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**P95000053449**  
January 4, 2002

**CORPORATION NAME (S) AND DOCUMENT NUMBER (S):**

Globalxchange Communications Inc. into Globalxchange Communications Inc.

**Filing Evidence**

- ☐ Plain/Confirmation Copy  
☒ Certified Copy

**Retrieval Request**

- ☐ Photocopy  
☐ Certified Copy

**Type of Document**

- ☐ Certificate of Status  
☐ Certificate of Good Standing  
☐ Articles Only  
☐ All Charter Documents to include Articles & Amendments  
☐ Fictitious Name Certificate  
☐ Other

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TALLAHASSEE, FLORIDA

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AMENDMENTS	
<input type="checkbox"/>	Amendment
<input type="checkbox"/>	Resignation of RA Officer/Director
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<input type="checkbox"/>	Dissolution/Withdrawal
<input checked="" type="checkbox"/>	Merger

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ARTICLES OF MERGER  
Merger Sheet

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MERGING:

GLOBALXCHANGE COMMUNICATIONS, INC., a Florida corp., P95000053449

INTO

**GLOBALXCHANGE COMMUNICATIONS, INC..** a Delaware entity not qualified  
in Florida

File date: January 4, 2002

Corporate Specialist: Susan Payne

**ARTICLES OF MERGER  
OF  
GLOBALXCHANGE COMMUNICATIONS, INC.  
(A Florida Corporation)  
AND  
GLOBALXCHANGE COMMUNICATIONS, INC.  
(A Delaware Corporation)**

FILED  
02 JAN -4 AM 10:47  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

To the Department of State  
State of Florida :

Pursuant to the provisions of the Florida Business Corporation Act, the domestic business corporation and the foreign business corporation herein named do hereby submit the following Articles of Merger.

FIRST: Annexed hereto and made a part hereof is the Agreement and Plan of Merger dated October 30, 2001 for merging GlobalXchange Communications, Inc., a Florida corporation, with and into GlobalXchange Communications, Inc., a Delaware corporation.

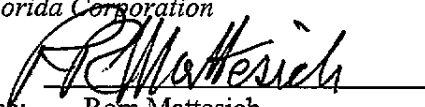
SECOND: The shareholders entitled to vote on the aforesaid Agreement and Plan of Merger of GlobalXchange Communications, Inc. (a Florida Corporation) approved and adopted the Agreement and Plan of Merger at a meeting of said shareholders held on December 7, 2001.

THIRD: The Board of Directors of GlobalXchange Communications, Inc. (a Delaware corporation) approved and adopted the Agreement and Plan of Merger by written consent given by them on October 30, 2001 in accordance with the provisions of the Delaware General Corporation Law, and, thereafter, on December 5, 2001, the sole shareholder of GlobalXchange Communications, Inc. (a Delaware corporation) approved and adopted the Agreement and Plan of Merger by written consent in accordance with the provisions of the Delaware General Corporation Law.

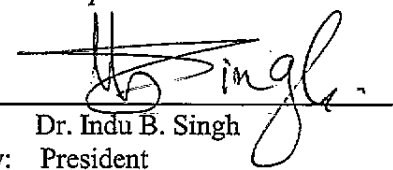
FOURTH: The merger of GlobalXchange Communications, Inc. (a Florida corporation) with and into GlobalXchange Communications, Inc., a Delaware corporation) is permitted by the laws of the jurisdiction of organization of GlobalXchange Communications, Inc., a Delaware Corporation and has been authorized in compliance with said laws.

Executed on this 7th day of December, 2001.

GlobalXchange Communications, Inc.  
*A Florida Corporation*

By:   
Name: Rom Mattesich  
Capacity: President

GlobalXchange Communications, Inc.,  
*A Delaware Corporation*

By:   
Name: Dr. Indu B. Singh  
Capacity: President

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**AGREEMENT AND PLAN OF MERGER**

Among

TRANSAT HOLDINGS, INC., a Delaware Corporation,  
GLOBALXCHANGE COMMUNICATIONS, INC., a Delaware Corporation,  
GLOBALXCHANGE COMMUNICATIONS, INC., a Florida Corporation,

ROM MATTESICH, an individual,

FRINEE MATTESICH, an individual,

And

ANIL GANATRA, an individual.

Dated: October 30, 2001

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AGREEMENT AND PLAN OF MERGER, dated as of October 30, 2001 (this "Agreement"), among Transat Holdings, Inc., a Delaware corporation ("Acquiror"), GlobalXchange Communications, Inc., a Delaware corporation and a direct, wholly owned subsidiary of Acquiror ("Acquiror Sub"), GlobalXchange Communications, Inc., a Florida corporation (the "Target"), Rom Mattesich, an individual, Frinee Mattesich, an individual, and Anil Ganatra, an individual (Rom Mattesich, Frinee Mattesich and Anil Ganatra to be referred to collectively as the "Target Principals") (Acquiror, Acquiror Sub, Target, and the Target Principals may hereinafter be referred to individually as a "Party" or collectively as the "Parties").

WHEREAS, Acquiror Sub, upon the terms and subject to the conditions of this Agreement, will merge with and into the Target (the "Merger");

WHEREAS, the Board of Directors of the Target (i) has determined that the Merger is in the best interests of the Target and its shareholders and has approved this Agreement and the transactions contemplated hereby ("Transactions") and (ii) has recommended approval of this Agreement by, and directed that this Agreement be submitted to a vote of, the shareholders of the Target; and

WHEREAS, the Boards of Directors of Acquiror and Acquiror Sub have determined that the Merger is in the best interests of Acquiror, Acquiror Sub and have approved this Agreement and the Transactions.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Acquiror, Acquiror Sub, the Target, and the Target Principals hereby agree as follows:

## ARTICLE I

### THE MERGER

SECTION 1.01. The Merger. Upon the terms and subject to the conditions set forth in this Agreement (including Article VII), at the Effective Time (as hereinafter defined), Target shall be merged with and into Acquiror Sub. As a result of the Merger, the outstanding shares of capital stock of Target shall be converted or canceled in the manner provided in Article II of this Agreement, the separate corporate existence of Target shall cease and Acquiror Sub shall continue as the surviving corporation of the Merger (the "Surviving Corporation"). The name of the Surviving Corporation shall be GlobalXchange Communications, Inc.

SECTION 1.02. Effective Time; Closing. As promptly as practicable and in no event later than the first business day following the satisfaction or waiver of the conditions set forth in Article VII (or such other date as may be agreed by each of the parties hereto) (the "Closing Date"), the parties hereto shall cause the Merger to be consummated by filing articles of merger (the "Articles of Merger") with the Secretary of State of the State of Delaware (the "Secretary") in such form as is required by, and executed in accordance with the relevant provisions of, Delaware law. The term "Effective Time" means the date and time of the filing of the Articles of Merger with the Secretary (or such later time as may be agreed in writing by each of the parties hereto and specified in the Articles of Merger). Immediately prior to the filing of the Articles of Merger, a closing will be held at the offices of Membrado Montell, LLP (or such other place and time as the parties may agree).

SECTION 1.03. Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of Delaware law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all the rights, privileges, immunities, powers and franchises (of a public as well as of a private nature) of the Target and Acquiror Sub and all property (real, personal and mixed) of the Target and Acquiror Sub and all debts due to either the Target or Acquiror Sub on any account, including subscriptions to shares, and all other choses in action, and every other interest of or belonging to or due to each of the Target and Acquiror Sub shall vest in the Surviving Corporation, and all debts, liabilities, obligations and duties of each of the Target and Acquiror Sub shall become the debts, liabilities, obligations and duties of the Surviving Corporation and may be enforced against the Surviving Corporation to the same extent as if such debts, liabilities, obligations and duties had been incurred or contracted by the Surviving Corporation. The title to any real estate or any interest therein vested, by deed or otherwise, in the Target or Acquiror Sub shall not revert or in any way become impaired by reason of the Merger, and all rights of creditors and all liens upon any property of the Target or Acquiror Sub shall be preserved unimpaired following the Merger.

SECTION 1.04. Articles of Incorporation; Bylaws. (a) At the Effective Time, the Articles of Incorporation of Acquiror Sub, as in effect immediately prior to the Effective Time, shall be the Articles of Incorporation of the Surviving Corporation, a copy of which is annexed hereto as Exhibit A.

(b) At the Effective Time, the Bylaws of Acquiror Sub, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation until thereafter amended as provided by law, the Articles of Incorporation of the Surviving Corporation and such Bylaws.

SECTION 1.05. Directors and Officers. The directors of Acquiror Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, each to hold office in accordance with the Articles of Incorporation and Bylaws of the Surviving Corporation until a successor is elected or appointed and has qualified or until the earliest of such director's death, resignation, removal or disqualification, and the officers of Acquiror Sub immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified, or as otherwise provided in the Bylaws of the Surviving Corporation.

## ARTICLE II

### CONVERSION OF SECURITIES: EXCHANGE OF CERTIFICATES

SECTION 2.01. Conversion of Securities. At the Effective Time, by virtue of the Merger and without any action on the part of Acquiror Sub, the Target or the holders of any of the following shares of capital stock:

(a) Subject to the other provisions of this Section 2.01 and to Section 2.02:

(i) each share of common stock, \$1.00 par value per share, of the Target ("Target Common Stock") issued and outstanding immediately prior to the Effective Time (the "Cancelable Shares") shall be converted into the right to receive twelve hundred (1200) shares (the "Exchange Ratio") of common stock, \$.0001 par value per share ("Acquiror Common Stock"), of Acquiror. At the Effective Time, all such shares of Target Common Stock shall no longer be outstanding and automatically shall be canceled and cease to exist, and each certificate previously evidencing any such shares shall thereafter represent the right

to receive a certificate representing the shares of Acquiror Common Stock into which such shares of Target Common Stock were converted in the Merger. The holders of certificates previously evidencing such shares of Target Common Stock outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such shares of Target Common Stock except as otherwise provided herein or by Delaware Law. Such certificates previously evidencing shares of Target Common Stock shall be exchanged for certificates representing whole shares of Acquiror Common Stock issued in consideration therefor upon the surrender of such certificates in accordance with the provisions of Section 2.02;

(ii) each Cancelable Share shall automatically be canceled and cease to exist, and no consideration shall be paid or payable in respect of such shares;

(iii) each share of common stock, par value \$.0001 per share, of Acquiror Sub ("Acquiror Sub Common Stock") issued and outstanding immediately prior to the Effective Time shall remain one (1) validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation at the Effective Time, and the Surviving Corporation thereafter shall have no other equity securities; and

(iv) The Acquiror Common Stock to be issued pursuant to the Merger will bear the following or a similar restrictive legend:

"The shares represented by this certificate have not been registered under the Securities Act of 1933, as amended. These shares have been acquired for investment and not for distribution or resale. They may not be sold, assigned, mortgaged, pledged, hypothecated or otherwise transferred or disposed of without an effective registration statement for such shares under the Securities Act of 1933 or an opinion of counsel for the Company that registration is not required under such Act."

(b) If between the date of this Agreement and the Effective Time the outstanding shares of Acquiror Common Stock or Target Common Stock shall have been changed into a different number of shares or a different class, by reason of any stock dividend, reclassification, recapitalization, split, division, combination or exchange of shares, the Exchange Ratio shall be correspondingly adjusted to reflect such stock dividend, reclassification, recapitalization, split, division, combination or exchange of shares.

SECTION 2.02. Exchange of Certificates. (a) Exchange Agent. As of or before the Effective Time, Acquiror shall deposit, or shall cause to be deposited, with Membrado Montell, LLP (the "Exchange Agent"), for the benefit of the holders of shares of Target Common Stock, for exchange in accordance with this Article II, through the Exchange Agent, certificates representing the whole shares of Acquiror Common Stock issuable pursuant to Section 2.01 in exchange for outstanding shares of Target Common Stock (such certificates for shares of Acquiror Common Stock, being hereinafter referred to as the "Exchange Fund"). The Exchange Agent shall, pursuant to irrevocable instructions from Acquiror, deliver the Acquiror Common Stock contemplated to be issued pursuant to Section 2.01 out of the Exchange Fund.

(b) Exchange Procedures. As soon as reasonably practicable after the Effective Time, Acquiror will instruct the Exchange Agent to mail to each holder of record of a certificate or certificates

which immediately prior to the Effective Time evidenced Cancelable Shares (the "Certificates") (i) a letter of transmittal, and (ii) instructions for use in effecting the surrender of the Certificates in exchange for certificates evidencing shares of Acquiror Common Stock. Upon surrender of a Certificate for cancellation to the Exchange Agent in accordance with the instructions provided, including duly executed documents, the holder of such Certificate shall be entitled to receive in exchange therefor a certificate representing the number of whole shares of Acquiror Common Stock which such holder has the right to receive in respect of the Cancelable Shares (after taking into account all Cancelable Shares then held by such holder), together with any dividends or distribution to which such holder is entitled pursuant to Section 2.02(c), and the Certificate so surrendered shall forthwith be canceled. Subject to Section 2.02(g), under no circumstances will any holder of a Certificate be entitled to receive any part of the shares of Acquiror Common Stock into which the Cancelable Shares were converted in the Merger until such holder shall have surrendered such Certificate. In the event of a transfer of ownership of Cancelable Shares which has not been registered in the transfer records of the Target, the shares of Acquiror Common Stock into which the Target Common Stock were converted in the Merger may be delivered by the Exchange Agent in accordance with this Article II to the transferee if the Certificate evidencing such shares of Target Common Stock is presented to the Exchange Agent, accompanied by all documents required to evidence and effect such transfer and by evidence that any applicable stock transfer taxes have been paid. Until surrendered as contemplated by this Section 2.02, each Certificate shall be deemed at any time after the Effective Time to evidence only the right to receive upon such surrender the certificate representing the number of whole shares of Acquiror Common Stock which such holder has the right to receive in respect of the Cancelable Shares formerly represented by such Certificate (after taking into account all Cancelable Shares then held by such holder), together with any dividends or distribution to which such holder is entitled pursuant to Section 2.02(c).

(c) Distributions with Respect to Unexchanged Shares of Acquiror Common Stock. No dividends or other distributions declared or made after the Effective Time with respect to Acquiror Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Certificate with respect to the shares of Acquiror Common Stock evidenced thereby, until the holder of such Certificate shall surrender such Certificate. Subject to the effect of applicable laws, following surrender of any such Certificate, there shall be paid to the holder of such Certificate, in addition to the shares of Acquiror Common Stock as provided in 2.02(b), without interest, the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to the whole shares of Acquiror Common Stock evidenced by such Certificate.

(d) No Further Rights in Target Common Stock. All shares of Acquiror Common Stock issued or paid upon conversion of the shares of Target Common Stock in accordance with the terms hereof (including any cash paid or other distributions pursuant to Section 2.02(c)) shall be deemed to have been issued or paid in full satisfaction of all rights pertaining to such shares of Target Common Stock.

(e) Termination of Exchange Fund. Any portion of the Exchange Fund which remains undistributed to the holders of Target Common Stock for one (1) year after the Effective Time shall be delivered to Acquiror, upon demand, and, subject to Section 2.02(g), any holders of Target Common Stock who have not theretofore complied with this Article II shall thereafter look only to Acquiror for the shares of Acquiror Common Stock and any dividends or other distributions to which they are entitled pursuant to Section 2.02(c).

(f) No Liability. Neither Acquiror nor the Surviving Corporation shall be liable to any holder of shares of Target Common Stock for any shares of Acquiror Common Stock or cash (or dividends or

distributions with respect thereto) delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

(g) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation, the posting by such person of a bond in such reasonable amount as the Surviving Corporation may direct as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the shares of Acquiror Common Stock, and unpaid dividends and distributions on shares of Acquiror Common Stock deliverable in respect thereof pursuant to this Agreement.

SECTION 2.03. Stock Transfer Books. At the Effective Time, the stock transfer books of the Target shall be closed and there shall be no further registration of transfers of shares of Target Common Stock thereafter on the records of the Target. On or after the Effective Time, any Certificates presented to the Exchange Agent or Acquiror for any reason shall carry only those rights as expressly stated in this Article II.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE TARGET & TARGET PRINCIPALS

Except as set forth in the Disclosure Schedule delivered by the Target and signed by the Target and Acquiror for identification prior to the execution and delivery of this Agreement (the "Target Disclosure Schedule"), which shall identify exceptions by specific section references, the Target and the Target Principals, jointly and severally, hereby represent and warrant to Acquiror and Acquiror Sub that the statements contained in this Article III are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article III).

SECTION 3.01. Organization and Qualification; Subsidiaries. The Target is a corporation, and each subsidiary of the Target (a "Subsidiary") is a corporation or partnership, in each case duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has the requisite corporate or partnership power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. The Target and each Subsidiary are duly qualified or licensed as a foreign corporation or partnership to do business, and are in good standing, in each jurisdiction where the character of the properties owned, leased or operated by them or the nature of their business makes such qualification or licensing necessary, except for such failures to be so qualified or licensed and in good standing that would not, individually or in the aggregate, have a Material Adverse Effect on the Target. As used in this Agreement, the term "Material Adverse Effect" means with respect to any person, any change or effect that is materially adverse to the financial condition, business or results of operations of such person and its subsidiaries, taken as a whole. As of the date hereof, a true and correct list of all Subsidiaries, together with the jurisdiction of organization of each Subsidiary and the percentage of the outstanding capital stock or other equity interests of each Subsidiary owned by the Target and each other Subsidiary, is set forth in Section 3.01 of the Target Disclosure Schedule. Except as disclosed in Section 3.01 of the Target Disclosure Schedule, the Target does not directly or indirectly own any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for any equity or similar interest in, any corporation, partnership, joint venture or other business association or entity.

SECTION 3.02. Articles of Incorporation and Bylaws. The Target has heretofore furnished or made available to Acquiror a complete and correct copy of the Articles of Incorporation and Bylaws or equivalent organizational documents, each as amended to date, of the Target and each Subsidiary. Neither the Target nor any Subsidiary is in violation of any provision of its Articles of Incorporation, Bylaws or equivalent organizational documents.

SECTION 3.03. Capitalization. The authorized capital stock of the Target consists of one thousand (1,000) shares of Target Common Stock. As of the date of this Agreement, one thousand (1,000) shares of Target Common Stock were issued and outstanding, all of which are validly issued, fully paid and nonassessable and not subject to preemptive rights. Except as set forth in this Section 3.03 or Section 3.03 of the Target Disclosure Schedule, as of the date of this Agreement, there are no options, warrants or other rights, agreements, arrangements or commitments of any character relating to the issued or unissued capital stock of, or other equity interests in, the Target or any Subsidiary obligating the Target or any Subsidiary to issue or sell any shares of capital stock of, or other equity interests in, the Target or any Subsidiary. There are no outstanding contractual obligations of the Target or any Subsidiary to repurchase, redeem or otherwise acquire any shares of Target Common Stock or any capital stock of, or any equity interest in, any Subsidiary. Each outstanding share of capital stock of, or other equity interest in, each Subsidiary is duly authorized, validly issued, fully paid and nonassessable.

SECTION 3.04. Authority Relative to This Agreement. The Target has all necessary corporate power and authority to execute and deliver this Agreement and, with respect to the Merger, upon the approval of this Agreement and the Merger by the Target's shareholders in accordance with this Agreement and applicable law, to perform its obligations hereunder and to consummate the Transactions. The execution and delivery of this Agreement by the Target and the consummation by the Target of the Transactions have been duly and validly authorized by all necessary corporate action and no other corporate proceedings on the part of the Target are necessary to authorize this Agreement or to consummate the Transactions (other than, with respect to the Merger, the approval of this Agreement and the Merger by the Target's shareholders in accordance with applicable law and the filing and recordation of appropriate Articles of Merger with the Secretary in accordance with this Agreement and applicable law). This Agreement has been duly and validly executed and delivered by the Target and the Target Principals and, assuming the due authorization, execution and delivery of this Agreement by Acquiror and Acquiror Sub, constitutes a legal, valid and binding obligation of the Target and the Target Principals, enforceable against the Target and the Target Principals in accordance with its terms.

SECTION 3.05. No Conflict; Required Filings and Consents. (a) The execution and delivery of this Agreement by the Target do not, and the performance of this Agreement by the Target will not, subject to (x) with respect to the Merger, obtaining the requisite approval of this Agreement and the Merger by the Target's shareholders in accordance with this Agreement and applicable law, and (y) obtaining the consents (the "Required Consents"), approvals, authorizations and permits and making the filings described in this Section 3.05(b) and Section 3.05(b) of the Target Disclosure Schedule, (i) conflict with or violate the Articles of Incorporation, Bylaws or equivalent organizational documents of the Target or any Subsidiary, (ii) conflict with or violate any law applicable to the Target or any Subsidiary or by which any property or asset of the Target or any Subsidiary is bound or affected, or (iii) except as specified in Section 3.05(a)(iii) of the Target Disclosure Schedule, result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any right of termination, unilateral amendment, acceleration or cancellation of, or result in the creation of a lien or other encumbrance on any property or asset of the Target or any Subsidiary, or require the consent of any third party pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise

or other instrument or obligation to which the Target or any Subsidiary is a party or by which the Target or any Subsidiary or any property or asset of the Target or any Subsidiary is bound or affected, except for such conflicts, violations, breaches, defaults or other occurrences, which individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect on the Target.

(b) The execution and delivery of this Agreement by the Target do not, and the performance of this Agreement by the Target will not, require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, domestic or foreign, except filing and recordation of appropriate Articles of Merger with the Secretary as required by Delaware law, except (i) as specified in Section 3.05(b) of the Target Disclosure Schedule, and (ii) where failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications, would not prevent or delay consummation of the Merger, or otherwise prevent the Target from performing its obligations under this Agreement.

SECTION 3.06. Permits; Compliance. Except as disclosed in Section 3.06 of the Target Disclosure Schedule, each of the Target and the Subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any United States (federal, state or local) or foreign government, or governmental, regulatory or administrative authority, agency or commission or court of competent jurisdiction ("Governmental Authority") necessary for the Target or any Subsidiary to own, lease and operate its properties or to carry on its business as it is now being conducted, except for those which the failure to possess would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect on the Target (the "Target Permits") and, as of the date hereof, no suspension or cancellation of any of the Target Permits is pending or, to the knowledge of the Target, threatened except such suspension or termination as would not reasonably be expected to have a Material Adverse Effect on the Target. Except as disclosed in Section 3.06 of the Target Disclosure Schedule or as would not reasonably be expected to have a Material Adverse Effect on the Target, neither the Target nor any Subsidiary is in conflict with, or in default or violation of, or, with the giving of notice or the passage of time, would be in conflict with, or in default or violation of, (a) any law applicable to the Target or any Subsidiary or by which any property or asset of the Target or any Subsidiary is bound or affected, or (b) any of the Target Permits.

SECTION 3.07. Financial Statements. (a) Section 3.07(a) of the Target Disclosure Schedule contains true and complete copies of the following financial statements: (i) unaudited income statement for the nine (9) months ended September 30, 2001 (the "Most Recent Income Statement"), (ii) unaudited balance sheet at September 30, 2001 (the "Most Recent Balance Sheet"), and (iii) unaudited cash flow statement for the nine (9) months ended September 30, 2001 (the "Most Recent Cash Flow Statement"), in each case internally prepared by the Target (the Most Recent Income Statement, the Most Recent Balance Sheet and the Most Recent Cash Flow Statement shall be referred to collectively as the "Most Recent Financial Statements"). Each of the Most Recent Financial Statements (including, in each case, any notes thereto) fairly presented in all material respects the financial position, results of operations and changes in shareholders' equity and cash flows of the Target and its Subsidiaries as at the respective dates thereof and for the respective periods indicated therein (subject to normal and recurring year-end adjustments which were not and are not expected, individually or in the aggregate, to have a Material Adverse Effect on the Target or any of its Subsidiaries).

(b) Except (i) to the extent set forth on the Most Recent Balance Sheet, including the notes thereto, or (ii) as set forth in Section 3.07(b) of the Target Disclosure Schedule, neither the Target nor any Subsidiary has any liability or obligation of any nature (whether accrued, absolute, contingent or

otherwise) which would be required to be reflected on a balance sheet, or in the notes thereto, prepared in accordance with reasonably accepted U.S. accounting standards, which would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect on the Target.

SECTION 3.08. Absence of Certain Changes or Events. Since July 31, 2001, except as contemplated by, or disclosed pursuant to, this Agreement, including Section 3.08 of the Target Disclosure Schedule, the Target and the Subsidiaries have conducted their business only in the ordinary course and in a manner consistent with past practice and, since July 31, 2001, there has not been (a) any event or events (whether or not covered by insurance), individually or in the aggregate, having a Material Adverse Effect on the Target or any of its Subsidiaries, including without limitation the imposition of any security interests on any of the assets of Target or any of its Subsidiaries, (b) any material change by the Target in its accounting methods, principles or practices, (c) any entry by the Target or any Subsidiary into any commitment or transaction material to the Target, except in the ordinary course of business and consistent with past practice, including without limitation any (i) borrowings or the issuance of any guaranties, (ii) any capital expenditures in excess of \$10,000, or (iii) any grant of any increase in the base compensation payable, or any loans, to any directors, officers or employees, (d) any declaration, setting aside or payment of any dividend or distribution in respect of any capital stock of the Target or any redemption, purchase or other acquisition of any of the Target's or the Subsidiaries' securities, or (e) other than pursuant to the Plans (as defined in Section 3.10), any increase in or establishment of any bonus, insurance, severance, deferred compensation, pension, retirement, profit sharing, stock option, stock purchase or other employee benefit plan, except in the ordinary course of business consistent with past practice.

SECTION 3.09. Absence of Litigation. Except as disclosed in Section 3.09 of the Target Disclosure Schedule, there is no claim, action, proceeding or investigation pending or, to the knowledge of the Target, threatened against the Target or any Subsidiary, before any arbitrator or Governmental Authority which (a) individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect on the Target, or (b) seeks to and is reasonably likely to significantly delay or prevent the consummation of the Merger. Neither the Target or any Subsidiary nor any property or asset of the Target or any Subsidiary is in violation of any order, writ, judgment, injunction, decree, determination or award having, individually or in the aggregate, a Material Adverse Effect on the Target.

SECTION 3.10. Employee Benefit Plans. Section 3.10 of the Target Disclosure Schedule lists (a) all material employee benefit plans, programs and arrangements maintained for the benefit of any current or former employee, officer or director of the Target or any Subsidiary (the "Plans") and (b) all written contracts and agreements relating to employment and all severance agreements with any of the directors or officers of the Target or any Subsidiaries (other than, in each case, any such contract or agreement that is terminable by the Target or any Subsidiary at will without penalty or other adverse consequence) (the "Target Employment Contracts"). Section 3.10 of the Target Disclosure Schedule sets forth the name of each officer or employee of the Target or any Subsidiary and the annual base compensation applicable to each such officer or employee. The Target has made available to Acquiror a copy of each Plan, each material document prepared in connection with each Plan and each Target Employment Contract. None of the Plans is a multiemployer plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Each Plan has been operated in accordance with its terms and the requirements of applicable law except where the failure to so operate would not have a Material Adverse Effect on the Target. The Target has not incurred any direct or indirect material liability under, arising out of or by operation of Title IV of ERISA in connection with the termination of, or withdrawal from, any Plan or other retirement plan or arrangement and, as of the date hereof, no fact exists or event has occurred that would reasonably be expected to give rise to any such liability. Except as set forth in Section 3.10 of the Target Disclosure



Schedule, no Plan is or has been covered by Title IV of ERISA or Section 412 of the Code. The Target and the Subsidiaries have complied in all respects with the Worker Adjustment Retraining Notification Act and no fact or event exists that could give rise to liability under such act, except for such occurrences, noncompliances and liabilities as would not, individually or in the aggregate, have a Material Adverse Effect on the Target.

SECTION 3.11. Labor Matters. Except as set forth in Section 3.11 of the Target Disclosure Schedule, neither the Target nor any Subsidiary is a party to any collective bargaining agreement or other labor union contract applicable to persons employed by the Target or any Subsidiary.

SECTION 3.12. Taxes. (a) Except as set forth in Section 3.12(a) of the Target Disclosure Schedule, the Target and each of the Subsidiaries have (i) filed all federal, state, local and foreign tax returns required to be filed by them prior to the date of this Agreement (taking into account extensions), all of which were correct and complete in all respects, (ii) paid or accrued all taxes shown to be due on such returns and paid all applicable ad valorem and value added taxes as are due, and (iii) paid or accrued all taxes for which a notice of assessment or collection has been received (other than amounts being contested in good faith by appropriate proceedings), except in the case of clause (i), (ii) or (iii) for any such filings, payments or accruals which would not, individually or in the aggregate, have a Material Adverse Effect on the Target. Except as set forth in Section 3.12(a) of the Target Disclosure Schedule, neither the Internal Revenue Service nor any other federal, state, local or foreign taxing authority has asserted any claim for taxes, or to the knowledge of the Target Principals, is threatening to assert any claims for taxes, which claims, individually or in the aggregate, could have a Material Adverse Effect on the Target. The Target has open years for federal, state and foreign income tax returns only as set forth in Section 3.12(a) of the Target Disclosure Schedule. The Target and each Subsidiary have withheld or collected and paid over to the appropriate governmental authorities (or are properly holding for such payment) all taxes required by law to be withheld or collected, except for amounts which would not, individually or in the aggregate, have a Material Adverse Effect on the Target. The Target has not made an election under Section 341(f) of the Code. There are no liens for taxes upon the assets of the Target or any Subsidiary (other than liens for taxes that are not yet due or that are being contested in good faith by appropriate proceedings), except for liens which would not, individually or in the aggregate, have a Material Adverse Effect on the Target.

(b) Neither the Target nor any Subsidiary has taken or agreed to take any action that would prevent the Merger from constituting a tax-free reorganization qualifying under the provisions of Section 368(a) of the Code.

SECTION 3.13. Environmental Matters. (a) For purposes of this Agreement, the following terms shall have the following meanings: (i) "Hazardous Substances" means (A) those substances defined in or regulated under the following federal statutes and their state counterparts, as each may be amended from time to time, and all regulations thereunder: the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, the Safe Drinking Water Act, the Atomic Energy Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Toxic Substances Control Act and the Clean Air Act; (B) petroleum and petroleum products, byproducts and breakdown products including crude oil and any fractions thereof; (C) natural gas, synthetic gas, and any mixtures thereof; (D) polychlorinated biphenyls; (E) any other chemicals, materials or substances defined or regulated as toxic or hazardous or as a pollutant or contaminant or as a waste under any applicable Environmental Law; and (F) any substance with respect to which a federal, state or local agency requires environmental investigation, monitoring, reporting or remediation; and (ii) "Environmental Laws" means any federal, state, foreign, or local law, rule or regulation, now or hereafter in

effect and as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to pollution or protection of the environment, health, safety or natural resources, including without limitation, those relating to (A) releases or threatened releases of Hazardous Substances or materials containing Hazardous Substances or (B) the manufacture, handling, transport, use, treatment, storage or disposal of Hazardous Substances or materials containing Hazardous Substances.

(b) Except as described in Section 3.13 of the Target Disclosure Schedule or as would not individually or in the aggregate result in or be likely to result in any fine, tax, assessment, penalty, loss, cost, damage, liability, expense or other payment related thereto that would reasonably be expected to have a Material Adverse Effect on the Target: (i) the Target and each Subsidiary are and have been in compliance with all applicable Environmental Laws; (ii) the Target and each Subsidiary have obtained all permits, approvals, identification numbers, licenses or other authorizations required under any applicable Environmental Laws ("Environmental Permits") and are and have been in compliance with their requirements; (iii) such Environmental Permits are transferable to the Surviving Corporation pursuant to the Merger without the consent of any Governmental Authority; (iv) there are no underground or aboveground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Substances are being or have been treated, stored or disposed of on any owned or leased real property or on any real property formerly owned, leased or occupied by the Target or any Subsidiary; (v) there is, to the best knowledge of the Target Principals, no asbestos or asbestos-containing material on any owned or leased real property in violation of applicable Environmental Laws; (vi) the Target and the Subsidiaries have not released, discharged or disposed of Hazardous Substances on any real property owned or leased or on any real property formerly owned or leased by the Target or any Subsidiary and none of such property is contaminated with any Hazardous Substances; (vii) neither the Target nor any of the Subsidiaries is undertaking, and neither the Target nor any of the Subsidiaries has completed, any investigation or assessment or remedial or response action relating to any such release, discharge or disposal of or contamination with Hazardous Substances at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and (viii) there are no pending or, to the knowledge of the Target Principals, past or threatened actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, notices of liability or potential liability, investigations, proceedings, consent orders or consent agreements relating in any way to Environmental Laws, any Environmental Permits or any Hazardous Substances ("Environmental Claims") against the Target or any Subsidiary or any of their property, and there are no circumstances that can reasonably be expected to form the basis of any such Environmental Claim, including without limitation with respect to any off-site disposal location presently or formerly used by the Target or any of the Subsidiaries or any of their predecessors.

(c) The Target and the Subsidiaries have made available to Acquiror copies of any environmental reports, studies or analyses in its possession or under its control relating to owned or leased real property or the operations of the Target or the Subsidiaries.

SECTION 3.14. Notes and Accounts Receivable. All notes and accounts receivables of Target and its Subsidiaries appearing on the balance sheets contained in the Financial Statements for the Most Recent Fiscal Month and all of the receivables which have arisen or been acquired by Target or its Subsidiaries since the date thereof (collectively, the "Receivables"), are bona fide trade receivable and have arisen or were acquired in the ordinary course of business of Target or its Subsidiaries and in a manner consistent with their normal past credit practices. Since the date of the balance sheets contained in the Financial Statements for the Most Recent Fiscal Month, neither Target nor its Subsidiaries has cancelled or agreed to cancel, in whole or in part, any Receivables except in the ordinary course of business consistent with demonstrated past practices. All

of the Receivables are reflected properly on the books and records of Target or its Subsidiaries, are current and collectible and not subject to set-off or counterclaim, and will be collected in accordance with their terms at their recorded amounts, subject only to reserve for bad debts or doubtful accounts set forth on the balance sheets contained in the Financial Statements for the Most Recent Fiscal Month (as opposed to the notes thereto) as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of Target and its Subsidiaries. For purposes of the foregoing, Receivables shall be deemed to be "collected in accordance with their terms at their recorded amounts" if they are collected in full within one hundred and twenty (120) days of the date such receivables are billed. Target and its Subsidiaries have provided to Acquiror a schedule of aged Receivables as of a date within five (5) days of the date hereof.

SECTION 3.15. Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of the Target or any Subsidiary.

SECTION 3.16. Tangible Property. The Target and the Subsidiaries have sufficient title to all their tangible properties and assets to conduct their respective businesses, with only such exceptions as, individually or in the aggregate, would not have a Material Adverse Effect on the Target.

SECTION 3.17. Material Contracts. Section 3.17 of the Target Disclosure Schedule lists each contract which is required by its terms or is currently expected to result in the payment or receipt by the Target or any Subsidiary of more than \$50,000 and which is not terminable by the Target or any Subsidiary without the payment of any penalty or fine on not more than three months' notice (a "Material Contract") to which the Target or any Subsidiary is a party. Each Material Contract is in full force and effect and is enforceable against the parties thereto (other than the Target) in accordance with its terms and no condition or state of facts exists that, with notice or the passage of time, or both, would constitute a material default by the Target or, to the knowledge of the Target Principals, any third party under such Material Contracts. The Target has duly complied in all material respects with the provisions of each Material Contract to which it is a party.

SECTION 3.18. Vote Required. The affirmative vote of the holders of at least two-thirds (2/3) of the then outstanding shares of Target Common Stock is the only vote of the holders of any class or series of capital stock of the Target necessary to approve the Merger.

SECTION 3.19. Parachute Payments. Except as disclosed in Section 3.19 of the Target Disclosure Schedule, the Target has not entered into any agreement that would result in the making of "parachute payments," as defined in Section 280G of the Code, to any person.

SECTION 3.20. Certain Business Practices. As of the date of this Agreement, except for such actions which would not have a Material Adverse Effect, neither the Target nor any director, officer (including the Target Principals), or, to the best knowledge of the Target Principals, any agent or employee of the Target has (i) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (ii) made any unlawful payment 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, or (iii) made any other unlawful payment.

SECTION 3.21. Insurance. All material assets and risks of the Target and any Subsidiaries are covered by valid and currently effective insurance policies in such types and amounts as are consistent

with customary practices and standards of companies engaged in businesses and operations similar to those of the Target.

SECTION 3.22. Board Recommendation. At a meeting duly called and held in compliance with Florida Law and the bylaws of the Target, the Board of Directors of the Target has adopted a resolution (i) approving the Merger, based on a determination that the Merger is fair to the holders of Target Common Stock and is in the best interests of such Target shareholders, and (ii) approving this Agreement and the Transactions and recommending approval of this Agreement and the Transactions by the shareholders of the Target.

SECTION 3.23. Change in Control. Except as set forth in Section 3.23 of the Target Disclosure Schedule, the Target is not a party to any contract, agreement or understanding that contains a "change in control," "potential change in control" or similar provision.

SECTION 3.24. Intellectual Property. Section 3.24 of the Target Disclosure Schedule (i)(A) identifies each trademark, service mark, trade name, copyright and all registrations and applications for any of the foregoing; (ii) lists each patent, invention, industrial model, process, design and all registrations and applications for any of the foregoing; and (iii) identifies any know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trade dress, labels and logos, pertaining to any product, software or service manufactured, marketed, licensed or sold by the Target or any of its Subsidiaries in the conduct of their business or used, employed or exploited in the development, license, sale, marketing, distribution or maintenance thereof and which is material to the business of the Target and its Subsidiaries taken as a whole, and (B) lists all contracts and other agreements to which the Target or any of its Subsidiaries is a party, including, such contract and agreement where Target is either as licensee or licensor, for each of the foregoing items of intellectual property (all of the foregoing, the "Target's Intellectual Property"). None of the Target's affiliates, including, to the Target Principal's knowledge, any of its shareholders, has any interest (other than as a shareholder of the Target) in, owns, possesses or otherwise holds in any manner any of the Target's, or any of its Subsidiaries', Intellectual Property. All patents, copyrights, trademarks, including state, federal and foreign registrations and applications, and other rights and property listed in Section 3.24 of the Target Disclosure Schedule are valid and in full force and effect. Except as set forth on Schedule 3.24 of the Target Disclosure Schedule, the Target, or one of its Subsidiaries, owns or has the exclusive right to use the Target's or such Subsidiaries' Intellectual Property in connection with the business now operated by it. The Target and any of its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of their respective Intellectual Property. Neither the Target nor any of its Subsidiaries have received any notice of infringement of or conflict with asserted rights of others with respect to any of the Target's or any of its Subsidiaries' Intellectual Property, and there is no claim, action, suit or proceeding pending or, to the Target Principal's knowledge, threatened or reasonably anticipated against the Target or any of its Subsidiaries with respect thereto. Except as set forth in Section 3.24 of the Target Disclosure Schedule, neither the Target nor any of its Subsidiaries is required to pay any royalty or other amount to anyone with respect to any of the Target's Intellectual Property. To the Target Principal's knowledge, the Target's and any of its Subsidiaries' trademarks, service marks, trade names, trade dress, labels and logos described in Section 3.24 of the Target Disclosure Schedule are sufficient for the conduct of their businesses as now conducted by them.

SECTION 3.25. Powers of Attorney. There are no outstanding powers of attorney executed on behalf of Target or any Subsidiaries.

SECTION 3.26. Solvency. No order has been made, petition presented or resolution passed for

the winding up (or other process whereby the business is terminated and the assets of the subject company are distributed among its creditors and/or shareholders) of either Target or any of its Subsidiaries. There are no cases or proceedings of any kind pending under any applicable insolvency, reorganization or similar law in any jurisdiction concerning Target or any of its Subsidiaries, and no circumstances exist which, under applicable law, would justify any such cases or proceedings. No receiver or trustee has been appointed with respect to all or any portion of Target or any of its Subsidiaries business or assets.

SECTION 3.27. Related Party Transactions. Except as set forth in Section 3.27 of the Target Disclosure Schedule, none of the officers, directors, employees or shareholders of Target or any of its Subsidiaries, or any of their affiliates, has been involved in any material business or financial transaction, arrangement or relationship with either Target or any of its Subsidiaries, as the case may be, within the past 12 months, and none of such officers, directors, employees, shareholders or their affiliates owns in whole or in part, directly or indirectly, any material asset, tangible or intangible, which is used in the business or operations of either Target or any of its Subsidiaries.

SECTION 3.28. Intentionally Omitted.

SECTION 3.29 Books and Records.

(a) None of the records, systems, data or information of either Target or any of its Subsidiaries is recorded, stored, maintained, operated or otherwise wholly or partly dependent on or held or accessible by any means (including, but not limited to, an electronic, mechanical or photographic process computerized or not) which are not under the exclusive ownership and direct control of either Target or its Subsidiaries, as the case may be.

(b) The books of account, minute books, stock record books, and other records of Target and its Subsidiaries, all of which have been made available to Acquiror, are complete and correct and have been maintained in accordance with sound business practices, including the maintenance of an adequate system of internal controls. The minute books of Target and its Subsidiaries contain accurate and complete records of all meetings held of, and corporate action taken by, the stockholders, the Boards of Directors, and any committees of the Boards of Directors of each of Target and such Subsidiaries, and no meeting of such stockholders, Boards of Directors or committees has been held for which minutes have not been prepared and are not contained in such minute books.

SECTION 3.30. Material Adverse Events. Since the date of the Most Recent Financial Statements there have not been any events, changes or developments relating to either Target or any of its Subsidiaries which, either individually or in the aggregate, have had or are reasonably likely to have a Material Adverse Effect.

SECTION 3.31. Material Disclosures. No statement, representation or warranty made by Target in this Agreement, or in any certificate, statement, list, schedule or other document furnished or to be furnished to Acquiror hereunder, contains, or when so furnished will contain, any untrue statement of a material fact, or fails to state, or when so furnished will fail to state, a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances in which they are or will be made, not misleading.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF ACQUIROR AND ACQUIROR SUB

Except as set forth in the Disclosure Schedule delivered by Acquiror to the Target and signed by the Target and Acquiror for identification prior to the execution and delivery of this Agreement (the "Acquiror Disclosure Schedule"), which shall identify exceptions by specific section references, Acquiror and Acquiror Sub hereby, jointly and severally, represent and warrant to the Target that:

SECTION 4.01. Corporate Organization and Qualification. Acquiror is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the requisite corporate power and authority and all necessary governmental approvals to own, lease and operate its properties and to carry on its business as it is now being conducted, except where the failure to have such power, authority and governmental approvals would not, individually or in the aggregate, have a material adverse effect on the ability of Acquiror and Acquiror Sub to perform their obligations hereunder and to consummate the Transactions. Acquiror and each of its subsidiaries is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for such failures to be so qualified or licensed and in good standing as would not, individually or in the aggregate, have a Material Adverse Effect on Acquiror or Acquiror Sub.

SECTION 4.02. Articles of Incorporation and Bylaws. Acquiror has heretofore furnished or made available to the Target a complete and correct copy of the Articles of Incorporation and Bylaws of Acquiror, and the Articles of Incorporation and Bylaws of Acquiror Sub, each as amended to date. Neither Acquiror nor Acquiror Sub is in violation of any provision of its Articles of Incorporation or Bylaws.

SECTION 4.03. Capitalization. As of the date of this Agreement, the authorized capital stock of Acquiror consists of (i) 45,000,000 shares of Acquiror Common Stock, \$.0001 par value, and (ii) 5,000,000 shares of so-called "blank check" preferred stock, \$.0001 par value ("Acquiror Preferred Stock"). As of the date of this Agreement, (a) 2,800,000 shares of Acquiror Common Stock were issued and outstanding, all of which were validly issued, fully paid and nonassessable, (b) no shares of Acquiror Common Stock were held in the treasury of Acquiror, (c) no shares of Acquiror Common Stock were reserved for future issuance pursuant to outstanding stock options or stock incentive rights granted pursuant to any stock option plan, and (d) no shares of Acquiror Preferred Stock were outstanding. The authorized capital stock of Acquiror Sub consists of (i) 8,000 shares of Acquiror Sub Common Stock, \$.0001 par value, and (ii) 2,000 shares of so-called "blank check" preferred stock, \$.0001 par value ("Acquiror Sub Preferred Stock"). As of the date of this Agreement, 100 shares of Acquiror Sub Common Stock is issued and outstanding and held by Acquiror. Except as contemplated by this Agreement and as set forth in Section 4.03 of the Acquiror Disclosure Schedule, as of the date of this Agreement, there are no options, warrants or other rights, agreements, arrangements or commitments of any character relating to the issued or unissued capital stock of Acquiror Sub obligating Acquiror Sub to issue or sell any shares of capital stock of, or other equity interests in, Acquiror or any Acquiror Sub. There are no outstanding contractual obligations of Acquiror or Acquiror Sub to repurchase, redeem or otherwise acquire any shares of Acquiror Common Stock or Acquiror Sub Common Stock. The shares of Acquiror Common Stock to be issued pursuant to the Merger will be duly authorized, validly issued, fully paid and nonassessable and not subject to preemptive rights created by statute, Acquiror's Articles of Incorporation or Bylaws or any agreement to which Acquiror is a party or by which Acquiror is bound.

SECTION 4.04. Authority Relative to This Agreement. Each of Acquiror and Acquiror Sub has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the Transactions. The execution and delivery of this Agreement by Acquiror and Acquiror Sub and the consummation by Acquiror and Acquiror Sub of the Transactions have been duly and validly authorized by all necessary corporate action and no other corporate proceedings on the part of Acquiror or Acquiror Sub are necessary to authorize this Agreement or to consummate the Transactions (other than with respect to the Merger, the filing and recordation of appropriate Articles of Merger with the Secretary, as required by this Agreement and applicable law). This Agreement has been duly and validly executed and delivered by Acquiror and Acquiror Sub and, assuming the due authorization, execution and delivery of this Agreement by the Target, constitutes a legal, valid and binding obligation of each of Acquiror and Acquiror Sub enforceable against each of Acquiror and Acquiror Sub in accordance with its terms.

SECTION 4.05. No Conflict; Required Filings and Consents. (a) The execution and delivery of this Agreement by Acquiror and Acquiror Sub do not, and the performance of this Agreement by Acquiror and Acquiror Sub will not, subject to obtaining the consents, approvals, authorizations and permits and making the filings described in Section 4.05(b) of this Agreement and Section 4.05(b) of the Acquiror Disclosure Schedule, (i) conflict with or violate the Articles of Incorporation or Bylaws of either Acquiror or Acquiror Sub, (ii) conflict with or violate any law applicable to Acquiror or Acquiror Sub or by which any property or asset of any of them is bound or affected, or (iii) result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a lien or other encumbrance on any property or asset of Acquiror or Acquiror Sub or require the consent of any third party pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Acquiror or Acquiror Sub is a party or by which Acquiror or Acquiror Sub or any property or asset of any of them is bound or affected, except for any such conflicts, violations, breaches, defaults or other occurrences which would not, individually or in the aggregate, have a Material Adverse Effect on Acquiror or prevent Acquiror and Acquiror Sub from performing their respective obligations under this Agreement and consummating the Transactions.

(b) The execution and delivery of this Agreement by Acquiror and Acquiror Sub do not, and the performance of this Agreement by Acquiror and Acquiror Sub will not, require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, domestic or foreign, except (i) filing and recordation of appropriate Articles of Merger with the Secretary as required by this Agreement and applicable law, (ii) as specified in Section 4.05(b) of the Acquiror Disclosure Schedule, and (iii) where failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications, would not have a Material Adverse Effect on Acquiror and would not prevent or delay consummation of the Transactions, or otherwise prevent Acquiror or Acquiror Sub from performing their respective obligations under this Agreement.

SECTION 4.06. Absence of Litigation. There is no claim, action, proceeding or investigation pending or, to the best knowledge of Acquiror, threatened against Acquiror or any Acquiror Subsidiary, before any arbitrator or Governmental Authority, which (a) individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on Acquiror or (b) seeks to delay or prevent the consummation of the Merger. Neither Acquiror nor any Acquiror Subsidiary nor any property or asset of Acquiror or any subsidiary is in violation of any order, writ, judgment, injunction, decree, determination or award having, individually or in the aggregate, a Material Adverse Effect.

SECTION 4.07. Taxes. (a) Acquiror and Acquiror Sub have (i) filed all federal and foreign tax returns required to be filed by it prior to the date of this Agreement (taking into account extensions), (ii) paid or accrued all taxes shown to be due on such returns and has paid all applicable ad valorem and value added taxes as are due and (iii) paid or accrued all taxes for which a notice of assessment or collection has been received (other than amounts being contested in good faith by appropriate proceedings), except in the case of clause (i), (ii) or (iii) for any such filings, payments or accruals which would not, individually or in the aggregate, have a Material Adverse Effect on Acquiror. Except as set forth on Section 4.07(a) of the Acquiror Disclosure Schedule, neither the Internal Revenue Service nor any other taxing authority has asserted any claim for taxes, or to the best knowledge of Acquiror, is threatening to assert any claims for taxes, which claims, individually or in the aggregate, would have a Material Adverse Effect on Acquiror. Acquiror and Acquiror Sub have withheld or collected and paid over to the appropriate governmental authorities (or are properly holding for such payment) all taxes required by law to be withheld or collected, except for amounts which would not, individually or in the aggregate, have a Material Adverse Effect on Acquiror. There are no liens for taxes upon the assets of Acquiror or Acquiror Sub (other than liens for taxes that are not yet due or that are being contested in good faith by appropriate proceedings), except for liens which would not, individually or in the aggregate, have a Material Adverse Effect on Acquiror.

(b) Acquiror has not taken or agreed to take any action that would prevent the Merger from constituting a tax-free reorganization qualifying under the provisions of Section 368(a) of the Code.

SECTION 4.08. Ownership of Acquiror Sub; No Prior Activities. (a) Acquiror Sub was formed solely for the purpose of engaging in the transactions contemplated by this Agreement.

(b) As of the date hereof and the Effective Time, except for obligations or liabilities incurred in connection with its incorporation or organization and the Transactions and except for this Agreement and any other agreements or arrangements contemplated by this Agreement, Acquiror Sub has not and will not have incurred, directly or indirectly, through any subsidiary or affiliate, any obligations or liabilities or engaged in any business activities of any type or kind whatsoever or entered into any agreements or arrangements with any person.

SECTION 4.09. Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of Acquiror or Acquiror Sub.

## ARTICLE V

### CONDUCT OF BUSINESS PENDING THE MERGER

SECTION 5.01. Conduct of Business by the Target Pending the Merger. The Target covenants and agrees that, between the date of this Agreement and the Effective Time, except as set forth in Section 5.01 of the Target Disclosure Schedule or as contemplated by any other provision of this Agreement, unless Acquiror shall otherwise agree in writing, (1) the business of the Target and any of its Subsidiaries shall be conducted only in, and the Target and any such Subsidiaries shall not take any action except in, the ordinary course of business and in a manner substantially consistent with past practice, (2) the Target shall use all reasonable efforts to preserve substantially intact its business organization, to keep available the services of the current officers, employees and consultants of the Target and any of its Subsidiaries and to preserve the current relationships of the Target and such Subsidiaries with customers, suppliers and other



persons with which the Target and any of its Subsidiaries has significant business relations, (3) comply with all applicable laws, (4) prepare and timely file all foreign, Federal, state and local tax returns as required by applicable law, and make timely payment of all applicable taxes when due, (5) use reasonable efforts to obtain, prior to the Closing Date, all Required Consents, (6) take all actions to be in substantial compliance with all Target Permits, (7) make full and timely payment of all amounts required to be contributed under the terms of each Plan and applicable law or required to be paid as expenses under any such Plan, and (8) the Target will not, and will not permit any Subsidiary to:

- (a) amend or otherwise change its Articles of Incorporation or Bylaws;
- (b) issue, sell, pledge, dispose of, grant, encumber, or authorize the issuance, sale, pledge, disposition, grant or encumbrance of, (i) any shares of capital stock of the Target or any Subsidiary of any class, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of such capital stock, or any other ownership interest (including, without limitation, any phantom interest), of the Target (except for shares of the Target Common Stock, if any, issuable under agreements currently in effect on the date hereof and described in Section 3.03 of the Target Disclosure Schedule and shares of capital stock pursuant to Plans currently in effect on the date hereof and described in Section 3.10 of the Target Disclosure Schedule), or (ii) any of the Target's or any Subsidiaries' assets, except for sales in the ordinary course of business and in a manner consistent with past practice;
- (c) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its capital stock;
- (d) reclassify, combine, split, divide or redeem, purchase or otherwise acquire, directly or indirectly, any of its capital stock;
- (e) (i) acquire (including, without limitation, by merger, consolidation, or acquisition of stock or assets) any interest in any corporation, partnership, other business organization or any division thereof or any assets, other than the acquisition of assets in the ordinary course of business consistent with past practice; (ii) incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any person, or make any loans or advances; (iii) enter into any contract or agreement material to the business, results of operations or financial condition of the Target other than in the ordinary course of business, consistent with past practice; (iv) authorize any capital expenditure, other than capital expenditures set forth in Section 5.01(e)(iv) of the Target Disclosure Schedule; or (v) enter into or amend any contract, agreement, commitment or arrangement with respect to any matter set forth in this subsection (e);
- (f) (i) increase the compensation payable or to become payable to any director, officer or other employee, or grant any bonus, to, or grant any severance or termination pay to, or enter into any employment or severance agreement with any director, officer or other employee of the Target or any Subsidiary or enter into or amend any collective bargaining agreement, or (ii) establish, adopt, enter into or amend any bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation or other plan, trust or fund for the benefit of any director, officer or class of employees;

(g) settle or compromise any pending or threatened litigation which is material or which relates to the Transactions; or

(h) grant or convey to any person any rights, including, but not limited to, by way of sale, license or sub-license, in any of the Target's Intellectual Property.

(i) make any change in any of Target's or any of its Subsidiaries accounting methods or in the manner of keeping each of their respective books and records or any change in any of their respective current practices with respect to inventory, sales, receivables, payables or accrued expenses;

(j) take or omit to take any action that would result in the representations and warranties hereunder being rendered untrue in any material respect.

SECTION 5.02. Conduct of Business by Acquiror Pending the Merger. Acquiror covenants and agrees that, between the date of this Agreement and the Effective Time, except as set forth in Section 5.02 of the Acquiror Disclosure Schedule or as contemplated by any other provision of this Agreement, unless the Target shall otherwise agree in writing (which agreement will not be unreasonably withheld), (i) the businesses of the Acquiror and Acquiror Sub shall be conducted only in, and the Acquiror shall not, and shall cause Acquiror Sub not to, take any action except in, the ordinary course of business consistent with past practice, and (ii) Acquiror shall not amend any of the terms or provisions of the Acquiror Common Stock, and (iii) Acquiror will reasonably and diligently cooperate with each of Target and any of its Subsidiaries in connection with their efforts to obtain the Required Consents.

## ARTICLE VI

### ADDITIONAL AGREEMENTS

SECTION 6.01. Proxy Statement; Issuance of Shares. (a) As promptly as practicable after the execution of this Agreement, Target, with the assistance of Acquiror, shall prepare a proxy statement to be sent to the shareholders of the Target (the "Proxy Statement"). Acquiror shall take all or any action required under any applicable federal or state securities laws in connection with the issuance of shares of Acquiror Common Stock pursuant to the Merger, including the provision of certain contents into the Proxy Statement if Acquiror deems it to be necessary or advisable. Each of the Target and Acquiror shall pay its own expenses incurred in connection with the Proxy Statement and the Target's Shareholders' Meeting, including, without limitation, the fees and disbursements of their respective counsel, accountants and other representatives. The Acquiror shall furnish all information concerning the Acquiror as Target may reasonably request in connection with such actions and the preparation of the Proxy Statement. As promptly as practicable, the Target shall cause the Proxy Statement to be mailed to its shareholders. The Proxy Statement shall include the recommendation of the Board of Directors of the Target in favor of the Merger, unless otherwise necessary due to the applicable fiduciary duties of the directors of the Target, as determined by such directors in good faith after consultation with independent legal counsel (who may be such party's regularly engaged independent legal counsel), subject to Section 6.05 of this Agreement. No amendment or supplement to the Proxy Statement will be made by the Target without the approval of the Acquiror, which approval shall not be unreasonably withheld.

(b) Acquiror represents, warrants and agrees that the information supplied by Acquiror for inclusion in the Proxy Statement shall not contain any statement which, at such time and in light of the

circumstances under which it is made, is false or misleading with respect to any material fact, or omit to state any material fact required to be stated therein, or necessary in order to make the statements therein not false or misleading. If at any time prior to the Effective Time any event or circumstance relating to Acquiror or Acquiror Sub, or their respective officers or directors, should be discovered by Acquiror which should be set forth in an amendment or a supplement to the Proxy Statement, Acquiror shall promptly inform the Target. Notwithstanding the foregoing, Acquiror and Acquiror Sub make no representation or warranty with respect to any information supplied by the Target or any of its representatives which is contained in the Proxy Statement.

(c) The Target represents, warrants and agrees that the information supplied by the Target for inclusion in the Proxy Statement shall not, at (i) the time the Proxy Statement (or any amendment thereof or supplement thereto) is first mailed to the shareholders of the Target, (ii) the time of the Target's Shareholder Meeting (if any), and (iii) the Effective Time, contain any statement which, at such time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or omit to state any material fact required to be stated therein, or necessary in order to make the statements therein not false or misleading. If at any time prior to the Effective Time any event or circumstance relating to the Target, or its officers or directors, should be discovered by the Target which should be set forth in an amendment or a supplement to the Proxy Statement, the Target shall promptly inform Acquiror. Notwithstanding the foregoing, the Target makes no representation or warranty with respect to any information supplied by Acquiror or any of its representatives in the Proxy Statement.

(d) The Target, Acquiror and Acquiror Sub each hereby agrees to cooperate, and agrees to use all reasonable efforts to cause its subsidiaries and affiliates to cooperate, with any legal counsel, accountant or other agent or representative retained by any of the parties in connection with the preparation of any and all information required, as determined after consultation with each party's counsel, to be disclosed pursuant to applicable securities laws in the the Proxy Statement.

SECTION 6.02. Target Shareholder Meeting or Written Consent. The Target shall call and hold a special meeting of its shareholders (the "Target Shareholders' Meeting") as promptly as practicable for the purpose of voting upon, the approval of the Merger, and the Target shall use its best efforts to hold the Target Shareholders' Meeting as soon as practicable, unless the Target is able to approve the Merger through the use of written consent (the "Target Shareholders' Consent") in which event it shall be obligated to use its best efforts to do so. The Board of Directors of Target shall use its best efforts to (i) in the case of a Target Shareholders' meeting, solicit from its shareholders proxies in favor of the approval of, the Merger, or (ii) in the case of a Target Shareholders' Consent, solicit from its shareholders approval of the Merger, and (iii) in either case, take all other action reasonably necessary or advisable to secure the vote or consent of shareholders required by applicable law to obtain such approvals.

SECTION 6.03. Appropriate Action; Filings. (a) The Target and Acquiror shall use their best efforts to (i) take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under applicable law or required to be taken by any Governmental Authority or otherwise to consummate and make effective the Transactions as promptly as practicable, (ii) obtain from any Governmental Authorities any consents, licenses, permits, waivers, approvals, authorizations or orders required to be obtained or made by Acquiror or the Target or any of their subsidiaries in connection with the authorization, execution and delivery of this Agreement and the consummation of the Transactions, including, without limitation, the Merger, and (iii) as promptly as practicable, make all necessary filings, and thereafter make any other required submissions, with respect to this Agreement and the Merger required under (A) any applicable federal or state securities laws, (B) Delaware and/or Florida law, and (C) any other applicable law; *provided* that Acquiror and the Target shall cooperate with each other in connection with the making of all

such filings, including providing copies of all such documents to the non-filing party and its advisors prior to filing and, if requested, to accept all reasonable additions, deletions or changes suggested in connection therewith.

(b) From the date of this Agreement until the Effective Time, each party shall promptly notify the other party of any pending, or to the best knowledge of the first party, threatened, action, proceeding or investigation by or before any Governmental Authority or any other person (i) challenging or seeking material damages in connection with the Merger or the conversion of the Target Common Stock into Acquiror Common Stock pursuant to the Merger, or (ii) seeking to restrain or prohibit the consummation of the Merger or otherwise limit the right of Acquiror or, to the knowledge of such first party, Acquiror Sub to own or operate all or any portion of the businesses or assets of the Target, which in either case is reasonably likely to have a Material Adverse Effect on the Target prior to the Effective Time, or a Material Adverse Effect on the Acquiror and the Acquiror Sub after the Effective Time.

SECTION 6.04. Access to Information. From the date hereof to the Effective Time, Acquiror and the Target will each provide to the other, during normal business hours and upon reasonable notice, access to all information and documents which the other may reasonably request regarding the business, assets, liabilities, employees and other aspects of the other party, other than information and documents that in the opinion of such other party's counsel may not be disclosed under applicable law.

SECTION 6.05. Intentionally Omitted.

SECTION 6.06. Directors' and Officers' Indemnification. (a) The Articles of Incorporation and Bylaws of the Surviving Corporation shall contain provisions no less favorable with respect to indemnification than are set forth in the Articles of Incorporation and Bylaws of the Target, which provisions shall not be amended, repealed or otherwise modified for a period of three (3) years from the Effective Time in any manner that would affect adversely the rights thereunder of individuals who at any time prior to the Effective Time were directors, officers or employees of the Target or any of the Subsidiaries, unless such modification shall be required by Delaware Law.

SECTION 6.07. Obligations of Acquiror Sub. Acquiror shall take all action necessary to cause Acquiror Sub to perform its obligations under this Agreement and to consummate the Merger on the terms and subject to conditions set forth in this Agreement.

SECTION 6.08. Intentionally Omitted.

SECTION 6.09. Target Principal Covenants. Each of the Target Principals hereby covenants that they shall vote their respective voting capital stock of the Target in favor of approving the Merger and the Transactions.

SECTION 6.10. Notification of Certain Matters. The Target shall give prompt notice to Acquiror, and Acquiror shall give prompt notice to the Target, of (a) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would be likely to cause any representation or warranty contained in this Agreement to be untrue or inaccurate in any material respect and (b) any failure of the Target, Acquiror or Acquiror Sub, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; *provided, however*, that the delivery of any notice pursuant to this Section 6.10 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

SECTION 6.11. Further Action. At any time and from time to time, each party to this Agreement agrees, subject to the terms and conditions of this Agreement, to take such actions and to execute and deliver such documents as may be necessary to effectuate the purposes of this Agreement at the earliest practicable time.

## ARTICLE VII

### CONDITIONS TO THE MERGER

SECTION 7.01. Conditions to the Obligations of Each Party. In addition to the other conditions set forth in this Article VII, the obligations of the Target, Acquiror and Acquiror Sub to consummate the Merger are subject to the satisfaction of the following conditions:

(a) this Agreement and the Transactions shall have been approved by the affirmative vote of two-thirds of the shareholders of the Target; and

(b) no Governmental Authority shall have enacted, issued, promulgated, enforced or entered any law, order, executive order, stay, decree, judgment or injunction or other order or statute, rule or regulation (each an "Order") which is in effect and which has the effect of making the Merger illegal or otherwise preventing or prohibiting consummation of the Merger.

SECTION 7.02. Conditions to the Obligations of Acquiror and Acquiror Sub. The obligation of Acquiror and Acquiror Sub to consummate the Merger is subject to satisfaction or waiver of the following conditions:

(i) this Agreement and the Merger shall have received the requisite approval at the Target Shareholder Meeting or through Target Shareholder Consent as required by applicable state law and the number of dissenting shares of Target shall not exceed 5% of the total number of outstanding shares of Target Common Stock;

(ii) the Target and its Subsidiaries shall have procured all of the Required Consents;

(iii) the representations and warranties set forth in Article III above shall be true and correct in all material respects at and as of the Closing Date;

(iv) the Target shall have performed and complied with all of its covenants hereunder in all material respects through the Closing Date;

(v) no action, suit, or proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (A) prevent consummation of any of the transactions contemplated by this Agreement, (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, (C) affect adversely the right of the Surviving Corporation to own the former assets, to operate the former businesses, and to control the former Subsidiaries of the Target, or (D) affect adversely the right of any of the former Subsidiaries of the Target to own its assets and to operate its businesses (and no such injunction, judgment, order, decree, ruling, or charge shall be in effect);

(vi) the Target shall have delivered to the Acquiror a certificate executed by its chief executive officer to the effect that each of the conditions specified above in Sections 7.02(i)-(v) is satisfied in all respects;

(vii) the Acquiror shall have received the resignations, effective as of the Closing Date, of each director and officer of the Target and any of its Subsidiaries;

(viii) Rom Mattesich shall have entered into an employment agreement with Acquiror substantially in the form of Exhibit B attached hereto (the "R. Mattesich Employment Agreement");

(ix) Frinee Mattesich shall have entered into an employment agreement with Acquiror substantially in the form of Exhibit C attached hereto (the "F. Mattesich Employment Agreement");

(x) Anil Ganatra shall have entered into an employment agreement with Acquiror substantially in the form of Exhibit D attached hereto (the "A. Ganatra Employment Agreement");

(xi) each of the Target Principals shall have entered into and delivered to Acquiror a shareholders' agreement substantially in the form of Exhibit E attached hereto (the "Shareholders' Agreement");

(xi) an escrow agreement in substantially the form of Exhibit F attached hereto shall have been executed and delivered by each of Target and a third party mutually agreeable to Acquiror and the Target Principals (the "Escrow Agreement");

(xii) all actions to be taken by the Target in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to the Acquiror or its counsel.

(xiii) each of the Target shareholders immediately preceding the closing of the Transactions and to whom Acquiror Common Stock shall be issuable pursuant hereto from the Exchange Fund shall have delivered to Acquiror a subscription agreement and shareholder questionnaire substantially in the forms of Exhibits G and H attached hereto (respectively, the "Acquiror Subscription Agreement" and the "Target Shareholder Questionnaire"), each of which shall have been completed to the satisfaction of Acquiror in its exclusive discretion, and which shall contain, without limitation, representations from such shareholders as to their accreditation under the applicable securities laws or their relative financial sophistication, and their investment understanding and intent in relation to the Transactions; provided however, that any Target shareholders who are deemed (based on their relative financial sophistication) to require a purchaser representative, or who otherwise elect to utilize a purchaser representative, in connection with their decision to vote on the Merger, shall be authorized to do designate a purchaser representative.

(xiv) an agreement shall have been delivered by Target duly terminating each of the agreements contained in Section 7.02(xiv) of the Acquiror Disclosure Schedule.

(xv) Since the date hereof, there shall not have been any event, occurrence, development or state of circumstances or facts or change in Target or any of its Subsidiaries, or any of their

respective businesses (including any damage, destruction or other casualty loss, but excluding any event, occurrence, development, circumstances, facts or change resulting from changes in general economic conditions) affecting Target or any of its Subsidiaries, or the respective businesses thereof, that has had or that may be reasonably expected to have, either alone or together with all such events, occurrences, developments, states of circumstances or facts or changes, a Material Adverse Effect.

SECTION 7.03. Conditions to the Obligations of the Target. The obligation of Target to consummate the Merger is subject to satisfaction or waiver of the following conditions:

(i) this Agreement and the Merger shall have received the requisite approval at the Target Shareholder Meeting or otherwise through Target Shareholder Consent as required by applicable state law;

(ii) the representations and warranties set forth in Article IV above shall be true and correct in all material respects at and as of the Closing Date;

(iii) the Acquiror shall have performed and complied with all of its covenants hereunder in all material respects through the Closing Date;

(iv) no action, suit, or proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (A) prevent consummation of any of the transactions contemplated by this Agreement or (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation;

(v) the Acquiror shall have delivered to the Target a certificate executed by its chief executive officer to the effect that each of the conditions specified above in Section 7.03(i)-(v) is satisfied in all respects;

(vi) the Acquiror Sub shall have executed and delivered the R. Mattesich Employment Agreement;

(vii) the Acquiror Sub shall have executed and delivered the F. Mattesich Employment Agreement;

(viii) the Acquiror shall have executed and delivered the A. Ganatra Employment Agreement;

(ix) the Acquiror shall deliver an amount in immediately available funds, in the form a cashier's, certified, or bank check, to Rom Mattesich equal to sixty-one thousand eight hundred seventy-five dollars (\$61,875.00);

(x) the Acquiror shall deliver an amount in immediately available funds, in the form a cashier's, certified, or bank check, to Frinee Mattesich equal to forty-nine thousand five hundred dollars (\$49,500);

(xi) the Acquiror shall deliver an amount in immediately available funds, in the form a cashier's, certified, or bank check, to Anil Ganatra equal to thirty-eight thousand six hundred and twenty-five dollars (\$38,625);

(xii) the Acquiror shall have executed and delivered a promissory note for deferred compensation to Rom Mattesich in an amount equal to one hundred and sixty-three thousand and nineteen and 58/100 dollars (\$163,019.58), such promissory note to be substantially in the form annexed hereto as Exhibit I (the "R. Mattesich Note");

(xiii) the Acquiror shall have executed and delivered a promissory note for deferred compensation to F. Mattesich in an amount equal to one hundred and thirty thousand three hundred and seventy-six and 56/100 dollars (\$130,376.56), such promissory note to be substantially in the form annexed hereto as Exhibit J (the "F. Mattesich Note");

(xiv) the Acquiror shall have executed and delivered a promissory note for deferred compensation to A. Ganatra in an amount equal to one hundred and one thousand seven hundred and seventy-eight and 15/100 (\$101,778.15), such promissory note to be substantially in the form annexed hereto as Exhibit K (the "A. Ganatra Note");

(xv) the Acquiror shall have delivered a bank guarantee from an internationally recognized money center bank in form and substance satisfactory to the Target Principals and their counsel which guarantee shall serve to secure the aggregate obligations of each of the R. Mattesich Note, the F. Mattesich Note and the A. Ganatra Note (the "Bank Guarantee");

(xvi) the Acquiror shall have delivered to the Target Principals for filing two originally and duly executed UCC-1 financing statements identifying the proceeds of the Bank Guarantee as collateral against which the Target Principals shall maintain a lien;

(xvii) the Acquiror shall have executed and delivered the Escrow Agreement;

(xviii) the Acquiror shall have executed and delivered the Shareholders' Agreement; and

(xix) all actions to be taken by the Acquiror and Acquiror Sub in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to the Target or its counsel.

## ARTICLE VIII

### TERMINATION, AMENDMENT AND WAIVER

SECTION 8.01. Termination. This Agreement may be terminated and the Merger and the other Transactions may be abandoned at any time prior to the Effective Time, notwithstanding any requisite approval of this Agreement and the Transactions, as follows:

(a) by mutual written consent duly authorized by the boards of directors of each of Acquiror, Acquiror Sub and the Target;

(b) by either Acquiror or the Target if either (i) the Effective Time shall not have occurred on or before December 15, 2001; *provided, however*, that the right to terminate this Agreement under this Section 8.01(b) shall not be available to any party whose failure to fulfill any



obligation under this Agreement has been the cause of, or resulted in, the failure of the Effective Time to occur on or before such date; or (ii) there shall be any Order which is final and nonappealable preventing the consummation of the Merger, except if the party relying on such Order has not complied with its obligations under Section 6.03(a);

(c) by Acquiror, if the shareholders of the Target shall have failed to approve this Agreement, the Merger and other Transactions at a meeting duly convened therefor;

(d) by Acquiror, upon a breach of any representation, warranty, covenant or agreement on the part of the Target set forth in this Agreement, or if any representation or warranty of the Target shall have become untrue, in either case such that the conditions set forth in Section 7.02(i)-(v) would not be satisfied (a "Terminating Target Breach"); *provided, however*, that, if such Terminating Target Breach is curable by the Target through the exercise of its best efforts and for so long as the Target continues to exercise such best efforts, Acquiror may not terminate this Agreement under this Section 8.01(d); or

(e) by the Target, upon breach of any representations, warranty, covenant or agreement on the part of Acquiror set forth in this Agreement, or if any representation or warranty of Acquiror shall have become untrue, in either case such that the conditions set forth in Section 7.03(i)-(iv) would not be satisfied ("Terminating Acquiror Breach"); *provided, however*, that, if such Terminating Acquiror Breach is curable by Acquiror through best efforts and for so long as Acquiror continues to exercise such best efforts, the Target may not terminate this Agreement under this Section 8.01(e).

SECTION 8.02. Amendment. This Agreement may be amended by the parties hereto by action taken by or on behalf of their respective Boards of Directors at any time prior to the Effective Time; *provided, however*, that, after the approval of this Agreement and the Transactions by the shareholders of the Target, no amendment may be made which would reduce the amount or change the type of consideration into which each share of Target Common Stock shall be converted upon consummation of the Merger. This Agreement may not be amended except by an instrument in writing signed by the parties hereto.

SECTION 8.03. Waiver. At any time prior to the Effective Time, any party hereto may (a) extend the time for the performance of any obligation or other act of any other party hereto, (b) waive any inaccuracy in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any agreement or condition contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party or parties to be bound thereby.

## ARTICLE IX

### REMEDIES

SECTION 9.01 Survival of Representations, Warranties and Covenants. All of the representations and warranties of the Target and the Target Principals contained in Article III of this Agreement, and all of the representations and warranties of the Acquiror and Acquiror Sub contained in Article IV of this Agreement, and any certificate delivered pursuant hereto by any person shall survive the Closing hereunder (even if the party to whom/which such representation, warranty or covenant was made knew or had reason to know of any misrepresentation or breach of warranty at the time of Closing) and continue in full force and effect for a period of one (1) year thereafter. Any other representations and

warranties of the Parties contained in this Agreement and any certificate delivered pursuant hereto by any person shall terminate at the Effective Time (even if the Damaged Party knew or had reason to know of any misrepresentation or breach of warranty at the time of Closing) and continue in full force and effect forever thereafter (subject to any applicable statutes of limitations).

#### SECTION 9.02 Indemnification Provisions for Benefit of the Acquiror.

(i) In the event that the Target or any of the Target Principals breach any of their representations, warranties, and covenants contained herein, and, if there is an applicable survival period pursuant to Section 9.01 of this Agreement, provided that the Acquiror makes a written claim for indemnification against any of the Target Principals pursuant to the notice provisions of Section 10.01 of this Agreement within such survival period, then each of the Target Principals agrees to indemnify the Acquiror from and against the entirety of any damages the Acquiror may suffer through and after the date of the claim for indemnification resulting from, arising out of, relating to, in the nature of, or caused by the breach; provided, however, that the Target Principals shall not have any obligation to indemnify the Acquiror from and against any damages resulting from, arising out of, relating to, in the nature of, or caused by the breach of any representation or warranty of the Target or the Target Principals until the Acquiror has suffered damages by reason of all such breaches in excess of a two hundred and fifty thousand (\$250,000) aggregate threshold.

(ii) Notwithstanding anything to the contrary contained in this Agreement, in no event shall any of the Target Principals indemnity obligations under this Article IX exceed in the aggregate the total value of the Acquiror Common Stock (based on the same valuation as used to determine the Exchange Ratio as of the Effective Time) which such Target Principal received pursuant to Article II hereof.

SECTION 9.03 Payment of Indemnification Obligations of Target Principals. The Acquiror shall have the right to recoup all or any part of any damages it may suffer and which are indemnifiable hereunder by canceling that number of shares of Acquiror Common Stock issued to the indemnifying Target Principals, on a *pro rata* basis, that have a total value equal to the amount of the corresponding indemnification obligation based upon the same valuation as used to determine the Exchange Ratio as of the Effective Time (*i.e.* six million dollars [\$6,000,000]).

#### SECTION 9.04 Indemnification Provisions for Benefit of the Target Shareholders.

(i) In the event the Acquiror breaches any of its representations, warranties, and covenants contained herein, and, if there is an applicable survival period pursuant to Section 9.01 of this Agreement, provided that any of the Target Principals makes a written claim for indemnification against the Acquiror pursuant to the notice provisions of Section 10.01 below within such survival period, then the Acquiror agrees to indemnify each of the Target shareholders from and against the entirety of any damages the Target shareholder may suffer through and after the date of the claim for indemnification resulting from, arising out of, relating to, in the nature of, or caused by the breach; provided, however, that the Acquiror shall not have any obligation to indemnify the Target shareholders from and against any damages resulting from, arising out of, relating to, in the nature of, or caused by the breach of any representation or warranty of the Acquiror until the Target shareholders have suffered damages by reason of all such breaches in excess of a two hundred and fifty thousand (\$250,000) aggregate threshold.

(ii) Notwithstanding anything to the contrary contained in this Agreement, in no event shall Acquiror's indemnity obligations under this Article IX exceed in the aggregate the total value of the Acquiror Common Stock (based on the same valuation as used to determine the Exchange Ratio as of the Effective Time) issued in the Merger pursuant to Article II hereof.

SECTION 9.05 Payment of Indemnification Obligations of Acquiror. The Target shareholders shall have the right to recoup, on a *pro rata* basis, all or any part of any damages they may suffer and which are indemnifiable hereunder by requiring the Acquiror to issue, in addition to the Acquiror Common Stock issued as of the Effective Time, that number of shares of Acquiror Common Stock that have a total value equal to the amount of the corresponding indemnification obligation based upon the same valuation as used to determine the Exchange Ratio as of the Effective Time (*i.e.* six million dollars [\$6,000,000]).

SECTION 9.06 Other Remedies. The foregoing indemnification provisions are in addition to, and not in derogation of, any statutory, equitable, or common law remedy any party may have with respect to any other party or the transactions contemplated hereby. Each of the Target Principals hereby agrees that he or she will not make any claim for indemnification against the Target by reason of the fact that he or she was a director, officer, employee, or agent of such entity or was serving at the request of such entity as a partner, trustee, director, officer, employee, or agent of another entity (whether such claim is for damages and whether such claim is pursuant to any statute, charter document, bylaw, agreement, or otherwise) with respect to any proceeding or demand brought by the Acquiror against such Target Principal (whether such action, suit, proceeding, complaint, claim, or demand is pursuant to this Agreement, applicable law, or otherwise).

## ARTICLE X

### GENERAL PROVISIONS

SECTION 10.01. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by cable, facsimile, telegram or telex or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.02):

if to Acquiror or Acquiror Sub:

**Transat Holdings, Inc.**  
5225 NW 87<sup>th</sup> Avenue  
Suite 100  
Miami, FL 33178  
Att: Indu Singh

Facsimile: 305-717-1523

with a copy to:

**Membrado Montell, LLP**  
535 West 34<sup>th</sup> Street, 2<sup>nd</sup> Floor  
New York, NY 10001  
Att: Michael M. Membrado, Esq.

Facsimile: 646-792-2258

If to the Target:

**GlobalXchange Communications, Inc.**  
8675 NW 53<sup>rd</sup> Street  
Suite 112  
Miami, FL 33166  
Att: Rom Mattesich

Facsimile: 305-470-6599

with a copy to:

**Vazquez & Hess**  
Courvoisier Centre II, Suite 802  
601 Brickell Key Drive  
Miami, FL 33131-2624  
Att: Gerardo A. Vazquez, Esq.

Facsimile: 305-371-4967

If to Rom and/or Frinee Mattesich:

3649 Estepona Ave.  
Miami, FL 33178

with a copy to:

**Vazquez & Hess**  
Courvoisier Centre II, Suite 802  
601 Brickell Key Drive  
Miami, FL 33131-2624  
Att: Gerardo A. Vazquez, Esq.

Facsimile: 305-371-4967

If to Anil Ganatra:

5383 NW 106<sup>th</sup> Drive  
Coral Springs, Florida 33076

with a copy to:

**Vazquez & Hess**

Courvoisier Centre II, Suite 802

601 Brickell Key Drive

Miami, FL 33131-2624

Att: Gerardo A. Vazquez, Esq.

Facsimile: 305-371-4967

SECTION 10.02. Certain Definitions. For purposes of this Agreement, the following terms, in their lower-case forms, shall have the correspondingly ascribed meanings:

(a) "affiliate" of a specified person means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified person.

(b) "applicable rate" means the corporate base rate of interest publicly announced from time to time by Citibank N.A. plus 2% per annum.

(c) "beneficial owner" with respect to any shares means a person who shall be deemed to be the beneficial owner of such shares (i) which such person or any of its affiliates or associates (as such term is defined in Rule 12b-2 promulgated under the Exchange Act) beneficially owns, directly or indirectly, (ii) which such person or any of its affiliates or associates has, directly or indirectly, (A) the right to acquire (whether such right is exercisable immediately or subject only to the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of consideration rights, exchange rights, warrants or options, or otherwise, or (B) the right to vote pursuant to any agreement, arrangement or understanding, (iii) which are beneficially owned, directly or indirectly, by any other persons with whom such person or any of its affiliates or associates or any person with whom such person or any of its affiliates or associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any such shares, or (iv) pursuant to Section 13(d) of the Exchange Act and any rules or regulations promulgated thereunder.

(d) "business day" means any day on which the principal offices of the SEC in Washington, D.C. are open to accept filings, or, in the case of determining a date when any payment is due, any day on which banks are not required or authorized to close in the New York, New York.

(e) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, as trustee or executor, by contract or credit arrangement or otherwise.

(f) "damages" means all proceedings, demands, claims, assessments, losses, damages, costs, expenses, liabilities, obligations, injunctions, judgments, orders, decrees, rulings, awards, fines, sanctions, penalties, charges, taxes and amounts paid in settlement, including, without limitation, (i) interest on cash disbursements in respect of any of the foregoing at the applicable rate, compounded quarterly, from the date each such cash disbursement is made until the person

incurring the same shall have been indemnified in respect thereof, and (ii) reasonable costs, fees and expenses of attorneys, accountants and other agents of the relevant person.

(g) "liability" or "liabilities" means any liability or obligation of any kind, whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether secured or unsecured, whether joint or several, whether due or to become due, whether vested or unvested, including any liability for taxes.

(h) "person" means an individual, corporation, partnership, limited partnership, syndicate, person (including, without limitation, a "person" as defined in Section 13(d)(3) of the Exchange Act), trust, association or entity or government, political subdivision, agency or instrumentality of a government.

(i) "proceedings" means any actions, suits, claims, hearings, arbitrations, mediations, proceedings (public or private) or governmental investigations that have been brought by any governmental authority or any other person.

(j) "subsidiary" or "subsidiaries" of any person means any corporation, partnership, joint venture or other legal entity of which such person (either alone or through or together with any other subsidiary), owns or has rights to acquire, directly or indirectly, more than 50% of the stock or other equity interests the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

(k) "tax" or "taxes" means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code §59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, 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.

**SECTION 10.03 Index of Other Defined Terms.** In addition to those terms defined above, the following terms, in their capitalized forms, shall have the respective meanings given thereto in the sections indicated below:

<u>Defined Term</u>	<u>Section</u>	"Acquiror Sub Common Stock"	2.01.(a)(iii)
		"Acquiror Sub Preferred Stock"	4.03.
		"Acquiror Subscription Agreement"	7.02.(xiii)
"A. Ganatra Employment Agmt."	7.02.(x)	"Agreement"	Preamble
"A. Ganatra Note"	7.03.(xiii)	"Articles of Merger"	1.02.
"Acquiror"	Preamble		
"Acquiror Common Stock"	2.01.(a)(i)	<u>Defined Term</u>	<u>Section</u>
"Acquiror Disclosure Schedule"	Art IV		
Intro		"Bank Guarantee"	7.03.(xiv)
"Acquiror Preferred Stock"	4.03.	"Cancelable Shares"	2.01.(a)(i)
"Acquiror Sub"	Preamble	"Certificates"	2.02.(b)

"Closing Date"	1.02.	"Proxy Statement"	6.01.(a)
"Closing"	2.3(a)	"R. Mattesich Employment Agmt. "	7.02.(viii)
"Effective Time"	1.02.	"R. Mattesich Note"	7.03.(xi)
"Environmental Claims"	3.13.(b)		
"Environmental Laws"	3.13.(a)	"Receivables"	3.14.
"Environmental Permits"	3.13.(b)	"Required Consents"	3.05.(a)
"ERISA "	3.10.	"Secretary"	1.02.
"Escrow Agreement"	7.02.(xi)	"Shareholders' Agreement"	7.02.(x)
"Exchange Agent"	2.02.(a)	"Subsidiary"	3.01.
"Exchange Fund"	2.02.(a)	"Target"	Preamble
"Exchange Ratio"	2.01.(a)(i)	"Target Common Stock"	2.01.(a)(i)
"F. Mattesich Employment Agmt. "	7.02.(ix)	"Target Disclosure Schedule"	Art III
"F. Mattesich Note"	7.03.(xii)	Intro	
"Governmental Authority"	3.06.	"Target Employment Contracts"	3.10.
"Hazardous Substances"	3.13.(a)	"Target Permits"	3.06
"Material Adverse Effect"	3.01.	"Target Principals"	Preamble
"Material Contract"	3.17.	"Target Shareholders' Consent"	6.02.
"Merger"	Recitals	"Target Shareholders' Meeting"	6.02.
"Most Recent Balance Sheet"	3.07.(a)	"Target Shareholders' Questionnaire"	7.02.(xiii)
"Most Recent Cash Flow Statement"	3.07.(a)	"Target's Intellectual Property"	3.24.
"Most Recent Financial Statements"	3.07.(a)	"Terminating Acquiror Breach"	8.01.(e)
"Most Recent Income Statement"	3.07.(a)	"Terminating Target Braech"	8.01.(d)
"Order"	7.01.(b)	"Third Party Provisions"	10.05.
"Party" / "Parties"	Preamble	"Transactions"	Recitals
"Plans"	3.10.		

SECTION 10.04. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the Transactions be consummated as originally contemplated to the fullest extent possible.

SECTION 10.05. Assignment; Binding Effect; Benefit. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, except for the provisions of Article II and Section 6.06. (collectively, the "Third Party Provisions"), nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

SECTION 10.06. Incorporation of Schedules. The Target Disclosure Schedule and the Acquiror Disclosure Schedule referred to herein and signed for identification by the parties hereto are hereby incorporated herein and made a part hereof for all purposes as if fully set forth herein.

SECTION 10.07. Specific Performance. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

SECTION 10.08. Governing Law. EXCEPT TO THE EXTENT THAT FLORIDA LAW IS MANDATORILY APPLICABLE TO THE MERGER AND THE RIGHTS OF THE SHAREHOLDERS OF THE TARGET, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS EXECUTED IN AND TO BE PERFORMED WHOLLY IN THAT STATE. ALL ACTIONS AND PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE HEARD AND DETERMINED IN ANY FEDERAL COURT SITTING IN THE COUNTY OF DADE, FLORIDA.

SECTION 10.09. Headings. The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 10.10. Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

SECTION 10.11. Waiver of Jury Trial. Each of Acquiror, the Target and Acquiror Sub hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of Acquiror, the Target or Acquiror Sub in the negotiation, administration, performance and enforcement thereof.

SECTION 10.12. Entire Agreement. This Agreement, the Target Disclosure Schedule, the Acquiror Disclosure Schedule and any documents delivered by the parties in connection herewith constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect thereto. No addition to or modification of any provision of this Agreement shall be binding upon any party hereto unless made in writing and signed by all parties hereto.

IN WITNESS WHEREOF, Acquiror, Acquiror Sub, Target, Rom Mattesich, Frinee Mattesich and Anil Ganatra have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

"ACQUIROR"  
TRANSAT HOLDINGS, INC.  
*A Delaware Corporation*



By \_\_\_\_\_

Name: Indu Singh  
Title: President

"ACQUIROR SUB"

GLOBALXCHANGE COMMUNICATIONS, INC.

*A Delaware Corporation*

By \_\_\_\_\_

Name: Indu Singh  
Title: President

TARGET

GLOBALXCHANGE COMMUNICATIONS, INC.

*A Florida Corporation*

By \_\_\_\_\_

Name: Rom Mattesich  
Title: President

\_\_\_\_\_  
Rom Mattesich

\_\_\_\_\_  
Frinee Mattesich

\_\_\_\_\_  
Anil Ganatra

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## EXHIBITS

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Exhibit A .....	Articles of Incorporation – Acquiror Sub
Exhibit B .....	R. Mattesich Employment Agreement
Exhibit C .....	F. Mattesich Employment Agreement
Exhibit D .....	A. Ganatra Employment Agreement
Exhibit E .....	Shareholders' Agreement
Exhibit F .....	Escrow Agreement
Exhibit G .....	Acquiror Subscription Agreement
Exhibit H .....	Target Shareholders' Questionnaire
Exhibit I .....	R. Mattesich Note
Exhibit J .....	F. Mattesich Note
Exhibit K .....	A. Ganatra Note

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EXHIBIT A

ARTICLES OF INCORPORATION – ACQUIROR SUB

**EXHIBIT B**

**R. MATTESICH EMPLOYMENT AGREEMENT**

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EXHIBIT C

F. MATTESICH EMPLOYMENT AGREEMENT

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**EXHIBIT D**

**A. GANATRA EMPLOYMENT AGREEMENT**

**EXHIBIT E**

**SHAREHOLDERS' AGREEMENT**

EXHIBIT F  
ESCROW AGREEMENT



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EXHIBIT G

ACQUIROR SUBSCRIPTION AGREEMENT

**EXHIBIT H**

**TARGET SHAREHOLDER'S QUESTIONNAIRE**

EXHIBIT I

R. MATTESICH NOTE

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EXHIBIT J

F. MATTESICH NOTE

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## EXHIBIT K

### A. GANATRA NOTE

## SCHEDULES

### *Target Disclosure Schedule*

Organization and Qualification; Subsidiaries.....	Section 3.01
Capitalization .....	Section 3.03
No Conflict; Required Filings and Consents.....	Section 3.05(b)
.....	Section 3.05(a)(iii)
Permits; Compliance .....	Section 3.06
Financial Statements .....	Section 3.07(a)
.....	Section 3.07(b)
Absence of Certain Changes or Events .....	Section 3.08
Absence of Litigation .....	Section 3.09
Employee Benefit Plans .....	Section 3.10
Labor Matters .....	Section 3.11
Taxes .....	Section 3.12(a)
Environmental Matters .....	Section 3.13
Material Contracts .....	Section 3.17
Parachute Payments .....	Section 3.19
Change in Control .....	Section 3.23
Intellectual Property .....	Section 3.24
Related Party Transactions.....	Section 3.27
Conduct of Business by the Target Pending the Merger .....	Section 5.01(e)(iv)

### *Acquiror Disclosure Schedule*

Capitalization .....	Section 4.03
No Conflict; Required Filings and Consents.....	Section 4.05(b)
Taxes .....	Section 4.07(a)
Conduct of Business by the Acquiror Pending the Merger .....	Section 5.02
Conditions to the Obligations of Acquiror and Acquiror Sub .....	Section 7.02(xiv)