Table of Contents

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): March 7, 2003

INTUITIVE SURGICAL, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware	000-30713	77-0416458
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

950 Kifer Road, Sunnyvale, CA 94086

(Address of Principal Executive Offices) (Zip Code)

(408) 523-2100

(Registrant's telephone number, including area code)

N/A

(Former Name or Former Address, if Changed Since Last Report)

TABLE OF CONTENTS

Table of Contents

ITEM 5. OTHER EVENTS

On March 7, 2003, Intuitive Surgical, Inc., a Delaware corporation ("Intuitive"), entered into an Agreement and Plan of Merger (the "Merger Agreement") by and among Intuitive, Iron Acquisition Corporation, a Delaware corporation and a wholly owned subsidiary of Intuitive ("Merger Sub"), and Computer Motion, Inc., a Delaware corporation ("Computer Motion"). Pursuant to the Merger Agreement and subject to the terms and conditions set forth therein, Merger Sub will be merged with and into Computer Motion (the "Merger"), with Computer Motion becoming the surviving corporation and a wholly owned subsidiary of Intuitive. At the Effective Time (as defined in the Merger Agreement) of the Merger, each issued and outstanding share of common stock, par value $0.001 per share, of Computer Motion ("CMI Common Stock") will be converted into the right to receive that certain number of shares of common stock, par value $0.001 per share, of Intuitive ("Intuitive Common Stock"), as calculated by application of an exchange ratio (the "Exchange Ratio"). A copy of the Merger Agreement is attached hereto as Exhibit 2.1 and the foregoing description is qualified in its entirety by reference to the full text of the Merger Agreement.

Certain stockholders of Computer Motion have entered into a stockholder support agreement (the "CMI Support Agreement") with Intuitive and Merger Sub pursuant to which, among other things, they have agreed to vote in favor of the Merger all shares of CMI Common Stock which they are entitled to vote. A copy of the form of CMI Support Agreement is attached hereto as Exhibit 4.1 and the foregoing description is qualified in its entirety by reference to the full text of the CMI Support Agreement.

Certain stockholders of Intuitive have entered into a stockholder support agreement (the "Intuitive Support Agreement") with Intuitive and Merger Sub pursuant to which, among other things, they have agreed to vote in favor of the Share Issuance (as defined in the Merger Agreement) all shares of Intuitive Common Stock to which they are entitled to vote. A copy of the form of Intuitive Support Agreement is attached hereto as Exhibit 4.2 and the foregoing description is qualified in its entirety by reference to the full text of the Intuitive Support Agreement.

In connection with the Merger, Intuitive and Computer Motion have also entered into a Loan and Security Agreement, under which Intuitive will provide a short-term secured bridge loan facility of up to $7.3 million (the "Loan"). The Loan will terminate and all outstanding amounts will become due and payable a year from the date of execution of the Loan Agreement, subject to certain acceleration events described in the Loan Agreement. Interest on the Loan will be payable at the rate equal to 8% per annum, which is not due and payable until the Maturity Date. A copy of the Loan and Security Agreement is attached hereto as Exhibit 10.1 and the foregoing description is qualified in its entirety by reference to the full text of the Loan and Security Agreement.

A copy of the joint press release announcing the execution of the Merger Agreement and related agreements was issued on March 7, 2003 and is attached hereto as Exhibit 99.1.

Finally, a certificate of designation for Computer Motion's newly issued Series D Preferred Stock is attached as Exhibit 99.2, the provisions of which relate to and affect adjustments to the Exchange Ratio. As of March 7, 2003, all holders of Computer Motion's Series C Preferred Stock have executed agreements to exchange all of the previously outstanding Series C Preferred Stock for Series D Preferred Stock.

Table of Contents

ITEM 7. Financial Statements, Pro Forma Financial Information and Exhibits.

(c) Exhibits:

2.1	Agreement and Plan of Merger by and among Intuitive Surgical, Inc., Iron Acquisition Corporation and Computer Motion, Inc., dated as of March 7, 2003.
4.1	Form of Stockholder Support Agreement by and among Intuitive Surgical, Inc., Iron Acquisition Corporation and Certain Stockholders of Computer Motion, Inc.
4.2	Form of Stockholder Support Agreement by and among Intuitive Surgical, Inc., Iron Acquisition Corporation and Certain Stockholders of Intuitive Surgical, Inc.
10.1	Loan and Security Agreement by and between Computer Motion, Inc., as Borrower, and Intuitive Surgical, Inc. as Lender, dated March 7, 2003.
99.1	Press Release dated March 7, 2003.
99.2	Certificate of Designation for Series D Preferred Stock of Computer Motion, Inc.

Table of Contents

SIGNATURES

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

Dated: March 7, 2003

INTUITIVE SURGICAL, INC.
(Registrant)

By: /s/ Lonnie M. Smith

President and Chief Executive Officer

Table of Contents

EXHIBIT INDEX

Exhibits	
2.1	Agreement and Plan of Merger by and among Intuitive Surgical, Inc., Iron Acquisition Corporation and Computer Motion, Inc., dated as of March 7, 2003.
4.1	Form of Stockholder Support Agreement by and among Intuitive Surgical, Inc., Iron Acquisition Corporation and Certain Stockholders of Computer Motion, Inc.
4.2	Form of Stockholder Support Agreement by and among Intuitive Surgical, Inc., Iron Acquisition Corporation and Certain Stockholders of Intuitive Surgical, Inc.
10.1	Loan and Security Agreement by and between Computer Motion, Inc., as Borrower, and Intuitive Surgical, Inc. as Lender, dated March 7, 2003.
99.1	Press Release dated March 7, 2003.
99.2	Form of Certificate of Designation for Series D Preferred Stock of Computer Motion, Inc.

Exhibit 2.1

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

INTUITIVE SURGICAL, INC.,

IRON ACQUISITION CORPORATION

AND

COMPUTER MOTION, INC.

DATED AS OF MARCH 7, 2003

TABLE OF CONTENTS

EXHIBITS

AGREEMENT AND PLAN OF MERGER, dated as of March 7, 2003 (this "Agreement"), by and among Intuitive Surgical, Inc., a Delaware corporation ("Parent"), Iron Acquisition Corporation, a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), and Computer Motion, Inc., a Delaware corporation (the "Company").

WHEREAS, the respective Boards of Directors of Parent, Merger Sub and the Company have approved and declared advisable the merger of Merger Sub with and into the Company (the "Merger") upon the terms and subject to the conditions of this Agreement and in accordance with the General Corporation Law of the State of Delaware (the "DGCL"); and

WHEREAS, the respective Boards of Directors of Parent and the Company have determined that the Merger is in furtherance of and consistent with their respective business strategies and is in the best interest of their respective stockholders, and Parent has approved this Agreement and the Merger as the sole stockholder of Merger Sub; and

WHEREAS, as a condition to and inducement to the Company's willingness to enter into this Agreement, simultaneously with the execution of this Agreement, each of the stockholders of Parent listed on Exhibit A have entered into support agreements with the Company in the form attached hereto as Exhibit B (the "Parent Support Agreements"); and

WHEREAS, as a condition to and inducement to Parent's and the Merger Sub's willingness to enter into this Agreement, simultaneously with the execution of this Agreement, each of the stockholders of the Company listed on Exhibit C have entered into support agreements with Parent and Merger Sub in the form attached hereto as Exhibit D (the "Company Support Agreements"); and

WHEREAS, simultaneously with the execution and delivery of this Agreement, Parent and the Company have entered into a loan and security agreement dated the date hereof; (the "Loan Agreement"); and

WHEREAS, for federal income tax purposes, it is intended that the Merger shall qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code");

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE 1.
THE MERGER

Section 1.1 The Merger. Upon the terms and subject to satisfaction or waiver of the conditions set forth in this Agreement, and in accordance with the DGCL, Merger Sub, at the Effective Time, shall be merged with and into the Company. As a result of the Merger, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation of the Merger (the "Surviving Corporation").

Section 1.2 Effective Time. As soon as practicable after the satisfaction or, if permissible, waiver of the conditions set forth in Article 6, the parties hereto shall cause the Merger to be consummated by filing a certificate of merger (the "Certificate of Merger") with the Secretary of State of the State of Delaware, in such form as required by, and executed in accordance with the relevant provisions of, the DGCL (the date and time of such filing, or if another date and time is specified in such filing, such specified date and time, being the "Effective Time").

Section 1.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, at the Effective Time, except as otherwise provided herein, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

Section 1.4 Certificate of Incorporation; By-laws. At the Effective Time, the Certificate of Incorporation and the By-laws of the Surviving Corporation shall be amended in their entirety to contain the provisions set forth in the Certificate of Incorporation and the By-laws of Merger Sub, each as in effect immediately prior to the Effective Time, as the same may be amended in accordance with Section 5.13.1 hereof.

Section 1.5 Directors and Officers. The directors of Merger Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, each to

hold office in accordance with the Certificate of Incorporation and By-laws of the Surviving Corporation. The officers of the Company immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and By-laws of the Surviving Corporation.

ARTICLE 2.
CONVERSION OF SECURITIES; EXCHANGE OF CERTIFICATES

Section 2.1 Conversion of Securities. At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or the holders of any of the following securities:

Section 2.1.1 Conversion Generally.

Section 2.1.1.1 Company Common Stock. Each share of common stock, par value $0.001 per share, of the Company ("Company Common Stock") issued and outstanding immediately prior to the Effective Time (other than any shares of Company Common Stock to be canceled pursuant to Section 2.1.2), including the associated rights of the Company (the "Company Rights") pursuant to the Rights Agreement, dated as of June 14, 1999, between the Company and American Stock Transfer and Trust Company, as Rights Agent (the "Company Rights Agreement") shall be converted, subject to Section 2.2.5, into the right to receive a number of shares of common stock, par value $0.001 per share, of Parent ("Parent Common Stock"), equal to the Exchange Ratio. All such shares of Company Common Stock shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each certificate previously representing any such shares shall thereafter represent the right to receive a certificate representing the shares of Parent Common Stock into which such Company Common Stock was converted in the Merger. Certificates previously representing shares of Company Common Stock shall be exchanged for certificates representing whole shares of Parent Common Stock issued in consideration therefor upon the surrender of such certificates in accordance with the provisions of Section 2.2, without interest. No fractional share of Parent Common Stock shall be issued, and in lieu thereof, a cash payment shall be made pursuant to Section 2.2.5 hereof.

Section 2.1.1.2 Company Preferred Stock. Each share of preferred stock, par value $0.001 per share, of the Company (the "Company Preferred Stock" and, together

with the Company Common Stock, the "Company Stock") issued and outstanding immediately prior to the Effective Time (other than any shares of Company Preferred Stock to be canceled pursuant to Section 2.1.2), shall be converted, subject to Section 2.2.5, into the right to receive a number of shares of Parent Common Stock equal to that number of shares of Company Common Stock into which the Company Preferred Stock would have been convertible multiplied by the Exchange Ratio. All such shares of Company Preferred Stock shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each certificate previously representing any such shares shall thereafter represent the right to receive a certificate representing the shares of Parent Common Stock into which such Company Preferred Stock was converted in the Merger. Certificates previously representing shares of Company Preferred Stock shall be exchanged for certificates representing whole shares of Parent Common Stock issued in consideration therefor upon the surrender of such certificates in accordance with the provisions of Section 2.2, without interest. No fractional share of Parent Common Stock shall be issued, and in lieu thereof, a cash payment shall be made pursuant to Section 2.2.5 hereof.

Section 2.1.1.3 Warrants. At the Effective Time, all unexercised and unexpired warrants to purchase Company Common Stock ("Company Warrants") then outstanding will be assumed by Parent. Each Company Warrant so assumed by Parent under this Agreement will continue to have, and be subject to, the same terms and conditions as set forth in such Company Warrant and any agreements executed in connection therewith immediately prior to the Effective Time, except that (i) each Company Warrant will be exercisable (or will become exercisable in accordance with its terms) for that number of whole shares of Parent Common Stock equal to the product of the number of shares of Company Common Stock that were issuable upon exercise of such Company Warrant immediately prior to the Effective Time multiplied by the Exchange Ratio, rounded down to the nearest whole number of shares of Parent Common Stock and (ii) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of such Company Warrant assumed, will be equal to the quotient determined by dividing the exercise price per share of Company Common Stock at which such Company Warrant was exercisable immediately prior to the Effective Time by the Exchange Ratio, rounded up to the nearest whole cent.

Section 2.1.2 Cancellation of Certain Shares. Each share of Company Stock held by Parent, Merger Sub, any wholly-owned subsidiary of Parent or Merger Sub, in the

treasury of the Company or by any wholly-owned subsidiary of the Company immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof and no payment shall be made with respect thereto.

Section 2.1.3 Merger Sub. Each share of common stock, par value $0.001 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and be exchanged for one newly and validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation.

Section 2.1.4 Change in Shares. If between the date of this Agreement and the Effective Time the outstanding shares of Parent Common Stock or Company Stock shall have been changed into a different number of shares or a different class, by reason of any stock dividend, subdivision, reclassification, recapitalization, split, combination or exchange of shares, the Exchange Ratio shall be correspondingly adjusted to reflect such stock dividend, subdivision, reclassification, recapitalization, split, combination or exchange of shares.

Section 2.2 Exchange of Certificates.

Section 2.2.1 Exchange Agent. As of the Effective Time, Parent shall deposit, or shall cause to be deposited, with Computer Share, Inc. or another bank or trust company designated by Parent and reasonably satisfactory to the Company (the "Exchange Agent"), for the benefit of the holders of shares of Company Stock, for exchange in accordance with this Article 2, through the Exchange Agent, certificates representing the shares of Parent Common Stock (such certificates for shares of Parent Common Stock, together with cash in lieu of fractional shares and any dividends or distributions with respect thereto, being hereinafter referred to as the "Exchange Fund") issuable pursuant to Section 2.1 in exchange for outstanding shares of Company Stock. The Exchange Agent shall, pursuant to irrevocable instructions, deliver the Parent Common Stock contemplated to be issued pursuant to Section 2.1 out of the Exchange Fund. Except as contemplated by Section 2.2.5 hereof, the Exchange Fund shall not be used for any other purpose.

Section 2.2.2 Exchange Procedures. Promptly after the Effective Time, Parent shall instruct the Exchange Agent to mail to each holder of record of a certificate or certificates which immediately prior to the Effective Time represented outstanding shares of Company Stock (the "Certificates") (A) a letter of transmittal (which shall specify that delivery

shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Exchange Agent and shall be in customary form) and (B) instructions for use in effecting the surrender of the Certificates in exchange for certificates representing shares of Parent Common Stock. Upon surrender of a Certificate for cancellation to the Exchange Agent together with such letter of transmittal, properly completed and duly executed, and such other documents as may be required pursuant to such instructions, the holder of such Certificate shall be entitled to receive in exchange therefor a certificate representing that number of whole shares of Parent Common Stock which such holder has the right to receive in respect of the shares of Company Stock formerly represented by such Certificate (after taking into account all shares of Company Stock then held by such holder), cash in lieu of fractional shares of Parent Common Stock to which such holder is entitled pursuant to Section 2.2.5 and any dividends or other distributions to which such holder is entitled pursuant to Section 2.2.3, and the Certificate so surrendered shall forthwith be canceled. No interest will be paid or accrued on any cash in lieu of fractional shares or on any unpaid dividends and distributions payable to holders of Certificates. In the event of a transfer of ownership of shares of Company Stock which is not registered in the transfer records of the Company, a certificate representing the proper number of shares of Parent Common Stock may be issued to a transferee if the Certificate representing such shares of Company 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 2.2, each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the certificate representing shares of Parent Common Stock, cash in lieu of any fractional shares of Parent Common Stock to which such holder is entitled pursuant to Section 2.2.5 and any dividends or other distributions to which such holder is entitled pursuant to Section 2.2.3.

Section 2.2.3 Distributions with Respect to Unexchanged Shares of Parent Common Stock. No dividends or other distributions declared or made after the Effective Time with respect to Parent 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 Parent Common Stock represented thereby, and no cash payment in lieu of fractional shares shall be paid to any such holder pursuant to Section 2.2.5, unless and until the holder of such Certificate shall

surrender such Certificate. Subject to the effect of escheat, tax or other applicable Laws, following surrender of any such Certificate, there shall be paid to the holder of the certificates representing whole shares of Parent Common Stock issued in exchange therefor, without interest, (A) promptly, the amount of any cash payable with respect to a fractional share of Parent Common Stock to which such holder is entitled pursuant to Section 2.2.5 and the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole shares of Parent Common Stock and (B) at the appropriate payment date, the amount of dividends or other distributions, with a record date after the Effective Time but prior to surrender and a payment date occurring after surrender, payable with respect to such whole shares of Parent Common Stock.

Section 2.2.4 Further Rights in Company Stock. All shares of Parent Common Stock issued upon conversion of the shares of Company Stock in accordance with the terms hereof (including any cash paid pursuant to Section 2.2.3 or Section 2.2.5) shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of Company Stock.

Section 2.2.5 Fractional Shares. No certificates or scrip representing fractional shares of Parent Common Stock shall be issued upon the surrender for exchange of Certificates, no dividend or distribution with respect to Parent Common Stock shall be payable on or with respect to any fractional share and such fractional share interests will not entitle the owner thereof to any rights of a stockholder of Parent.

Section 2.2.5.1 As promptly as practicable following the Effective Time, the Exchange Agent shall determine the difference between (A) the number of full shares of Parent Common Stock delivered to the Exchange Agent by Parent pursuant to Section 2.2.1 and (B) the aggregate number of full shares of Parent Common Stock to be distributed to holders of Company Stock pursuant to Section 2.2.2 (such difference being the "Excess Shares"). As soon after the Effective Time as practicable, the Exchange Agent, as agent for such holders of Parent Common Stock, shall sell the Excess Shares at then prevailing prices on Nasdaq, all in the manner provided in this Section 2.2.5.

Section 2.2.5.2 The sale of the Excess Shares by the Exchange Agent shall be executed on Nasdaq and shall be executed in round lots to the extent practicable. Until the net proceeds of any such sale or sales have been distributed to such holders of

Company Stock, the Exchange Agent will hold such proceeds in trust for such holders of Company Stock as part of the Exchange Fund. The Company shall pay all commissions, transfer taxes and other out-of-pocket transaction costs of the Exchange Agent incurred in connection with such sale or sales of Excess Shares. In addition, the Company shall pay the Exchange Agent's compensation and expenses in connection with such sale or sales. The Exchange Agent shall determine the portion of such net proceeds to which each holder of Company Stock shall be entitled, if any, by multiplying the amount of the aggregate net proceeds by a fraction, the numerator of which is the amount of the fractional share interest to which such holder of Company Stock is entitled (after taking into account all shares of Parent Common Stock to be issued to such holder) and the denominator of which is the aggregate amount of fractional share interests to which all holders of Company Stock are entitled.

Section 2.2.5.3 As soon as practicable after the determination of the amount of cash, if any, to be paid to holders of Company Stock with respect to any fractional share interests, the Exchange Agent shall promptly pay such amounts to such holders of Company Stock subject to and in accordance with the terms of Section 2.2.3.

Section 2.2.6 Termination of Exchange Fund. Any portion of the Exchange Fund which remains undistributed to the holders of Company Stock for six months after the Effective Time shall be delivered to Parent upon demand, and any holders of Company Stock who have not theretofore complied with this Article 2 shall thereafter look only to Parent for the shares of Parent Common Stock, any cash in lieu of fractional shares of Parent Common Stock to which they are entitled pursuant to Section 2.2.5 and any dividends or other distributions with respect to Parent Common Stock to which they are entitled pursuant to Section 2.2.3, in each case, without any interest thereon.

Section 2.2.7 No Liability. Neither Parent nor the Company shall be liable to any holder of shares of Company Stock for any such shares of Parent Common Stock (or dividends or distributions with respect thereto) or cash from the Exchange Fund delivered to a public official pursuant to any abandoned property, escheat or similar Law.

Section 2.2.8 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 Parent, the posting by such person of

a bond, in such reasonable amount as Parent 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 Parent Common Stock, any cash in lieu of fractional shares of Parent Common Stock to which the holders thereof are entitled pursuant to Section 2.2.5 and any dividends or other distributions to which the holders thereof are entitled pursuant to Section 2.2.3, in each case, without any interest thereon.

Section 2.2.9 Withholding. Parent or the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of Company Stock such amounts as Parent or the Exchange Agent are required to deduct and withhold under the Code, or any provision of state, local or foreign tax Law, with respect to the making of such payment. To the extent that amounts are so withheld by Parent or the Exchange Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of Company Stock in respect of whom such deduction and withholding was made by Parent or the Exchange Agent.

Section 2.3 Stock Transfer Books. At the Effective Time, the stock transfer books of the Company shall be closed and thereafter, there shall be no further registration of transfers of shares of Company Stock theretofore outstanding on the records of the Company. From and after the Effective Time, the holders of certificates representing shares of Company Stock outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such shares of Company Stock except as otherwise provided herein or by Law. On or after the Effective Time, any Certificates presented to the Exchange Agent or Parent for any reason shall be converted into the shares of Parent Common Stock, any cash in lieu of fractional shares of Parent Common Stock to which the holders thereof are entitled pursuant to Section 2.2.5 and any dividends or other distributions to which the holders thereof are entitled pursuant to Section 2.2.3.

Section 2.4 Stock Options. At the Effective Time, all unexercised and unexpired options to purchase Company Common Stock ("Company Options") then outstanding, under any stock option plan of the Company, including the Company's Tandem Stock Option Plan, the Company's 1997 Stock Incentive Plan or any other plan, agreement or arrangement (the "Company Stock Option Plans"), whether or not then exercisable, will be assumed by Parent.

Each Company Option so assumed by Parent under this Agreement will continue to have, and be subject to, the same terms and conditions as set forth in the Company Stock Option Plan and any agreements thereunder immediately prior to the Effective Time, except that (i) each Company Option will be exercisable (or will become exercisable in accordance with its terms) for that number of whole shares of Parent Common Stock equal to the product of the number of shares of Company Common Stock that were issuable upon exercise of such Company Option immediately prior to the Effective Time multiplied by the Exchange Ratio, rounded down to the nearest whole number of shares of Parent Common Stock and (ii) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of such Company Option assumed, will be equal to the quotient determined by dividing the exercise price per share of Company Common Stock at which such Company Option was exercisable immediately prior to the Effective Time by the Exchange Ratio, rounded up to the nearest whole cent. The conversion of any Company Options which are incentive stock options within the meaning of Section 422 of the Code, into options to purchase Parent Common Stock shall be made so as not to constitute a "modification" of such Company Options within the meaning of Section 424 of the Code. Continuous employment with the Company or its subsidiaries shall be credited to the optionee for purposes of determining the vesting of all assumed Company Options after the Effective Time.

ARTICLE 3.
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the Disclosure Schedule delivered by the Company to Parent prior to the execution of this Agreement (the "Company Disclosure Schedule"), which identifies exceptions by specific Section references, the Company hereby represents and warrants to Parent as follows:

Section 3.1 Organization and Qualification; Subsidiaries. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Each subsidiary of the Company (each a "Company Subsidiary" and, collectively, the "Company Subsidiaries") has been duly organized, and is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, as the case may be. Each of the Company and each Company Subsidiary has the requisite 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. Each of the Company and each Company Subsidiary is duly qualified or licensed 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, licensing or good standing necessary, except for such failures to be so qualified, licensed or in good standing that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. Section 3.1 of the Company Disclosure Schedule sets forth a true and complete list of all of the Company Subsidiaries. Except as set forth in Section 3.1 of the Company Disclosure Schedule, none of the Company or any Company Subsidiary holds an Equity Interest in any other person.

Section 3.2 Certificate of Incorporation and By-laws; Corporate Books and Records. The copies of the Company's Second Amended and Restated Certificate of Incorporation (the "Company Certificate") and By-laws (the "Company By-laws") that are listed as exhibits to the Company's Form 10-K for the year ended December 31, 2001 are complete and correct copies thereof as in effect on the date hereof (the "Company Form 10-K"). The Company is not in violation of any of the provisions of the Company Certificate or the Company By-laws. True and complete copies of all minute books of the Company have been made available by the Company to Parent.

Section 3.3 Capitalization. The authorized capital stock of the Company consists of 50,000,000 shares of Company Common Stock and 5,000,000 shares of Company Preferred Stock. As of the date hereof, (A)17,842,157 shares of Company Common Stock (other than treasury shares) were issued and outstanding, all of which were validly issued and fully paid, nonassessable and free of preemptive rights, (B) no shares of Company Common Stock were held in the treasury of the Company or by the Company Subsidiaries, and (C) 5,537,142 shares of Company Common Stock were issuable (and such number was reserved for issuance) upon exercise of Company Options outstanding as of such date. As of the date hereof, of the 5,000,000 shares of authorized Company Preferred Stock, 12,000 shares have been designated as Series A Junior Participating Preferred Stock; 12,000 shares have been designated as Series B Convertible Preferred Stock; 10,750 shares of Company Preferred Stock have been designated as Series C Convertible Preferred Stock, 8,965 shares of which have been designated as Series C-1 Convertible Preferred Stock and 1,785 shares of which have been designated as Series C-2 Convertible Preferred Stock; 10,750 shares of Company Preferred Stock have been designated as

Series D Convertible Preferred Stock ("Series D Convertible Preferred Stock"), 8,965 shares of which have been designated as Series D-1 Convertible Preferred Stock ("Series D-1 Convertible Preferred Stock") and 1,785 shares of which have been designated as Series D-2 Convertible Preferred Stock ("Series D-2 Convertible Preferred Stock"). As of the date hereof, 7,726 shares of Series D-1 Convertible Preferred Stock and 1,071 shares of Series D-2 Convertible Preferred Stock are issued and outstanding, and there are no other shares of Company Preferred Stock outstanding. Except for Company Options to purchase not more than 5,537,142 shares of Company Common Stock and Company Warrants to purchase not more than 7,416,887 shares of Company Common Stock outstanding as of the date hereof, Company Rights outstanding under the Company Rights Agreement and arrangements and agreements set forth in Section 3.3 of the Company Disclosure Schedule, there are no options, warrants or other rights, agreements, arrangements or commitments of any character to which the Company or any Company Subsidiary is a party or by which the Company or any Company Subsidiary is bound relating to the issued or unissued capital stock or other Equity Interests of the Company or any Company Subsidiary, or securities convertible into or exchangeable for such capital stock or other Equity Interests, or obligating the Company or any Company Subsidiary to issue or sell any shares of its capital stock or other Equity Interests, or securities convertible into or exchangeable for such capital stock of, or other Equity Interests in, the Company or any Company Subsidiary. Since December 31, 2001, the Company has not issued any shares of its capital stock, or securities convertible into or exchangeable for such capital stock or other Equity Interests, other than those shares of capital stock reserved for issuance as set forth in this Section 3.3 or Section 3.3 of the Company Disclosure Schedule. Section 3.3 of the Company Disclosure Schedule sets forth a true and complete list, as of the date hereof, of the prices at which outstanding Company Options may be exercised under the applicable Company Stock Option Plan, the number of Company Options outstanding at each such price and the vesting schedule of the Company Options for each officer of the Company and the prices at which outstanding Company Warrants may be exercised, the number of Company Warrants outstanding at each such price and the number of shares of Company Common Stock into which each such Company Warrant is convertible. All shares of Company Common Stock subject to issuance under the Company Stock Option Plans, upon issuance prior to the Effective Time on the terms and conditions specified in the instruments pursuant to which they are issuable, will be duly authorized, validly issued, fully

paid, nonassessable and free of preemptive rights. There are no outstanding contractual obligations of the Company or any Company Subsidiary (A) restricting the transfer of, (B) affecting the voting rights of, (C) requiring the repurchase, redemption or disposition of, or containing any right of first refusal with respect to, (D) requiring the registration for sale of, or (E) granting any preemptive or antidilutive right with respect to, any shares of Company Stock or any capital stock of, or other Equity Interests in, the Company or any Company Subsidiary. Except as set forth in Section 3.3 of the Company Disclosure Schedule, each outstanding share of capital stock of each Company Subsidiary is duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights and is owned, beneficially and of record, by the Company or another Company Subsidiary free and clear of all security interests, liens, claims, pledges, options, rights of first refusal, agreements, limitations on the Company's or such other Company Subsidiary's voting rights, charges and other encumbrances of any nature whatsoever. There are no outstanding contractual obligations of the Company or any Company Subsidiary to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any Company Subsidiary or any other person, other than guarantees by the Company of any indebtedness or other obligations of any wholly-owned Company Subsidiary.

Section 3.4 Authority.

Section 3.4.1 The Company has all necessary corporate power and authority to execute and deliver this Agreement and each Ancillary Agreement, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated by this Agreement and each Ancillary Agreement to be consummated by the Company. The execution and delivery of this Agreement and each Ancillary Agreement by the Company and the consummation by the Company of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action and no other corporate proceedings on the part of the Company and no stockholder votes are necessary to authorize this Agreement or any Ancillary Agreement or to consummate the transactions contemplated hereby and thereby other than, with respect to the Merger, as provided in Section 3.20. The Board of Directors of the Company (the "Company Board") has approved this Agreement and each Ancillary Agreement, declared advisable the transactions contemplated hereby and thereby and has directed that this Agreement and the transactions contemplated hereby be submitted to the Company's stockholders for approval at a meeting of such stockholders. This Agreement and

each Ancillary Agreement has been duly authorized and validly executed and delivered by the Company and constitute a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with their respective terms.

Section 3.4.2 The Company has taken all appropriate actions so that the restrictions on business combinations contained in Section 203 of the DGCL will not apply with respect to or as a result of this Agreement or any Ancillary Agreement and the transactions contemplated hereby and thereby, including the Merger, without any further action on the part of the stockholders or the Company Board. True and complete copies of all Company Board resolutions reflecting such actions have been previously provided to Parent. No other state takeover statute or similar statute or regulation is applicable to or purports to be applicable to the Merger or any other transaction contemplated by this Agreement or any Ancillary Agreement.

Section 3.4.3 The Company Rights Agreement has been amended so that: (A) Parent, Merger Sub and each Parent Subsidiary are each exempt from the definition of "Acquiring Person" contained in the Company Rights Agreement, and no "Stock Acquisition Date" or "Distribution Date" or "Triggering Event" (as such terms are defined in the Company Rights Agreement) will occur as a result of the execution of this Agreement or any Ancillary Agreement or the consummation of the Merger and the other transactions contemplated by this Agreement or any Ancillary Agreement and (B) the Company Rights Agreement will terminate and the Company Rights will expire immediately prior to the Effective Time. The Company Rights Agreement, as so amended, has not been further amended or modified. True and complete copies of the Company Rights Agreement and of all amendments thereto through the date hereof have been previously provided to Parent.

Section 3.5 No Conflict; Required Filings and Consents.

Section 3.5.1 The execution and delivery of this Agreement and each Ancillary Agreement by the Company does not, and the performance of this Agreement and each Ancillary Agreement by the Company will not, (A) (assuming, the stockholder approval set forth in Section 3.20 is obtained) conflict with or violate any provision of the Company Certificate or Company By-laws or any equivalent organizational documents of any Company Subsidiary, (B) assuming that all consents, approvals, authorizations and permits described in Section 3.5.2 have been obtained and all filings and notifications described in Section 3.5.2 have been made and any

waiting periods thereunder have terminated or expired, conflict with or violate any Law applicable to the Company or any Company Subsidiary or by which any property or asset of the Company or any Company Subsidiary is bound or affected or (C) require any consent or approval under, result in any breach of or any loss of any benefit under, constitute a change of control or 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, vesting, amendment, acceleration or cancellation of, or result in the creation of a lien or other encumbrance on any property or asset of the Company or any Company Subsidiary pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, Company Permit or other instrument or obligation.

Section 3.5.2 The execution and delivery of this Agreement and each Ancillary Agreement by the Company does not, and the performance of this Agreement and each Ancillary Agreement by the Company will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity or any other person, except (A) under the Exchange Act, the Securities Act, any applicable Blue Sky Laws and the rules and regulations of Nasdaq and the filing and recordation of the Certificate of Merger as required by the DGCL and (B) where failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications to a person other than a Governmental Entity, would not, individually or in the aggregate, reasonably be expected to (x) prevent or materially delay consummation of the Merger, (y) otherwise prevent or materially delay performance by the Company of any of its material obligations under this Agreement or any Ancillary Agreement or (z) have a Company Material Adverse Effect.

Section 3.6 Permits; Compliance With Law. Each of the Company and each Company Subsidiary is in possession of all authorizations, licenses, permits, certificates, approvals and clearances of any Governmental Entity necessary for the Company and each Company Subsidiary to own, lease and operate its properties or to carry on its respective businesses substantially in the manner described in the Company SEC Filings filed prior to the date hereof and substantially as it is being conducted as of the date hereof (the "Company Permits"), and all such Company Permits are valid, and in full force and effect, except where the failure to have, or the suspension or cancellation of, or failure to be valid or in full force and effect of, any of the Company Permits would not, individually or in the aggregate, reasonably be expected to (A) prevent or materially delay consummation of the Merger, (B) otherwise prevent

or materially delay performance by the Company of any of its material obligations under this Agreement or any Ancillary Agreement or (C) have a Company Material Adverse Effect. None of the Company or any Company Subsidiary is in conflict with, or in default or violation of, (x) any Law applicable to the Company or any Company Subsidiary or by which any property or asset of the Company or any Company Subsidiary is bound or affected or (y) any Company Permits, except for any such conflicts, defaults or violations that would not, individually or in the aggregate, reasonably be expected to (A) prevent or materially delay consummation of the Merger, (B) otherwise prevent or materially delay performance by the Company of any of its material obligations under this Agreement or any Ancillary Agreement or (C) have a Company Material Adverse Effect.

Section 3.7 SEC Filings; Financial Statements.

Section 3.7.1 The Company has timely filed all registration statements, prospectuses, forms, reports, definitive proxy statements, schedules and documents required to be filed by it under the Securities Act or the Exchange Act, as the case may be, since January 1, 2000 (collectively, the "Company SEC Filings"). Each Company SEC Filing (A) as of its date, complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and (B) did not, at the time it was filed, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. As of the date of this Agreement, no Company Subsidiary is subject to the periodic reporting requirements of the Exchange Act.

Section 3.7.2 Each of the consolidated financial statements (including, in each case, any notes thereto) contained in the Company SEC Filings was prepared in accordance with GAAP applied (except as may be indicated in the notes thereto and, in the case of unaudited quarterly financial statements, as permitted by Form 10-Q under the Exchange Act) on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto), and each presented fairly the consolidated financial position, results of operations and cash flows of the Company and the consolidated Company Subsidiaries as of the respective dates thereof and for the respective periods indicated therein (subject, in the case of unaudited statements, to normal year-end adjustments which did not and would not, individually or in the

aggregate, reasonably be expected to have a Company Material Adverse Effect). The books and records of the Company and each Company Subsidiary have been, and are being, maintained in accordance with applicable legal and accounting requirements.

Section 3.7.3 Except as and to the extent set forth on the consolidated balance sheet of the Company and the consolidated Company Subsidiaries as of December 31, 2001 included in the Company Form 10-K for the year ended December 31, 2001, including the notes thereto, none of the Company or any consolidated Company Subsidiary has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) that would be required to be reflected on a balance sheet or in notes thereto prepared in accordance with GAAP, except for liabilities or obligations incurred in the ordinary course of business since December 31, 2001 that would not, individually or in the aggregate, reasonably be expected to (A) prevent or materially delay consummation of the Merger, (B) otherwise prevent or materially delay performance by the Company of any of its material obligations under this Agreement or any Ancillary Agreement or (C) have a Company Material Adverse Effect.

Section 3.7.4 The Company has previously provided to Parent a complete and correct copy of any amendment or modification which has not yet been filed with the SEC to any agreement, document or other instrument which previously had been filed by the Company with the SEC pursuant to the Securities Act or the Exchange Act.

Section 3.8 Disclosure Documents.

Section 3.8.1 The Proxy Statement and any Other Filings, and any amendments or supplements thereto, at (A) the time the Registration Statement is declared effective, (B) the time the Proxy Statement (or any amendment thereof or supplement thereto) is first mailed to the stockholders of the Company, (C) if applicable, the time the Proxy Statement (or any amendment thereof or supplement thereto) is first mailed to stockholders of Parent, (D) the time of the Company Stockholders' Meeting, (E) the time of the Parent Stockholders' Meeting, and (F) the Effective Time, will comply as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act and other applicable Laws.

Section 3.8.2 The Proxy Statement and any Other Filings, and any amendments or supplements thereto, do not, and will not, at (A) the time the Registration Statement is declared effective, (B) the time the Proxy Statement (or any amendment thereof or

supplement thereto) is first mailed to the stockholders of the Company, (C) the time the Proxy Statement (or any amendment thereof or supplement thereto) is first mailed to stockholders of Parent, (D) the time of the Company Stockholders' Meeting, (E) the time of the Parent Stockholders' Meeting, and (F) the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The representations and warranties contained in this Section 3.8.2 will not apply to statements or omissions included in the Proxy Statement or any Other Filings based upon information furnished in writing to the Company by Parent or Merger Sub specifically for use therein.

Section 3.9 Absence of Certain Changes or Events. Since September 30, 2002, except as specifically contemplated by, or as disclosed in, this Agreement or Section 3.9 of the Company Disclosure Schedule, the Company and each Company Subsidiary has conducted its businesses in the ordinary course consistent with past practice. During the period from October 1, 2002 through the date of this Agreement, there has not been any Company Material Adverse Effect or an event or development that would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. Since September 30, 2002, there has not been any event or development that would, individually or in the aggregate, reasonably be expected to prevent or materially delay the performance of this Agreement or any Ancillary Agreement by the Company. Neither the Company nor any Company Subsidiary has taken any action during the period from October 1, 2002 through the date of this Agreement that, if taken during the period from the date of this Agreement through the Effective Time, would constitute a breach of Section 5.1.

Section 3.10 Employee Benefit Plans

Section 3.10.1 Section 3.10.1 of the Company Disclosure Schedule sets forth a true and complete list of each "employee benefit plan" as defined in Section 3(3) of ERISA and any other plan, policy, program, practice, agreement, understanding or arrangement (whether written or oral) providing compensation or other benefits to any current or former director, officer, employee or consultant (or to any dependent or beneficiary thereof of the Company or any ERISA Affiliate), which are now, or were within the past 6 years, maintained,

sponsored or contributed to by the Company or any ERISA Affiliate, or under which the Company or any ERISA Affiliate has any obligation or liability, whether actual or contingent, including, without limitation, all incentive, bonus, deferred compensation, vacation, holiday, cafeteria, medical, disability, stock purchase, stock option, stock appreciation, phantom stock, restricted stock or other stock-based compensation plans, policies, programs, practices or arrangements (each a "Company Benefit Plan"). Neither the Company, nor to the knowledge of the Company, or any other person or entity, has any express or implied commitment, whether legally enforceable or not, to modify, change or terminate any Company Benefit Plan, other than with respect to a modification, change or termination required by ERISA or the Code.

With respect to each Company Benefit Plan, the Company has delivered to Parent true, correct and complete copies of (A) each Company Benefit Plan (or, if not written a written summary of its material terms), including without limitation all plan documents, adoption agreements, trust agreements, insurance contracts or other funding vehicles and all amendments thereto, (B) all summaries and summary plan descriptions, including any summary of material modifications, (C) the most recent annual reports (Form 5500 series) filed with the IRS with respect to such Company Benefit Plan (and, if the most recent annual report is a Form 5500R, the most recent Form 5500C filed with respect to such Company Benefit Plan), (D) the most recent actuarial report or other financial statement relating to such Company Benefit Plan, (E) the most recent determination or opinion letter, if any, issued by the IRS with respect to any Company Benefit Plan and any pending request for such a determination letter, (F) the most recent nondiscrimination tests performed under the Code (including 401(k) and 401(m) tests) for each Company Benefit Plan, and (G) all filings made with any Governmental Entity, including but not limited any filings under the Voluntary Compliance Resolution or Closing Agreement Program or the Department of Labor Delinquent Filer Program.

Section 3.10.2 Each Company Benefit Plan has been administered in all material respects in accordance with its terms and all applicable Laws, including ERISA and the Code, and contributions required to be made under the terms of any of the Company Benefit Plans as of the date of this Agreement have been timely made or, if not yet due, have been properly reflected on the most recent consolidated balance sheet filed or incorporated by reference in the Company SEC Filings prior to the date of this Agreement. With respect to the Company Benefit Plans, no event has occurred and, to the knowledge of the Company, there

exists no condition or set of circumstances in connection with which the Company could be subject to any material liability (other than for routine benefit liabilities) under the terms of, or with respect to, such Company Benefit Plans, ERISA, the Code or any other applicable Law.

Section 3.10.3 Except as disclosed on Section 3.10.3 of the Company Disclosure Schedule: (A) each Company Benefit Plan which is intended to qualify under Section 401(a), Section 401(k), Section 401(m) or Section 4975(e)(6) of the Code has either received a favorable determination letter from the IRS as to its qualified status or the remedial amendment period for such Company Benefit Plan has not yet expired, and each trust established in connection with any Company Benefit Plan which is intended to be exempt from federal income taxation under Section 501(a) of the Code is so exempt, and to the Company's knowledge no fact or event has occurred that could adversely affect the qualified status of any such Company Benefit Plan or the exempt status of any such trust, (B) to the Company's knowledge there has been no prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code and other than a transaction that is exempt under a statutory or administrative exemption) with respect to any Company Benefit Plan that could result in liability to the Company or an ERISA Affiliate, (C) each Company Benefit Plan can be amended, terminated or otherwise discontinued after the Effective Time in accordance with its terms, without liability (other than (i) liability for ordinary administrative expenses typically incurred in a termination event or (ii) if the Company Benefit Plan is a pension benefit plan subject to Part 2 of Title I of ERISA, liability for the accrued benefits as of the date of such termination (if and to the extent required by ERISA) to the extent that either there are sufficient assets set aside in a trust or insurance contract to satisfy such liability or such liability is reflected on the most recent consolidated balance sheet filed or incorporated by reference in the Company SEC Filings prior to the date of this Agreement), (D) no suit, administrative proceeding, action or other litigation has been brought, or to the knowledge of the Company is threatened, against or with respect to any such Company Benefit Plan, including any audit or inquiry by the IRS or United States Department of Labor (other than routine benefits claims), (E) neither the Company nor any ERISA Affiliate has any liability under ERISA Section 502, (F) all tax, annual reporting and other governmental filings required by ERISA and the Code have been timely filed with the appropriate Governmental Entity and all notices and disclosures have been timely provided to participants, (G) all contributions and payments to such Company Benefit Plan are deductible

under Code sections 162 or 404, (H) no amount is subject to Tax as unrelated business taxable income under Section 511 of the Code, and (I) no excise tax could be imposed upon the Company under Chapter 43 of the Code.

Section 3.10.4 Neither the Company nor any of its ERISA Affiliates sponsors, maintains, contributes to or has an obligation to contribute to, or has sponsored, maintained, contributed to or had an obligation to contribute to, any "employee pension benefit plan" (as defined in Section 3(2) of ERISA) that is subject to Title IV of ERISA or Section 412 of the Code, or any "multiemployer plan" as defined in Section 3(37) of ERISA ("Multiemployer Plan").

Section 3.10.5 Neither the Company nor any of its ERISA Affiliates sponsors, contributes to or has any liability with respect to any employee benefit plan, program or arrangement that provides benefits to non-resident aliens with no United States source income outside of the United States.

Section 3.10.6 Except as set forth on Section 3.10.6 of the Company Disclosure Schedule, no amount that could be received (whether in cash or property or the vesting of property), as a result of the consummation of the transactions contemplated by this Agreement or any Ancillary Agreement, by any employee, officer or director of the Company or any Company Subsidiary who is a "disqualified individual" (as such term is defined in proposed Treasury Regulation Section 1.280G-1) under any Company Benefit Plan could be characterized as an "excess parachute payment" (as defined in Section 280G(b)(1) of the Code). Set forth in Section 3.10.6 of the Company Disclosure Schedule is (A) the estimated maximum amount that could be paid to any disqualified individual as a result of the transactions contemplated by this Agreement or any Ancillary Agreement under all employment, severance and termination agreements, other compensation arrangements and Company Benefit Plans currently in effect, and (B) the "base amount" (as defined in Section 280G(b)(e) of the Code) for each such individual as of the date of this Agreement.

Section 3.10.7 Except as required by Law, no Company Benefit Plan provides any of the following retiree or post-employment benefits to any person: medical, disability or life insurance benefits. No Company Benefit Plan is a voluntary employee benefit association under Section 501(a)(9) of the Code. The Company and each ERISA Affiliate are in

material compliance with (i) the requirements of the applicable health care continuation and notice provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the regulations (including proposed regulations) thereunder and any similar state law and (ii) the applicable requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations (including the proposed regulations) thereunder.

Section 3.11 Labor and Other Employment Matters.

Section 3.11.1 Each of the Company and each Company Subsidiary is in compliance with all applicable Laws respecting labor, employment, fair employment practices, terms and conditions of employment, workers' compensation, occupational safety, plant closings, and wages and hours. None of the Company or any Company Subsidiary is liable for any payment to any trust or other fund or to any Governmental Entity, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the ordinary course of business and consistent with past practice). Except as set forth in Section 3.11.1 of the Company Disclosure Schedule, none of the Company or any Company Subsidiary is a party to any collective bargaining or other labor union contract applicable to persons employed by the Company or any Company Subsidiary, and no collective bargaining agreement or other labor union contract is being negotiated by the Company or any Company Subsidiary. There is no labor dispute, strike, slowdown or work stoppage against the Company or any Company Subsidiary pending or, to the knowledge of the Company, threatened which may interfere in any respect that would have a Company Material Adverse Effect with the respective business activities of the Company or any Company Subsidiary. No labor union or similar organization has otherwise been certified to represent any persons employed by the Company or any Company Subsidiary or has applied to represent such employees or, to the knowledge of the Company, is attempting to organize so as to represent such employees. None of the Company, any Company Subsidiary or their respective representatives or employees has committed any unfair labor practices in connection with the operation of the respective businesses of the Company or any Company Subsidiary, and there is no charge or complaint against the Company or any Company Subsidiary by the National Labor Relations Board or any comparable state or foreign agency pending or, to the knowledge of the Company, threatened, except where such unfair labor practice, charge or complaint would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse

Effect. None of the Company or any Company Subsidiary is delinquent in payments to any of its employees for any wages, salaries, commissions, bonuses or other direct compensation for any services performed for it or amounts required to be reimbursed to such employees. Each of the Company and each Company Subsidiary has withheld all amounts required by Law or by agreement to be withheld from the wages, salaries, and other payments to employees, and is not liable for any arrears of wages or any Taxes or any penalty for failure to comply with any of the foregoing. There are no material pending claims against the Company or any Company Subsidiary under any workers' compensation plan or policy or for long term disability. There are no material controversies pending or, to the knowledge of the Company, threatened, between the Company or any Company Subsidiary and any of their current or former employees, which controversies have or could reasonably be expected to result in an action, suit, proceeding, claim, arbitration or investigation before any Governmental Entity. To the Company's knowledge, no employee of the Company or any Company Subsidiary is in any material respect in violation of any term of any employment contract, non-disclosure agreement, non-competition agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by the Company or such Company Subsidiary because of the nature of the business conducted or presently proposed to be conducted by it or to the use of trade secrets or proprietary information of others. No employee of the Company or any Company Subsidiary has given notice, nor is the Company otherwise aware, that such employee intends to terminate his or her employment with the Company or such Company Subsidiary.

Section 3.11.2 The Company has identified in Section 3.11.2 of the Company Disclosure Schedule and has made available to Parent true and complete copies of (A) all severance and employment agreements with directors, officers or employees of or consultants to the Company or any Company Subsidiary, (B) all severance programs and policies of the Company and each Company Subsidiary with or relating to its employees, and (C) all plans, programs, agreements and other arrangements of the Company and each Company Subsidiary with or relating to its directors, officers, employees or consultants which contain change in control provisions. Except as set forth in Section 3.11.2 of the Company Disclosure Schedule, none of the execution and delivery of this Agreement or any Ancillary Agreement or the consummation of the transactions contemplated hereby or thereby will (either alone or in conjunction with any other event, such as termination of employment) (A) result in any payment

(including, without limitation, severance, unemployment compensation, parachute or otherwise) becoming due to any director or any employee of the Company or any Company Subsidiary or affiliate from the Company or any Company Subsidiary or affiliate under any Company Benefit Plan or otherwise, (B) significantly increase any benefits otherwise payable under any Company Benefit Plan or (C) result in any acceleration of the time of payment or vesting of any material benefits. No individual who is a party to an employment agreement listed in Section 3.11.2 of the Company Disclosure Schedule or any agreement incorporating change in control provisions with the Company has terminated employment or been terminated, nor has any event occurred that could give rise to a termination event, in either case under circumstances that has given, or could give, rise to a severance obligation on the part of the Company under such agreement. Section 3.11.2 of the Company Disclosure Schedule sets forth the Company's best estimates of the amounts payable to the executives listed therein, as a result of the transactions contemplated by this Agreement, any Ancillary Agreement, and/or any subsequent employment termination (including any cash-out or acceleration of options and restricted stock and any "gross-up" payments with respect to any of the foregoing), based on compensation data applicable as of the date of the Company Disclosure Schedule and the assumptions stated therein.

Section 3.11.3 There are no pending or threatened claims (other than claims for benefits in the ordinary course), lawsuits or arbitrations which have been asserted or instituted against any Company Benefit Plan, any fiduciaries thereof with respect to their duties to the Company Benefit Plans or the assets of any of the trusts under any of the Company Benefit Plans which could reasonably be expected to result in any material liability of the Company or any Company Subsidiary to the Pension Benefit Guaranty Corporation ("PBGC"), the Department of Treasury, the Department of Labor or any Multiemployer Plan.

Section 3.12 Tax Treatment. None of the Company, any Company Subsidiary or, to the knowledge of the Company, any of the Company's affiliates has taken or agreed to take any action that would prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code. The Company is not aware of any agreement, plan or other circumstance that would prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

Section 3.13 Contracts

Except as filed as exhibits to the Company SEC Filings filed prior to the date of this Agreement, or as disclosed in Section 3.13 of the Company Disclosure Schedule, none of the Company or any Company Subsidiary is a party to or bound by any contract (A) any of the benefits to any party of which will be increased, or the vesting of the benefits to any party of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement or any Ancillary Agreement, or the value of any of the benefits to any party of which will be calculated on the basis of any of the transactions contemplated by this Agreement or any Ancillary Agreement, or (B) which, as of the date hereof, (1) is a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC), (2) involves aggregate expenditures in excess of $250,000, other than contracts for the purchase of raw materials, components or manufacturing goods and contracts for the sale of the Company's products in the ordinary course of business, (3) involves annual expenditures in excess of $250,000 and is not cancelable within one year, other than contracts for the purchase of raw materials, components or manufacturing goods and contracts for the sale of the Company's products in the ordinary course of business, (4) contains any non-compete or exclusivity provisions with respect to any line of business or geographic area with respect to the Company, any Company Subsidiary or any of the Company's current or future affiliates, or which restricts the conduct of any line of business by the Company, any Company Subsidiary or any of the Company's current or future affiliates or any geographic area in which the Company, any Company Subsidiary or any of the Company's current or future affiliates may conduct business, in each case in any material respect, (5) involves the sale of a Company Product to a customer or distributor and provides for a right of refund or return for any reason, including upon the occurrence of specified events or otherwise or (6) would prohibit or materially delay the consummation of the Merger or any of the transactions contemplated by this Agreement or any Ancillary Agreement. Each Contract of the type described in this Section 3.13, whether or not set forth in Section 3.13 of the Company Disclosure Schedule, is referred to herein as a "Company Material Contract." Each Company Material Contract is valid and binding on the Company and each Company Subsidiary party thereto and, to the Company's knowledge, each other party thereto, and in full force and effect, and the Company and each Company Subsidiary has in all material respects performed all obligations required to be performed by it to the date hereof under each Company Material Contract and, to the Company's knowledge, each other party to each Company Material Contract

has in all material respects performed all obligations required to be performed by it under such Company Material Contract, except as would not, individually or in the aggregate, reasonably be expected to (1) prevent or materially delay consummation of the Merger, (2) otherwise prevent or materially delay performance by the Company of any of its material obligations under this Agreement or any Ancillary Agreement, or (3) result in a Company Material Adverse Effect. None of the Company or any Company Subsidiary knows of, or has received notice of, any violation or default under (or any condition which with the passage of time or the giving of notice would cause such a violation of or default under) any Company Material Contract or any other contract to which it is a party or by which it or any of its properties or assets is bound, except for violations or defaults that would not, individually or in the aggregate, reasonably be expected to (1) prevent or materially delay consummation of the Merger, (2) otherwise prevent or materially delay performance by the Company of any of its material obligations under this Agreement or any Ancillary Agreement or (3) result in a Company Material Adverse Effect. Section 3.13 of the Company Disclosure Schedule provides the Company's good faith estimate of the additional costs which will accrue to the Company under the contracts described in clause (A) of Section 3.13 as a result of the transactions contemplated by this Agreement or any Ancillary Agreement.

Section 3.14 Litigation. Except as and to the extent set forth in Company SEC Filings filed prior to the date of this Agreement or in Section 3.14 of the Company Disclosure Schedule, (A) there is no suit, claim, action, proceeding or investigation pending or, to the knowledge of the Company, threatened in writing against the Company or any Company Subsidiary or reasonably likely to be brought against the Company or any Company Subsidiary or for which the Company or any Company Subsidiary is obligated to indemnify a third party that (1) has had or would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect or (2) as of the date hereof, challenges the validity or propriety, or seeks to prevent or materially delay consummation of the Merger or any other transaction contemplated by this Agreement or any Ancillary Agreement and (B) none of the Company or any Company Subsidiary is subject to any outstanding order, writ, injunction, decree or arbitration ruling, award or other finding which has had or would, individually or in the aggregate, reasonably be expected to (1) prevent or materially delay consummation of the Merger, (2) otherwise prevent or materially delay performance by the Company of any of its

material obligations under this Agreement or any Ancillary Agreement, or (3) result in a Company Material Adverse Effect.

Section 3.15 Environmental Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect:

Section 3.15.1 The Company and each Company Subsidiary (A) is in compliance with all, and is not subject to any liability, with respect to any, applicable Environmental Laws, (B) holds or has applied for all Environmental Permits necessary to conduct their current operations, and (C) is in compliance with their respective Environmental Permits.

Section 3.15.2 None of the Company or any Company Subsidiary has received any written notice, demand, letter, claim or request for information alleging that the Company or any Company Subsidiary may be in violation of, or liable under, any Environmental Law.

Section 3.15.3 None of the Company or any Company Subsidiary (A) has entered into or agreed to any consent decree or order or is subject to any judgment, decree or judicial order relating to compliance with Environmental Laws, Environmental Permits or the investigation, sampling, monitoring, treatment, remediation, removal or cleanup of Hazardous Materials and, to the knowledge of the Company, no investigation, litigation or other proceeding is pending or threatened in writing with respect thereto, or (B) is an indemnitor in connection with any claim threatened or asserted in writing by any third-party indemnitee for any liability under any Environmental Law or relating to any Hazardous Materials.

Section 3.15.4 None of the real property owned or leased by the Company or any Company Subsidiary is listed or, to the knowledge of the Company, proposed for listing on the "National Priorities List" under CERCLA, as updated through the date hereof, or any similar state or foreign list of sites requiring investigation or cleanup.

Section 3.16 Intellectual Property. Excepting the Intellectual Property owned or controlled by Parent and/or Merger Sub, the Company owns or has the defensible right to use, whether through ownership, licensing or otherwise, all Intellectual Property significant to the businesses of the Company and each Company Subsidiary in substantially the same manner as

such businesses are conducted on the date hereof ("Material Company Intellectual Property"). Excepting the Intellectual Property owned or controlled by Parent and/or Merger Sub, except as set forth in Section 3.16 of the Company Disclosure Schedule and except as would not, individually or in the aggregate, reasonably be expected to have a material adverse impact on the validity or value of any Material Company Intellectual Property and excluding prior communications or dealings with Parent: (A) no written claim of invalidity or conflicting ownership rights with respect to any Material Company Intellectual Property has been made by a third party and no such Material Company Intellectual Property is the subject of any pending or, to the Company's knowledge, threatened action, suit, claim, investigation, arbitration or other proceeding; (B) no person or entity has given notice to the Company or any Company Subsidiary that the use of any Material Company Intellectual Property by the Company, any Company Subsidiary or any licensee is infringing or has infringed any domestic or foreign patent, trademark, service mark, trade name, or copyright or design right, or that the Company, any Company Subsidiary or any licensee has misappropriated or improperly used or disclosed any trade secret, confidential information or know-how; (C) the making, using, selling, manufacturing, marketing, licensing, reproduction, distribution, or publishing of any process, machine, manufacture or product related to any Material Company Intellectual Property, is not presently believed to infringe any domestic or foreign patent, trademark, service mark, trade name, copyright or other intellectual property right of any third party, and does not and will not involve the misappropriation or improper use or disclosure of any trade secrets, confidential information or know-how of any third party; (D) there is not believed to exist any prior act or current conduct or use by the Company, any Company Subsidiary or any third party that would void or invalidate any Material Company Intellectual Property; and (E) the execution, delivery and performance of this Agreement and each Ancillary Agreement by the Company and the consummation of the transactions contemplated hereby and thereby will not breach, violate or conflict with any instrument or agreement concerning any Material Company Intellectual Property, will not cause the forfeiture or termination or give rise to a right of forfeiture or termination of any of the Material Company Intellectual Property or impair the right of Parent or the Surviving Corporation to make, use, sell, license or dispose of, or to bring any action for the infringement of any Material Company Intellectual Property. In addition, the matters disclosed

on Section 3.16 of the Company Disclosure Schedule would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

Section 3.17 Taxes.

Section 3.17.1 The Company and each Company Subsidiary has timely filed all Tax Returns with the appropriate taxing authorities required to be filed as of the date hereof, taking into account any extensions of time within which to file such Tax Returns. The Tax Returns accurately reflected in all material respects and will accurately reflect in all material respects all liability for Taxes of the Company and such Company Subsidiaries for the periods covered thereby. Except as provided in Schedule 3.17.1, all material Taxes owed by the Company and each Company Subsidiary for all taxable years or other taxable periods that end on or before the Effective Time, and, with respect to any taxable year or other taxable period beginning before and ending after the Effective Time, whether or not shown as being due on any Tax Return, have been paid and the Company and each Company Subsidiary have provided adequate reserves in accordance with GAAP in their financial statements for any Taxes that have not been paid, whether or not shown as being due on any Tax Returns. No claim has ever been made by an authority in a jurisdiction where the Company or any Company Subsidiary does not file Tax Returns that the Company or any Company Subsidiary is or may be subject to taxation by that jurisdiction.

Section 3.17.2 Except as provided in Schedule 3.17.2, no deficiencies for Taxes with respect to the Company and any Company Subsidiary have been claimed, proposed or assessed by any taxing authority or other Governmental Entity. Except as provided in Schedule 3.17.2, there are no audits or other administrative proceedings or court proceedings presently pending with regard to any Taxes or Tax Returns of the Company or any Company Subsidiary and none of the Company or any Company Subsidiary has received a written notice or announcement of any audits or proceedings. To the Company's knowledge, no such audits or proceedings are contemplated. No requests for waivers of time to assess any Taxes are pending and none of the Company or any Company Subsidiary has waived any statute of limitations with respect to Taxes or agreed to any extension of time with respect to any Tax assessment or deficiency for any open tax year.

Section 3.17.3 There are no Tax liens upon any property or assets of the Company or any Company Subsidiary except liens for current Taxes not yet due and payable and liens for Taxes that are being contested in good faith by appropriate proceedings.

Section 3.17.4 The Company and each Company Subsidiary has withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

Section 3.17.5 Neither the Company nor any Company Subsidiary has been included in any "consolidated," "unitary" or combined Tax Return, other than the consolidated, unified or combined Tax Returns of a Company Subsidiary filed with other Company Subsidiaries and/or the Company, provided for under the laws of the United States, any foreign jurisdiction or any state or locality with respect to Taxes for any taxable period for which the statute of limitations has not expired. None of the Company or any Company Subsidiary is responsible for the Taxes of any other person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee, by contract, or otherwise.

Section 3.17.6 None of the Company or any Company Subsidiary has (i) filed a consent pursuant to Section 341(f) of the Code or agreed to have Section 341(f)(2) of the Code apply to any disposition of any asset owned by it; (ii) agreed, or is required, to make any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise; (iii) made an election, or is required to treat any of its assets as owned by another person or as "tax-exempt use property" or "tax-exempt bond financed property" within the meaning of Section 168 of the Code; (iv) made a consent dividend election under Section 565 of the Code; or (v) made any of the foregoing elections or is required to apply any of the foregoing rules under any comparable state, local or foreign Tax provision.

Section 3.17.7 The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period described in Section 897(c)(1)(A)(ii) of the Code.

Section 3.17.8 None of the interest payable by the Company or any Company Subsidiary under outstanding indebtedness is nondeductible under Code Section 163 or is treated as interest on corporate acquisition indebtedness under Code Section 279.

Section 3.17.9 None of the Company or any Company Subsidiary is a party to, is bound by or has any obligation under any Tax sharing or Tax indemnity agreement or similar contract or arrangement.

Section 3.17.10 There are no other transactions or facts existing with respect to the Company and/or its Subsidiaries which by reason of the consummation of the transactions contemplated by this Agreement will result in the Company and/or the Company Subsidiaries recognizing income.

Section 3.18 Insurance. The Company maintains insurance coverage with reputable insurers, or maintains self-insurance practices, in such amounts and covering such risks as are in accordance with normal industry practice for companies engaged in businesses similar to that of the Company (taking into account the cost and availability of such insurance).

Section 3.19 Opinion of Financial Advisors. H.C. Wainwright & Co. (the "Company Financial Advisor") has delivered to the Company Board its written opinion that the Exchange Ratio is fair from a financial point of view to the holders of Company Stock.

Section 3.20 Vote Required. The affirmative vote of the holders of a majority of the outstanding shares of Company Common Stock and Series D Convertible Preferred Stock, voting together as a single class on an as-converted basis, are the only votes, if any, of the holders of any class or series of capital stock or other Equity Interests of the Company necessary to approve the Merger.

Section 3.21 Brokers and Other Advisors. No broker, finder, investment banker or other person (other than the Company Financial Advisor, the fees and expenses of which will be paid by the Company) is entitled to any brokerage, finder's or other fee or commission in connection with the Merger or any other transaction contemplated by this Agreement or any Ancillary Agreement based upon arrangements made by or on behalf of the Company or any Company Subsidiary. The Company has heretofore made available to Parent a true and complete copy of all agreements between the Company and the Company Financial Advisor

pursuant to which such firm would be entitled to any payment or indemnification in connection with the Merger or any other transaction contemplated by this Agreement or any Ancillary Agreement.

Section 3.22 Product Liability. As used in this Section 3.22, the term "Company Product" shall mean any product designed, manufactured, shipped, sold, marketed, distributed and/or otherwise introduced into the stream of commerce by or on behalf of the Company or any Company Subsidiary, including, without limitation, any product sold by the Company or any Company Subsidiary as a distributor, agent, or pursuant to any other contractual relationship; and the term "Company Defect" shall mean a defect or impurity of any kind, whether in design, manufacture, processing or otherwise, including, without limitation, any dangerous propensity associated with any reasonably foreseeable use of a Company Product, or the failure to know of the existence of any defect, impurity or dangerous propensity. Except as set forth in Section 3.22 of the Company Disclosure Schedule, there is no pending or, to the knowledge of the Company, threatened, claim, action, suit, inquiry, proceeding or investigation by any individual or Governmental Entity in which a Company Product is alleged to have a Company Defect, except any such claim, action, suit, inquiry proceeding or investigation which would not be reasonably likely to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 3.23 Transactions with Affiliates. Other than as previously disclosed by the Company in any filing with the SEC prior to the date of this Agreement, since January 1, 2000, the Company has not entered into any agreement or engaged in any transaction with any current or former director, officer or holder of five percent or more of the outstanding voting securities of the Company (calculated assuming conversion or exercise of all securities convertible into or exercisable or exchangeable for voting securities of the Company). Other than as previously disclosed by the Company in any filing with the SEC prior to the date of this Agreement, since January 1, 2000, no executive officer or director of the Company, either in such capacity or in his or her individual capacity, has entered into any agreement or engaged in any transaction with any current or former employee, customer, distributor, vendor or any other person, except for any agreement or transaction pursuant to which the Company receives no direct or indirect benefit and undertakes no direct or indirect obligation.

Section 3.24 Federal Healthcare Matters. The Company (i) is not currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. Section 1320a-7b(f) (the "Federal Healthcare Programs"); (ii) has not been charged with or convicted of a criminal offense related to the provision of health care items or services and (iii) is not under investigation or otherwise aware of any circumstances which may result in the Company being excluded from participation in the Federal Healthcare Programs.

ARTICLE 4.
REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as set forth in the Disclosure Schedule delivered by Parent and Merger Sub to the Company prior to the execution of this Agreement (the "Parent Disclosure Schedule"), which identifies exceptions by specific Section references, Parent and Merger Sub hereby jointly and severally represent and warrant to the Company as follows:

Section 4.1 Organization and Qualification; Subsidiaries. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Each of Merger Sub and the other subsidiaries of Parent (each a "Parent Subsidiary" and, collectively, the "Parent Subsidiaries") has been duly organized, and is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, as the case may be. Each of Parent and each Parent Subsidiary has the requisite 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. Each of Each of Parent and each Parent Subsidiary is duly qualified or licensed 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, licensing or good standing necessary, except for such failures to be so qualified, licensed or in good standing that would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. Section 4.1 of the Parent Disclosure Schedule sets forth a true and complete list of all of the Parent Subsidiaries. Except as set forth in Section 4.1 of the Parent Disclosure Schedule, none of Parent or any Parent Subsidiary holds an Equity Interest in any other person.

Section 4.2 Certificate of Incorporation and By-laws; Corporate Books and Records. The copies of Parent's Amended and Restated Certificate of Incorporation (the "Parent

Certificate") and By-laws (the "Parent By-laws") that are listed as exhibits to Parent's Form 10-K for the year ended December 31, 2001 are complete and correct copies thereof as in effect on the date hereof (the "Parent Form 10-K"). Parent is not in violation of any of the provisions of the Parent Certificate or the Parent By-laws. True and complete copies of all minute books of Parent have been made available by Parent to the Company.

Section 4.3 Capitalization. The authorized capital stock of Parent consists of 200,000,000 shares of Parent Common Stock and 5,000,000 shares of preferred stock, par value $0.001 per share (the "Parent Preferred Stock"). As of the date hereof, (A) 36,974,978 shares of Parent Common Stock (other than treasury shares) were issued and outstanding, all of which were validly issued and fully paid, nonassessable and free of preemptive rights, (B) no shares of Parent Common Stock were held in the treasury of Parent or by the Parent Subsidiaries, and (C) 6,512,652 shares of Parent Common Stock were issuable (and such number was reserved for issuance) upon exercise of options to purchase Parent Common Stock ("Parent Options") outstanding as of such date. As of the date hereof, no shares of Parent Preferred Stock are issued or outstanding. Except for Parent Options to purchase not more than 6,512,652 shares of Parent Common Stock, warrants to purchase not more than 5,081 shares of Company Common Stock outstanding as of the date hereof and arrangements and agreements set forth in Section 4.3 of the Parent Disclosure Schedule, there are no options, warrants or other rights, agreements, arrangements or commitments of any character to which Parent or any Parent Subsidiary is a party or by which Parent or any Parent Subsidiary is bound relating to the issued or unissued capital stock or other Equity Interests of Parent or any Parent Subsidiary, or securities convertible into or exchangeable for such capital stock or other Equity Interests, or obligating Parent or any Parent Subsidiary to issue or sell any shares of its capital stock or other Equity Interests, or securities convertible into or exchangeable for such capital stock of, or other Equity Interests in, Parent or any Parent Subsidiary. Since December 31, 2002, Parent has not issued any shares of its capital stock, or securities convertible into or exchangeable for such capital stock or other Equity Interests, other than those shares of capital stock reserved for issuance as set forth in this Section 4.3 or Section 4.3 of the Parent Disclosure Schedule. Parent has previously provided the Company with a true and complete list, as of the date hereof, of the prices at which outstanding Parent Options may be exercised under the applicable Parent Stock Option Plan, the number of Parent Options outstanding at each such price and the vesting

schedule of the Parent Options for each officer of Parent. All shares of Parent Common Stock subject to issuance under the Parent Stock Option Plans, upon issuance prior to the Effective Time on the terms and conditions specified in the instruments pursuant to which they are issuable, will be duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights. There are no outstanding contractual obligations of Parent or any Parent Subsidiary (A) restricting the transfer of, (B) affecting the voting rights of, (C) requiring the repurchase, redemption or disposition of, or containing any right of first refusal with respect to, (D) requiring the registration for sale of, or (E) granting any preemptive or antidilutive right with respect to, any shares of Parent Common Stock or any capital stock of, or other Equity Interests in, Parent or any Parent Subsidiary. Except as set forth in Section 4.3 of the Parent Disclosure Schedule, each outstanding share of capital stock of each Parent Subsidiary is duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights and is owned, beneficially and of record, by Parent or another Parent Subsidiary free and clear of all security interests, liens, claims, pledges, options, rights of first refusal, agreements, limitations on Parent's or such other Parent Subsidiary's voting rights, charges and other encumbrances of any nature whatsoever. There are no outstanding contractual obligations of Parent or any Parent Subsidiary to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any Parent Subsidiary or any other person, other than guarantees by Parent of any indebtedness or other obligations of any wholly-owned Parent Subsidiary.

Section 4.4 Authority.

Section 4.4.1 Each of Parent and Merger Sub has all necessary corporate power and authority to execute and deliver this Agreement and each Ancillary Agreement to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated by this Agreement and each Ancillary Agreement to be consummated by it. Each of (A) the execution and delivery of this Agreement and each Ancillary Agreement to which it is a party by each of Parent and Merger Sub, as applicable, and the consummation by Parent and Merger Sub of the transactions contemplated hereby and thereby and (B) the issuance of shares of Parent Common Stock in accordance with the Merger, have been duly and validly authorized by all necessary corporate action (including approval by Parent as sole stockholder of Merger Sub), and no other corporate proceedings on the part of Parent and Merger Sub and no other stockholder votes are necessary to authorize this Agreement or any such Ancillary Agreement or to consummate the transactions contemplated hereby and thereby other than, with respect to the Merger, as provided in Section 4.20. Each of the Board of Directors of Parent (the "Parent Board") and the Board of Directors of Merger Sub (the "Merger Sub Board") has approved this Agreement and each Ancillary Agreement to which Parent or Merger Sub, as applicable, is a party, declared advisable the transactions contemplated hereby or thereby and has directed that this Agreement and each such Ancillary

Agreement and the transactions contemplated hereby and thereby be submitted to Parent's stockholders for approval at a meeting of such stockholders and to Parent, as the sole stockholder of Merger Sub, for approval. This Agreement and each Ancillary Agreement to which Parent or Merger Sub is a party have been duly authorized and validly executed and delivered by Parent and Merger Sub, as applicable, and constitute a legal, valid and binding obligation of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with its terms.

Section 4.4.2 Each of Parent and Merger Sub has taken all appropriate actions so that the restrictions on business combinations contained in Section 203 of the DGCL will not apply with respect to or as a result of this Agreement or any Ancillary Agreement to which Parent or Merger Sub is a party and the transactions contemplated hereby and thereby, including the Merger, without any further action on the part of the stockholders of Parent or Merger Sub or the Parent Board or the Merger Sub Board. True and complete copies of all Parent Board resolutions and Merger Sub Board resolutions reflecting such actions have been previously provided to the Company. No other state takeover statute or similar statute or regulation is applicable to or purports to be applicable to the Merger or any other transaction contemplated by this Agreement or any Ancillary Agreement to which Parent or Merger Sub is a party.

Section 4.5 No Conflict; Required Filings and Consents.

Section 4.5.1 The execution and delivery of this Agreement and each Ancillary Agreement to which Parent or Merger Sub is a party do not, and the performance thereof by Parent and Merger Sub will not, (A) (assuming, the stockholder approval set forth in Section 4.20 is obtained) conflict with or violate any provision of the Certificate of Incorporation or By-laws of Parent or Merger Sub, (B) assuming that all consents, approvals, authorizations and permits described in Section 4.5.2 have been obtained and all filings and notifications

described in Section 4.5.2 have been made, and that the stockholders of Parent have approved the issuance of the shares of Parent Common Stock to be issued in connection with the Merger, and any waiting periods thereunder have terminated or expired, conflict with or violate any Law applicable to Parent or any Parent Subsidiary or by which any property or asset of Parent or any Parent Subsidiary is bound or affected or (C) require any consent or approval under, result in any breach of or any loss of any benefit under, constitute a change of control or 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, vesting, amendment, acceleration or cancellation of, or result in the creation of a lien or other encumbrance on any property or asset of Parent or any Parent Subsidiary pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, Parent Permit or other instrument or obligation.

Section 4.5.2 The execution and delivery of this Agreement and each Ancillary Agreement to which Parent or Merger Sub is a party do not, and the performance hereof and thereof by Parent and Merger Sub will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity or any other person, except (A) under the Exchange Act, the Securities Act, any applicable Blue Sky Laws and the rules and regulations of Nasdaq and the filing and recordation of the Certificate of Merger as required by the DGCL and (B) where failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications to a person other than a Governmental Entity, would not, individually or in the aggregate, reasonably be expected to (x) prevent or materially delay consummation of the Merger, (y) otherwise prevent or materially delay performance by Parent or Merger Sub of any of their material obligations under this Agreement or any Ancillary Agreement or (z) have a Parent Material Adverse Effect.

Section 4.6 Permits; Compliance With Law. Each of Parent and each Parent Subsidiary is in possession of all authorizations, licenses, permits, certificates, approvals and clearances of any Governmental Entity necessary for Parent and each Parent Subsidiary to own, lease and operate its properties or to carry on its respective businesses substantially in the manner described in the Parent SEC Filings filed prior to the date hereof and substantially as it is being conducted as of the date hereof (the "Parent Permits"), and all such Parent Permits are valid, and in full force and effect, except where the failure to have, or the suspension or cancellation of, or failure to be valid or in full force and effect of, any of the Parent Permits

would not, individually or in the aggregate, reasonably be expected to (A) prevent or materially delay consummation of the Merger, (B) otherwise prevent or materially delay performance by Parent or Merger Sub of any of their material obligations under this Agreement or any Ancillary Agreement or (C) have a Parent Material Adverse Effect. None of Parent or any Parent Subsidiary is in conflict with, or in default or violation of, (x) any Law applicable to Parent or any Parent Subsidiary or by which any property or asset of Parent or any Parent Subsidiary is bound or affected or (y) any Parent Permits, except for any such conflicts, defaults or violations that would not, individually or in the aggregate, reasonably be expected to (A) prevent or materially delay consummation of the Merger, (B) otherwise prevent or materially delay performance by Parent or Merger Sub of any of their material obligations under this Agreement or any Ancillary Agreement to which it is a party or (C) have a Parent Material Adverse Effect.

Section 4.7 SEC Filings; Financial Statements.

Section 4.7.1 Parent has timely filed all registration statements, prospectuses, forms, reports, definitive proxy statements, schedules and documents required to be filed by it under the Securities Act or the Exchange Act, as the case may be, since January 1, 2000 (collectively, the "Parent SEC Filings"). Each Parent SEC Filing (A) as of its date, complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and (B) did not, at the time it was filed, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. As of the date of this Agreement, no Parent Subsidiary is subject to the periodic reporting requirements of the Exchange Act.

Section 4.7.2 Each of the consolidated financial statements (including, in each case, any notes thereto) contained in the Parent SEC Filings was prepared in accordance with GAAP applied (except as may be indicated in the notes thereto and, in the case of unaudited quarterly financial statements, as permitted by Form 10-Q under the Exchange Act) on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto), and each presented fairly the consolidated financial position, results of operations and cash flows of Parent and the consolidated Parent Subsidiaries as of the respective dates thereof and for the respective periods indicated therein (subject, in the case of unaudited statements, to

normal year-end adjustments which did not and would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect). The books and records of Parent and each Parent Subsidiary have been, and are being, maintained in accordance with applicable legal and accounting requirements.

Section 4.7.3 Except as and to the extent set forth on the consolidated balance sheet of Parent and the consolidated Parent Subsidiaries as of December 31, 2001 included in the Parent Form 10-K for the year ended December 31, 2001, including the notes thereto, none of Parent or any consolidated Parent Subsidiary has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) that would be required to be reflected on a balance sheet or in notes thereto prepared in accordance with GAAP, except for liabilities or obligations incurred in the ordinary course of business since December 31, 2001 that would not, individually or in the aggregate, reasonably be expected to (A) prevent or materially delay consummation of the Merger, (B) otherwise prevent or materially delay performance by Parent or Merger Sub of any of their material obligations under this Agreement or any Ancillary Agreement to which it is a party or (C) have a Parent Material Adverse Effect.

Section 4.7.4 Parent has previously provided to the Company a complete and correct copy of any amendment or modification which has not yet been filed with the SEC to any agreement, document or other instrument which previously had been filed by Parent with the SEC pursuant to the Securities Act or the Exchange Act.

Section 4.8 Disclosure Documents.

Section 4.8.1 The Registration Statement, the Proxy Statement and any Other Filings, and any amendments or supplements thereto, at (A) the time the Registration Statement is declared effective, (B) the time the Proxy Statement (or any amendment thereof or supplement thereto) is first mailed to the stockholders of the Company, (C) if applicable, the time the Proxy Statement (or any amendment thereof or supplement thereto) is first mailed to stockholders of Parent, (D) the time of the Company Stockholders' Meeting, (E) the time of the Parent Stockholders' Meeting, and (F) the Effective Time, will comply as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act and other applicable Laws.

Section 4.8.2 The Registration Statement, the Proxy Statement and any Other Filings, and any amendments or supplements thereto, do not, and will not, at (A) the time the Registration Statement is declared effective, (B) the time the Proxy Statement (or any amendment thereof or supplement thereto) is first mailed to the stockholders of the Company, (C) the time the Proxy Statement (or any amendment thereof or supplement thereto) is first mailed to stockholders of Parent, (D) the time of the Company Stockholders' Meeting, (E) the time of the Parent Stockholders' Meeting, and (F) the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The representations and warranties contained in this Section 4.8.2 will not apply to statements or omissions included in the Registration Statement, the Proxy Statement or any Other Filings based upon information furnished in writing to Parent or Merger Sub by the Company specifically for use therein.

Section 4.9 Absence of Certain Changes or Events. Since September 30, 2002, except as specifically contemplated by, or as disclosed in, this Agreement or Section 4.9 of the Parent Disclosure Schedule, Parent and each Parent Subsidiary has conducted its businesses in the ordinary course consistent with past practice. During the period from October 1, 2002 through the date of this Agreement, there has not been any Parent Material Adverse Effect or an event or development that would, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. Since September 30, 2002, there has not been any event or development that would, individually or in the aggregate, reasonably be expected to prevent or materially delay the performance of this Agreement or any Ancillary Agreement by Parent or Merger Sub. Neither Parent nor any Parent Subsidiary has taken any action during the period from October 1, 2002 through the date of this Agreement that, if taken during the period from the date of this Agreement through the Effective Time, would constitute a breach of Section 5.2.

Section 4.10 Employee Benefit Plans.

Section 4.10.1 Section 4.10.1 of the Parent Disclosure Schedule sets forth a true and complete list of each "employee benefit plan" as defined in Section 3(3) of ERISA and any other plan, policy, program, practice, agreement, understanding or arrangement (whether written or oral) providing compensation or other benefits to any current or former director,

officer, employee or consultant (or to any dependent or beneficiary thereof of Parent or any ERISA Affiliate), which are now, or were within the past 6 years, maintained, sponsored or contributed to by Parent or any ERISA Affiliate, or under which Parent or any ERISA Affiliate has any obligation or liability, whether actual or contingent, including, without limitation, all incentive, bonus, deferred compensation, vacation, holiday, cafeteria, medical, disability, stock purchase, stock option, stock appreciation, phantom stock, restricted stock or other stock-based compensation plans, policies, programs, practices or arrangements (each a "Parent Benefit Plan"). Neither Parent, nor to the knowledge of Parent, or any other person or entity, has any express or implied commitment, whether legally enforceable or not, to modify, change or terminate any Parent Benefit Plan, other than with respect to a modification, change or termination required by ERISA or the Code.

With respect to each Parent Benefit Plan, Parent has delivered to the Company true, correct and complete copies of (A) each Parent Benefit Plan (or, if not written a written summary of its material terms), including without limitation all plan documents, adoption agreements, trust agreements, insurance contracts or other funding vehicles and all amendments thereto, (B) all summaries and summary plan descriptions, including any summary of material modifications, (C) the most recent annual reports (Form 5500 series) filed with the IRS with respect to such Parent Benefit Plan (and, if the most recent annual report is a Form 5500R, the most recent Form 5500C filed with respect to such Parent Benefit Plan), (D) the most recent actuarial report or other financial statement relating to such Parent Benefit Plan, (E) the most recent determination or opinion letter, if any, issued by the IRS with respect to any Parent Benefit Plan and any pending request for such a determination letter, (F) the most recent nondiscrimination tests performed under the Code (including 401(k) and 401(m) tests) for each Parent Benefit Plan, and (G) all filings made with any Governmental Entity, including but not limited any filings under the Voluntary Compliance Resolution or Closing Agreement Program or the Department of Labor Delinquent Filer Program.

Section 4.10.2 Each Parent Benefit Plan has been administered in all material respects in accordance with its terms and all applicable Laws, including ERISA and the Code, and contributions required to be made under the terms of any of the Parent Benefit Plans as of the date of this Agreement have been timely made or, if not yet due, have been properly reflected on the most recent consolidated balance sheet filed or incorporated by reference in the

Parent SEC Filings prior to the date of this Agreement. With respect to the Parent Benefit Plans, no event has occurred and, to the knowledge of Parent, there exists no condition or set of circumstances in connection with which Parent could be subject to any material liability (other than for routine benefit liabilities) under the terms of, or with respect to, such Parent Benefit Plans, ERISA, the Code or any other applicable Law.

Section 4.10.3 Except as disclosed on Section 4.10.3 of the Parent Disclosure Schedule: (A) each Parent Benefit Plan which is intended to qualify under Section 401(a), Section 401(k), Section 401(m) or Section 4975(e)(6) of the Code has either received a favorable determination letter from the IRS as to its qualified status or the remedial amendment period for such Parent Benefit Plan has not yet expired, and each trust established in connection with any Parent Benefit Plan which is intended to be exempt from federal income taxation under Section 501(a) of the Code is so exempt, and to Parent's knowledge no fact or event has occurred that could adversely affect the qualified status of any such Parent Benefit Plan or the exempt status of any such trust, (B) to Parent's knowledge there has been no prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code and other than a transaction that is exempt under a statutory or administrative exemption) with respect to any Parent Benefit Plan that could result in liability to Parent or an ERISA Affiliate, (C) each Parent Benefit Plan can be amended, terminated or otherwise discontinued after the Effective Time in accordance with its terms, without liability (other than (i) liability for ordinary administrative expenses typically incurred in a termination event or (ii) if the Parent Benefit Plan is a pension benefit plan subject to Part 2 of Title I of ERISA, liability for the accrued benefits as of the date of such termination (if and to the extent required by ERISA) to the extent that either there are sufficient assets set aside in a trust or insurance contract to satisfy such liability or such liability is reflected on the most recent consolidated balance sheet filed or incorporated by reference in the Parent SEC Filings prior to the date of this Agreement), (D) no suit, administrative proceeding, action or other litigation has been brought, or to the knowledge of Parent is threatened, against or with respect to any such Parent Benefit Plan, including any audit or inquiry by the IRS or United States Department of Labor (other than routine benefits claims), (E) neither Parent nor any ERISA Affiliate has any liability under ERISA Section 502, (F) all tax, annual reporting and other governmental filings required by ERISA and the Code have been timely filed with the appropriate Governmental Entity and all notices and disclosures have been timely

provided to participants, (G) all contributions and payments to such Parent Benefit Plan are deductible under Code sections 162 or 404, (H) no amount is subject to Tax as unrelated business taxable income under Section 511 of the Code, and (I) no excise tax could be imposed upon Parent under Chapter 43 of the Code.

Section 4.10.4 Neither Parent nor any of its ERISA Affiliates sponsors, maintains, contributes to or has an obligation to contribute to, or has sponsored, maintained, contributed to or had an obligation to contribute to, any "employee pension benefit plan" (as defined in Section 3(2) of ERISA) that is subject to Title IV of ERISA or Section 412 of the Code, or any Multiemployer Plan.

Section 4.10.5 Neither Parent nor any of its ERISA Affiliates sponsors, contributes to or has any liability with respect to any employee benefit plan, program or arrangement that provides benefits to non-resident aliens with no United States source income outside of the United States.

Section 4.10.6 Except as set forth on Section 4.10.6 of the Parent Disclosure Schedule, no amount that could be received (whether in cash or property or the vesting of property), as a result of the consummation of the transactions contemplated by this Agreement or any Ancillary Agreement, by any employee, officer or director of Parent or any Parent Subsidiary who is a "disqualified individual" (as such term is defined in proposed Treasury Regulation Section 1.280G-1) under any Parent Benefit Plan could be characterized as an "excess parachute payment" (as defined in Section 280G(b)(1) of the Code). Set forth in Section 4.10.6 of the Parent Disclosure Schedule is (A) the estimated maximum amount that could be paid to any disqualified individual as a result of the transactions contemplated by this Agreement or any Ancillary Agreement under all employment, severance and termination agreements, other compensation arrangements and Parent Benefit Plans currently in effect, and (B) the "base amount" (as defined in Section 280G(b)(e) of the Code) for each such individual as of the date of this Agreement.

Section 4.10.7 Except as required by Law, no Parent Benefit Plan provides any of the following retiree or post-employment benefits to any person: medical, disability or life insurance benefits. No Parent Benefit Plan is a voluntary employee benefit association under Section 501(a)(9) of the Code. Parent and each ERISA Affiliate are in material compliance with

(i) the requirements of the applicable health care continuation and notice provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the regulations (including proposed regulations) thereunder and any similar state law and (ii) the applicable requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations (including the proposed regulations) thereunder.

Section 4.11 Labor and Other Employment Matters.

Section 4.11.1 Each of Parent and each Parent Subsidiary is in compliance with all applicable Laws respecting labor, employment, fair employment practices, terms and conditions of employment, workers' compensation, occupational safety, plant closings, and wages and hours. None of Parent or any Parent Subsidiary is liable for any payment to any trust or other fund or to any Governmental Entity, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the ordinary course of business and consistent with past practice). Except as set forth in Section 4.11.1 of the Parent Disclosure Schedule, none of Parent or any Parent Subsidiary is a party to any collective bargaining or other labor union contract applicable to persons employed by Parent or any Parent Subsidiary, and no collective bargaining agreement or other labor union contract is being negotiated by Parent or any Parent Subsidiary. There is no labor dispute, strike, slowdown or work stoppage against Parent or any Parent Subsidiary pending or, to the knowledge of Parent, threatened which may interfere in any respect that would have a Parent Material Adverse Effect with the respective business activities of Parent or any Parent Subsidiary. No labor union or similar organization has otherwise been certified to represent any persons employed by Parent or any Parent Subsidiary or has applied to represent such employees or, to the knowledge of Parent, is attempting to organize so as to represent such employees. None of Parent, any Parent Subsidiary or their respective representatives or employees has committed any unfair labor practices in connection with the operation of the respective businesses of Parent or any Parent Subsidiary, and there is no charge or complaint against Parent or any Parent Subsidiary by the National Labor Relations Board or any comparable state or foreign agency pending or, to the knowledge of Parent, threatened, except where such unfair labor practice, charge or complaint would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. None of Parent or any Parent Subsidiary is delinquent in payments to any of its employees for any wages, salaries,

commissions, bonuses or other direct compensation for any services performed for it or amounts required to be reimbursed to such employees. Each of Parent and each Parent Subsidiary has withheld all amounts required by Law or by agreement to be withheld from the wages, salaries, and other payments to employees, and is not liable for any arrears of wages or any Taxes or any penalty for failure to comply with any of the foregoing. There are no material pending claims against Parent or any Parent Subsidiary under any workers' compensation plan or policy or for long term disability. There are no material controversies pending or, to the knowledge of Parent, threatened, between Parent or any Parent Subsidiary and any of their current or former employees, which controversies have or could reasonably be expected to result in an action, suit, proceeding, claim, arbitration or investigation before any Governmental Entity. To Parent's knowledge, no employee of Parent or any Parent Subsidiary is in any material respect in violation of any term of any employment contract, non-disclosure agreement, non-competition agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by Parent or such Parent Subsidiary because of the nature of the business conducted or presently proposed to be conducted by it or to the use of trade secrets or proprietary information of others. No employee of Parent or any Parent Subsidiary has given notice, nor is Parent otherwise aware, that such employee intends to terminate his or her employment with Parent or such Parent Subsidiary.

Section 4.11.2 Parent has identified in Section 4.11.2 of the Parent Disclosure Schedule and has made available to the Company true and complete copies of (A) all severance and employment agreements with directors, officers or employees of or consultants to Parent or any Parent Subsidiary, (B) all severance programs and policies of Parent and each Parent Subsidiary with or relating to its employees, and (C) all plans, programs, agreements and other arrangements of Parent and each Parent Subsidiary with or relating to its directors, officers, employees or consultants which contain change in control provisions. Except as set forth in Section 4.11.2 of the Parent Disclosure Schedule, none of the execution and delivery of this Agreement or any Ancillary Agreement or the consummation of the transactions contemplated hereby or thereby will (either alone or in conjunction with any other event, such as termination of employment) (A) result in any payment (including, without limitation, severance, unemployment compensation, parachute or otherwise) becoming due to any director or any employee of Parent or any Parent Subsidiary or

affiliate from Parent or any Parent Subsidiary or affiliate under any Parent Benefit Plan or otherwise, (B) significantly increase any benefits otherwise payable under any Parent Benefit Plan or (C) result in any acceleration of the time of payment or vesting of any material benefits. No individual who is a party to an employment agreement listed in Section 4.11.2 of the Parent Disclosure Schedule or any agreement incorporating change in control provisions with Parent has terminated employment or been terminated, nor has any event occurred that could give rise to a termination event, in either case under circumstances that has given, or could give, rise to a severance obligation on the part of Parent under such agreement. Section 4.11.2 of the Parent Disclosure Schedule sets forth Parent's best estimates of the amounts payable to the executives listed therein, as a result of the transactions contemplated by this Agreement, any Ancillary Agreement, and/or any subsequent employment termination (including any cash-out or acceleration of options and restricted stock and any "gross-up" payments with respect to any of the foregoing), based on compensation data applicable as of the date of the Parent Disclosure Schedule and the assumptions stated therein.

Section 4.11.3 There are no pending or threatened claims (other than claims for benefits in the ordinary course), lawsuits or arbitrations which have been asserted or instituted against any Parent Benefit Plan, any fiduciaries thereof with respect to their duties to the Parent Benefit Plans or the assets of any of the trusts under any of the Parent Benefit Plans which could reasonably be expected to result in any material liability of Parent or any Parent Subsidiary to the PBGC, the Department of Treasury, the Department of Labor or any Multiemployer Plan.

Section 4.12 Tax Treatment. None of Parent, any Parent Subsidiary or, to the knowledge of Parent, any of Parent's affiliates has taken or agreed to take any action that would prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code. Parent is not aware of any agreement, plan or other circumstance that would prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

Section 4.13 Contracts.

Except as filed as exhibits to the Parent SEC Filings filed prior to the date of this Agreement, or as disclosed in Section 4.13 of the Parent Disclosure Schedule, none of Parent or any Parent Subsidiary is a party to or bound by any contract (A) any of the benefits to any party of which will be increased, or the vesting of the benefits to any party

of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement or any Ancillary Agreement, or the value of any of the benefits to any party of which will be calculated on the basis of any of the transactions contemplated by this Agreement or any Ancillary Agreement, or (B) which, as of the date hereof, (1) is a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC), (2) involves aggregate expenditures in excess of $250,000, other than contracts for the purchase of raw materials, components or manufacturing goods and contracts for the sale of Parent's products in the ordinary course of business, (3) involves annual expenditures in excess of $250,000 and is not cancelable within one year, other than contracts for the purchase of raw materials, components or manufacturing goods and contracts for the sale of Parent's products in the ordinary course of business, (4) contains any non-compete or exclusivity provisions with respect to any line of business or geographic area with respect to Parent, any Parent Subsidiary or any of Parent's current or future affiliates, or which restricts the conduct of any line of business by Parent, any Parent Subsidiary or any of Parent's current or future affiliates or any geographic area in which Parent, any Parent Subsidiary or any of Parent's current or future affiliates may conduct business, in each case in any material respect, (5) involves the sale of a Parent Product to a customer or distributor and provides for a right of refund or return for any reason, including upon the occurrence of specified events or otherwise or (6) would prohibit or materially delay the consummation of the Merger or any of the transactions contemplated by this Agreement or any Ancillary Agreement. Each Contract of the type described in this Section 4.13, whether or not set forth in Section 4.13 of the Parent Disclosure Schedule, is referred to herein as a "Parent Material Contract." Each Parent Material Contract is valid and binding on Parent and each Parent Subsidiary party thereto and, to Parent's knowledge, each other party thereto, and in full force and effect, and Parent and each Parent Subsidiary has in all material respects performed all obligations required to be performed by it to the date hereof under each Parent Material Contract and, to Parent's knowledge, each other party to each Parent Material Contract has in all material respects performed all obligations required to be performed by it under such Parent Material Contract, except as would not, individually or in the aggregate, reasonably be expected to (1) prevent or materially delay consummation of the Merger, (2) otherwise prevent or materially delay performance by Parent or Merger Sub of any of their material obligations under this Agreement or any Ancillary Agreement to which it is a party, or (3) result in a Parent Material Adverse Effect. None of Parent or any Parent Subsidiary knows of, or has received notice of, any violation or default under (or any condition which with the passage of time or the giving of notice would cause such a violation of or default under) any Parent Material Contract or any other contract to which it is a party or by which it or any of its properties or assets is bound, except for violations or defaults that would not, individually or in the aggregate, reasonably be expected to (1) prevent or materially delay consummation of the Merger, (2) otherwise prevent or materially delay performance by Parent or Merger Sub of any of their material obligations under this Agreement or any Ancillary

Agreement to which it is a party or (3) result in a Parent Material Adverse Effect. Section 4.13 of the Parent Disclosure Schedule provides Parent's good faith estimate of the additional costs which will accrue to Parent under the contracts described in clause (A) of Section 4.13 as a result of the transactions contemplated by this Agreement or any Ancillary Agreement.

Section 4.14 Litigation. Except as and to the extent set forth in Parent SEC Filings filed prior to the date of this Agreement or in Section 4.14 of the Parent Disclosure Schedule, (A) there is no suit, claim, action, proceeding or investigation pending or, to the knowledge of Parent, threatened in writing against Parent or any Parent Subsidiary or reasonably likely to be brought against Parent or any Parent Subsidiary or for which Parent or any Parent Subsidiary is obligated to indemnify a third party that (1) has had or would, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect or (2) as of the date hereof, challenges the validity or propriety, or seeks to prevent or materially delay consummation of the Merger or any other transaction contemplated by this Agreement or any Ancillary Agreement and (B) none of Parent or any Parent Subsidiary is subject to any outstanding order, writ, injunction, decree or arbitration ruling, award or other finding which has had or would, individually or in the aggregate, reasonably be expected to (1) prevent or materially delay consummation of the Merger, (2) otherwise prevent or materially delay performance by Parent or Merger Sub of any of their material obligations under this Agreement or any Ancillary Agreement, or (3) result in a Parent Material Adverse Effect.

Section 4.15 Environmental Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect:

Section 4.15.1 Parent and each Parent Subsidiary (A) is in compliance with all, and is not subject to any liability, with respect to any, applicable Environmental Laws, (B) holds or has applied for all Environmental Permits necessary to conduct their current operations, and (C) is in compliance with their respective Environmental Permits.

Section 4.15.2 None of Parent or any Parent Subsidiary has received any written notice, demand, letter, claim or request for information alleging that Parent or any Parent Subsidiary may be in violation of, or liable under, any Environmental Law.

Section 4.15.3 None of Parent or any Parent Subsidiary (A) has entered into or agreed to any consent decree or order or is subject to any judgment, decree or judicial order relating to compliance with Environmental Laws, Environmental Permits or the investigation, sampling, monitoring, treatment, remediation, removal or cleanup of Hazardous Materials and, to the knowledge of Parent, no investigation, litigation or other proceeding is pending or threatened in writing with respect thereto, or (B) is an indemnitor in connection with any claim threatened or asserted in writing by any third-party indemnitee for any liability under any Environmental Law or relating to any Hazardous Materials.

Section 4.15.4 None of the real property owned or leased by Parent or any Parent Subsidiary is listed or, to the knowledge of Parent, proposed for listing on the "National Priorities List" under CERCLA, as updated through the date hereof, or any similar state or foreign list of sites requiring investigation or cleanup.

Section 4.16 Intellectual Property. Excepting the Intellectual Property owned or controlled by the Company, Parent owns or has the defensible right to use, whether through ownership, licensing or otherwise, all Intellectual Property significant to the businesses of Parent and each Parent Subsidiary in substantially the same manner as such businesses are conducted on the date hereof ("Material Parent Intellectual Property"). Excepting the Intellectual Property owned or controlled by the Company, except as set forth in Section 4.16 of the Parent Disclosure Schedule and except as would not, individually or in the aggregate, reasonably be expected to have a material adverse impact on the validity or value of any Material Parent Intellectual Property and excluding prior communications or dealings with the Company: (A) no written claim of invalidity or conflicting ownership rights with respect to any Material Parent Intellectual Property has been made by a third party and no such Material Parent Intellectual

Property is the subject of any pending or, to Parent's knowledge, threatened action, suit, claim, investigation, arbitration or other proceeding; (B) no person or entity has given notice to Parent or any Parent Subsidiary that the use of any Material Parent Intellectual Property by Parent, any Parent Subsidiary or any licensee is infringing or has infringed any domestic or foreign patent, trademark, service mark, trade name, or copyright or design right, or that Parent, any Parent Subsidiary or any licensee has misappropriated or improperly used or disclosed any trade secret, confidential information or know-how; (C) the making, using, selling, manufacturing, marketing, licensing, reproduction, distribution, or publishing of any process, machine, manufacture or product related to any Material Parent Intellectual Property, is not presently believed to infringe any domestic or foreign patent, trademark, service mark, trade name, copyright or other intellectual property right of any third party, and does not and will not involve the misappropriation or improper use or disclosure of any trade secrets, confidential information or know-how of any third party; (D) there is not believed to exist any prior act or current conduct or use by Parent, any Parent Subsidiary or any third party that would void or invalidate any Material Parent Intellectual Property; and (E) the execution, delivery and performance of this Agreement and each Ancillary Agreement by Parent and Merger Sub and the consummation of the transactions contemplated hereby and thereby will not breach, violate or conflict with any instrument or agreement concerning any Material Parent Intellectual Property, will not cause the forfeiture or termination or give rise to a right of forfeiture or termination of any of the Material Parent Intellectual Property or impair the right of Parent or the Surviving Corporation to make, use, sell, license or dispose of, or to bring any action for the infringement of any Material Parent Intellectual Property. In addition, the matters disclosed on Section 4.16 of the Parent Disclosure Schedule would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

Section 4.17 Taxes.

Section 4.17.1 Parent and each Parent Subsidiary has timely filed all Tax Returns with the appropriate taxing authorities required to be filed as of the date hereof, taking into account any extensions of time within which to file such Tax Returns. The Tax Returns have accurately reflected in all material respects and will accurately reflect in all material respects all liability for Taxes of Parent and such Parent Subsidiaries for the periods covered thereby. Except as provided in Schedule 4.17.1, all material Taxes owed by Parent and each

Parent Subsidiary for all taxable years or other taxable periods that end on or before the Effective Time, and, with respect to any taxable year or other taxable period beginning before and ending after the Effective Time, whether or not shown as being due on any Tax Return, have been paid and Parent and each Parent Subsidiary have provided adequate reserves in accordance with GAAP in their financial statements for any Taxes that have not been paid, whether or not shown as being due on any Tax Returns. No claim has ever been made by an authority in a jurisdiction where Parent or any Parent Subsidiary does not file Tax Returns that Parent or any Parent Subsidiary is or may be subject to taxation by that jurisdiction.

Section 4.17.2 Except as provided in Schedule 4.17.2, no deficiencies for Taxes with respect to Parent and any Parent Subsidiary have been claimed, proposed or assessed by any taxing authority or other Governmental Entity. Except as provided in Schedule 4.17.2, there are no audits or other administrative proceedings or court proceedings presently pending with regard to any Taxes or Tax Returns of Parent or any Parent Subsidiary and none of Parent or any Parent Subsidiary has received a written notice or announcement of any audits or proceedings. To Parent's knowledge, no such audits or proceedings are contemplated. No requests for waivers of time to assess any Taxes are pending and none of Parent or any Parent Subsidiary has waived any statute of limitations with respect to Taxes or agreed to any extension of time with respect to any Tax assessment or deficiency for any open tax year.

Section 4.17.3 There are no Tax liens upon any property or assets of Parent or any Parent Subsidiary except liens for current Taxes not yet due and payable and liens for Taxes that are being contested in good faith by appropriate proceedings.

Section 4.17.4 Parent and each Parent Subsidiary has withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

Section 4.17.5 Neither Parent nor any Parent Subsidiary has been included in any "consolidated," "unitary" or combined Tax Return, other than the consolidated, unified or combined Tax Returns of a Parent Subsidiary filed with other Parent Subsidiaries and/or the Company, provided for under the laws of the United States, any foreign jurisdiction or any state or locality with respect to Taxes for any taxable period for which the statute of limitations has not expired. None of the Company or any Company Subsidiary is responsible for the Taxes of

any other person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee, by contract, or otherwise.

Section 4.17.6 None of Parent or any Parent Subsidiary has (i) filed a consent pursuant to Section 341(f) of the Code or agreed to have Section 341(f)(2) of the Code apply to any disposition of any asset owned by it; (ii) agreed, or is required, to make any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise; (iii) made an election, or is required to treat any of its assets as owned by another person or as "tax-exempt use property" or "tax-exempt bond financed property" within the meaning of Section 168 of the Code; (iv) made a consent dividend election under Section 565 of the Code; or (v) made any of the foregoing elections or is required to apply any of the foregoing rules under any comparable state, local or foreign Tax provision.

Section 4.17.7 Parent has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period described in Section 897(c)(1)(A)(ii) of the Code.

Section 4.17.8 None of the interest payable by Parent or any Parent Subsidiary under outstanding indebtedness is nondeductible under Code Section 163 or is treated as interest on corporate acquisition indebtedness under Code Section 279.

Section 4.17.9 None of Parent or any Parent Subsidiary is a party to, is bound by or has any obligation under any Tax sharing or Tax indemnity agreement or similar contract or arrangement.

Section 4.17.10 There are no other transactions or facts existing with respect to Parent and/or its Subsidiaries which by reason of the consummation of the transactions contemplated by this Agreement will result in Parent and/or the Parent Subsidiaries recognizing income.

Section 4.18 Insurance. Parent maintains insurance coverage with reputable insurers, or maintains self-insurance practices, in such amounts and covering such risks as are in accordance with normal industry practice for companies engaged in businesses similar to that of Parent (taking into account the cost and availability of such insurance).

Section 4.19 Opinion of Financial Advisors. Bear, Stearns & Co. Inc. (the "Parent Financial Advisor") has delivered to the Parent Board its written opinion that the Exchange Ratio is fair from a financial point of view to Parent.

Section 4.20 Vote Required. The affirmative vote of the holders of a majority of the outstanding shares of Parent Common Stock is the only vote, if any, of the holders of any class or series of capital stock or other Equity Interests of Parent necessary to approve the Share Issuance. The affirmative vote of Parent, as the sole stockholder of Merger Sub, is the only vote, if any, of the holders of any class or series of capital stock or other Equity Interests of Merger Sub necessary to approve the Merger.

Section 4.21 Brokers and Other Advisors. No broker, finder, investment banker or other person (other than the Parent Financial Advisor, the fees and expenses of which will be paid by Parent) is entitled to any brokerage, finder's or other fee or commission in connection with the Merger or any other transaction contemplated by this Agreement or any Ancillary Agreement based upon arrangements made by or on behalf of Parent or any Parent Subsidiary. Parent has heretofore made available to the Company a true and complete copy of all agreements between Parent and the Parent Financial Advisor pursuant to which such firm would be entitled to any payment or indemnification in connection with the Merger or any other transaction contemplated by this Agreement or any Ancillary Agreement.

Section 4.22 Product Liability. As used in this Section 4.22, the term "Parent Product" shall mean any product designed, manufactured, shipped, sold, marketed, distributed and/or otherwise introduced into the stream of commerce by or on behalf of Parent or any Parent Subsidiary, including, without limitation, any product sold by Parent or any Parent Subsidiary as a distributor, agent, or pursuant to any other contractual relationship; and the term "Parent Defect" shall mean a defect or impurity of any kind, whether in design, manufacture, processing or otherwise, including, without limitation, any dangerous propensity associated with any reasonably foreseeable use of a Parent Product, or the failure to know of the existence of any defect, impurity or dangerous propensity. Except as set forth in Section 4.22 of the Parent Disclosure Schedule, there is no pending or, to the knowledge of Parent, threatened, claim, action, suit, inquiry, proceeding or investigation by any individual or Governmental Entity in which a Parent Product is alleged to have a Parent Defect, except any such claim, action, suit,

inquiry proceeding or investigation which would not be reasonably likely to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 4.23 Transactions with Affiliates. Other than as previously disclosed by the Company in any filing with the SEC prior to the date of this Agreement, since January 1, 2000, Parent has not entered into any agreement or engaged in any transaction with any current or former director, officer or holder of five percent or more of the outstanding voting securities of Parent (calculated assuming conversion or exercise of all securities convertible into or exercisable or exchangeable for voting securities of Parent). Other than as previously disclosed by the Company in any filing with the SEC prior to the date of this Agreement, since January 1, 2000, no executive officer or director of Parent, either in such capacity or in his or her individual capacity, has entered into any agreement or engaged in any transaction with any current or former employee, customer, distributor, vendor or any other person, except for any agreement or transaction pursuant to which Parent receives no direct or indirect benefit and undertakes no direct or indirect obligation.

Section 4.24 Federal Healthcare Matters. The Company (i) is not currently excluded, debarred, or otherwise ineligible to participate in the Federal Healthcare Programs; (ii) has not been charged with or convicted of a criminal offense related to the provision of health care items or services and (iii) is not under investigation or otherwise aware of any circumstances which may result in the Company being excluded from participation in the Federal Healthcare Programs.

ARTICLE 5.
COVENANTS

Section 5.1 Conduct of Business by the Company Pending the Closing. The Company agrees that, between the date of this Agreement and the Effective Time, except as set forth in Section 5.1 of the Company Disclosure Schedule or as specifically permitted by any other provision of this Agreement, unless Parent shall otherwise agree in writing, the Company will, and will cause each Company Subsidiary to, (A) conduct its operations only in the ordinary and usual course of business consistent with past practice and (B) subject to the prohibitions contained in Section 5.1.6, use its reasonable efforts to keep available the services of the current executive officers, key employees and consultants of the Company and each Company

Subsidiary and to preserve the current relationships of the Company and each Company Subsidiary with such of the customers, suppliers and other persons with which the Company or any Company Subsidiary has significant business relations as is reasonably necessary to preserve substantially intact its business organization. Without limiting the foregoing, and as an extension thereof, except as set forth in Section 5.1 of the Company Disclosure Schedule or as specifically permitted by any other provision of this Agreement, the Company shall not (unless required by applicable Law or the regulations or requirements of Nasdaq), and shall not permit any Company Subsidiary to, between the date of this Agreement and the Effective Time, directly or indirectly, do, or agree to do, any of the following without the prior written consent of Parent:

Section 5.1.1 amend or otherwise change its certificate of incorporation or by-laws or equivalent organizational documents;

Section 5.1.2 (A) issue, sell, pledge, dispose of, grant, transfer or encumber, or authorize the issuance, sale, pledge, disposition, grant, transfer or encumbrance of any shares of capital stock of, or other Equity Interests in, the Company or any Company Subsidiary of any class, or securities convertible or exchangeable or exercisable for any shares of such capital stock or other Equity Interests, or any options (other than options to purchase up to an aggregate of 50,000 shares of Company Common Stock to be granted pursuant to the Company's 1997 Stock Incentive Plan, in each case consistent with past practice), warrants or other rights of any kind to acquire any shares of such capital stock or other Equity Interests or such convertible or exchangeable securities, or any other ownership interest (including, without limitation, any such interest represented by contract right), of the Company or any Company Subsidiary, other than the issuance of Company Common Stock (and the related Company Rights) upon the exercise of Company Options or Company Warrants outstanding as of the date hereof in accordance with their terms as of the date hereof (or, if a Triggering Event (as defined in the Company Rights Agreement) by a party other than Parent or Merger Sub shall occur, the Company Rights), (B) amend, waive or modify any terms of any Company Options or Company Warrants, including, without limitation, by directly or indirectly increasing or reducing the exercise price of or the number of shares of Company Common Stock subject to any Company Option or Company Warrant (provided, however, that, solely with respect to this Section 5.1.2(B), Parent's prior written consent shall not be unreasonably withheld) or (C), sell, pledge, dispose of, transfer, lease, license, guarantee or encumber, or authorize the sale, pledge,

disposition, transfer, lease, license, guarantee or encumbrance of, any material property or assets (including Intellectual Property) of the Company or any Company Subsidiary, except pursuant to the Loan Agreement, existing contracts or commitments or the sale or purchase of goods in the ordinary course of business consistent with past practice, or enter into any commitment or transaction outside the ordinary course of business consistent with past practice other than transactions between a wholly-owned Company Subsidiary and the Company or another wholly-owned Company Subsidiary;

Section 5.1.3 declare, set aside, make or pay any dividend or other distribution (whether payable in cash, stock, property or a combination thereof) with respect to any of its capital stock (other than dividends paid by a wholly-owned Company Subsidiary to the Company or to any other wholly-owned Company Subsidiary) or enter into any agreement with respect to the voting of its capital stock; provided, however, that the Company shall be permitted to pay dividends on the Series D Preferred Stock in accordance with the requirements of Section 2 of the certificate of designations relating to the Series D Preferred Stock; and provided further, that any such dividends paid on the Series D-1 Preferred Stock shall be paid in shares of Company Common Stock to the fullest extent possible;

Section 5.1.4 reclassify, combine, split, subdivide or redeem, purchase or otherwise acquire, directly or indirectly, any of its capital stock, other Equity Interests or other securities;

Section 5.1.5 (A) acquire (including, without limitation, by merger, consolidation, or acquisition of stock or assets) any interest in any person or any division thereof or any assets, other than acquisitions of assets in the ordinary course of business consistent with past practice and any other acquisitions for consideration that do not exceed $100,000 in the aggregate for the Company and the Company Subsidiaries taken as a whole, (B) incur any indebtedness for borrowed money or issue any debt securities (other than pursuant to the Loan Agreement) or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any person (other than a wholly-owned Company Subsidiary) for borrowed money, except for indebtedness for borrowed money incurred in the ordinary course of business or other indebtedness for borrowed money with a maturity of not more than one year in a principal amount not, in the aggregate, in excess of $100,000 for the Company and

the Company Subsidiaries taken as a whole, (C) (i) terminate, cancel or request any material change in, or agree to any material change in, any Company Material Contract other than in the ordinary course of business consistent with past practice, (ii) enter into any Company Material Contract or (iii) grant any product warranty for a period longer than one year from the date of purchase to any customer of the Company, (D) make or authorize any capital expenditure, other than capital expenditures that are not, in the aggregate, in excess of $100,000 for the Company and the Company Subsidiaries taken as a whole or (E) enter into or amend any contract, agreement, commitment or arrangement that, if fully performed, would not be permitted under this Section 5.1.5;

Section 5.1.6 Except as may be required by contractual commitments or corporate policies with respect to severance or termination pay in existence on the date of this Agreement as disclosed in Section 3.11.2 of the Company Disclosure Schedule: (A) increase the compensation or benefits payable or to become payable to its directors, officers or employees (except for increases in accordance with past practices in salaries or wages of employees of the Company or any Company Subsidiary which are not across-the-board increases); (B) grant any rights to severance or termination pay to, or enter into any employment or severance agreement with, any director, officer or other employee of the Company or any Company Subsidiary, or establish, adopt, enter into or amend any collective bargaining, bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any director, officer or employee, except to the extent required by applicable Law or the terms of a collective bargaining agreement in existence on the date of this Agreement; or (C) take any affirmative action to amend or waive any performance or vesting criteria or accelerate vesting, exercisability or funding under any Company Benefit Plan.

Section 5.1.7 (A) pre-pay any long-term debt, except in the ordinary course of business in an amount not to exceed $25,000 in the aggregate for the Company and the Company Subsidiaries taken as a whole, or pay, discharge or satisfy any claims, liabilities or obligations (absolute, accrued, contingent or otherwise), except in the ordinary course of business consistent with past practice and in accordance with their terms and except as contemplated by the Loan Agreement, (B) accelerate or delay collection of notes or accounts receivable in advance of or beyond their regular due dates or the dates when the same would

have been collected in the ordinary course of business consistent with past practice, (C) delay or accelerate payment of any account payable in advance of its due date or the date such liability would have been paid in the ordinary course of business consistent with past practice or (D) vary the Company's inventory practices in any material respect from the Company's past practices;

Section 5.1.8 make any change in accounting policies or procedures, other than in the ordinary course of business consistent with past practice or except as required by GAAP or by a Governmental Entity;

Section 5.1.9 waive, release, assign, settle or compromise any material claims, or any material litigation or arbitration, except as expressly contemplated by Section 5.17;

Section 5.1.10 make any material tax election or settle or compromise any material liability for Taxes;

Section 5.1.11 take, or agree to take, any action that would prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code;

Section 5.1.12 amend or modify, or propose to amend or modify, or otherwise take any action under, the Company Rights Agreement;

Section 5.1.13 modify, amend or terminate, or waive, release or assign any material rights or claims with respect to any confidentiality or standstill agreement to which the Company is a party;

Section 5.1.14 write up, write down or write off the book value of any assets, individually or in the aggregate, for the Company and the Company Subsidiaries taken as a whole, in excess of $200,000, except for depreciation and amortization in accordance with GAAP consistently applied;

Section 5.1.15 take any action to exempt or make not subject to (A) the provisions of Section 203 of the DGCL, (B) any other state takeover law or state law that purports to limit or restrict business combinations or the ability to acquire or vote shares or (C) the Company Rights Agreement, any person or entity (other than Parent, Merger Sub or any Parent Subsidiary) or any action taken thereby, which person, entity or action would have otherwise been subject to the restrictive provisions thereof and not exempt therefrom;

Section 5.1.16 take any action that is intended or would reasonably be expected to result in any of the conditions to the Merger set forth in Article 6 not being satisfied; or

Section 5.1.17 authorize or enter into any agreement or otherwise make any commitment to do any of the foregoing.

Section 5.2 Conduct of Business by Parent Pending the Closing. Except as set forth in Section 5.2 of the Parent Disclosure Schedule or as specifically permitted by any other provision of this Agreement, Parent shall not (unless required by applicable Law or any stock exchange regulations applicable to Parent), and shall not permit any Parent Subsidiary to, between the date of this Agreement and the Effective Time, directly or indirectly, do, or agree to do, any of the following, without the prior written consent of the Company:

Section 5.2.1 amend or otherwise change its certificate of incorporation or by-laws or equivalent organizational documents;

Section 5.2.2 declare, set aside, make or pay any dividend or other distribution (whether payable in cash, stock, property or a combination thereof) with respect to any of its capital stock (other than dividends paid by a wholly-owned Parent Subsidiary to Parent or to any other wholly-owned Parent Subsidiary) or enter into any agreement with respect to the voting of its capital stock;

Section 5.2.3 make any change in accounting policies or procedures, other than in the ordinary course of business consistent with past practice or except as required by GAAP or by a Governmental Entity;

Section 5.2.4 waive, release, assign, settle or compromise any material claims, or any material litigation or arbitration, except as expressly contemplated by Section 5.17;

Section 5.2.5 take, or agree to take, any action that would prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code;

Section 5.2.6 take any action that is intended or would reasonably be expected to result in any of the conditions to the Merger set forth in Article 6 not being satisfied; or

Section 5.2.7 authorize or enter into any agreement or otherwise make any commitment to do any of the foregoing.

Section 5.3 Cooperation. The Company and Parent shall coordinate and cooperate in connection with (A) the preparation of the Registration Statement, the Proxy Statement and any Other Filings, (B) determining whether any action by or in respect of, or filing with, any Governmental Entity is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any Company Material Contracts, in connection with the consummation of the Merger, and (C) seeking any such actions, consents, approvals or waivers or making any such filings, furnishing information required in connection therewith or with the Registration Statement, the Proxy Statement or any Other Filings and timely seeking to obtain any such actions, consents, approvals or waivers.

Section 5.4 Registration Statement; Proxy Statement.

Section 5.4.1 As promptly as practicable after the execution of this Agreement, Parent and the Company shall prepare and the Company shall file with the SEC a joint proxy statement relating to the meeting of the Company's stockholders to be held in connection with the Merger and the meeting of Parent's stockholders to be held in connection with the issuance of shares of Parent Common Stock contemplated hereby (together with any amendments thereof or supplements thereto, the "Proxy Statement") and Parent shall prepare and file with the SEC a registration statement on Form S-4 (together with all amendments thereto, the "Registration Statement") in which the Proxy Statement shall be included as a prospectus, in connection with the registration under the Securities Act of the shares of Parent Common Stock to be issued to the stockholders of the Company pursuant to the Merger. Each of Parent and the Company shall prepare and file with the SEC any Other Filings as and when required or requested by the SEC. Each of Parent and the Company will use all reasonable efforts to respond to any comments made by the SEC with respect to the Proxy Statement and any Other Filings, and to cause the Registration Statement to become effective as promptly as practicable. Prior to the effective date of the Registration Statement, Parent shall take all or any action required under any applicable federal or state securities laws in connection with the issuance of shares of Parent Common Stock in the Merger. Each of Parent and the Company shall furnish all information concerning it and the holders of its capital stock as the other may reasonably request

in connection with such actions and the preparation of the Registration Statement, the Proxy Statement and any Other Filings. As promptly as practicable after the Registration Statement shall have become effective, each of the Company and Parent shall mail the Proxy Statement to its stockholders. The Proxy Statement shall (subject to the last sentence of Section 5.7.3 hereof) include (i) the recommendation of the Company Board that adoption of the Agreement by the Company's stockholders is advisable and that the Company Board has determined that the Merger is fair and in the best interests of the Company's stockholders and (ii) the recommendation of the Parent Board in favor of the issuance of shares of Parent Common Stock contemplated hereby.

Subject to the last sentence of Section 5.7.3 hereof, no amendment or supplement (other than pursuant to Rule 425 of the Securities Act with respect to releases made in compliance with Section 5.10 of this Agreement) to the Proxy Statement, the Registration Statement or any Other Filings will be made by Parent or the Company without the approval of the other party (which approval shall not be unreasonably withheld or delayed). Parent and the Company each will advise the other, promptly after it receives notice thereof, of the time when the Registration Statement has become effective or any supplement or amendment has been filed, of the issuance of any stop order, the suspension of the qualification of the Parent Common Stock issuable in connection with the Merger for offering or sale in any jurisdiction, or any request by the SEC for amendment of the Proxy Statement, the Registration Statement or any Other Filings or comments thereon and responses thereto or requests by the SEC for additional information.

If at any time prior to the Effective Time, any event or circumstance relating to Parent or any Parent Subsidiary, or their respective officers or directors, should be discovered by Parent which should be set forth in an amendment or a supplement to the Registration Statement, the Proxy Statement or any Other Filing, Parent shall promptly inform the Company. All documents that Parent is responsible for filing with the SEC in connection with the transactions contemplated herein will comply as to form and substance in all material respects with the applicable requirements of the Securities Act and the rules and regulations thereunder, the Exchange Act and the rules and regulations thereunder, and other applicable Law.

If at any time prior to the Effective Time, any event or circumstance relating to the Company or any Company Subsidiary, or their respective officers or directors, should be discovered by the Company which should be set forth in an amendment or a supplement to the Registration Statement, the Proxy Statement or any Other Filing, the Company shall promptly inform Parent. All documents that the Company is responsible for filing with the SEC in connection with the transactions contemplated herein will comply as to form and substance in all material respects with the applicable requirements of the Securities Act and the rules and regulations thereunder, the Exchange Act and the rules and regulations thereunder and other applicable Law.

Section 5.5 Stockholders' Meetings.

Section 5.5.1 The Company shall call and hold a meeting of its stockholders (the "Company Stockholders' Meeting") as promptly as practicable for the purpose of voting upon the approval of the Merger, and the Company shall use its best efforts to hold the Company Stockholders' Meeting as soon as practicable after the date on which the Registration Statement becomes effective. The Company's obligation under this Section 5.5.1 shall not be affected in any way as a result of any change in the Company Recommendation permitted by Section 5.7.3.

Section 5.5.2 Parent shall call and hold a meeting of its stockholders (the "Parent Stockholders' Meeting") as promptly as practicable for the purpose of voting upon the approval of the Share Issuance, and Parent shall use its best efforts to hold the Parent Stockholders' Meeting as soon as practicable after the date on which the Registration Statement becomes effective.

Section 5.6 Access to Information; Confidentiality.

Section 5.6.1 Except as required pursuant to any confidentiality agreement or similar agreement or arrangement to which the Company or any Company Subsidiary is a party (which such person shall use its reasonable best efforts to cause the counterparty to waive), from the date of this Agreement to the Effective Time, the Company shall, and shall cause each Company Subsidiary and each of their respective directors, officers, employees, accountants, consultants, legal counsel, advisors, and agents and other representatives (collectively, the "Company Representatives") to (A) provide to Parent and

Merger Sub and their respective officers, directors, employees, accountants, consultants, legal counsel, advisors, agents and other representatives (collectively, the "Parent Representatives") access at reasonable times upon prior notice to the officers, employees, agents, properties, offices and other facilities of such party and its subsidiaries and to the books and records thereof and (B) furnish promptly such information concerning the business, properties, contracts, assets, liabilities, personnel and other aspects of such party and its subsidiaries as the other party or its Representatives may reasonably request, except in each case for information relating to the Company's pending patent applications and trade secrets.

Except as required pursuant to any confidentiality agreement or similar agreement or arrangement to which Parent or any Parent Subsidiary is a party (which such person shall use its reasonable best efforts to cause the counterparty to waive), from the date of this Agreement to the Effective Time, Parent shall, and shall cause each Parent Subsidiary and each Parent Representative to (A) provide to the Company and the Company Representatives access at reasonable times upon prior notice to the officers, employees, agents, properties, offices and other facilities of such party and its subsidiaries and to the books and records thereof and (B) furnish promptly such information concerning the business, properties, contracts, assets, liabilities, personnel and other aspects of such party and its subsidiaries as the other party or its Representatives may reasonably request, except in each case for information relating to Parent's pending patent applications and trade secrets.

No investigation conducted pursuant to this Section 5.6.1 shall affect or be deemed to modify or limit any representation or warranty made in this Agreement.

Section 5.6.2 With respect to the information disclosed pursuant to Section 5.6.1, the parties shall comply with, and shall cause their respective Representatives to comply with, all of their respective obligations under the Confidentiality Agreement previously executed by the Company and Parent (the "Confidentiality Agreement").

Section 5.7 No Solicitation of Transactions.

Section 5.7.1 None of the Company or any Company Subsidiary shall, directly or indirectly, take (and the Company shall not authorize or permit the Company Representatives or, to the extent within the Company's control, other affiliates to take) any action to (A) encourage (including by way of furnishing non-public information), solicit, initiate

or facilitate any Acquisition Proposal, (B) enter into any agreement with respect to any Acquisition Proposal or enter into any agreement, arrangement or understanding requiring it to abandon, terminate or fail to consummate the Merger or any other transaction contemplated by this Agreement or (C) participate in any way in discussions or negotiations with, or furnish any information to, any person in connection with, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or could reasonably be expected to lead to, any Acquisition Proposal; provided, however, that if, at any time prior to the obtaining of the Company's stockholders' approval of the Merger, the Company Board determines in good faith, after consultation with outside counsel, that it would otherwise constitute a breach of the directors' fiduciary duties to stockholders, the Company may, in response to a Superior Proposal and subject to the Company's compliance with Section 5.5.1 and Section 5.7.2, (x) furnish information with respect to the Company and the Company Subsidiaries to the person making such Superior Proposal pursuant to a customary confidentiality agreement the benefits of the terms of which are no more favorable to the other party to such confidentiality agreement than those in place with Parent and (y) participate in discussions with respect to such Superior Proposal. Upon execution of this Agreement, the Company shall cease immediately and cause to be terminated any and all existing discussions or negotiations with any parties conducted heretofore with respect to an Acquisition Proposal and promptly request that all confidential information with respect thereto furnished on behalf of the Company be returned.

Section 5.7.2 The Company shall, as promptly as practicable (and in no event later than 24 hours after receipt thereof), advise Parent of any inquiry received by it relating to any potential Acquisition Proposal and of the material terms of any proposal or inquiry, including the identity of the person and its affiliates making the same, that it may receive in respect of any such potential Acquisition Proposal, or of any information requested from it or of any negotiations or discussions being sought to be initiated with it, shall furnish to Merger Sub a copy of any such proposal or inquiry, if it is in writing, or a written summary of any such proposal or inquiry, if it is not in writing and shall keep Parent fully informed on a prompt basis with respect to any developments with respect to the foregoing.

Section 5.7.3 Neither the Company Board nor any committee thereof shall (A) withdraw or modify, or propose publicly to withdraw or modify, in a manner adverse to Parent, the approval or recommendation by the Company Board or such committee of the

adoption and approval of the Merger (the "Company Recommendation") and the matters to be considered at the Company Stockholders' Meeting, (B) other than the Merger, approve or recommend, or propose publicly to approve or recommend, any Acquisition Proposal or (C) other than the Merger, cause the Company to enter into any letter of intent, agreement in principle, acquisition agreement or other similar agreement related to any Acquisition Proposal. Nothing contained in this Section 5.7 shall prohibit the Company (x) from taking and disclosing to its stockholders a position contemplated by Rule 14d-9 or Rule 14e-2(a) promulgated under the Exchange Act or (y) in the event that a Superior Proposal is made and the Company Board determines in good faith, after consultation with outside counsel, that it would otherwise constitute a breach of its fiduciary duty to stockholders, from withdrawing or modifying its recommendation of the Merger no earlier than five business days following the day of delivery of written notice to Parent of its intention to do so, so long as the Company continues to comply with all other provisions of this Agreement including, without limitation, Section 5.5.1 hereof.

Section 5.8 Appropriate Action; Consents; Filings.

Section 5.8.1 The Company and Parent shall use their reasonable best efforts to (A) 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 otherwise to consummate and make effective the transactions contemplated by this Agreement and each Ancillary Agreement as promptly as practicable, (B) obtain from any Governmental Entity any consents, licenses, permits, waivers, approvals, authorizations or orders required to be obtained or made by Parent or the Company or any of their respective Subsidiaries, or to avoid any action or proceeding by any Governmental Entity, in connection with the authorization, execution and delivery of this Agreement and each Ancillary Agreement and the consummation of the transactions contemplated herein and therein, including, without limitation, the Merger, and (C) make all necessary filings, and thereafter make any other required submissions, with respect to this Agreement and each Ancillary Agreement and the Merger required under (x) the Securities Act and the Exchange Act, and any other applicable federal or state securities Laws and (y) any other applicable Law; provided, that Parent and the Company 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 and, provided, however, that

nothing in this Section 5.8.1 shall require Parent to agree to (AA) the imposition of conditions, (BB) the requirement of divestiture of assets or property or (CC) the requirement of expenditure of money by Parent or the Company to a third party in exchange for any such consent. The Company and Parent shall furnish to each other all information required for any application or other filing under the rules and regulations of any applicable Law (including all information required to be included in the Proxy Statement and the Registration Statement) in connection with the transactions contemplated by this Agreement and each Ancillary Agreement. Nothing contained in this Agreement shall give Parent or Merger Sub, directly or indirectly, the right to control or direct the operations of the Company prior to the consummation of the Merger. Prior to the consummation of the Merger, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its operations.

Section 5.8.2 The Company and Parent shall give (or shall cause their respective Subsidiaries to give) any notices to third parties, and use, and cause their respective Subsidiaries to use, all reasonable efforts to obtain any third party consents, (A) necessary, proper or advisable to consummate the transactions contemplated in this Agreement and each Ancillary Agreement, (B) required to be disclosed in the Company Disclosure Schedule or the Parent Disclosure Schedule, as applicable, (C) required to prevent a Company Material Adverse Effect from occurring prior to or after the Effective Time or a Parent Material Adverse Effect from occurring after the Effective Time or (D) otherwise referenced in Section 6.1.4 or Section 6.2.3. In the event that either party shall fail to obtain any third party consent described in the first sentence of this Section 5.8.2, such party shall use all reasonable efforts, and shall take any such actions reasonably requested by the other party hereto, to minimize any adverse effect upon the Company and Parent, their respective Subsidiaries, and their respective businesses resulting, or which could reasonably be expected to result after the Effective Time, from the failure to obtain such consent.

Section 5.8.3 From the date of this Agreement until the Effective Time, the Company shall promptly notify Parent in writing of any pending or, to the knowledge of the Company, threatened action, suit, arbitration or other proceeding or investigation by any Governmental Entity or any other person (A) challenging or seeking material damages in connection with the Merger or the conversion of Company Stock into Parent Common Stock pursuant to the Merger or (B) seeking to restrain or prohibit the consummation of the Merger or

otherwise limit the right of Parent or any Parent Subsidiary to own or operate all or any portion of the businesses or assets of the Company or any Company Subsidiary, which in either case would reasonably be expected to have a Company Material Adverse Effect prior to or after the Effective Time or a Parent Material Adverse Effect after the Effective Time.

Section 5.9 Certain Notices. From and after the date of this Agreement until the Effective Time, each party hereto shall promptly notify the other party hereto of (A) the occurrence, or non-occurrence, of any event that would be likely to cause any condition to the obligations of any party to effect the Merger and the other transactions contemplated by this Agreement or any Ancillary Agreement not to be satisfied or (B) the failure of the Company or Parent, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it pursuant to this Agreement or any Ancillary Agreement which would reasonably be expected to result in any condition to the obligations of any party to effect the Merger and the other transactions contemplated by this Agreement or any Ancillary Agreement not to be satisfied; provided, however, that the delivery of any notice pursuant to this Section 5.9 shall not cure any breach of any representation or warranty requiring disclosure of such matter prior to the date of this Agreement or otherwise limit or affect the remedies available hereunder to the party receiving such notice.

Section 5.10 Public Announcements. Parent and the Company shall consult with each other before issuing any press release or otherwise making any public statements with respect to the Merger and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law or any listing agreement with Nasdaq.

Section 5.11 Stock Exchange Listing. Parent shall promptly prepare and submit to Nasdaq and any other applicable exchange a listing application covering the shares of Parent Common Stock to be issued in the Merger and shall use its reasonable best efforts to cause such shares to be approved for listing on Nasdaq, subject to official notice of issuance, prior to the Effective Time.

Section 5.12 Employee Benefit Matters. With respect to any Parent Benefit Plan in which any director, officer or employee of the Company or any Company Subsidiary (the "Company Employees") will participate effective as of the Effective Time, Parent shall, or shall

cause the Surviving Corporation to, recognize all service of the Company Employees with the Company or a Company Subsidiary, as the case may be, for purposes of eligibility for participation in, but not for purposes of benefit accrual, in any such Parent Benefit Plan; provided, however, that with regard to vacation, on and after the Effective Time, Parent shall provide, or shall cause to be provided, each Company Employee with credit for service under the Parent vacation policy pursuant to the terms of such policy as may be amended from time to time. Prior to the Effective Time, the Company Board, or an appropriate committee of non-employee directors thereof, shall adopt a resolution consistent with the interpretive guidance of the SEC so that the acquisition by any officer or director of the Company who may become a covered person of Parent for purposes of Section 16 of the Exchange Act and the rules and regulations thereunder ("Section 16") of shares of Parent Common Stock or options to acquire Parent Common Stock pursuant to this Agreement and the Merger shall be an exempt transaction for purposes of Section 16.

Section 5.13 Indemnification of Directors and Officers.

Section 5.13.1 Parent and the Surviving Corporation agree that the indemnification obligations set forth in the Company Certificate and Company By-laws shall survive the Merger (and, prior to the Effective Time, Parent shall cause the Certificate of Incorporation and By-laws of Merger Sub to reflect such provisions) and shall not be amended, repealed or otherwise modified for a period of six years after the Effective Time in any manner that would adversely affect the rights thereunder of any individual who on or prior to the Effective Time was a director, officer, trustee, fiduciary, employee or agent of the Company or any Company Subsidiary or who served at the request of the Company or any Company Subsidiary as a director, officer, trustee, partner, fiduciary, employee or agent of another corporation, partnership, joint venture, trust, pension or other employee benefit plan or enterprise, unless such amendment or modification is required by Law.

Section 5.13.2 For six years from the Effective Time, the Surviving Corporation shall provide to the Company's current directors and officers an insurance and indemnification policy that provides coverage for events occurring prior to the Effective Time (the "D&O Insurance") that is no less favorable than the Company's existing policy (true and complete copies which have been previously provided to Parent) or, if substantially equivalent

insurance coverage is unavailable, the best available coverage; provided, however, that the Surviving Corporation shall not be required to pay an annual premium for the D&O Insurance in excess of 150% of the last annual premium paid prior to the date of this Agreement, which premium the Company represents and warrants to be approximately $315,000. The provisions of the immediately preceding sentence shall be deemed to have been satisfied if prepaid policies have been obtained prior to the Effective Time for purposes of this Section 5.13, which policies provide such directors and officers with coverage for an aggregate period of six years with respect to claims arising from facts or events that occurred on or before the Effective Time, including, without limitation, in respect of the transactions contemplated by this Agreement. If such prepaid policies have been obtained prior to the Effective Time, Parent shall, and shall cause the Surviving Corporation to, maintain such policies in full force and effect, and continue to honor the obligations thereunder. The obligations under this Section 5.13 shall not be terminated or modified in such a manner as to adversely affect any indemnitee to whom this Section 5.13 applies without the consent of such affected indemnitee (it being expressly agreed that the indemnitees to whom this Section 5.13 applies shall be third party beneficiaries of this Section 5.13).

Section 5.13.3 In the event Parent or the Surviving Corporation (A) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (B) transfers all or substantially all of its properties and assets to any person, then, and in each such case, proper provisions shall be made so that such continuing or surviving corporation or entity or transferee of such assets, as the case may be, shall assume the obligations set forth in this Section 5.13.

Section 5.14 Plan of Reorganization. This Agreement is intended to constitute a "plan of reorganization" within the meaning of Treasury Regulation Section 1.368-2(g). Each party hereto shall use its reasonable best efforts to cause the Merger to qualify, and will not knowingly take any actions or cause any actions to be taken which could reasonably be expected to prevent the Merger from qualifying, as a reorganization within the meaning of Section 368(a) of the Code.

Section 5.15 Affiliate Agreements. The Company shall, within five business days of the date hereof, deliver to Parent a list (reasonably satisfactory to counsel for Parent)

setting forth the names of all persons who are expected to be, at the time of the Company Stockholders' Meeting, "affiliates" of the Company for purposes of Rule 145 under the Securities Act. The Company shall furnish such information and documents as Parent may reasonably request for the purpose of reviewing the list. The Company shall use its reasonable best efforts to cause each person who is identified as an affiliate in the list furnished or supplemented pursuant to this Section 5.15 to execute a written agreement, as soon as practicable after the date hereof, as to such person's prospective compliance with the restrictions imposed by Rule 145 under the Securities Act on transfer of the shares of Parent Common Stock received by such person in the Merger.

Section 5.16 Company Rights Agreement. The Company covenants and agrees that it will not (i) redeem the Company Rights, (ii) amend the Company Rights Agreement or (iii) take any action which would allow any person (as defined in the Company Rights Agreement) other than Parent, Merger Sub or any Parent Subsidiary to acquire beneficial ownership (for purposes of this Section 5.16, as defined in the Company Rights Agreement) of 20% or more of the outstanding shares of Company Common Stock without causing a Distribution Date or a Triggering Event (as each such term is defined in the Company Rights Agreement) to occur.

Section 5.17 Patent Litigation and Administrative Proceedings.

Section 5.17.1 Patent litigation counsel for both parties shall, within one day of execution of this Agreement or as soon thereafter as possible, cooperate in good faith to jointly file papers in the U.S. District Courts for the Central District of California and the District of Delaware, requesting that an immediate stay of all proceedings be entered in the following civil actions: C.D. Cal. Case Nos. CV 00-4988-CBM and CV 02-5888-CBM, and D. Del. Case No. 01-203-SLR. The duration of each requested stay shall be through and including August 31, 2003. Before seeking the stay in Delaware, counsel for Parent shall exercise all reasonable efforts to acquire IBM Corporation's consent to stay all further proceedings in Delaware. As part of the requested stays, the parties shall request that the courts cease all further activity in the cases during the period of stay, including refraining from issuing any further opinions or orders on issues already previously submitted for decision. In the event that the Merger is not consummated within the duration of the first stay to be obtained, and if both parties believe that

an extension of the stays would be justified or desirable, then patent litigation counsel shall cooperate to request appropriate extensions of the stays in each forum.

Section 5.17.2 Upon execution of this Agreement, patent prosecution counsel for both parties shall immediately confer in good faith for the purpose of seeking to stay opposition proceedings in the European Patent Office, and will file papers as soon as practicable jointly requesting either that the opposition proceeding No. IK/I-12053, be stayed through and including August 31, 2003 or until further notice (if possible) or that any impending filing deadlines be extended by at least six months.

Section 5.17.3 Within three days after consummation of the Merger, (i) patent litigation counsel for both parties shall cooperate in good faith to jointly file papers in all of the stayed litigations requesting dismissal with prejudice of all claims, counterclaims and cross-claims (if any), and before seeking such dismissal in Delaware, counsel for Parent shall exercise all reasonable efforts to acquire IBM Corporation's consent to such dismissal; (ii) patent prosecution counsel for both parties shall seek dismissal with prejudice (or similar terminating relief) of all opposition proceedings; and (iii) in accordance with 35 U.S.C. Section 135(c) and 37 C.F.R. Sections 1.661 and 1.666, the parties shall promptly jointly submit a copy of this Agreement to the United States Patent Office in Interference Nos. 104,643, 104,644, and 104,645.

Section 5.17.4 Subject to Section 5.17.5, if for any reason this Agreement is terminated by either party prior to consummation of the Merger, then, upon five days' written notice by the party seeking to lift the stays, that party may unilaterally request that the stays in each of the litigations be immediately lifted and may also immediately request a status conference.

Section 5.17.5 As part of the stay requested in C.D. Cal. Case Nos. CV 00-4988-CBM pursuant to Section 5.17.1, the parties shall jointly request that the court reserve the earliest available trial date no earlier than November 30, 2003; provided, however, that if this Agreement is terminated pursuant to Section 7.1.4, 7.1.5, 7.1.6 or 7.1.7, the Company agrees and hereby stipulates that it will not thereafter request, suggest or justify a trial date any earlier than February 29, 2004, and hereby agrees to take all necessary and reasonable steps to seek from the court an additional three-month extension of the trial date under these circumstances.

Section 5.17.6 Within one day of the execution of this Agreement or as soon thereafter as practicable, patent litigation counsel for both parties shall jointly stipulate and request that the Company be immediately relieved from the Delaware court's requirement that it post a bond as security for the damage award due Parent, without prejudice to possible future reinstatement; provided, however, that as part of that stipulation, the Company shall also stipulate to an immediate reimposition of the previous bond requirement should the stay in Delaware be lifted prior to consummation of the Merger upon termination of this Agreement for any reason, without any further obligation or requirement of Parent to act. Parent's counsel shall promptly exercise all reasonable efforts to acquire IBM Corporation's consent to effectuate this relief, if such consent is deemed necessary or desirable to do so.

Section 5.18 Board of Directors. Parent agrees to increase the size of the Parent Board and shall have validly elected directors such that immediately following the Effective Time, the Parent Board shall consist of nine directors, including Robert Duggan and one other individual to be proposed by the Company as soon as practicable after the date of this Agreement and satisfactory to Parent.

Section 5.19 Termination of 401(k) Plan. At the request of Parent, the Company shall, effective not later than the day immediately prior to the day on which the Effective Time occurs, terminate the Company's 401(k) Plan (the "401(k) Plan") and no further contributions shall be made to the 401(k) Plan. The Company shall provide to Parent and Merger Sub (i) executed resolutions by the Company Board authorizing the termination and (ii) an executed amendment to the 401(k) Plan sufficient to assure compliance with all applicable requirements of the Internal Revenue Code and regulations thereunder so that the tax-qualified status of the 401(k) Plan will be maintained at the time of termination.

Section 5.20 Employee Stock Purchase Plan. Effective as of the date hereof, the Company Board, or, if appropriate, any committee of the Company Board administering the Company's Employee Stock Purchase Plan (the "ESPP")), shall adopt such resolutions or take such other actions as may be required to provide that (i) participants may not increase their payroll deductions or purchase elections from those in effect on the date of this Agreement, (ii) no offering period shall be commenced after the date of this Agreement, (iii) each participant's outstanding right to purchase shares of Company Common Stock under the ESPP shall terminate

on the day immediately prior to the day on which the Effective Time occurs, provided that all amounts allocated to each participant's account under the ESPP as of such date shall thereupon be used to purchase from the Company whole shares of Company Common Stock at the applicable price determined under the terms of the ESPP for then-outstanding offering periods using such date as the final purchase date for each such offering period, and (iv) the ESPP shall terminate immediately following the purchases of Company Common Stock on the day prior to the day on which the Effective Time occurs.

ARTICLE 6.
CLOSING CONDITIONS

Section 6.1 Conditions to Obligations of Each Party Under This Agreement. The respective obligations of each party to effect the Merger and the other transactions contemplated herein shall be subject to the satisfaction at or prior to the Effective Time of the following conditions, any or all of which may be waived, in whole or in part, to the extent permitted by applicable Law:

Section 6.1.1 Effectiveness of the Registration Statement. The Registration Statement shall have been declared effective by the SEC under the Securities Act. No stop order suspending the effectiveness of the Registration Statement shall have been issued by the SEC and no proceedings for that purpose shall have been initiated or, to the knowledge of Parent or the Company, threatened by the SEC.

Section 6.1.2 Stockholder Approval. This Agreement and the Merger and the other transactions contemplated hereby shall have been approved and adopted by the requisite vote of the stockholders of the Company and by the requisite vote of the stockholders of Parent, to the extent, in each case, that stockholder approval is required under the DGCL or by Nasdaq.

Section 6.1.3 No Order. No Governmental Entity, nor any federal or state court of competent jurisdiction or arbitrator shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, judgment, injunction or arbitration award or finding or other order (whether temporary, preliminary or permanent), in any case which is in effect and which prevents or prohibits consummation of the Merger or any other transactions contemplated in this Agreement or any Ancillary Agreement.

Section 6.1.4 Consents and Approvals. All consents, approvals and authorizations of any Governmental Entity set forth in Section 3.5.2, Section 4.5.2 or otherwise required to be set forth in the related sections of the Company Disclosure Schedule or the Parent Disclosure Schedule shall have been obtained, in each case, without (A) the imposition of conditions, (B) the requirement of divestiture of assets or property or (C) the requirement of expenditure of money by Parent or the Company to a third party in exchange for any such consent, except as would not be reasonably likely to have a Company Material Adverse Effect or Parent Material Adverse Effect, as applicable.

Section 6.1.5 Exchange Listing. The shares of Parent Common Stock issuable to the Company's stockholders in the Merger shall have been approved for listing on Nasdaq, subject to official notice of issuance.

Section 6.1.6 Litigation Stays. Each of the patent litigation stays referred to in Section 5.17.1 shall have been obtained and remain in full force and effect.

Section 6.2 Additional Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to effect the Merger and the other transactions contemplated herein are also subject to the following conditions:

Section 6.2.1 Representations and Warranties. Each of (i) the representations and warranties of the Company contained in this Agreement and each Ancillary Agreement (other than the Loan Agreement) that are qualified by Company Material Adverse Effect shall be true and correct as of the date hereof and as of the Effective Time as though made on and as of the Effective Time (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date), and (ii) the representations and warranties of the Company contained in this Agreement and each Ancillary Agreement (other than the Loan Agreement) which are not so qualified (including, without limitation, those which are qualified by the phrase "material") shall be true and correct as of the date hereof and as of the Effective Time as though made on and as of the Effective Time (except that those representations and warranties which address matters only as of a particular date need only remain true and correct as of such date), except to the extent that the failure of any such representation or warranty to be true and correct has not had and could not reasonably be likely

to have a Company Material Adverse Effect. Parent shall have received a certificate of the Chief Executive Officer or Chief Financial Officer of the Company to that effect.

Section 6.2.2 Agreements and Covenants. The Company shall have performed or complied with all agreements and covenants required by this Agreement and each Ancillary Agreement (other than the Loan Agreement) to be performed or complied with by it on or prior to the Effective Time, except to the extent that such nonperformance or noncompliance has not had and could not reasonably be likely to have a Company Material Adverse Effect. Parent shall have received a certificate of the Chief Executive Officer or Chief Financial Officer of the Company to that effect.

Section 6.2.3 Consents and Approvals. All consents, approvals and authorizations listed on Schedule 6.2.3 or of any person other than a Governmental Entity required to be set forth in Section 3.5 or Section 4.5 or the related sections of the Company Disclosure Schedule or the Parent Disclosure Schedule shall have been obtained in each case, without (A) the imposition of conditions, (B) the requirement of divestiture of assets or property or (C) the requirement of expenditure of money by Parent or the Company to a third party in exchange for any such consent, except as has not had and could not reasonably be likely to have a Company Material Adverse Effect or Parent Material Adverse Effect, as applicable.

Section 6.2.4 Material Adverse Change. Since the date of this Agreement, there shall not have occurred any Company Material Adverse Change.

Section 6.2.5 Court Proceedings. No action or claim 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 any Ancillary Agreement, (B) cause any of the transactions contemplated by this Agreement or any Ancillary Agreement to be rescinded following consummation thereof or (C) materially adversely affect the right or powers of Parent to own, operate or control the Company, and no such injunction, judgment, order, decree, ruling or charge shall be in effect.

Section 6.3 Additional Conditions to Obligations of the Company. The obligation of the Company to effect the Merger and the other transactions contemplated herein are also subject to the following conditions:

Section 6.3.1 Representations and Warranties. Each of (i) the representations and warranties of Parent contained in this Agreement and each Ancillary Agreement (other than the Loan Agreement) that are qualified by Parent Material Adverse Effect shall be true and correct as of the date hereof and as of the Effective Time as though made on and as of the Effective Time (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date), and (ii) the representations and warranties of Parent contained in this Agreement and each Ancillary Agreement (other than the Loan Agreement) which are not so qualified (including, without limitation, those which are qualified by the phrase "material") shall be true and correct as of the date hereof and as of the Effective Time as though made on and as of the Effective Time (except that those representations and warranties which address matters only as of a particular date need only remain true and correct as of such date), except to the extent that the failure of any such representation or warranty to be true and correct has not had and could not reasonably be likely to have a Parent Material Adverse Effect. The Company shall have received a certificate of the Chief Executive Officer or Chief Financial Officer of Parent to that effect.

Section 6.3.2 Agreements and Covenants. Parent shall have performed or complied with all agreements and covenants required by this Agreement and each Ancillary Agreement (other than the Loan Agreement) to be performed or complied with by it on or prior to the Effective Time, except to the extent that such nonperformance or noncompliance has not had and could not reasonably be likely to have a Parent Material Adverse Effect. The Company shall have received a certificate of the Chief Executive Officer or Chief Financial Officer of Parent to that effect.

ARTICLE 7.
TERMINATION, AMENDMENT AND WAIVER

Section 7.1 Termination. This Agreement may be terminated, and the Merger contemplated hereby may be abandoned, at any time prior to the Effective Time, by action taken or authorized by the Board of Directors of the terminating party or parties, whether before or

after approval of the matters presented in connection with the Merger by the stockholders of the Company and Parent:

Section 7.1.1 By mutual written consent of Parent and the Company, by action of their respective Boards of Directors;

Section 7.1.2 By either the Company or Parent if the Merger shall not have been consummated prior to August 31, 2003 (the "Termination Date"); provided, however, that the right to terminate this Agreement under this Section 7.1.2 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 Merger to occur on or before such date;

Section 7.1.3 By either the Company or Parent if any Governmental Entity shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement or any Ancillary Agreement, and such order, decree, ruling or other action shall have become final and nonappealable (which order, decree, ruling or other action the parties shall have used their reasonable best efforts to resist, resolve or lift, as applicable, subject to the provisions of Section 5.8);

Section 7.1.4 By either Parent or the Company if the approval by the stockholders of the Company required for the consummation of the Merger or the other transactions contemplated hereby shall not have been obtained by reason of the failure to obtain the required vote at a duly held meeting of stockholders of the Company or at any adjournment thereof; provided, however, that if this Agreement is then terminable pursuant to Section 7.1.5 by Parent, the Company shall not have a right to terminate under this Section 7.1.4;

Section 7.1.5 By Parent if (A) the Company Board shall have withdrawn, or adversely modified, or failed upon Parent's request to reconfirm its recommendation of the Merger or this Agreement (or determined to do so); (B) the Company Board shall have determined to recommend to the stockholders of the Company that they approve an Acquisition Proposal other than that contemplated by this Agreement or shall have determined to accept a Superior Proposal; (C) a tender offer or exchange offer that, if successful, would result in any person or group becoming a beneficial owner of 35% or more of the outstanding shares of Company Common Stock and/or securities convertible into or exercisable or exchangeable for

35% or more of the outstanding shares of Company Common Stock is commenced (other than by Parent or an affiliate of Parent) and the Company Board fails to recommend that the stockholders of the Company not tender their shares in such tender or exchange offer; (D) any person (other than Parent or an affiliate of Parent) or group becomes the beneficial owner of 35% or more of the outstanding shares of Company Common Stock; or (E) for any reason the Company fails to call or hold the Company Stockholders' Meeting by the Termination Date;

Section 7.1.6 By the Company, if the Company Board determines to accept a Superior Proposal, but only after the Company (A) holds the Company Stockholders' Meeting and has failed to obtain the stockholder approval required for consummation of the Merger and the other transactions contemplated hereby, and (B) fulfills its obligations under Section 7.2 hereof upon such termination (provided that the Company's right to terminate this Agreement under this Section 7.1.6 shall not be available if the Company is then in breach of Section 5.7);

Section 7.1.7 By Parent, if since the date of this Agreement, there shall have been any event, development or change of circumstance that constitutes, has had or could reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Change and such Company Material Adverse Change is not cured within 10 days after written notice thereof or if (A)(1) there shall be breached any covenant or agreement on the part of a party other than Parent or Merger Sub set forth in this Agreement or any Ancillary Agreement (other than the Loan Agreement) or (2) any representation or warranty of a party other than Parent or Merger Sub set forth in this Agreement or any Ancillary Agreement (other than the Loan Agreement) shall have become untrue, (B) such breach or misrepresentation is not cured within 10 days after written notice thereof and (C) such breach or misrepresentation would cause the conditions set forth in Section 6.2.1 or Section 6.2.2 not to be satisfied;

Section 7.1.8 By the Company, if (A)(1) Parent has breached any covenant or agreement on the part of Parent or Merger Sub set forth in this Agreement or any Ancillary Agreement or (2) any representation or warranty of Parent or Merger Sub set forth in this Agreement or any Ancillary Agreement shall have become untrue, (B) such breach or misrepresentation is not cured within 10 days after written notice thereof and (C) such breach or

misrepresentation would cause the conditions set forth in Section 6.3.1 or Section 6.3.2 not to be satisfied; or

Section 7.1.9 By either Parent or the Company if the approval by the stockholders of Parent required for the Share Issuance or the other transactions contemplated hereby shall not have been obtained by reason of the failure to obtain the required vote at a duly held meeting of stockholders of Parent or at any adjournment thereof.

Section 7.2 Effect of Termination.

Section 7.2.1 Limitation on Liability. In the event of termination of this Agreement by either the Company or Parent as provided in Section 7.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent or the Company or their respective Subsidiaries, officers or directors except (x) with respect to Section 5.6.2, Section 5.10, Section 5.17 this Section 7.2 and Article 8 and (y) with respect to any liabilities or damages incurred or suffered by a party as a result of the willful and material breach by the other party of any of its representations, warranties, covenants or other agreements set forth in this Agreement or any Ancillary Agreement.

Section 7.2.2 Parent Expenses. Parent and the Company agree that if this Agreement is terminated pursuant to Section 7.1.4, 7.1.5, 7.1.6 or 7.1.7, then the Company shall pay Parent an amount equal to the sum of Parent's Expenses up to an amount equal to $1,250,000.

Section 7.2.3 Company Expenses. Parent and the Company agree that if this Agreement is terminated pursuant to Section 7.1.8 or Section 7.1.9 then Parent shall pay to the Company an amount equal to the sum of the Company's Expenses up to an amount equal to $1,250,000.

Section 7.2.4 Payment of Expenses. Payment of Expenses pursuant to Section 7.2.2 or Section 7.2.3 shall be made not later than two business days after delivery to the other party of notice of demand for payment and a documented itemization setting forth in reasonable detail all Expenses of the party entitled to receive payment (which itemization may be supplemented and updated from time to time by such party until the 90th day after such party delivers such notice of demand for payment).

Section 7.2.5 Termination Fee.

Section 7.2.5.1 In addition to any payment required by the foregoing provisions of this Section 7.2, (A) in the event that this Agreement is terminated pursuant to Section 7.1.5, Section 7.1.6 or Section 7.1.7, then the Company shall pay to Parent immediately prior to such termination, in the case of a termination by the Company, or within two business days thereafter, in the case of a termination by Parent, a termination fee of $2,500,000 (provided, however, that this amount shall be reduced by and to the extent of any payment of Parent expenses pursuant to Section 7.2.2) and (B) in the event that this Agreement is terminated pursuant to Section 7.1.4, and an Acquisition Proposal has been publicly announced and not expressly and publicly withdrawn prior to the Company Stockholders' Meeting, then the Company shall pay Parent, no later than two days after the earlier to occur of (x) the date the Company or any Company Subsidiary enter into an agreement concerning a transaction that constitutes an Acquisition Proposal, provided that such agreement is entered into within 12 months of the termination of this Agreement or (y) the date any person or persons (other than Parent) purchases at least a majority of the consolidated assets or Equity Interests of the Company and the Company Subsidiaries, provided that any tender, exchange or other offer or arrangement for the Company's voting securities is first publicly announced within 12 months of the termination of this Agreement, a termination fee of $2,500,000 (provided, however, that this amount shall be reduced by and to the extent of any payment of Parent expenses pursuant to Section 7.2.2).

Section 7.2.5.2 In addition to any payment required by the foregoing provisions of this Section, in the event that this Agreement is terminated pursuant to Section 7.1.8, then Parent shall pay to the Company, within two business days thereafter, a termination fee of $2,500,000 (provided, however, that this amount shall be reduced by and to the extent of any payment of Company expenses pursuant to Section 7.2.3).

Section 7.2.6 All Payments. All payments under Section 7.2 shall be made by wire transfer of immediately available funds to an account designated by the party entitled to receive payment.

Section 7.3 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 approval of the Merger by the stockholders of the Company, no amendment may be made without further stockholder approval which, by Law or in accordance with the rules of any relevant stock exchange, requires further approval by such stockholders. This Agreement may not be amended except by an instrument in writing signed by the parties hereto.

Section 7.4 Waiver. At any time prior to the Effective Time, any party hereto may (A) extend the time for the performance of any of the obligations or other acts of the other party hereto, (B) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered pursuant hereto, and (C) waive compliance by the other party with any of the agreements or conditions contained herein; provided, however, that after any approval of the transactions contemplated by this Agreement by the stockholders of the Company, there may not be, without further approval of such stockholders, any extension or waiver of this Agreement or any portion thereof which, by Law or in accordance with the rules of any relevant stock exchange, requires further approval by such stockholders. 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, but such extension or waiver or failure to insist on strict compliance with an obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 7.5 Fees and Expenses. Subject to Section 7.2.1, Section 7.2.2 and Section 7.2.3 hereof, all expenses incurred by the parties hereto shall be borne solely and entirely by the party which has incurred the same; provided, however, that each of Parent and the Company shall pay one-half of the expenses related to printing, filing and mailing the Registration Statement and the Proxy Statement and all SEC and other regulatory filing fees incurred in connection with the Registration Statement and the Proxy Statement.

ARTICLE 8.
GENERAL PROVISIONS

Section 8.1 Non-Survival of Representations and Warranties. None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time. This Section 8.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Effective Time.

Section 8.2 Notices. Any notices or other communications required or permitted under, or otherwise in connection with this Agreement, shall be in writing and shall be deemed to have been duly given when delivered in person or upon confirmation of receipt when transmitted by facsimile transmission (but only if followed by transmittal by national overnight courier or hand for delivery on the next business day) or on receipt after dispatch by registered or certified mail, postage prepaid, addressed, or on the next business day if transmitted by national overnight courier, in each case as follows:

If to Parent or Merger Sub, addressed to it at:

Intuitive Surgical, Inc.
950 Kifer Road
Sunnyvale, California 94086
Facsimile: (408) 523-1390
Attention: Lonnie M. Smith, President and Chief Executive Officer

with a mandated copy (which shall not constitute notice) to:

Latham & Watkins LLP
505 Montgomery Street, Suite 1900
San Francisco, California 94111-2562
Facsimile: (415) 395-8095
Attention: John M. Newell, Esq.

If to the Company, addressed to it at:

Computer Motion, Inc.
130-B Cremona Drive
Santa Barbara, California 93117
Facsimile: (805) 968-4920
Attention: Robert W. Duggan, Chairman of the Board and Chief Executive Officer

with a mandated copy (which shall not constitute notice) to:

Stradling Yocca Carlson & Rauth
302 Olive Street
Santa Barbara, California 93101
Facsimile: (805) 564-1044
Attention: David E. Lafitte, Esq.

Section 8.3 Certain Definitions. For purposes of this Agreement, the term:

"AFFILIATE" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first-mentioned person;

"ACQUISITION PROPOSAL" means any offer or proposal concerning any (A) merger, consolidation, business combination, or similar transaction involving the Company or any Company Subsidiary, (B) sale, lease or other disposition directly or indirectly by merger, consolidation, business combination, share exchange, joint venture, or otherwise of assets of the Company or any Company Subsidiary representing 20% or more of the consolidated assets of the Company and the Company Subsidiaries, (C) issuance, sale, or other disposition of (including by way of merger, consolidation, business combination, share exchange, joint venture, or any similar transaction) securities (or options, rights or warrants to purchase, or securities convertible into or exchangeable for such securities) representing 20% or more of the voting power of the Company or (D) transaction in which any person shall acquire beneficial ownership, or the right to acquire beneficial ownership or any group shall have been formed which beneficially owns or has the right to acquire beneficial ownership of 20% or more of the outstanding voting capital stock of the Company or (E) any combination of the foregoing (other than the Merger); provided, however, that for purposes of Section 7.2.5.1(B)(x), the 20% figures stated in this definition of "Acquisition Proposal" shall instead be 50%.

"ANCILLARY AGREEMENTS" means the Company Support Agreements, the Parent Support Agreements and the Loan Agreement.

"BENEFICIAL OWNERSHIP" (and related terms such as "beneficially owned" or "beneficial owner") has the meaning set forth in Rule 13d-3 under the Exchange Act.

"BLUE SKY LAWS" means state securities or "blue sky" laws.

"BUSINESS DAY" means any day other than a day on which the SEC shall be closed.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date hereof.

"COMPANY ALLOCABLE SHARES" means (x) the Parent Total Fully Diluted Shares divided by 0.68, minus (y) the Parent Total Fully Diluted Shares.

"COMPANY MATERIAL ADVERSE CHANGE" means any event, development or change affecting, or condition having an effect on, the Company and the Company Subsidiaries that is material to the assets, liabilities, business, financial condition or results of operations of the Company and the Company Subsidiaries, taken as a whole, which arises out of or relates to (i) any forfeiture, impairment, invalidity or diminution in value of the Material Company Intellectual Property which is unrelated to any litigation, dispute or proceeding between Parent and the Company; (ii) any violation of Section 5.1.2(A) or (iii) the incurrence by the Company or any of the Company Subsidiaries of any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise), other than pursuant to the Loan Agreement, except in the case of any of the events listed in clauses (i), (ii) or (iii) of this definition that would not, individually or in the aggregate, reasonably be likely to result in a Company Material Adverse Effect.

"COMPANY MATERIAL ADVERSE EFFECT" means any change affecting, or condition having an effect on, the Company and the Company Subsidiaries that is, or would reasonably be likely to be, materially adverse to the assets, liabilities, business, financial condition or results of operations of the Company and the Company Subsidiaries, taken as a whole, other than any change or condition relating to the economy or securities markets in general, or the industry in which the Company operates in general, and not specifically relating to the Company.

"COMPANY TOTAL FULLY DILUTED SHARES" means, as of immediately prior to the consummation of the Merger, the sum of (x) the number of shares of Company Common Stock outstanding, (y) the number of shares of Company Common Stock into which any outstanding convertible or exchangeable securities (including any outstanding Company Preferred Stock) may be converted or exchanged, and (z) the number of shares of Company Common Stock issuable upon exercise of all outstanding Company Options and Company Warrants (whether or not such convertible or exchangeable securities or Company Options or Company Warrants are then convertible, exchangeable or exercisable, and regardless of the conversion, exchange or exercise price of any such securities), but excluding for purposes of this calculation (if then outstanding) the shares of Company Common Stock issuable upon exercise of the Company Warrants to acquire 396,578 shares of Company Common Stock at $4.57 per share, and excluding the shares of Company Common Stock issuable upon exercise of the Company Warrants to acquire 252,836 shares of Company Common Stock at $7.71 per share.

"CONTRACTS" means any of the agreements, contracts, leases, powers of attorney, notes, loans, evidence of indebtedness, purchase orders, letters of credit, settlement agreements, franchise agreements, undertakings, covenants not to compete, employment agreements, licenses, instruments, obligations, commitments, understandings, policies, purchase and sales orders, quotations and other executory commitments to which any company is a party or to which any of the assets of the companies are subject, whether oral or written, express or implied.

"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 or policies of a person, whether through the ownership of stock or as trustee or executor, by contract or credit arrangement or otherwise.

"ENVIRONMENTAL LAWS" means any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, treaty, writ or order and any enforceable judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, judgment, stipulation, injunction, permit, authorization, policy, opinion, or agency requirement, in each case having the force and effect of law, relating to the pollution, protection, investigation or restoration of the environment, health and safety as affected by the environment or natural resources, including, without limitation, those relating to the use, handling, presence, transportation, treatment, storage, disposal, release, threatened release or discharge of Hazardous Materials or noise, odor, wetlands, pollution or contamination.

"ENVIRONMENTAL PERMITS" means any permit, approval, identification number, license and other authorization required under any applicable Environmental Law.

"EQUITY INTEREST" means any share, capital stock, partnership, member or similar interest in any entity, and any option, warrant, right or security (including debt securities) convertible, exchangeable or exercisable therefor.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"ERISA AFFILIATE" shall mean any entity or trade or business (whether or not incorporated) other than the Company that together with the Company is considered under

common control and treated as a single employer under Section 4.14(b), (c), (m) or (o) of the Code.

"EXCHANGE ACT" shall mean Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"EXCHANGE RATIO" means the number obtained by dividing (x) the Company Allocable Shares by (y) the Company Total Fully Diluted Shares.

"EXPENSES" includes all reasonable out-of-pocket expenses (including, without limitation, all fees and expenses of counsel, accountants, investment bankers, experts and consultants to a party hereto and its affiliates) incurred by a party or on its behalf in connection with or related to the authorization, preparation, negotiation, execution and performance of this Agreement and the transactions contemplated hereby, including the preparation, printing, filing and mailing of the Proxy Statement and the solicitation of shareholder approvals and all other matters related to the transactions contemplated hereto.

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

"GOVERNMENTAL ENTITY" means domestic or foreign governmental, administrative, judicial or regulatory authority.

"GROUP" is defined as in the Exchange Act, except where the context otherwise requires.

"HAZARDOUS MATERIALS" means (A) any petroleum, petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials or polychlorinated biphenyls or (B) any chemical, material or other substance defined or regulated as toxic or hazardous or as a pollutant or contaminant or waste under any applicable Environmental Law.

"INTELLECTUAL PROPERTY" means all intellectual property or other proprietary rights of every kind, foreign or domestic, including all patents, patent applications, inventions (whether or not patentable), processes, products, technologies, discoveries, copyrightable and copyrighted works, apparatus, trade secrets, trademarks, trademark registrations and applications, domain names, service marks, service mark registrations and applications, trade names, trade secrets,

know-how, trade dress, copyright registrations, customer lists, confidential marketing and customer information, licenses, confidential technical information, software, and all documentation thereof.

"IRS" means the United States Internal Revenue Service.

"KNOWLEDGE" will be deemed to be present when the matter in question was brought to the attention of any officer of Parent or the Company, as the case may be.

"LAW" means foreign or domestic law, statute, code, ordinance, rule, regulation, order, judgment, writ, stipulation, award, injunction, decree or arbitration award or finding.

"OTHER FILINGS" means all filings made by or required to be made by, the Company or Parent, as the case may be, with the SEC other than the Registration Statement and the Proxy Statement.

"PARENT MATERIAL ADVERSE EFFECT" means any change affecting, or condition having an effect on, Parent, Merger Sub and the Parent Subsidiaries that is, or would reasonably be likely to be, materially adverse to the assets, liabilities, business, financial condition or results of operations of Parent and the Parent Subsidiaries, taken as a whole, other than any change or condition relating to the economy or securities markets in general, or the industry in which Parent operates in general, and not specifically relating to Parent.

"PARENT TOTAL FULLY DILUTED SHARES" means, as of immediately prior to the consummation of the Merger, the sum of (x) the number of shares of Parent Common Stock outstanding, (y) the number of shares of Parent Common Stock into which any outstanding convertible or exchangeable securities (including any outstanding Parent Preferred Stock) may be converted or exchanged, and (z) the number of shares of Parent Common Stock issuable upon exercise of all outstanding Parent Options and warrants to purchase shares of Parent Common Stock (whether or not such convertible or exchangeable securities or Parent Options or warrants to purchase shares of Parent Common Stock are then convertible, exchangeable or exercisable, and regardless of the conversion, exchange or exercise price of any such securities).

"PERSON" means an individual, corporation, limited liability company, partnership, association, trust, unincorporated organization, other entity or group (as defined in Section 13(d) of the Exchange Act).

"SEC" means the Securities and Exchange Commission.

"SECURITIES ACT" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"SHARE ISSUANCE" means the issuance of Parent Common Stock pursuant to Section 2.1.1.

"SUBSIDIARY" or "SUBSIDIARIES" of Parent, the Company, the Surviving Corporation or any other person means any corporation, partnership, joint venture or other legal entity of which Parent, the Company, the Surviving Corporation or such other person, as the case may be (either alone or through or together with any other subsidiary), owns, directly or indirectly, a majority 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.

"SUPERIOR PROPOSAL" means a bona fide Acquisition Proposal made by a third party which was not solicited by the Company, any Company Subsidiary, any Company Representatives or any other affiliates and which, in the good faith judgment of the Company Board, taking into account, to the extent deemed appropriate by the Company Board, the various legal, financial and regulatory aspects of the proposal and the person making such proposal (A) if accepted, is reasonably likely to be consummated, and (B) if consummated would, based upon the written advice of the Company Financial Advisor, result in a transaction that is more favorable to the Company's stockholders, from a financial point of view, than the transactions contemplated by this Agreement.

"TAXES" means any and all taxes, fees, levies, duties, tariffs, imposts and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Governmental Entity or domestic or foreign taxing authority, including, without limitation, income, franchise, windfall or other profits, gross receipts, property, sales, use, net worth, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation, excise, withholding, ad valorem, stamp, transfer, value-added, gains tax and license, registration and documentation fees.

"TAX RETURNS" means any report, return (including information return), claim for refund, election, estimated tax filing or declaration required to be supplied to any Governmental Entity or domestic or foreign taxing authority with respect to Taxes, including any schedule or attachment thereto, and including any amendments thereof.

Section 8.4 Terms Defined Elsewhere. The following terms are defined elsewhere in this Agreement, as indicated below:

"401(k) PLAN"	Section 5.19
"AGREEMENT"	Preamble
"CERTIFICATE OF MERGER"	Section 1.2
"CERTIFICATES"	Section 2.2.2
"CERTIFICATE OF AMENDMENT"	Section 5.5.1
"CODE"	Recitals
"COMPANY"	Preamble
"COMPANY BENEFIT PLAN"	Section 3.10.1
"COMPANY BOARD"	Section 3.4.1
"COMPANY BY-LAWS"	Section 3.2
"COMPANY CERTIFICATE"	Section 3.2
"COMPANY COMMON STOCK"	Section 2.1.1.1
"COMPANY DEFECT"	Section 3.22
"COMPANY DISCLOSURE SCHEDULE"	Article 3
"COMPANY EMPLOYEES"	Section 5.12
"COMPANY FINANCIAL ADVISOR"	Section 3.19
"COMPANY FORM 10-K"	Section 3.2
"COMPANY MATERIAL CONTRACT"	Section 3.13
"COMPANY OPTIONS"	Section 2.4

"COMPANY PERMITS"	Section 3.6
"COMPANY PREFERRED STOCK"	Section 2.1.1.2
"COMPANY PRODUCT"	Section 3.22
"COMPANY RECOMMENDATION"	Section 5.7.3
"COMPANY REPRESENTATIVES"	Section 5.6.1
"COMPANY RIGHTS"	Section 2.1.1.1
"COMPANY RIGHTS AGREEMENT"	Section 2.1.1.1
"COMPANY SEC FILINGS"	Section 3.7.1
"COMPANY PREFERRED STOCK"	Section 2.1.1.2
"COMPANY STOCK"	Section 2.1.1.2
"COMPANY STOCKHOLDERS' MEETING"	Section 5.5.1
"COMPANY SUBSIDIARY"	Section 3.1
"COMPANY SUPPORT AGREEMENTS"	Recitals
"COMPANY WARRANTS"	Section 2.1.1.3
"CONFIDENTIALITY AGREEMENT"	Section 5.6.2
"D&O INSURANCE"	Section 5.13.2
"DGCL"	Recitals
"EFFECTIVE TIME"	Section 1.2
"ESPP"	Section 5.20
"EXCESS SHARES"	Section 2.2.5.1
"EXCHANGE AGENT"	Section 2.2.1
"EXCHANGE FUND"	Section 2.2.1
"FEDERAL HEALTHCARE PROGRAMS"	Section 3.24
"LOAN AGREEMENT"	Recitals

"MATERIAL COMPANY INTELLECTUAL PROPERTY"	Section 3.16
"MATERIAL PARENT INTELLECTUAL PROPERTY"	Section 4.16
"MERGER"	Recitals
"MERGER SUB"	Preamble
"MERGER SUB BOARD"	Section 4.4.1
"MULTIEMPLOYER PLAN"	Section 3.10.4
"PARENT"	Preamble
"PARENT BENEFIT PLAN"	Section 4.10.1
"PARENT BOARD"	Section 4.4.1
"PARENT BY-LAWS"	Section 4.2
"PARENT CERTIFICATE"	Section 4.2
"PARENT COMMON STOCK"	Section 2.1.1.1
"PARENT DEFECT"	Section 4.22
"PARENT DISCLOSURE SCHEDULE"	Article 4
"PARENT FINANCIAL ADVISOR"	Section 4.19
"PARENT FORM 10-K"	Section 4.2
"PARENT MATERIAL CONTRACT"	Section 4.13
"PARENT OPTIONS"	Section 4.3
"PARENT PERMITS"	Section 4.6
"PARENT PREFERRED STOCK"	Section 4.3
"PARENT PRODUCT"	Section 4.22
"PARENT REPRESENTATIVES"	Section 5.6.1
"PARENT SEC FILINGS"	Section 4.7.1

"PARENT STOCKHOLDERS' MEETING"	Section 5.5.2
"PARENT SUBSIDIARY"	Section 4.1
"PARENT SUPPORT AGREEMENTS"	Recitals
"PBGC"	Section 3.11.3
"PROXY STATEMENT"	Section 5.4.1
"REGISTRATION STATEMENT"	Section 5.4.1
"SECTION 16"	Section 5.12
"SERIES D CONVERTIBLE PREFERRED STOCK"	Section 3.3
"SERIES D-1 CONVERTIBLE PREFERRED STOCK"	Section 3.3
"SERIES D-2 CONVERTIBLE PREFERRED STOCK"	Section 3.3
"SURVIVING CORPORATION"	Section 1.1
"TERMINATION DATE"	Section 7.1.2

Section 8.5 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.6 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 contemplated hereby 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 an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

Section 8.7 Entire Agreement. This Agreement (together with the Exhibits, Parent and Company Disclosure Schedules and the other documents delivered pursuant hereto), each Ancillary Agreement and the Confidentiality Agreement constitute the entire agreement of the parties and supersede all prior agreements and undertakings, both written and oral, between the parties, or any of them, with respect to the subject matter hereof and, except as otherwise expressly provided herein, are not intended to confer upon any other person any rights or remedies hereunder.

Section 8.8 Assignment. This Agreement shall not be assigned by operation of law or otherwise.

Section 8.9 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and assigns, and nothing in this Agreement, express or implied, other than pursuant to Section 5.13, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.10 Mutual Drafting. Each party hereto has participated in the drafting of this Agreement, which each party acknowledges is the result of extensive negotiations between the parties.

Section 8.11 Governing Law; Consent to Jurisdiction; Waiver of Trial by Jury.

Section 8.11.1 This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, without regard to laws that may be applicable under conflicts of laws principles.

Section 8.11.2 Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any Delaware State court, or Federal court of the United States of America, sitting in Delaware, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the agreements delivered in connection herewith or the transactions contemplated hereby or thereby or for recognition or enforcement of any judgment relating thereto, and each of the parties hereby irrevocably and unconditionally (A) agrees not to commence any such action or proceeding except in such courts, (B) agrees that any claim in respect of any such action or

proceeding may be heard and determined in such Delaware State court or, to the extent permitted by law, in such Federal court, (C) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in any such Delaware State or Federal court, and (D) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such Delaware State or Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 8.2. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 8.11.3 EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (C) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.11.3.

Section 8.12 Disclosure. Any matter disclosed in any section of a party's Disclosure Schedule shall be considered disclosed for other sections of such Disclosure Schedule, but only to the extent such matter on its face would reasonably be expected to be pertinent to a particular section of a party's Disclosure Schedule in light of the disclosure made

in such section. The provision of monetary or other quantitative thresholds for disclosure does not and shall not be deemed to create or imply a standard of materiality hereunder.

Section 8.13 Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

Section 8.14 Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

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

INTUITIVE SURGICAL, INC.

By: /s/ Lonnie M. Smith

Name: Lonnie M. Smith
Title: President and Chief Executive Officer

IRON ACQUISITION CORPORATION

By: /s/ Lonnie M. Smith

Name: Lonnie M. Smith
Title: President, Chief Executive Officer and Secretary

COMPUTER MOTION, INC.

By: /s/ Robert W. Duggan

Name: Robert W. Duggan
Title: Chairman of the Board and Chief Executive Officer

Exhibit 4.1

STOCKHOLDER SUPPORT AGREEMENT

BY AND AMONG

INTUITIVE SURGICAL, INC.,

IRON ACQUISITION CORPORATION

AND

CERTAIN STOCKHOLDERS OF COMPUTER MOTION, INC.

DATED AS OF MARCH 7, 2003

STOCKHOLDER SUPPORT AGREEMENT, dated as of March 7, 2003 (this "Agreement"), by and among Intuitive Surgical, Inc., a Delaware corporation ("Parent"), Iron Acquisition Corporation, a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), and the parties listed on Annex A hereto (each, a "Stockholder" and, collectively, the "Stockholders").

WHEREAS, simultaneously with the execution of this Agreement, Parent, Merger Sub and Computer Motion, Inc., a Delaware corporation (the "Company"), are entering into an Agreement and Plan of Merger (the "Merger Agreement") (with all capitalized terms used but not defined herein having the meanings set forth in the Merger Agreement), pursuant to which Merger Sub will merge with and into the Company, with the Company continuing as the surviving corporation and a wholly owned subsidiary of Parent (the "Merger"), which Merger Agreement has been approved by the Boards of Directors of the Company, Merger Sub and Parent;

WHEREAS, each Stockholder owns the number of shares of Company Common Stock set forth opposite its name on Annex A hereto (such shares of Company Common Stock, together with any other shares of capital stock of the Company acquired by such Stockholder after the date hereof and during the term of this Agreement, including any shares issued upon the exercise of any warrants or options, the conversion of any convertible securities or otherwise, being collectively referred to herein as the "Subject Shares");

WHEREAS, as a condition to the willingness of Parent and Merger Sub to enter into the Merger Agreement, Parent has required that each Stockholder agree and, in order to induce Parent and Merger Sub to enter into the Merger Agreement, each Stockholder has agreed, to enter into this Agreement; and

WHEREAS, this Agreement has been approved by the Board of Directors of the Company for purposes of Section 203 of the General Corporation Law of the State of Delaware (the "DGCL").

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement and intending to be legally bound, the parties hereto agree as follows:

ARTICLE 1.
REPRESENTATIONS AND WARRANTIES OF THE STOCKHOLDERS

Each Stockholder, severally and not jointly, hereby represents and warrants to Parent and Merger Sub as follows:

Section 1.1 Organization. Such Stockholder is either (a) a corporation, partnership or limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of such Stockholder's organization, or (b) a natural person residing in the United States.

Section 1.2 Authority. Such Stockholder has all necessary power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated by this Agreement to be consummated by such Stockholder. The execution and delivery of this Agreement by such Stockholder and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary action of such Stockholder and no other proceedings on the part of such Stockholder are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly authorized and validly executed and delivered by such Stockholder and constitutes a legal, valid and binding obligation of such Stockholder, enforceable against such Stockholder in accordance with its terms.

Section 1.3 The Subject Shares. Such Stockholder is the record and beneficial owner of, and has good and marketable title to, the Subject Shares set forth opposite its name on Annex A hereto. Such Stockholder does not own, of record or beneficially, any shares of capital stock of the Company (or rights to acquire any such shares) other than the Subject Shares set forth opposite its name on Annex A hereto. Such Stockholder has (a) the sole right to vote, (b) the sole power of disposition, (c) the sole power to issue instructions with respect to the matters set forth in Articles 3, 4 and 5 hereof, (d) the sole power to demand appraisal rights, if applicable, and (e) the sole power to agree to all of the matters set forth in this Agreement, in each case with respect to all of such Stockholder's Subject Shares, with no limitations, qualifications or restrictions on such rights, subject to applicable federal securities laws and the terms of this Agreement. Except for this Agreement, none of such Stockholder's Subject Shares are subject to any voting trust or other agreement, arrangement or restriction with respect to the

voting or disposition of such Stockholder's Subject Shares. To such Stockholder's knowledge, all of its Subject Shares are validly issued, fully paid and non-assessable.

Section 1.4 No Conflicts. The execution and delivery of this Agreement by such Stockholder do not, and the performance of this Agreement by such Stockholder will not, (a) conflict with or violate any provision of the certificate or articles of incorporation or by-laws or any equivalent organizational documents of such Stockholder, (b) conflict with or violate any Law applicable to such Stockholder or by which any property or asset of such Stockholder is bound or affected, (c) require any consent or approval under, result in any breach of, or loss of any benefit under, or constitute a change of control or default (or any event which with notice or lapse of time or both would become a default) under, or give to others any right of termination, vesting, amendment, acceleration or cancellation of, or result in the creation of a lien or other encumbrance on any property or asset of such Stockholder pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit or other instrument or obligation. The execution and delivery of this Agreement by such Stockholder does not, and the performance of this Agreement by such Stockholder will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity or other person.

Section 1.5 Brokers. No broker, finder or investment banker (other than the Company Financial Advisor) is entitled to any brokerage, finder's or other fee or commission in connection with the Merger based upon arrangements made by or on behalf of such Stockholder.

ARTICLE 2.
REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Each of Parent and Merger Sub, jointly and severally, hereby represents and warrants to each Stockholder as follows:

Section 2.1 Organization. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

Section 2.2 Authority. Each of Parent and Merger Sub has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated by this Agreement to be consummated by Parent and Merger Sub, respectively. The execution and delivery of this

Agreement by Parent and Merger Sub and the consummation by Parent and Merger Sub of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action of Parent and Merger Sub and no other corporate proceedings on the part of Parent or Merger Sub are necessary to authorize this Agreement or to consummate the transactions contemplated hereby (other than the approval of Parent, as sole stockholder of Merger Sub, to the Merger and the approval of the stockholders of Parent to the Share Issuance). This Agreement has been duly authorized and validly executed and delivered by Parent and Merger Sub and constitutes a legal, valid and binding obligation of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with its terms.

Section 2.3 No Conflicts. The execution and delivery of this Agreement by Parent and Merger Sub do not, and the performance of this Agreement by Parent and Merger Sub will not, (a) conflict with or violate any provision of the certificate of incorporation or by-laws of Parent or Merger Sub, (b) conflict with or violate any Law applicable to Parent or Merger Sub or by which any property or asset of Parent or Merger Sub is bound or affected, (c) require any consent or approval under, result in any breach of, or loss of any benefit under, or constitute a change of control or default (or any event which with notice or lapse of time or both would become a default) under, or give to others any right of termination, vesting, amendment, acceleration or cancellation of, or result in the creation of a lien or other encumbrance on any property or asset of Parent or Merger Sub pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit or other instrument or obligation. The execution and delivery of this Agreement by Parent and Merger Sub do not, and the performance of this Agreement by Parent and Merger Sub will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity or other person, except as may be required under the Exchange Act, the Securities Act, any applicable Blue Sky Law or, the rules and regulations of Nasdaq.

ARTICLE 3.
AGREEMENT TO VOTE

Each Stockholder, severally and not jointly, agrees that:

Section 3.1 Agreement to Vote in Favor of the Adoption of the Merger Agreement. At any Company Stockholders' Meeting called to vote upon the Merger Agreement and the transactions contemplated thereby, however called, or at any adjournment thereof or in

connection with any written consent of the holders of Company Common Stock or in any other circumstances upon which a vote, consent or other approval with respect to the Merger Agreement and the transactions contemplated thereby is sought, such Stockholder shall be present (in person or by proxy) and shall vote (or cause to be voted) all Subject Shares then beneficially owned by such Stockholder in favor of (a) the Merger and adoption of the Merger Agreement and the transactions contemplated thereby and (b) any other matter necessary for the consummation of the transactions contemplated by the Merger Agreement. In addition, each Stockholder agrees that it will, upon request by Parent, furnish written confirmation, in form and substance reasonably satisfactory to Parent, of such Stockholder's support for the Merger Agreement and the Merger. Each Stockholder acknowledges receipt and review of a copy of the Merger Agreement.

Section 3.2 Agreement to Vote Against Acquisition Proposals. At any Company Stockholders' Meeting, however called, or at any adjournment thereof or in connection with any written consent of the holders of Company Common Stock or in any other circumstances upon which a vote, consent or other approval is sought, such Stockholder shall be present (in person or by proxy) and shall vote (or cause to be voted) all Subject Shares then beneficially owned by such Stockholder against any action or agreement that would impede, interfere with, delay, postpone or attempt to discourage the Merger or the other transactions contemplated by this Agreement and the Merger Agreement, including, but not limited to the following: (a) any Acquisition Proposal or extraordinary corporate transaction, such as a merger, consolidation or other business combination involving the Company or any of its subsidiaries (other than the Merger); (b) a sale, lease, license or transfer of a material amount of assets of the Company or any of its subsidiaries or a reorganization, recapitalization, dissolution, winding up or liquidation of the Company or any of its subsidiaries; (c) any change in the management or board of directors of the Company, except as contemplated by the Merger Agreement or otherwise agreed to in writing by Parent; (d) any material change in the present capitalization or dividend policy of the Company; (e) any material change in the Company's corporate structure, business, the Company Certificate or the Company By-laws; or (f) any action or agreement that would result in a breach of any representation, warranty, covenant, agreement or other obligation of the Company under the Merger Agreement or which could result in any of the conditions to the Company's obligations under the Merger Agreement not being fulfilled.

ARTICLE 4.
GRANT OF IRREVOCABLE PROXY; APPOINTMENT OF PROXY

Section 4.1 Grant of Proxy. Each Stockholder hereby irrevocably grants to and appoints Lonnie M. Smith and Susan K. Barnes, in their respective capacities as officers of Parent, and any individual who shall hereafter succeed to their respective offices of Parent, and each of them individually, such Stockholder's proxy and attorney-in-fact (with full power of substitution), for and in the name, place and stead of such Stockholder, to vote such Stockholder's Subject Shares, or grant a consent or approval in respect of such Subject Shares, (a) in favor of the Merger and adoption of the Merger Agreement and the transactions contemplated thereby and any other matter necessary for the consummation of the transactions contemplated by the Merger Agreement and (b) against any action or agreement that would impede, interfere with, delay, postpone or attempt to discourage the Merger or the other transactions contemplated by this Agreement and the Merger Agreement, including, but not limited to: (i) any Acquisition Proposal or extraordinary corporate transaction, such as a merger, consolidation or other business combination involving the Company or any of its subsidiaries (other than the Merger); (ii) a sale, lease, license or transfer of a material amount of assets of the Company or any of its subsidiaries or a reorganization, recapitalization, dissolution, winding up or liquidation of the Company or any of its subsidiaries; (iii) any change in the management or board of directors of the Company, except as contemplated by the Merger Agreement or otherwise agreed to in writing by Parent; (iv) any material change in the present capitalization or dividend policy of the Company; (v) any material change in the Company's corporate structure, business, the Company Certificate or the Company By-laws or (vi) any action or agreement that would result in a breach of any representation, warranty, covenant, agreement or other obligation of the Company under the Merger Agreement or which could result in any of the conditions to the Company's obligations under the Merger Agreement not being fulfilled.

Section 4.2 Revocation of Prior Proxies. Such Stockholder represents that any proxies heretofore given in respect of such Stockholder's Subject Shares are revocable, and that all such proxies are hereby revoked.

Section 4.3 Irrevocable Proxy Coupled With an Interest. Such Stockholder hereby affirms that the irrevocable proxy set forth in this Article 4 is coupled with an interest, and may under no circumstances be revoked. Such Stockholder hereby ratifies and confirms all

that such irrevocable proxy may lawfully do or cause to be done by virtue hereof. Such irrevocable proxy is executed and intended to be irrevocable in accordance with the provisions of Section 212(e) of the DGCL.

ARTICLE 5.
COVENANTS AND AGREEMENTS

Section 5.1 Restriction on Transfer. Each Stockholder agrees not (a) to sell, transfer, pledge, encumber, assign or otherwise dispose of (collectively, "Transfer"), or enter into any contract, option or other arrangement or understanding with respect to the Transfer by such Stockholder of, any of the Subject Shares or offer any interest in any thereof to any Person other than pursuant to the terms of the Merger or this Agreement, (b) to enter into any voting arrangement or understanding, whether by proxy, power of attorney, voting agreement, voting trust or otherwise with respect to the Subject Shares in connection with, directly or indirectly, any Acquisition Proposal or otherwise and agrees not to commit or agree to take any of the foregoing actions or (c) take any action that would make any representation or warranty of such Stockholder contained herein untrue or incorrect or have the effect of preventing or disabling such Stockholder from performing its obligations under this Agreement. Notwithstanding the foregoing, each Stockholder shall have the right to Transfer Subject Shares to an Affiliate upon the due execution and delivery to Parent by such transferee of a legal, valid and binding counterpart to this Agreement so long as any such Transfer is not intended to circumvent the provisions of this Agreement.

Section 5.2 No Solicitation of Alternative Transactions. No Stockholder shall, directly or indirectly, take any action to, and each Stockholder shall use its reasonable best efforts to cause its agents and representatives (including investment bankers, attorneys or accountants) not to, (a) encourage (including by way of furnishing non-public information), solicit, initiate or facilitate any Acquisition Proposal, (b) enter into any agreement with respect to any Acquisition Proposal or enter into any agreement, arrangement or understanding requiring the Company to abandon, terminate or fail to consummate the Merger or any other transaction contemplated by this Agreement or the Merger Agreement or (c) participate in any way in discussions or negotiations with, or furnish any information to, any person in connection with, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or could reasonably be expected to lead to, any Acquisition Proposal. Upon the execution of this

Agreement, each Stockholder shall cease immediately and cause to be terminated any and all existing discussions or negotiations with any parties conducted heretofore with respect to any Acquisition Proposal and promptly request that all confidential information with respect thereto furnished by such Stockholder be returned. Each Stockholder shall, as promptly as practicable (and in no event later than 24 hours after receipt thereof), advise Parent of any inquiry received by it relating to any potential Acquisition Proposal and of the material terms of any proposal or inquiry, including the identity of the person and its affiliates making the same, that it may receive in respect of any such potential Acquisition Proposal, or of any information requested from it or of any negotiations or discussions being sought to be initiated with it, and shall furnish to Parent a copy of any such proposal or inquiry, if it is in writing, or a written summary of any such proposal or inquiry, if it is not in writing, and shall keep Parent fully informed on a prompt basis with respect to any developments with respect to the foregoing.

Section 5.3 Further Assurances. From time to time and without additional consideration, each Stockholder shall use its reasonable best efforts to assist and cooperate with Parent and to take, or cause to be taken, all appropriate action, and to do, or cause to be done, all things necessary, proper or advisable under any applicable Law or otherwise to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement and the Merger Agreement. Without limiting the generality of the foregoing, each Stockholder shall, from time to time, execute and deliver, or cause to be executed and delivered, such additional or further consents, documents and other instruments and shall take all such other action as Parent may reasonably request for the purpose of effectively carrying out the transactions contemplated by this Agreement and the Merger Agreement, including promptly making all regulatory filings and applications, and to obtain all licenses, permits, consents, approvals, authorizations, qualification and orders of governmental authorities and parties to contracts as are necessary for the consummation of the transactions contemplated by this Agreement and the Merger Agreement.

Section 5.4 Waiver of Dissenter's and Appraisal Rights. Each Stockholder agrees that it will not exercise any rights to dissent from the Merger or request appraisal of its respective Subject Shares pursuant to Section 262 of the DGCL or any other similar provisions of law in connection with the Merger.

Section 5.5 Lock-Up Agreement. Each Stockholder agrees that, in connection with any public offering of Parent Common Stock or securities convertible into Parent Common Stock conducted by Parent after the Effective Time (a "Financing") and at the request of any managing underwriter of such Financing, it will enter into a customary "lock-up" agreement pursuant to which it will agree beginning on the date of the final prospectus delivered in connection with such Financing and ending on a date no later than ninety (90) days thereafter, to not, directly or indirectly, without the prior written consent of such managing underwriter, issue, sell, offer or agree to sell, grant any option for the sale of, pledge, make any short sale or maintain any short position, establish or maintain any "put equivalent position" (within the meaning of Rule 16-a-1(h) under the Exchange Act), enter into any swap, derivative or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of Parent Common Stock (whether any such transaction is to be settled by delivery of Parent Common Stock, other securities, cash or other consideration) or otherwise dispose of, any Parent Common Stock (or any securities convertible into, exercisable for or exchangeable for Parent Common Stock) or interest therein of Parent or any Parent Subsidiary.

ARTICLE 6.
GENERAL PROVISIONS

Section 6.1 Termination. Except with respect to Sections 5.5 and 6.3, which shall survive termination, this Agreement, and all obligations, agreements and waivers hereunder, will terminate and be of no further force and effect on the earliest of (a) 5:00 p.m., Pacific Standard Time, on the second anniversary of the date hereof, (b) the Effective Time and (c) 120 days after payment of any termination fee set forth in Section 7.2.5 of the Merger Agreement; provided, however, that nothing herein shall relieve any party from liability for any breach hereof.

Section 6.2 Board of Directors Action. No action taken by the Board of Directors of the Company (including, without limitation, the withdrawal, modification or amendment of the recommendation of the Board of Directors of the Company that the stockholders of the Company vote in favor of the adoption of the Merger Agreement) shall modify, alter, change or otherwise affect the obligations of any Stockholder hereunder.

Section 6.3 Stockholder Capacity. No person executing this Agreement who is or becomes during the term hereof a director or officer of the Company makes any agreement or

understanding herein in his or her capacity as such director or officer. Each Stockholder signs solely in its capacity as the record holder and beneficial owner of such Stockholder's Subject Shares and nothing herein shall limit or affect any actions taken by any Stockholder in his or her capacity as an officer or director of the Company to the extent specifically permitted by the Merger Agreement. This Section 6.3 shall survive termination of this Agreement.

Section 6.4 Parent Guarantee. Parent hereby guarantees the due performance of any and all obligations and liabilities of Merger Sub under or arising out of this Agreement and the transactions contemplated hereby.

Section 6.5 Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to the remedy of specific performance of such provisions and to an injunction or injunctions and/or such other equitable relief as may be necessary to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any court of competent jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

Section 6.6 Stop Transfer Order. In furtherance of this Agreement, concurrently herewith, each Stockholder shall, and hereby does authorize the Company's counsel to, notify the Company's transfer agent that there is a stop transfer order with respect to all of the Subject Shares (and that this Agreement places limits on the voting and transfer of such shares).

Section 6.7 Adjustments to Prevent Dilution, Etc. In the event of a stock dividend or distribution, or any change in the Company's capital stock by reason of any stock dividend, split-up, reclassification, recapitalization, combination or the exchange of shares, the term "Subject Shares" shall be deemed to refer to and include the Subject Shares as well as all such stock dividends and distributions and any shares into which or for which any or all of the Subject Shares may be changed or exchanged. In such event, the amount to be paid per share by Parent in the Merger shall be proportionately adjusted.

Section 6.8 Amendments. This Agreement may not be modified, altered, supplemented or amended except by an instrument in writing signed by each of the parties hereto.

Section 6.9 Notice. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered in person or upon confirmation or receipt when transmitted by facsimile transmission (but only if followed by transmittal by national overnight courier or hand for delivery on the next business day) or on receipt after dispatch by registered or certified mail, postage prepaid, addressed, or on the next business day if transmitted by national overnight courier to Parent or Merger Sub in accordance with Section 8.2 of the Merger Agreement and to the Stockholders at their respective addresses set forth in Annex A hereto (or to such other address as any party may have furnished to the other parties in writing).

Section 6.10 Interpretation. When a reference is made in this Agreement to Sections, such reference shall be to a Section to this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 6.11 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more of the counterparts have been signed by each of the parties and delivered to the other party, it being understood that each party need not sign the same counterpart.

Section 6.12 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 contemplated hereby 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 an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 6.13 Entire Agreement; No Third-Party Beneficiaries. This Agreement (including, without limitation, the documents and instruments referred to herein) (a) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and

oral, among the parties with respect to the subject matter hereof and (b) is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

Section 6.14 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to laws that may be applicable under conflicts of laws principals.

Section 6.15 Costs and Expenses. All costs and expenses incurred in connection with this Agreement and the consummation of the transactions contemplated hereby shall be paid by the party incurring such expenses.

Section 6.16 Multiple Stockholders. All representations, warranties, covenants and agreements of the Stockholders in this Agreement are several and not joint, and solely relate to matters involving the subject Stockholder and not any of the other Stockholders.

(Signature Pages Follow)

IN WITNESS WHEREOF, Parent, Merger Sub and each Stockholder have caused this Agreement to be signed by their respective officer thereunto duly authorized as of the date first written above.

INTUITIVE SURGICAL, INC.

By:

Name:
Title:

IRON ACQUISITION CORPORATION

By:

Name:
Title:

STOCKHOLDER

By:

Name:
Title:

ANNEX A

NAME	ADDRESS	NUMBER OF SUBJECT SHARES

Exhibit 4.2

STOCKHOLDER SUPPORT AGREEMENT

BY AND AMONG

INTUITIVE SURGICAL, INC.,

IRON ACQUISITION CORPORATION

AND

CERTAIN STOCKHOLDERS OF INTUITIVE SURGICAL, INC.

DATED AS OF MARCH 7, 2003

STOCKHOLDER SUPPORT AGREEMENT, dated as of March 7, 2003 (this "Agreement"), by and among Intuitive Surgical, Inc., a Delaware corporation ("Parent"), Iron Acquisition Corporation, a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), and the parties listed on Annex A hereto (each, a "Stockholder" and, collectively, the "Stockholders").

WHEREAS, simultaneously with the execution of this Agreement, Parent, Merger Sub and Computer Motion, Inc., a Delaware corporation (the "Company"), are entering into an Agreement and Plan of Merger (the "Merger Agreement") (with all capitalized terms used but not defined herein having the meanings set forth in the Merger Agreement), pursuant to which Merger Sub will merge with and into the Company, with the Company continuing as the surviving corporation and a wholly owned subsidiary of Parent (the "Merger"), which Merger Agreement has been approved by the Boards of Directors of the Company, Merger Sub and Parent;

WHEREAS, in accordance with the Merger Agreement, Parent will issue shares (the "Share Issuance") of common stock, par value $0.001 per share ("Parent Common Stock"), as consideration for the acquisition by Parent of all outstanding equity interests of the Company (the "Merger Consideration");

WHEREAS, each Stockholder owns the number of shares of Parent Common Stock set forth opposite its name on Annex A hereto (such shares of Parent Common Stock, together with any other shares of capital stock of Parent acquired by such Stockholder after the date hereof and during the term of this Agreement, including any shares issued upon the exercise of any warrants or options, the conversion of any convertible securities or otherwise, being collectively referred to herein as the "Subject Shares");

WHEREAS, as a condition to the willingness of the Company to enter into the Merger Agreement, the Company has required that each Stockholder agree and, in order to induce the Company to enter into the Merger Agreement, each Stockholder has agreed, to enter into this Agreement; and

WHEREAS, this Agreement has been approved by the Board of Directors of the Company for purposes of Section 203 of the General Corporation Law of the State of Delaware (the "DGCL").

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement and intending to be legally bound, the parties hereto agree as follows:

ARTICLE 1.
REPRESENTATIONS AND WARRANTIES OF THE STOCKHOLDERS

Each Stockholder, severally and not jointly, hereby represents and warrants to Parent and Merger Sub as follows:

Section 1.1 Organization. Such Stockholder is either (a) a corporation, partnership or limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of such Stockholder's organization, or (b) a natural person residing in the United States.

Section 1.2 Authority. Such Stockholder has all necessary power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated by this Agreement to be consummated by such Stockholder. The execution and delivery of this Agreement by such Stockholder and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary action of such Stockholder and no other proceedings on the part of such Stockholder are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly authorized and validly executed and delivered by such Stockholder and constitutes a legal, valid and binding obligation of such Stockholder, enforceable against such Stockholder in accordance with its terms.

Section 1.3 The Subject Shares. Such Stockholder is the record and beneficial owner of, and has good and marketable title to, the Subject Shares set forth opposite its name on Annex A hereto. Such Stockholder does not own, of record or beneficially, any shares of capital stock of Parent (or rights to acquire any such shares) other than the Subject Shares set forth opposite its name on Annex A hereto. Such Stockholder has (a) the sole right to vote, (b) the sole power of disposition, (c) the sole power to issue instructions with respect to the matters set forth in Articles 3, 4 and 5 hereof, (d) the sole power to demand appraisal rights, if applicable, and (e) the sole power to agree to all of the matters set forth in this Agreement, in each case with respect to all of such Stockholder's Subject Shares, with no limitations, qualifications or

restrictions on such rights, subject to applicable federal securities laws and the terms of this Agreement. Except for this Agreement, none of such Stockholder's Subject Shares are subject to any voting trust or other agreement, arrangement or restriction with respect to the voting or disposition of such Stockholder's Subject Shares. To such Stockholder's knowledge, all of its Subject Shares are validly issued, fully paid and non-assessable.

Section 1.4 No Conflicts. The execution and delivery of this Agreement by such Stockholder do not, and the performance of this Agreement by such Stockholder will not, (a) conflict with or violate any provision of the certificate or articles of incorporation or by-laws or any equivalent organizational documents of such Stockholder, (b) conflict with or violate any Law applicable to such Stockholder or by which any property or asset of such Stockholder is bound or affected, (c) require any consent or approval under, result in any breach of, or loss of any benefit under, or constitute a change of control or default (or any event which with notice or lapse of time or both would become a default) under, or give to others any right of termination, vesting, amendment, acceleration or cancellation of, or result in the creation of a lien or other encumbrance on any property or asset of such Stockholder pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit or other instrument or obligation. The execution and delivery of this Agreement by such Stockholder does not, and the performance of this Agreement by such Stockholder will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity or other person.

Section 1.5 Brokers. No broker, finder or investment banker (other than the Company Financial Advisor) is entitled to any brokerage, finder's or other fee or commission in connection with the Merger based upon arrangements made by or on behalf of such Stockholder.

ARTICLE 2.
REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Each of Parent and Merger Sub, jointly and severally, hereby represents and warrants to each Stockholder as follows:

Section 2.1 Organization. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

Section 2.2 Authority. Each of Parent and Merger Sub has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated by this Agreement to be consummated by Parent and Merger Sub, respectively. The execution and delivery of this Agreement by Parent and Merger Sub and the consummation by Parent and Merger Sub of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action of Parent and Merger Sub and no other corporate proceedings on the part of Parent or Merger Sub are necessary to authorize this Agreement or to consummate the transactions contemplated hereby (other than the approval of Parent, as sole stockholder of Merger Sub, to the Merger and the approval of the stockholders of Parent to the Share Issuance). This Agreement has been duly authorized and validly executed and delivered by Parent and Merger Sub and constitutes a legal, valid and binding obligation of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with its terms.

Section 2.3 No Conflicts. The execution and delivery of this Agreement by Parent and Merger Sub do not, and the performance of this Agreement by Parent and Merger Sub will not, (a) conflict with or violate any provision of the certificate of incorporation or by-laws of Parent or Merger Sub, (b) conflict with or violate any Law applicable to Parent or Merger Sub or by which any property or asset of Parent or Merger Sub is bound or affected, (c) require any consent or approval under, result in any breach of, or loss of any benefit under, or constitute a change of control or default (or any event which with notice or lapse of time or both would become a default) under, or give to others any right of termination, vesting, amendment, acceleration or cancellation of, or result in the creation of a lien or other encumbrance on any property or asset of Parent or Merger Sub pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit or other instrument or obligation. The execution and delivery of this Agreement by Parent and Merger Sub do not, and the performance of this Agreement by Parent and Merger Sub will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity or other person, except as may be required under the Exchange Act, the Securities Act, any applicable Blue Sky Law or, the rules and regulations of Nasdaq.

ARTICLE 3.
AGREEMENT TO VOTE

Each Stockholder, severally and not jointly, agrees that:

Section 3.1 Agreement to Vote in Favor of the Approval of the Share Issuance. At any Parent Stockholders' Meeting called to vote upon the Share Issuance, however called, or at any adjournment thereof or in connection with any written consent of the holders of Parent Common Stock or in any other circumstances upon which a vote, consent or other approval with respect to the Share Issuance is sought, such Stockholder shall be present (in person or by proxy) and shall vote (or cause to be voted) all Subject Shares then beneficially owned by such Stockholder in favor of (a) the Share Issuance and (b) any other matter necessary for the consummation of the transactions contemplated by the Share Issuance, the Merger or the Merger Agreement. In addition, each Stockholder agrees that it will, upon request by Parent, furnish written confirmation, in form and substance reasonably satisfactory to Parent, of such Stockholder's support for the Share Issuance. Each Stockholder acknowledges receipt and review of a copy of the Merger Agreement.

Section 3.2 Agreement to Vote Against Acquisition Proposals. At any Parent Stockholders' Meeting, however called, or at any adjournment thereof or in connection with any written consent of the holders of Parent Common Stock or in any other circumstances upon which a vote, consent or other approval is sought, such Stockholder shall be present (in person or by proxy) and shall vote (or cause to be voted) all Subject Shares then beneficially owned by such Stockholder against any action or agreement that would impede, interfere with, delay, postpone or attempt to discourage the Share Issuance, the Merger or the other transactions contemplated by this Agreement and the Merger Agreement, including, but not limited to the following: (a) any Acquisition Proposal or extraordinary corporate transaction, such as a merger, consolidation or other business combination involving the Company or any of its subsidiaries (other than the Merger); (b) a sale, lease, license or transfer of a material amount of assets of the Company or any of its subsidiaries or a reorganization, recapitalization, dissolution, winding up or liquidation of the Company or any of its subsidiaries; (c) any change in the management or board of directors of the Company, except as contemplated by the Merger Agreement or otherwise agreed to in writing by Parent; (d) any material change in the present capitalization or dividend policy of the Company; (e) any material change in the Company's corporate structure,

business, the Company Certificate or the Company By-laws; or (f) any action or agreement that would result in a breach of any representation, warranty, covenant, agreement or other obligation of the Company under the Merger Agreement or which could result in any of the conditions to the Company's obligations under the Merger Agreement not being fulfilled.

ARTICLE 4.
GRANT OF IRREVOCABLE PROXY; APPOINTMENT OF PROXY

Section 4.1 Grant of Proxy. Each Stockholder hereby irrevocably grants to and appoints Lonnie M. Smith and Susan K. Barnes, in their respective capacities as officers of Parent, and any individual who shall hereafter succeed to their respective offices of Parent, and each of them individually, such Stockholder's proxy and attorney-in-fact (with full power of substitution), for and in the name, place and stead of such Stockholder, to vote such Stockholder's Subject Shares, or grant a consent or approval in respect of such Subject Shares, (a) in favor of the Share Issuance and any other matter necessary for the consummation of the transactions contemplated by the Merger Agreement and (b) against any action or agreement that would impede, interfere with, delay, postpone or attempt to discourage the Share Issuance, the Merger or the other transactions contemplated by this Agreement and the Merger Agreement, including, but not limited to: (i) any Acquisition Proposal or extraordinary corporate transaction, such as a merger, consolidation or other business combination involving the Company or any of its subsidiaries (other than the Merger); (ii) a sale, lease, license or transfer of a material amount of assets of the Company or any of its subsidiaries or a reorganization, recapitalization, dissolution, winding up or liquidation of the Company or any of its subsidiaries; (iii) any change in the management or board of directors of the Company, except as contemplated by the Merger Agreement or otherwise agreed to in writing by Parent; (iv) any material change in the present capitalization or dividend policy of the Company; (v) any material change in the Company's corporate structure, business, the Company Certificate or the Company By-laws or (vi) any action or agreement that would result in a breach of any representation, warranty, covenant, agreement or other obligation of the Company under the Merger Agreement or which could result in any of the conditions to the Company's obligations under the Merger Agreement not being fulfilled.

Section 4.2 Revocation of Prior Proxies. Such Stockholder represents that any proxies heretofore given in respect of such Stockholder's Subject Shares are revocable, and that all such proxies are hereby revoked.

Section 4.3 Irrevocable Proxy Coupled With an Interest. Such Stockholder hereby affirms that the irrevocable proxy set forth in this Article 4 is coupled with an interest, and may under no circumstances be revoked. Such Stockholder hereby ratifies and confirms all that such irrevocable proxy may lawfully do or cause to be done by virtue hereof. Such irrevocable proxy is executed and intended to be irrevocable in accordance with the provisions of Section 212(e) of the DGCL.

ARTICLE 5.
COVENANTS AND AGREEMENTS

Section 5.1 Restriction on Transfer. Each Stockholder agrees not (a) to sell, transfer, pledge, encumber, assign or otherwise dispose of (collectively, "Transfer"), or enter into any contract, option or other arrangement or understanding with respect to the Transfer by such Stockholder of, any of the Subject Shares or offer any interest in any thereof to any Person other than pursuant to the terms of the Merger or this Agreement, (b) to enter into any voting arrangement or understanding, whether by proxy, power of attorney, voting agreement, voting trust or otherwise with respect to the Subject Shares in connection with, directly or indirectly, any Acquisition Proposal or otherwise and agrees not to commit or agree to take any of the foregoing actions or (c) take any action that would make any representation or warranty of such Stockholder contained herein untrue or incorrect or have the effect of preventing or disabling such Stockholder from performing its obligations under this Agreement. Notwithstanding the foregoing, each Stockholder shall have the right to Transfer Subject Shares to an Affiliate upon the due execution and delivery to Parent by such transferee of a legal, valid and binding counterpart to this Agreement so long as any such Transfer is not intended to circumvent the provisions of this Agreement.

Section 5.2 No Solicitation of Alternative Transactions. No Stockholder shall, directly or indirectly, take any action to, and each Stockholder shall use its reasonable best efforts to cause its agents and representatives (including investment bankers, attorneys or accountants) not to, (a) encourage (including by way of furnishing non-public information), solicit, initiate or facilitate any Acquisition Proposal, (b) enter into any agreement with respect to

any Acquisition Proposal or enter into any agreement, arrangement or understanding requiring the Company to abandon, terminate or fail to consummate the Merger or any other transaction contemplated by this Agreement or the Merger Agreement or (c) participate in any way in discussions or negotiations with, or furnish any information to, any person in connection with, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or could reasonably be expected to lead to, any Acquisition Proposal. Upon the execution of this Agreement, each Stockholder shall cease immediately and cause to be terminated any and all existing discussions or negotiations with any parties conducted heretofore with respect to any Acquisition Proposal and promptly request that all confidential information with respect thereto furnished by such Stockholder be returned. Each Stockholder shall, as promptly as practicable (and in no event later than 24 hours after receipt thereof), advise Parent of any inquiry received by it relating to any potential Acquisition Proposal and of the material terms of any proposal or inquiry, including the identity of the person and its affiliates making the same, that it may receive in respect of any such potential Acquisition Proposal, or of any information requested from it or of any negotiations or discussions being sought to be initiated with it, and shall furnish to Parent a copy of any such proposal or inquiry, if it is in writing, or a written summary of any such proposal or inquiry, if it is not in writing, and shall keep Parent fully informed on a prompt basis with respect to any developments with respect to the foregoing.

Section 5.3 Further Assurances. From time to time and without additional consideration, each Stockholder shall use its reasonable best efforts to assist and cooperate with Parent and to take, or cause to be taken, all appropriate action, and to do, or cause to be done, all things necessary, proper or advisable under any applicable Law or otherwise to consummate and make effective, in the most expeditious manner practicable, the Share Issuance, the transactions contemplated by this Agreement and the Merger Agreement. Without limiting the generality of the foregoing, each Stockholder shall, from time to time, execute and deliver, or cause to be executed and delivered, such additional or further consents, documents and other instruments and shall take all such other action as Parent may reasonably request for the purpose of effectively carrying out the Share Issuance, the transactions contemplated by this Agreement and the Merger Agreement, including promptly making all regulatory filings and applications, and to obtain all licenses, permits, consents, approvals, authorizations, qualification and orders of governmental authorities and parties to contracts as are necessary for the consummation of the Share Issuance,

the transactions contemplated by this Agreement and the Merger Agreement.

ARTICLE 6.
GENERAL PROVISIONS

Section 6.1 Termination. Except with respect to Section 6.3, which shall survive termination, this Agreement, and all obligations, agreements and waivers hereunder, will terminate and be of no further force and effect on the earliest of (a) 5:00 p.m., Pacific Standard Time, on the second anniversary of the date hereof, (b) the Effective Time and (c) 120 days after payment of any termination fee set forth in Section 7.2.5 of the Merger Agreement; provided, however, that nothing herein shall relieve any party from liability for any breach hereof.

Section 6.2 Board of Directors Action. No action taken by the Board of Directors of Parent (including, without limitation, the withdrawal, modification or amendment of the recommendation of the Board of Directors of Parent that the stockholders of the Parent vote in favor of the adoption of the Share Issuance) shall modify, alter, change or otherwise affect the obligations of any Stockholder hereunder.

Section 6.3 Stockholder Capacity. No person executing this Agreement who is or becomes during the term hereof a director or officer of Parent makes any agreement or understanding herein in his or her capacity as such director or officer. Each Stockholder signs solely in its capacity as the record holder and beneficial owner of such Stockholder's Subject Shares and nothing herein shall limit or affect any actions taken by any Stockholder in his or her capacity as an officer or director of the Company to the extent specifically permitted by the Merger Agreement. This Section 6.3 shall survive termination of this Agreement.

Section 6.4 Parent Guarantee. Parent hereby guarantees the due performance of any and all obligations and liabilities of Merger Sub under or arising out of this Agreement and the transactions contemplated hereby.

Section 6.5 Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to the remedy of specific performance of such provisions and to an injunction or injunctions and/or such other equitable relief as may be necessary to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any court of

competent jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

Section 6.6 Stop Transfer Order. In furtherance of this Agreement, concurrently herewith, each Stockholder shall, and hereby does authorize Parent's counsel to, notify Parent's transfer agent that there is a stop transfer order with respect to all of the Subject Shares (and that this Agreement places limits on the voting and transfer of such shares).

Section 6.7 Adjustments to Prevent Dilution, Etc. In the event of a stock dividend or distribution, or any change in Parent's capital stock by reason of any stock dividend, split-up, reclassification, recapitalization, combination or the exchange of shares, the term "Subject Shares" shall be deemed to refer to and include the Subject Shares as well as all such stock dividends and distributions and any shares into which or for which any or all of the Subject Shares may be changed or exchanged. In such event, the amount to be paid per share by Parent in the Merger shall be proportionately adjusted.

Section 6.8 Amendments. This Agreement may not be modified, altered, supplemented or amended except by an instrument in writing signed by each of the parties hereto.

Section 6.9 Notice. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered in person or upon confirmation or receipt when transmitted by facsimile transmission (but only if followed by transmittal by national overnight courier or hand for delivery on the next business day) or on receipt after dispatch by registered or certified mail, postage prepaid, addressed, or on the next business day if transmitted by national overnight courier to Parent or Merger Sub in accordance with Section 8.2 of the Merger Agreement and to the Stockholders at their respective addresses set forth in Annex A hereto (or to such other address as any party may have furnished to the other parties in writing).

Section 6.10 Interpretation. When a reference is made in this Agreement to Sections, such reference shall be to a Section to this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 6.11 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become

effective when one or more of the counterparts have been signed by each of the parties and delivered to the other party, it being understood that each party need not sign the same counterpart.

Section 6.12 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 contemplated hereby 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 an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 6.13 Entire Agreement; No Third-Party Beneficiaries. This Agreement (including, without limitation, the documents and instruments referred to herein) (a) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and (b) is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

Section 6.14 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to laws that may be applicable under conflicts of laws principals.

Section 6.15 Costs and Expenses. All costs and expenses incurred in connection with this Agreement and the consummation of the transactions contemplated hereby shall be paid by the party incurring such expenses.

Section 6.16 Multiple Stockholders. All representations, warranties, covenants and agreements of the Stockholders in this Agreement are several and not joint, and solely relate to matters involving the subject Stockholder and not any of the other Stockholders.

(Signature Pages Follow)

IN WITNESS WHEREOF, Parent, Merger Sub and each Stockholder have caused this Agreement to be signed by their respective officer thereunto duly authorized as of the date first written above.

INTUITIVE SURGICAL, INC.

By:

Name:
Title:

IRON ACQUISITION CORPORATION

By:

Name:
Title:

STOCKHOLDER

By:

Name:
Title:

ANNEX A

NAME	ADDRESS	NUMBER OF SUBJECT SHARES

Exhibit 10.1

LOAN AND SECURITY AGREEMENT

BY

AND BETWEEN

COMPUTER MOTION, INC.,

as Borrower

AND

INTUITIVE SURGICAL, INC.,

as Lender

DATED AS OF MARCH 7, 2003

TABLE OF CONTENTS

EXECUTION VERSION

LOAN AND SECURITY AGREEMENT, dated as of March 7, 2003, by and between Computer Motion, Inc., a Delaware corporation (the "Borrower") and Intuitive Surgical, Inc., a Delaware corporation (the "Lender").

WHEREAS, the Borrower has requested a short-term secured bridge loan from the Lender in an aggregate principal amount not to exceed $7,300,000; and

WHEREAS, the Lender is willing to make such loan to the Borrower upon the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Affiliate" shall mean any other Person controlling or controlled by or under common control with such specified Person.

"Agreement" shall mean this Loan and Security Agreement, as amended, supplemented, waived or otherwise modified from time to time pursuant to the terms hereof.

"Borrower" shall have the meaning set forth in the preamble hereto.

"Business Day" shall mean a day other than a Saturday, Sunday or other day on which commercial banks in California are authorized or required by law to close.

"Closing Date" shall mean the date on which all the conditions precedent set forth in Section 5 shall be satisfied or waived pursuant to the terms hereof. The original Closing Date shall occur on such date prior to termination of the Merger Agreement as the Borrower and the Lender agree, failing which this Agreement shall be of no further force or effect.

"Collateral" shall have the meaning set forth in Exhibit A hereto.

"Contractual Obligation" shall mean, as to any Person, any provision of any security issued by such Person or of any agreement, instrument, document or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" (including, with correlative meaning, the terms "controlling", "controlled by," "under common control with" and similar phrases) shall mean with respect to any Person, the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Default" shall mean any event, act or condition which with or without notice or lapse of time, or both, could constitute an Event of Default.

"Default Interest" shall have the meaning set forth in Section 3.1.

"Deposit Account Control Agreements" shall mean deposit account control agreements on commercially reasonable terms and conditions in which all of the Borrower's accounts with any financial institution shall be subject to Lender's right upon the occurrence and during the continuance of an Event of Default to restrict the use of such accounts and to turn over the proceeds from such accounts to Lender, in form and substance reasonably satisfactory to the Lender; provided that the Borrower shall be required to enter into a Deposit Account Control Agreement with respect to accounts maintained at Salomon Smith Barney but such agreement shall not be implemented unless and until there has occurred an Event of Default.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, or any successor or similar statute and the rules and regulations of the SEC promulgated thereunder as in effect from time to time.

"Event of Default" shall mean the occurrence of any of the events specified in Section 8.

"Existing Indebtedness" shall mean that Indebtedness owing by the Borrower to Agility Capital, LLC, pursuant to that certain Loan and Security Agreement dated as of February 13, 2003 (as amended, restated or modified from time to time).

"GAAP" shall mean the generally accepted accounting principles in the United States of America in effect from time to time.

"Governmental Authority" shall mean any nation or government, any state or other political subdivision thereof and any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Indebtedness" shall mean (without double counting), at any time and with respect to any Person, (i) indebtedness of such Person for borrowed money (whether by loan or the issuance and sale of debt securities) or for the deferred purchase price of property or services purchased (other than amounts constituting trade payables arising in the ordinary course of business); (ii) obligations of such Person in respect of letters of credit, acceptance facilities, or drafts or similar

instruments issued or accepted by banks and other financial institutions for the account of such Person; (iii) obligations of such Person under capital leases and any financing lease involving substantially the same economic effect; (iv) deferred payment obligations of such Person resulting from the adjudication or settlement of any litigation or claim to the extent not already reflected as a current liability on the balance sheet of such Person; (v) trade debt not incurred in the ordinary course of business or trade debt in excess of $250,000 as to any single creditor or in excess of $250,000 in the aggregate; or (vi) indebtedness of others of the type described in clauses (i) through (v) which such Person has (a) directly or indirectly assumed or guaranteed in connection with a guaranty, or (b) secured by a Lien on any of the assets of such Person whether or not such Person has assumed or guaranteed such indebtedness.

"Intellectual Property" shall have the meaning set forth in Section 4.10.

"Intellectual Property Security Agreement" shall mean the Intellectual Property Security Agreement by and between the Lender and the Borrower, in substantially the form attached hereto as Exhibit B.

"Interest Rate" shall have the meaning set forth in Section 3.1.

"Interest Deficit" shall have the meaning set forth in Section 9.7.

"Lender" shall have the meaning set forth in the preamble hereto.

"Lien" shall mean any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, encroachment, lien (statutory or otherwise), claim, option, reservation, priority, preferential arrangement, easement or other encumbrance of any kind.

"Loan" or "Loans" shall have the meaning set forth in Section 2.1.

"Loan Availability" shall mean $7,300,000.

"Loan Documents" shall mean this Agreement, the Note, the Intellectual Property Security Agreement, the Deposit Account Control Agreement and any and all other agreements, certificates, instruments or documents made, given or delivered in connection with the consummation of any transaction contemplated by a Loan Document (other than the Merger Documents).

"Lock Box Account" shall mean any checking or other demand depository account maintained by the Borrower into which the contents of any other checking, demand or other depository account of the Borrower is transferred pursuant to the applicable Lock Box Agreement.

"Lock Box Agreements" shall mean each of the Lock Box Agreements on commercially reasonable terms and conditions, by and among the Lender, the Borrower and the applicable financial institution that recognizes the Lender's

security interest in the contents of the checking, demand or other depository account which is the subject of such agreement and provides that such contents shall be transferred only to the applicable Lock Box Account or as otherwise instructed by Lender.

"Material Adverse Change" shall mean an event, act, condition or change which had, has or could reasonably be expected to have a material adverse effect on (a) the business, operations, results of operations, properties, assets, condition (financial or otherwise) of the Borrower, (b) the Borrower's ability to perform the Secured Obligations or (c) any right or remedy of the Lender under any Loan Document.

"Maturity Date" shall mean the earlier of (i) 120 days following termination of the Merger Agreement and (ii) the occurrence of a Prohibited Transaction.

"Merger Agreement" shall mean that certain Agreement and Plan of Merger by and among Intuitive Surgical, Inc., Iron Acquisition Corporation and Computer Motion, Inc., dated as of March 7, 2003.

"Merger Default" shall mean a default under Section 7.1.7 of the Merger Agreement.

"Merger Documents" shall mean the Merger Agreement and all agreements, certificates, instruments or documents made, given or delivered specifically in connection with the Merger Agreement.

"Note" shall have the meaning set forth in Section 2.2.

"Notice of Borrowing" shall have the meaning given in Section 2.1.

"Person" shall mean an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"Proceeds" shall mean whatever is received when Collateral or Proceeds are sold, exchanged, collected or otherwise disposed of, both cash and non-cash, including the proceeds of insurance payable by reason of loss of or damage to Collateral or Proceeds and any license fees, royalties and other similar items received in connection with Collateral.

"Prohibited Transaction" shall mean (i) the sale, lease, license, exchange, transfer or similar transaction involving all or substantially all of the assets of the Borrower (other than pursuant to the Merger Agreement), other than inventory in the ordinary course of business, in one or more transactions after the Closing Date; (ii) the closing date of a recapitalization, reorganization, merger, consolidation or other transaction or transactions (whether by sale, gift or other

transfer or disposition) other than pursuant to the Merger Agreement, which transaction or transactions result in the transfer of control of the Borrower excluding any securities under any option plan of the Borrower (which plan, type of securities and amount of securities are approved by Lender in writing) which have not been granted, or which have been granted but have not yet vested, in each case on or prior to the date in question) on a fully-diluted basis; or (iii) any action (voluntary or involuntary) to liquidate, dissolve and/or wind down the business of the Borrower.

"Requirement of Law" shall mean as to any Person, the articles or certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, statute, treaty, ordinance, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"SEC" shall mean the Securities and Exchange Commission or any successor thereto.

"Secured Obligations" shall mean all money, debts, obligations and liabilities which now are or have been or at any time hereafter may be or become due, owing or incurred by the Borrower to the Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with any Loan Document or any transaction contemplated by any Loan Document, whether on account of principal, interest (including, without limitation, interest accruing after the Maturity Date on the Note and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), royalties, reimbursement obligations, fees, indemnities, costs, expenses or otherwise, excluding, however, any obligations or liability arising under the Merger Documents.

"Securities Act" shall mean the Securities Act of 1933, as amended, or any successor or similar statute and the rules and regulations of the SEC promulgated thereunder as in effect from time to time.

"Subordinated Debt" shall mean unsecured Indebtedness subordinated to the Loan on terms and conditions satisfactory to lender, evidenced by a subordination agreement in form and substance satisfactory to lender which by its terms does not permit the payment of all or any portion of any principal, interest or any other amounts until the indefeasible payment in full of all Secured Obligations.

"Subsidiary" shall have the meaning set forth in Section 4.4.

"Tax Return" shall mean any return, declaration, report, claim for refund, information return or statement, estimated return or statement or other document (including, without limitation, any related or supporting estimates, elections, schedules, statements or information) filed or required to be filed in connection with the determination, assessment or collection of any Tax or the administration of any laws, statutes, treaties, regulations or administrative requirements relating to any Tax.

"Tax" or "Taxes" shall mean (i) any and all taxes (whether federal, state and local, domestic or foreign) including, without limitation, income, gross receipts, profits, property, sales, use, capital stock, net worth, occupation, value added, ad valorem, transfer, franchise, recapture, excise, windfall, withholding, payroll, social security, workers' compensation, unemployment compensation or employment taxes, tariffs, imposts, duties, levies, fees or governmental charges of any nature whatsoever, together with any interest, penalties or additions to tax imposed with respect to any of the foregoing, and (ii) any obligations under any agreements or arrangements with respect to any tax or taxes described in clause (i) above.

"UCC" shall mean the Uniform Commercial Code of the State of California as in effect on the date hereof and as amended from time to time hereafter or, when used in relation to a specific filing or termination, the Uniform Commercial Code of the State wherein such filing or termination statement is made.

"Weekly Projections" shall have the meaning set forth in Section 4.16.

1.2 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the Note or any agreement, instrument, certificate or other document made, given or delivered pursuant hereto.

(b) Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the part includes the whole, the terms "include" and "including" are not limiting, and the term "or" has the inclusive meaning represented by the phrase "and/or."

(c) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, subsection, Exhibit and Schedule references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(e) Any reference in this Agreement to any of the Loan Documents includes any and all alterations, amendments, extensions, modifications, renewals, restatements, or supplements thereto or thereof, as applicable.

(f) Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against the Lender or the Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by the Borrower, the Lender, and their respective counsel, and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the Lender and the Borrower.

SECTION 2. AMOUNT OF LOAN

2.1 Loan. Subject to the terms and conditions hereof, the Lender agrees to make Loans to the Borrower in an aggregate principal amount which shall not exceed the Loan Availability. Such Loans shall be made as follows: (i) upon delivery to the Lender of a Notice of Borrowing/Letter of Direction in substantially the form attached hereto as Exhibit D (a "Notice of Borrowing") no less than three (3) Business Days prior thereto, on the Closing Date in an aggregate amount of up to $2,300,000, the proceeds of which will be used exclusively to pay off the Existing Indebtedness, and (ii) in an aggregate amount of up to $5,000,000 as such Loans may be required in accordance with the Weekly Projections, as the same may be amended in accordance with Section 6.11 hereof, the proceeds of which Loans will be used exclusively for working capital and other general corporate purposes of the Borrower. Amounts borrowed and repaid hereunder may not be re-borrowed. As used herein, the term "Loan" and "Loans" shall mean the advances made by the Lender in accordance with this Section 2.1.

2.2 Notes. In order to evidence the Loan, the Borrower will execute and deliver to the Lender on the initial Closing Date a secured promissory note substantially in the form of Exhibit C attached hereto, payable to the order of the Lender and in a principal amount equal to $7,300,000. The Note: (a) shall be dated the Closing Date; (b) shall be payable as provided in Section 2.4; (c) shall provide for the payment of interest in accordance with Section 3.1; and (d) shall be subject to mandatory prepayment in accordance with Section 3.2(b).

2.3 Making of Loan. The Lender shall have no obligation to make the Loans hereunder unless the Lender, in its sole discretion, determines that the Loan Documents are in full force and effect, and the Borrower is in full compliance with all the terms of this Agreement, the Note, the Intellectual Property Security Agreement and the other Loan Documents, and that no Default or Event of Default not waived in writing by the Lender exists or will result from the making of any such Loan..

2.4 Repayment of Loan.

(a) Except as set forth below, the aggregate amount of the Loan shall be payable, together with all accrued and unpaid interest thereon and all other Secured Obligations, on the Maturity Date.

(b) The Borrower shall not be obligated to make any principal or interest payments on the Loan other than upon the Maturity Date or as otherwise required pursuant to the provisions of Section 3.1 or 3.2(b).

2.5 Collateral.

(a) Security Interest. This Agreement constitutes a "security agreement" within the meaning of the UCC. In order to secure payment and performance of all present and future Secured Obligations, the Borrower hereby grants, assigns, transfers, pledges, and sets over to the Lender a first-priority security interest in and Lien on all of the Collateral (subject to Liens expressly permitted under Section 7.2(a) hereof and those other Liens set forth in Section 7.2 required as a matter of law to have priority over the Secured Obligations; provided that, with respect to such other security interests and other Liens, such security interests and Liens shall not be with respect to claimed amounts in excess of $100,000 in the aggregate.

(b) Further Assurances. The Borrower agrees that at any time and from time to time, at its expense, the Borrower will promptly execute and deliver all further agreements, certificates, instruments and documents (including, without limitation, financing statements and continuation statements), and take all further action that the Lender may reasonably request (including obtaining any control agreements or bailee acknowledgments required by Lender), in order to perfect and protect the security interests granted or purported to be granted hereby and to enable the Lender to exercise and enforce its rights and remedies hereunder with respect to any Collateral. The Borrower agrees that it will not take any action intended or reasonably likely to negatively impact or question the security interest granted herein. Without limiting any rights of the Lender under the UCC, the Borrower authorizes the Lender to file, without the Borrower's signature, UCC financing statements disclosing the Lender's Liens hereunder with any filing office deemed appropriate by the Lender, including without limitation designating the Collateral as "all present and future assets" of the Borrower.

SECTION 3. GENERAL PROVISIONS APPLICABLE TO LOAN

3.1 Interest Rate and Payments. The outstanding principal of the Loan shall accrue interest from the date such Loan is disbursed pursuant to the terms hereunder until and including the date paid in full at a rate per annum (computed on the basis of a 360-day year of twelve 30-day months, provided, however, that per diem interest shall be calculated on the basis of the actual number of days elapsed over a year of 365 days) of eight percent (8%) per annum (the "Interest Rate"). Except as provided in the following sentence, interest on the Loan shall not be due and payable until the Maturity Date or such earlier date upon which the Loan shall be due and payable in accordance with the terms hereof, in each case with interest to accrue and be due and payable through and including the applicable date of payment. Without duplication of any interest payable under this Section 3.1, the Borrower hereby unconditionally promises to pay to the Lender interest on any Secured Obligations payable by the Borrower under any Loan Document that shall not be paid in full when due (whether at stated maturity, by acceleration or otherwise), for the period from and including the due date of such payment to and including the date the same is paid in full, at a rate per annum equal to the Interest Rate plus 400 basis points (the "Default Interest"), which Default Interest shall be payable from time to time on demand of the Lender.

3.2 Prepayment.

(a) Optional. The Borrower shall be permitted to prepay the Loan, or any portion thereof, at any time without penalty or premium; in each case all payments shall be applied first against any Secured Obligation (other than interest and principal), then against accrued and unpaid interest through and including the date of payment and then against principal.

(b) Mandatory. Upon the Maturity Date all Secured Obligations shall immediately become due and payable.

SECTION 4. COMPANY REPRESENTATIONS, WARRANTIES AND COVENANTS

The Borrower represents, warrants and covenants, as of the Closing Date, that:

4.1 Existence. The Borrower (a) is duly organized and validly existing under the laws of the State of Delaware, (b) is duly qualified to do business and is in good standing in all other jurisdictions in which the nature of its business or the ownership or leasing of its properties makes such authorization or qualification necessary except for such jurisdictions where the failure to be so authorized or qualified could not result in a Material Adverse Change and (c) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee or lessor and to conduct the business in which it is presently engaged and presently proposes to engage. The Borrower's place of incorporation and principal place of business/chief executive office are set forth on Schedule 4.1.

4.2 Power; Authorization; Enforceable Obligations. The Borrower has the power and authority, and the legal right, to make, execute, deliver and perform the Loan Documents, borrow the Loan hereunder, and to consummate the transactions contemplated hereby and thereby and the Borrower has taken all necessary action to authorize the execution, delivery and performance of the Loan Documents, the borrowing of the Loan on the terms and conditions of this Agreement, and the consummation of the transactions contemplated hereby and thereby. No consent or authorization of, filing with, notice to or other similar act by or in respect of, any Governmental Authority or any other Person is required to be obtained or made by or on behalf of the Borrower in connection with the execution, delivery, performance, validity or enforceability of the Loan Documents to which it is a party, the borrowing of the Loan hereunder, or the consummation of the transactions contemplated hereby and thereby. Each of the Loan Documents has been duly executed and delivered by the Borrower. Each of the Loan Documents constitutes a legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its respective terms.

4.3 No Legal Bar. The execution, delivery and performance of the Loan Documents by the Borrower, the borrowing of the Loan hereunder, and the use of the proceeds thereof (a) will not violate any Requirement of Law, which violation could result in a Material Adverse Change, or Contractual Obligation of the Borrower and (b) will not result in, or require, the creation or imposition of any Lien (other than Liens in favor of the Lender) on any of its properties, assets or revenues pursuant to any such Requirement of Law, which violation could result in a Material Adverse Change or the default or breach of any Contractual Obligation.

4.4 Subsidiaries. Except as set forth on Schedule 4.4 hereto, the Borrower has no, and never has had any, Subsidiaries. For purposes hereof, "Subsidiary" shall mean, for any Person, any corporation, partnership, limited liability company or other entity of which at least a majority of the securities or other ownership interests having by their terms ordinary voting power (or otherwise) to elect a majority of the board of directors or other Persons performing similar functions of such corporation, partnership, limited liability company or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency) are at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person.

4.5 Capitalization. The authorized capital stock of the Borrower is as set forth on Schedule 4.5 hereto: All such issued and outstanding shares and warrants have been duly authorized and validly issued, are fully paid and nonassessable and were issued in compliance with all applicable state and federal laws concerning issuance of securities. Other than as set forth on Schedule 4.5(a) hereto, there are no other rights, plans, options, warrants, agreements or other rights of any Person to purchase or acquire from the Borrower or any owner of any such item any shares of its capital stock. The Borrower has no obligation to repurchase, redeem or otherwise acquire any security or other right of the Borrower.

4.6 Material Adverse Facts. The Borrower has no knowledge of any fact that could materially adversely affect the ability of the Borrower to perform its obligations under this Agreement, the Note or the other Loan Documents or which could result in a Material Adverse Change.

4.7 Purpose of Loan. The proceeds of the Loans shall be used by the Borrower to refinance the Existing Indebtedness and for working capital and other general corporate purposes.

4.8 Liabilities. Other than with respect to the Loan and Indebtedness expressly permitted under Section 7.1 and described in Schedule 7.1(b) hereto, the Borrower does not have any Indebtedness in excess of $250,000 in the aggregate that the Borrower has directly or indirectly created, incurred, assumed, or guaranteed, or with respect to which the Borrower has otherwise become directly or indirectly liable. Schedule 7.1(b) sets forth a true, complete and correct description of all Indebtedness of the Borrower on the Closing Date.

4.9 Title to Property and Assets. The Borrower has good and marketable title to, or a valid leasehold in, all of the Borrower's tangible and intangible properties and assets (including, without limitation, Intellectual Property), in each case free and clear of all Liens other than (a) Liens for taxes not yet due or other statutory liens relating to obligations to any Governmental Authority which are not yet due, (b) statutory Liens arising in the ordinary course of business, in each case, which do not interfere with the use of the properties and assets to which they relate for the purposes for which those properties and assets were acquired and (c) Liens in favor of the Lender and other Liens expressly permitted under Section 7.2 hereof. Schedule 7.2(f) sets forth a true, complete and correct description of all Liens on the Borrower or its properties or assets on the Closing Date.

4.10 Intellectual Property. The Borrower possesses all licenses, permits, franchises, authorizations, patents, copyrights, trademarks, trade secrets and trade names and any other tangible, intangible or intellectual property rights, or rights thereto, required to conduct its business as presently conducted and as presently proposed to be conducted, without any known conflict with the rights of others, excluding any and all patent and other Intellectual Property rights owned or controlled by the Lender. A true, correct and complete list of the Borrower's licenses, permits, franchises, authorizations, patents, copyrights, trademarks, trade secrets, trade names, inventions, discoveries, designs, patentable technology and art, methodologies, trade secrets, know how, service marks, Internet domain names and any other tangible, intangible or intellectual property rights (the "Intellectual Property") is attached as Schedule 4.10 hereto. No claim of infringement has been made or threatened in writing or otherwise with respect to any such Intellectual Property, excluding current discussions and pending lawsuits as to such matters with the Lender. Except as set forth on Schedule 4.15, the Borrower has not directly or indirectly created, incurred, assumed or permitted to exist any Lien on any such Intellectual Property, other than Liens granted to the Lender to secure the Secured Obligations and liens expressly permitted under Section 7.2 hereof.

4.11 ERISA. No employee benefit plan established or maintained by the Borrower or its Subsidiaries or to which the Borrower or any Subsidiary has made contributions or is liable is subject to Part 3 of Subtitle B of Title 1 of the Employee Retirement Income Security Act of 1974, as amended, or Section 412 of the Internal Revenue Code of 1954, as amended.

4.12 Brokers. No broker or finder has acted for the Borrower in connection with the Loan Documents or the transactions contemplated hereby or thereby, and no broker finder or other Person is entitled to any brokerage or finder's fees or other commission or payment in respect of such transaction based in any way on agreements, arrangements or understandings made by or on behalf of the Borrower.

4.13 Use of Credit. No part of the proceeds from the Loan extended hereunder will be used, directly or indirectly, for the purpose of buying or carrying any "margin stock" within the meaning of Regulation G of the Board of Governors of the Federal Reserve System (12 CFR 207), or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve the Borrower in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). The assets of the Borrower do not include any margin stock, and the Borrower does not have any present intention of acquiring any margin stock.

4.14 Indebtedness. The Note will be the senior obligation of the Borrower, and will be secured by first priority liens on all of the Collateral subject to Liens expressly permitted under Section 7.2(a) hereof and those other Liens set forth in Section 7.2 required as a matter of law to have priority over the Secured Obligations; provided that, with respect to such other security interests and other Liens, such security interests and Liens shall not be with respect to claimed amounts in excess of $250,000 in the aggregate.

4.15 Litigation. Except as set forth on Schedule 4.15 hereto, there are no (i) actions, suits or legal, equitable, arbitrative or administrative proceedings pending, or, to the best knowledge of the Borrower after reasonable review and due inquiry, threatened against the

Borrower or any of its properties or assets or (ii) judgments, injunctions, writs, rulings or orders by any Governmental Authority against the Borrower or applicable to any of its properties or assets.

4.16 Financial Condition; Unknown Liabilities; Weekly Projections. The Borrower has previously furnished to the Lender the unaudited income statement, balance sheet and cash flow statements of the Borrower as of December 31, 2002, and the unaudited income statement and balance sheet of the Borrower as of January 31, 2003, each of which are attached hereto as Schedule 4.16(a). There are no liabilities, obligations or commitments of any nature (whether accrued, absolute, contingent or otherwise) matured or unmatured of the Borrower, except as provided for in the unaudited balance sheets referred to above or as set forth on Schedule 4.16(b), as of the Closing Date. Since January 1, 2003, there has been no Material Adverse Change as to the Borrower. The Borrower has previously furnished to the Lender the projected cash flow for the Borrower, set forth on a weekly basis, for the period through August 23, 2003 (the "Weekly Projections"), which Weekly Projections are in form and substance satisfactory to the Lender and are attached hereto as Schedule 4.16(c).

4.17 Taxes. The Borrower has filed all federal, state and local, domestic or foreign Tax Returns and all other Tax Returns that are required to be filed by it and it has paid all Taxes due pursuant to such returns or pursuant to any deficiency, notice of proposed assessment, audit, assessment or other similar notice received by it in writing other than those being contested in good faith in appropriate proceedings and for which reserves have been established in the financial statements described in Section 4.16. There are no audits, assessments or claim for assessments, and no basis upon which such a claim can be made to the best knowledge of the Borrower after reasonable review and due inquiry. The charges, accrual and reserves on its books and records in respect of Taxes are adequate. The Borrower has not given or been requested to give a waiver of the statute of limitations relating to the payment of Federal or other taxes or the audit of any tax period.

4.18 Certain Regulations. The Borrower is not (a) an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940; (b) a "holding company," or an "affiliate" of a "holding company" or a "Subsidiary company" of a "holding company," within the meaning of the Public Utility Holding Company Act of 1935; or (c) to the knowledge of the Borrower, subject to any other Requirement of Law restricting its ability to incur debt or to grant Liens.

4.19 Environmental Matters. The Borrower has obtained all approvals required by any Governmental Authority to carry on its business as presently being conducted or as presently proposed to be conducted. Each of such approvals is in full force and effect and the Borrower is in compliance in all respects with the terms and conditions of such approvals, and is also in compliance in all respects with all other provisions of any applicable environmental law, rule or regulation.

4.20 Accounts Receivable. The accounts receivable set forth in the unaudited balance sheet delivered to the Lender pursuant to Section 4.16(a), net of applicable reserves set forth in such unaudited balance sheet, are collectible in the amounts shown therein. All such accounts receivable represent legal, valid and binding obligations arising from bona fide business

transactions in the ordinary course of business consistent with past practices of the Borrower. There is no contest, claim, counterclaim, defense, contra account or other right of set-off with respect to such accounts receivable, other than returns in the ordinary course consistent with the past practices of the Borrower.

4.21 SEC Documents; Financial Statements and No Material Changes. Borrower has made available to Lender through the SEC's EDGAR database ("EDGAR") a true, complete and correct copy of each publicly available statement, report, registration statement (with the prospectus in the form filed pursuant to Rule 424(b) of the Securities Act), definitive proxy statement, and other filing filed with the SEC by Borrower since December 31, 2001, and, prior to the Closing Date, Borrower will have made available to Lender true, complete and correct copies of any additional publicly available documents filed with the SEC by Borrower after the date hereof but prior to the Closing Date (collectively, the "Borrower SEC Documents"). All documents required to be filed as exhibits to the Borrower SEC Documents have been so filed, and all Borrower Material Contracts (as defined below) so filed as exhibits are in full force and effect as of the date hereof, except those that have expired in accordance with their terms and those that failure to be in full force and effect would not have a Material Adverse Change. As used in this Agreement, "Borrower Material Contracts" means all contracts required to be filed as exhibits to the Borrower SEC Documents pursuant to Item 601 of Regulation S-K. As of their respective filing dates, the Borrower SEC Documents complied in all material respects with the applicable requirements of the Exchange Act and the Securities Act, and none of the Borrower SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein, in light of the circumstance under which they were made or necessary to make the statements made therein not misleading, except to the extent corrected by a subsequently filed Borrower SEC Document. The consolidated financial statements of Borrower, including the notes thereto, included in the Borrower SEC Documents (the "Borrower SEC Financial Statements") fairly present (or will fairly present) the consolidated financial condition and the related consolidated statements of operations, of stockholder's equity, and of cash flows of Borrower at the dates and during the periods indicated therein in accordance with GAAP (subject, in the case of unaudited statements, to normal, recurring year-end adjustments), complied (or will comply) as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto as of their respective dates, and have been prepared (or will be prepared) in accordance with generally accepted accounting principles applied on a basis consistent throughout the periods indicated and consistent with each other (except as may be expressly indicated in the notes thereto or, in the case of unaudited statements included in Quarterly Reports on Forms 10-Q, as permitted by Form 10-Q of the SEC).

4.22 Locations of Collateral. The only locations of Collateral are set forth on Schedule 4.22, attached hereto, and such schedule correctly identifies any of such locations which are not owned by the Borrower and sets forth the owners and/or operators thereof. The Borrower shall not move the Collateral to any other location (other than to transfer such Collateral in the ordinary course of business); provided that the Borrower may open a new location at which Collateral will be located within the continental United States so long as the Borrower (i) gives the Lender thirty (30) days prior written notice of the intended opening of any such new location and (ii) executes and delivers, or causes to be executed and delivered, to the Lender such

agreements, documents, and instruments as the Lender may deem reasonably necessary or desirable to protect its interests in the Collateral at such new location.

4.23 Disclosure. No representation or warranty by the Borrower in this Agreement or any of the other Loan Documents contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances in which they are made, not misleading. If, prior to the Closing Date, the Borrower becomes aware of any fact or circumstance that could change a representation or warranty of the Borrower in this Agreement, then the Borrower shall immediately give notice of such fact or circumstance to the Lender.

4.24 Capacity to Protect Interests. The Borrower has been represented by outside counsel in connection with the transactions contemplated under the Loan Documents and the negotiation of the same, and each of the Borrower and such counsel has the "capacity to protect [the Borrower's] own interests in connection" herewith within the meaning of California Corporations Code Section 25118.

SECTION 5. CONDITIONS OF LENDING

The obligation of the Lender to make the Loan hereunder is subject to the following conditions precedent:

5.1 Loan Documents. Lender shall have received (a) this Agreement, (b) the Note, (c) the Intellectual Property Security Agreement, (d) the Lock Box Agreement, (e) the Deposit Account Control Agreements and (f) each of the other Loan Documents to which the Borrower is a party, in each case executed and delivered by duly authorized officers of the Borrower, together with completed schedules thereto as of the Closing Date, all in form and substance satisfactory to the Lender.

5.2 Proceedings. The Lender shall have received a copy of the resolutions, in form and substance reasonably satisfactory to it, of the board of directors of the Borrower authorizing (i) the execution, delivery and performance of this Agreement and the other Loan Documents, (ii) the Loan contemplated hereunder, (iii) the execution, delivery and performance of the Merger Agreement and the transactions contemplated thereunder and (iv) the other transactions contemplated hereby and thereby, certified by the Secretary or an Assistant Secretary of the Borrower as of the Closing Date, which certificate shall be in form and substance reasonably satisfactory to the Lender and shall state that the resolutions thereby certified have not been amended, modified, revoked or rescinded and are in full force and effect.

5.3 Incumbency Certificates. The Lender shall have received a certificate of the Borrower, dated the Closing Date, as to the incumbency and signature of the officers of the Borrower executing any Loan Document, reasonably satisfactory in form and substance to the Lender, executed by the Secretary or any Assistant Secretary of the Borrower.

5.4 Organizational Documents. The Lender shall have received copies of the articles of incorporation and bylaws of the Borrower, certified as of the Closing Date as true, complete and correct copies thereof by the Secretary or an Assistant Secretary of the Borrower.

5.5 Representations and Warranties; No Default. Each of the representations and warranties made by the Borrower pursuant to this Agreement or any other Loan Document (or in any amendment, modification or supplement hereto or thereto) and each of the representations and warranties contained in any certificate or statement furnished at any time by or on behalf of the Borrower pursuant to this Agreement or any other Loan Document or certificate or other document delivered herewith or therewith, shall, except to the extent that they relate to a particular date, be true, complete and correct in all respects on and as of the date it was made and on and as of such date as if made on and as of such date. The Borrower shall have complied with each and every covenant and agreement contained herein, no Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the Loan, and no Material Adverse Change shall have occurred. The Borrower shall have delivered a certificate of the Chief Executive Officer or President of the Borrower, dated as of the applicable Closing Date hereunder, to the foregoing effect.

5.6 Security Interest. The Lender shall have received evidence satisfactory to it of a valid and perfected first priority Lien and security interest in the Collateral and no other Liens on the Collateral exist, except as expressly permitted hereunder.

5.7 Intellectual Property Security Interest. The Lender shall have received evidence satisfactory to it of a valid and perfected first priority Lien and security interest in the Intellectual Property.

5.8 Lock Box Agreement. The Lender shall have received satisfactory evidence that the Lock Box Agreement is in full force and effect.

5.9 Deposit Account Control Agreements. The Lender shall have received satisfactory evidence that each Deposit Account Control Agreement is in full force and effect.

5.10 Merger Agreement. The Lender shall have received satisfactory evidence that the Merger Agreement is in full force and effect.

5.11 Evidence of Insurance. The Lender shall have received evidence of insurance and loss payee/additional insured endorsements required hereunder and under the other Loan Documents, in form and substance satisfactory to the Lender, and certificates of insurance policies and/or endorsements naming the Lender as loss payee/additional insured.

5.12 Existing Indebtedness. After giving effect to the Loans on the Closing Date, the Existing Indebtedness shall have been paid in full and the Liens securing the same released of record (or the Lender shall have received such releases of such Liens or assurances with respect thereto, all in form and substance satisfactory to the Lender).

5.13 Other Documents. The Lender shall have received, in form and substance satisfactory to Lender, such releases, terminations and other documents as the Lender may reasonably request.

SECTION 6. AFFIRMATIVE COVENANTS

The Borrower hereby agrees that, from and after the original Closing Date and through the indefeasible payment in full of the Loan and the Secured Obligations then due and owing to the Lender hereunder, the Borrower shall:

6.1 Payment of Obligations. Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings diligently conducted and which are reserved against on the Borrower's books and records.

6.2 Maintenance of Books and Records. The Borrower shall keep proper books and records in which true and complete entries shall be made of all dealings or transactions of or in relation to the Collateral and the business of Borrower and its Subsidiaries in accordance with GAAP, which books and records shall be maintained at the address set forth on Schedule 4.1 hereto.

6.3 Conduct of Business; Maintenance of Existence; and Compliance with Laws. Continue to engage in business of the same general type as conducted by the Borrower on the Closing Date, and preserve, renew and keep in full force and effect its corporate existence and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of the business of the Borrower. The Borrower shall do or cause to be done all things necessary to ensure compliance by the Borrower in all material respects with all Requirements of Law and all applicable restrictions imposed by any Governmental Authority.

6.4 Maintenance of Insurance. Maintain insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies of similar size engaged in similar businesses and owning similar properties and assets in the same general areas in which the Borrower operates and reasonably acceptable to the Lender, including, without limitation, primary, all risk, physical damage, property damage, and bodily injury with appropriate loss payee and additional insured endorsements in favor of the Lender.

6.5 Taxes. Timely pay all Taxes except Taxes being contested in good faith by appropriate proceedings (which shall be reserved against on the Borrower's books and records); provided that it shall pay any contested Taxes upon commencement of proceedings to foreclose upon any property or assets of the Borrower to pay such Taxes.

6.6 Maintenance of Properties. Maintain, preserve, protect and keep its properties in good repair, working order and condition (ordinary wear and tear excepted), and make reasonable, necessary and proper repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times consistent with past practices of the Borrower.

6.7 Information Rights. The Borrower shall deliver the following to the Lender:

(a) as soon as practicable, but in any event within ninety (90) days after the end of each calendar year, (i) consolidated income statement and statement of cash flows for such year and a balance sheet as of the end of such year, prepared in accordance with GAAP, and audited and certified by independent public accountants of nationally recognized standing selected by the Borrower and reasonably acceptable to the Lender and (ii) annual sales forecasts

and budgets for the then next two years, in each case in form and substance reasonably satisfactory to the Lender;

(b) as soon as practicable, (i) but in any event within thirty (30) days after the end of each calendar month an unaudited income statement and statement of cash flows for such month and an unaudited balance sheet as of the end of such month, (ii) but in any event within thirty (30) days after the end of each calendar month, monthly sales forecasts, and (iii) but in any event within thirty (30) days, monthly, quarterly and annual budgets (including variance reports) in form and substance reasonably satisfactory to the Lender; and

(c) as soon as reasonably practicable after requested by Lender, such other reports as Lender may reasonably request in connection with the Borrower, including without limitation the information referenced at Section 6.11.

6.8 Board Observation Rights. Following termination of the Merger Agreement and until such time as all Secured Obligations are indefeasibly repaid in full, the Lender shall have the right to have a representative attend all meetings of the Borrower's Board of Directors or any such committee thereof, in a nonvoting, observer capacity, the cost of which attendance shall be paid by the Borrower, including travel and related costs and expenses. The Borrower shall provide the Lender notice of such meetings at the same time and in the same manner as such notice is provided to the Board of Directors and the Borrower shall provide the Lender copies of all minutes, consents, and other materials the Borrower provides to its directors in conjunction with said meetings.

6.9 Access to Premises. Subject to the provisions of the Confidentiality Agreement between the Borrower and the Lender dated February 27, 2003, and Section 5.6 of the Merger Agreement, from time to time as requested by the Lender, (a) the Lender or its designee shall have complete access to all of the Borrower's premises and personnel during normal business hours and after reasonable prior notice to, or at any time and without notice to the Borrower if an Event of Default exists or has occurred and is continuing, for the purposes of inspecting, verifying and auditing the Collateral and all of Borrower's books and records, and (b) the Borrower shall promptly furnish to the Lender such copies of such books and records or extracts therefrom as the Lender may request, and (c) the Lender or the Lender's designee may use during normal business hours such of the Borrower's equipment, supplies and premises as may be reasonably necessary for the foregoing and, if an Event of Default exists or has occurred and is continuing, for the collection of accounts receivable and realization of other Collateral.

6.10 Lock Box Instructions. Upon the occurrence of an Event of Default, permit Lender, in Lender's sole discretion, to instruct each of the Borrower's customers and any other Persons with amounts owing to the Borrower to send all future payments to a designated Lock Box Account pursuant to instructions determined by the Lender in its sole discretion.

6.11 Updates to Weekly Projections. The Borrower shall consult with the Lender on a weekly basis with respect to the reconciliation of actual cash flow to that set forth in the Weekly Projections for the applicable period(s), and the Borrower shall provide the Lender with the updated Weekly Projections, which updates shall be consistent with the categories and details set forth in the Weekly Projections attached at Schedule 4.16(b) hereto, and which updates, for

purposes of making Loans pursuant to Section 2.1 hereof, shall in each instance be acceptable to the Lender in its sole and absolute discretion.

SECTION 7. NEGATIVE COVENANTS

The Borrower hereby agrees that, from and after the original Closing Date and thereafter until payment in full of all Secured Obligations, the Borrower shall not, without the Lender's prior written consent:

7.1 Limitation on Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of the Borrower under this Agreement; and

(b) other Indebtedness (including accrued interest thereon) outstanding on the original Closing Date and listed on Schedule 7.1(b) (none of which is secured).

7.2 Limitation on Liens. Create, incur, assume or suffer to exist any Liens on any properties or assets of the Borrower other than:

(a) Liens incurred in connection with Indebtedness permitted to be incurred or permitted to exist pursuant to Section 7.1(a);

(b) deposits under worker's compensation, unemployment insurance and Social Security laws or to secure statutory obligations or surety or appeal bonds or performance or other similar bonds in the ordinary course of business consistent with past practice;

(c) Liens for taxes, assessments or other governmental charges or levies due and payable, the validity or amount of which is currently being contested in good faith by appropriate proceedings and which have been reserved for on the Borrower's books and records;

(d) Except as set forth on Schedule 4.15, Liens arising out of attachments, judgments or awards as to which an appeal or other appropriate proceedings for contest or review are promptly commenced (and as to which foreclosure and other enforcement proceedings shall not have been commenced (unless fully bonded or otherwise effectively stayed)) and as to which reserves have been established, provided that the assets or property subject to such lien do not have a value in the aggregate greater than $50,000;

(e) [intentionally deleted];

(f) Liens existing on the Closing Date and described on Schedule 7.2(f); or

(g) Easements, reservations, rights-of-way, restrictions, minor defects or irregularities in title and other similar charges or encumbrances affecting real property not constituting, or not possible of resulting in, a Material Adverse Change.

7.3 Limitations on Transactions with Affiliates. Make any payment to or investment in, or enter into any transaction with, any Affiliate, including, without limitation, the purchase, sale or exchange of property or assets or the rendering of any service, except transactions entered into with Affiliates (a) in the ordinary course of business consistent with past practice, (b) on terms and conditions substantially similar to those that the Borrower would have received in an "arm's length" transaction with an independent third party and (c) related to the Borrower's principal activities; provided, however, that no payments shall be made (i) to pay any deferred compensation to any officer, director, employee, insider or Affiliate, or (ii) to reduce, retire or otherwise repay any note, Indebtedness or other debt or obligation of any officer, director, employee, insider or Affiliate (including, without limitation, any Subordinated Debt), or (iii) to reduce any single account payable of the Borrower by more than $50,000 or more than $150,000 in the aggregate without, in each case, the prior written approval of the Lender.

7.4 Restrictions on Transactions and Fundamental Changes. Alter the Borrower's capital or legal structure, or change its name, jurisdiction of formation or principal place of business/chief executive office, or enter into any transaction of merger, recapitalization, restructuring, consolidation or similar transaction, or liquidate, wind-up or dissolve the Borrower (or suffer any liquidation or dissolution), or convey, sell, lease, sub-lease, license, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of the Borrower's business, property or assets, whether now owned or hereafter acquired, or enter into any management contract permitting third-party management rights with respect to the Borrower's business, or declare or pay any dividends or make any other distribution to its shareholders, or make any investments, or make any loans, advances or other extensions of credit to any Person; provided, that (i) the Borrower may declare and make any dividend payment or other distribution payable in its equity securities; (ii) the Borrower may make travel advances in the ordinary course of business consistent with past practice in an aggregate amount of up to $25,000 per month, with an aggregate amount per employee of up to $5,000 per month and (iii) the Borrower may consummate the transactions contemplated under the Merger Agreement in accordance with the terms thereof.

7.5 Sale of Assets; Transfer to Subsidiary. Sell, lease, sub-lease, license, transfer or otherwise dispose of any of the Borrower's interest in its respective properties or assets, whether real, personal or mixed, or tangible or intangible, other than inventory in the ordinary course of business consistent with past practice. Borrower shall not sell, lease, sublease, license, transfer or otherwise dispose of any properties or assets to any subsidiary.

7.6 Repurchase of Securities. Repurchase, redeem or otherwise acquire or retire any of the Borrower's securities or obligation evidencing the right of any holder thereof to purchase any of the Borrower's securities without the prior written consent of the Lender, other than (a) under the terms and conditions of stock option, stock purchase, profit sharing or similar plans approved by the Borrower's Board of Directors or (b) pursuant to the Merger Agreement in accordance with the terms thereof; provided that with respect to transactions under (a) only: (i) the shares of common stock or other securities of the Borrower issued or issuable pursuant thereto do not constitute in the aggregate more than ten percent (10%) of the Borrower's total outstanding capital stock on a fully diluted basis; (ii) in no event shall the Borrower repurchase, redeem or otherwise acquire or retire shares that constitute in the aggregate more than (A) ten percent (10%) of the Borrower's total outstanding capital stock on a fully diluted basis or (B) more than

two percent (2%) of the Borrower's total outstanding capital stock on a fully diluted basis from any Person or their respective Affiliates (the securities of which Affiliates shall be deemed aggregated with such Person for such purpose); and (iii) any repurchase, redemption or other acquisition or retirement by the Borrower of securities acquired by an employee pursuant to any such plan shall be at a price not greater than the actual, cash price that such employee paid to acquire such securities.

7.7 Corporate Governance. Enter into one or more mortgage, indenture, agreement, contract, commitment, lease, plan, or other instrument, document or understanding, oral or written, with any Person in which (i) the Borrower is obligated to pay in excess of $100,000 in the aggregate within 12 months of the date hereof without obtaining the approval of the Board of Directors of the Borrower, and (ii) the Lender does not have a first-priority security interest as to payment or liquidation or otherwise.

7.8 Bank Accounts. Attached hereto as Schedule 7.8 is a list of all of the Borrower's present accounts at any bank or other financial institution, which list includes (i) the name and address of the applicable bank or financial institution, (ii) the account number and (iii) a contact person at such bank or financial institution responsible for the operation of such account (collectively, the "Bank Accounts"). The Borrower shall not establish any accounts other than the Bank Accounts, except upon not less than fifteen (15) days' prior written notice to Lender and delivery to Lender of an appropriate deposit account control agreement in form and substance satisfactory to the Lender. The Borrower shall not maintain or permit to exist any deposits or other funds of whatever nature outside of Montecito Bank & Trust in excess of the amounts and in the Bank Accounts set forth on Schedule 7.8.

7.9 Limitation on Liabilities. The Borrower shall not incur liabilities owing to any Person (other than in the ordinary course of business) and its Affiliates in excess of $100,000 in the aggregate without the prior approval of the Lender, which approval may be given or withheld in the Lender's sole discretion.

SECTION 8. EVENTS OF DEFAULT

8.1 Event of Default. If any of the following events shall occur and be continuing:

(a) the Borrower shall fail to pay any principal of or any interest on the Loan or any other amount payable hereunder when due in accordance with the terms hereof, or shall fail to make a mandatory prepayment as and when required under Section 3.2(b) hereof; or

(b) the Borrower shall default in the observance or performance of any covenant, agreement or other obligation contained in this Agreement or any other Loan Document, and such default continues for five (5) Business Days from the Borrower's knowledge thereof; or

(c) default shall be made with respect to any payment of any Indebtedness of the Borrower in excess of $250,000 when due or the performance of any covenant, agreement or other obligation incurred in connection with any such Indebtedness, if the effect of such default is to permit the acceleration of the maturity of such Indebtedness and such default shall not be remedied, cured, waived or consented to by the holder of such Indebtedness within the applicable

grace period, or any other circumstance arise (other than the mere passage of time) by reason of which the Borrower is required to repurchase or offer to holders of Indebtedness of any such Person, the opportunity to have purchased, any such Indebtedness; or

(d) (i) the Borrower shall commence any case, proceeding or other action (A) under any existing or future law or statute of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Borrower shall make a general assignment for the benefit of its creditors; (ii) there shall be commenced against the Borrower any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged, unstayed or unbonded for a period of 30 days; (iii) there shall be commenced against the Borrower any case, proceeding or other action seeking issuance of a warrant or writ of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for such relief which shall not have been vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof; (iv) the Borrower shall take any corporate action in furtherance of, or indicating its consent to, approval of or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Borrower shall be generally unable to, or shall admit its general inability to, pay its debts as they become due; or

(e) final judgment for the payment of money shall be rendered by a court of competent jurisdiction against the Borrower and the Borrower shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof within ten (10) calendar days from the date of entry thereof and within a period of thirty (30) days, or such longer period during which execution of such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal, and such judgment together with all other such judgments of the Borrower shall exceed in the aggregate $250,000; or

(f) any representation or warranty made by the Borrower in this Agreement, or any other Loan Document shall be false or incorrect in any material respect on any date on which such representation or warranty was made; or

(g) any Loan Document shall cease for any reason to be in full force and effect (other than pursuant to the express terms hereof or thereof), the Loan Documents shall, for any reason, not give or shall cease to give the Lender a perfected Lien in all of the Collateral with the priority contemplated by such Loan Documents and subject to no other Liens (except to the extent expressly permitted herein or therein) other than by actions of the Lender, or the Borrower shall so assert; or

(h) any Material Adverse Change shall have occurred; or

(i) a Prohibited Transaction shall have occurred.

then, and in each such event, (A) if such event is an Event of Default specified in clauses (i) or (ii) of paragraph (d) above with respect to the Borrower automatically the Loan hereunder (with accrued interest thereon) and all other Secured Obligations shall immediately become due and payable, and (B) if such event is any other Event of Default (except as otherwise provided in the definition of "Maturity Date," in which case no notice of acceleration shall be required), the Lender may, by notice to the Borrower, declare the Loan hereunder (with accrued but unpaid interest thereon including such interest accruing at the Default Rate) and all other Secured Obligations to be due and payable forthwith, whereupon the same shall immediately become due and payable.

8.2 Use of Collateral. So long as no Event of Default shall have occurred and be continuing, and subject to the various provisions of this Agreement and the other Loan Documents, the Borrower may use the Collateral in any lawful manner except as otherwise prohibited hereunder or thereunder.

8.3 Credit Parties to Hold in Trust. Upon the occurrence and during the continuance of an Event of Default, the Borrower will, upon receipt by it of any revenue, income, profits or other sums in which a security interest is granted hereunder, payable pursuant to any agreement or otherwise, or of any check, draft, note, trade acceptance or other instrument evidencing an obligation to pay any such sum, hold the sum or instrument in trust for the Lender, segregate such sum or instrument from their own assets and forthwith, without any notice, demand or other action whatsoever (all notices, demands, or other actions on the part of the Lender being expressly waived), endorse, transfer and deliver any such sums or instruments or both, to the Lender to be applied to the repayment of the Loan in accordance with the provisions of this Agreement.

8.4 Collections, etc. Upon the occurrence and during the continuance of an Event of Default, the Lender may, in its sole discretion, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for, or make any commercially reasonable compromise or settlement deemed desirable with respect to, any of the Collateral, but shall be under no obligation so to do, or the Lender may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to, or discharging or otherwise affecting any liability of the Borrower. The Lender will not be required to take any steps to preserve any rights against prior parties to the Collateral. If the Borrower fails to make any payment or take any action required hereunder, the Lender may make such payments and take all such actions as the Lender reasonably deems necessary to protect the Lender's security interests in the Collateral and/or the value thereof, and the Lender is hereby authorized (without limiting the general nature of the authority hereinabove conferred) to pay, purchase, contest and/or compromise any Liens that in the judgment of the Lender appear to be equal to, prior to or superior to the security interests of the Lender in the Collateral (other than those permitted hereunder) and any Liens not expressly permitted by this Agreement.

8.5 Possession, Sale of Collateral, etc. Upon the occurrence and during the continuance of an Event of Default, the Lender may enter upon the premises of the Borrower or wherever the Collateral may be, and take possession of the Collateral, and may demand and receive such possession from any Person who has possession thereof, and the Lender may take such measures

as it deems necessary or proper for the care or protection thereof, including the right to remove all or any portion of the Collateral, and with or without taking such possession may sell or cause to be sold, whenever the Lender shall decide, in one or more sales or parcels, at such prices as the Lender may deem appropriate, and for cash or on credit or for future delivery, without assumption of any credit risk, all or any portion of the Collateral, at any broker's board or at public or private sale, without demand of performance but within 10 days' written notice to the Borrower of the time and place of any such public sale or sales (which notice the Borrower hereby agrees is reasonable) and with such other notices as may be required by applicable law and cannot be waived, and the Lender shall have no liability should the proceeds resulting from a private sale be less than the proceeds realizable from a public sale, and the Lender or any other Person may be the purchaser of all or any portion of the Collateral so sold and thereafter hold the same absolutely, free (to the fullest extent permitted by applicable law) from any claim or right of whatever kind, including any equity of redemption, of the Borrower, any such demand, notice, claim, right or equity being hereby expressly waived and released by the Borrower. At any sale or sales made pursuant to this Section 8, the Lender may bid for or purchase, free (to the fullest extent permitted by applicable law) from any claim or right of whatever kind, including any equity of redemption, without demand therefore or notice to the Borrower, any such demand, notice, claim, right or equity being hereby expressly waived and released, any part of or all of the Collateral offered for sale, and may make any payment on account thereof by using any claim for moneys then due and payable to the Lender by the Borrower hereunder as a credit against the purchase price. The Lender shall in any such sale make no representations or warranties with respect to the Collateral or any part thereof, and the Lender shall not be chargeable with any of the obligations or liabilities of the Borrower. The Borrower hereby agrees (i) that it will indemnify and hold the Lender harmless from and against any and all claims with respect to the Collateral asserted before the taking of actual possession or control of the relevant Collateral by the Lender pursuant to this Section 8, or arising out of any act of, or omission to act on the part of, any Person prior to such taking of actual possession or control by the Lender (whether asserted before or after such taking of possession or control), or arising out of any act on the part of the Borrower or its Affiliates or agents before or after the commencement of such actual possession or control by the Lender, but excluding therefrom all claims with respect to the Collateral resulting from the gross negligence or willful misconduct of the Lender; and (ii) the Lender shall not have liability or obligation to the Borrower arising out of any such claim except for acts of gross negligence or willful misconduct of the Lender. Subject only to the lawful rights of third parties, any Person that has possession of any of the Collateral is hereby constituted and appointed by the Borrower as pledgeholder for the Lender and, upon the occurrence of an Event of Default, each such pledgeholder is hereby authorized (to the fullest extent permitted by applicable law) to sell all or any portion of the Collateral upon the order and direction of the Lender, and the Borrower hereby waives any and all claims, for damages or otherwise, for any action taken by such pledgeholder in accordance with the terms of the UCC not otherwise waived hereunder. In any action hereunder, the Lender shall be entitled, if permitted by applicable law, to the appointment of a receiver without notice, to take possession of all or any portion of the Collateral and to exercise such powers as the court shall confer upon the receiver. Notwithstanding the foregoing, upon the occurrence of an Event of Default, and during the continuation of such Event of Default, the Lender shall be entitled to apply, without prior notice to the Borrower, any cash or cash items constituting Collateral in the possession of the Lender to payment of the Secured Obligations.

8.6 Application of Proceeds on Default. Upon the occurrence and during the continuance of an Event of Default, the balances in any account of the Borrower which constitutes part of the Collateral, all other income on the Collateral, and all proceeds from any sale of the Collateral pursuant hereto shall be applied first toward payment of the costs and expenses paid or incurred by the Lender in enforcing this Agreement, in realizing on or protecting any Collateral and in enforcing or collecting any Secured Obligations, including, without limitation, court costs and the attorney's fees and expenses incurred by the Lender, then to satisfy or provide cash Collateral for all obligations relating to Secured Obligations, and then the indefeasible payment in full of the Secured Obligations in accordance with this Agreement. Any amounts remaining after such indefeasible payment in full shall be remitted to the Borrower or as a court of competent jurisdiction may otherwise direct.

8.7 Power of Attorney. Upon the occurrence and during the continuance of an Event of Default which is not waived in writing by the Lender, (a) the Borrower does hereby irrevocably make, constitute and appoint the Lender or any of its officers or designees the Borrower's true and lawful attorney-in-fact with full power in the name of the Lender or such other Person to receive, open and dispose of all mail addressed to the Borrower, and to endorse any notes, checks, drafts, money orders or other evidences of payment relating to the Collateral that may come into the possession of the Lender with full power and right to cause the mail of such Persons to be transferred to the Lender's own offices or otherwise, and to do any and all other acts necessary or proper to carry out the intent of this Agreement and the grant of the security interests hereunder and under the Loan Documents, and the Borrower hereby ratifies and confirms all that the Lender or its substitutes shall properly do by virtue hereof; (b) the Borrower does hereby further irrevocably make, constitute and appoint the Lender or any of its officers or designees its true and lawful attorney-in-fact in the name of the Lender or the Borrower (i) to enforce all of the Borrower's rights under and pursuant to all agreements with respect to the Collateral, all for the sole benefit of the Lender and to enter into such other agreements (as may be lawful and without breach of contract) as may be necessary, desirable or appropriate in the judgment of the Lender to complete the production, distribution or exploitation of any Collateral, (ii) to enter into and perform such agreements as may be necessary, desirable or appropriate in the judgment of the Lender in order to carry out the terms, covenants and conditions of the Loan Documents that are required to be observed or performed by the Borrower, (iii) to execute such other and further mortgages, pledges and assignments of the Collateral, and related instruments or agreements, as the Lender may reasonably require for the purpose of perfecting, protecting, maintaining or enforcing the security interests granted to the Lender hereunder, and under the other Loan Documents, and (iv) to do any and all other things necessary, desirable or appropriate in the judgment of the Lender to carry out the intention of this Agreement and the grant of the security interests hereunder and under the other Loan Documents. The Borrower hereby ratifies and confirms in advance all that the Lender as such attorney-in-fact or its substitutes shall properly do by virtue of this power of attorney.

8.8 Termination and Release. The security interests granted under this Agreement shall terminate when all the Secured Obligations have been indefeasibly paid in full and performed and the commitments pursuant to this Agreement shall have terminated. Upon request by the Borrower (and at the sole expense of the Borrower) after such termination, the Lender will take all reasonable action and do all things reasonably necessary, including executing UCC

termination statements, termination letters to account debtors and copyright and trademark releases, to terminate the security interest granted to it hereunder.

8.9 Remedies Not Exclusive. The remedies conferred upon or reserved to the Lender in this Section 8 are intended to be in addition to, and not in limitation of, any other remedy or remedies available to the Lender. Without limiting the generality of the foregoing, the Lender shall have all rights and remedies of a secured creditor under Article 9 of the UCC and other applicable law.

SECTION 9. MISCELLANEOUS

9.1 [intentionally deleted]

9.2 Indemnification. The Borrower agrees to indemnify, defend and hold harmless the Lender and each of its successors, assigns, heirs, Subsidiaries, Affiliates and all of the officers, directors, employees, partners, members, representatives, advisors and agents (including, without limitation, attorneys and accountants) of each of the aforementioned Persons, and each of them, from and against any and all losses, claims, damages, liabilities, expenses, demands, causes of action, suits, debts, obligations, rights, promises, acts, agreements and damages of any kind or nature whatsoever, whether at law or in equity, whether known or unknown, foreseen or unforeseen, heretofore or hereafter arising out of, relating to, connected with or incidental to the failure of any representation or warranty made by the Borrower in this Agreement, the other Loan Documents or in any other documents or agreements contemplated hereby or thereby or the failure of the Borrower to comply with the covenants, agreements or other obligations contained in this Agreement or the other Loan Documents (but excluding (i) any such losses, claims, damages, liabilities, expenses, demands, causes of action, suits, debts, obligations, rights, promises, acts, agreements and damages of the Lender to the extent incurred solely by reason of the gross negligence or willful misconduct of the Lender or (ii) litigation solely between the Borrower, on the one hand, and the Lender, on the other hand, in connection with this Agreement or the other Loan Documents or relating to the transactions contemplated hereby or thereby if, after final non-appealable judgment, the Lender is not the prevailing party in such litigation). The agreements in this Section 9.2 shall survive the execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby or thereby.

9.3 Entire Agreement; Amendments. This Agreement and the other Loan Documents constitute the entire agreement between the Lender and the Borrower pertaining to the subject matter contained herein and therein. Neither this Agreement nor any other Loan Document, nor any terms hereof or thereof, may be amended, supplemented or modified, nor may the obligations of the parties hereto or thereto be waived, except pursuant to a writing signed by both the Lender and the Borrower.

9.4 Waivers. The Lender shall not be deemed, by any act or omission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Lender and then only to the extent specifically set forth in such writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. No delay or omission of the Lender to exercise any right, whether before or

after a default hereunder, shall impair any such right or shall be construed to be a waiver of any right or default, and the acceptance at any time by the Lender of any past-due amount shall not be deemed to be a waiver of the right to require prompt payment when due of any other amounts then or thereafter due and payable.

9.5 Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, or three days after being deposited in the mail, postage prepaid, or, in the case of a telecopy notice, when received (provided an original copy of such notice is mailed, postage pre-paid within the next business day after such notice is sent by telecopy), or, in the case of delivery by a nationally recognized overnight courier, when received, addressed as follows, or to such other address as may be hereafter notified by the respective parties hereto:

The Borrower:	Computer Motion, Inc. 130-B Cremona Drive Santa Barbara, California 93117 Attn: Robert W. Duggan, Chief Executive Officer Fax: 805-968-4920
with a copy to:	Stradling, Yocca, Carlson & Rauth 302 Olive Street Santa Barbara, California 93101 Attn: David Lafitte, Esq. Fax: 805-564-1044
The Lender:	Intuitive Surgical, Inc. 950 Kifer Road Sunnyvale, California 94086 Attn: Lonnie M. Smith, Chief Executive Officer Fax: 408-523-2372
with a copy to:	Latham & Watkins LLP 505 Montgomery Street San Francisco, California 94111-2562 Attn: John M. Newell, Esq. Fax: 415-395-8095

9.6 Successors and Assigns. The Borrower may not assign its rights or obligations under this Agreement or the Note without the written consent of the Lender. This Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender and their respective successors and permitted assigns.

9.7 Interest Deficit. If the provisions of this Agreement or the Note would at any time require payment by the Borrower to the Lender of any amount of interest in excess of the maximum amount then permitted by applicable law, the interest payments to the Lender shall be

reduced but only to the extent necessary so that the Lender shall not receive interest in excess of such maximum amount. If, as a result of the foregoing, the Lender shall receive interest payments under the Note in an amount less than the amount otherwise provided hereunder, such deficit (hereinafter called the "Interest Deficit") will, to the fullest extent permitted by applicable law, cumulate and will be carried forward (without interest) until the payment in full of the Note or such earlier time as it may be paid. Interest otherwise payable to the Lender for any subsequent period shall be increased by the maximum amount of the Interest Deficit that may be so added without causing the Lender to receive interest in excess of the maximum amount then permitted by the law applicable thereto. The amount of any Interest Deficit shall be treated as a prepayment penalty and shall, to the fullest extent permitted by applicable law, be paid in full at the time of any prepayment by the Borrower to the Lender. The amount of any Interest Deficit at the time of any complete payment of the Loan (if any) (other than an optional prepayment thereof) shall, except to the full extent then permitted to be paid under applicable law, be canceled and not paid.

9.8 Confidentiality. In handling any confidential information of the Borrower, the Lender shall exercise the same degree of care that it exercises with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this Agreement, except that disclosure of such information may be made (i) to the Subsidiaries or Affiliates of the Lender in connection with their present or prospective business relations with the Borrower, (ii) to prospective transferees or purchasers of any interest in the Loan, provided that they have entered into a comparable confidentiality agreement in favor of the Borrower and have delivered a copy to the Borrower, (iii) under any Requirement of Law, (iv) as may be required in connection with the examination, audit or similar investigation of the Lender, (v) in connection with the Merger Agreement and (vi) as the Lender may deem appropriate in connection with the exercise of any remedies hereunder. Confidential information hereunder shall not include information that either (a) is in the public domain or in the knowledge or possession of the Lender when disclosed to the Lender by the Borrower, or becomes part of the public domain after disclosure to the Lender through no fault of the Lender; or (b) is disclosed to the Lender by a third party, provided the Lender does not have actual knowledge that such third party is prohibited from disclosing such information.

9.9 Payment of Expenses. Without duplication of amounts payable under Section 7.2.2 of the Merger Agreement, the Borrower agrees to pay or reimburse the Lender upon the termination of the Merger Agreement for all of the Lender's out-of-pocket costs and expenses incurred in connection with its due diligence with respect to the Loan, the preparation, execution, delivery and performance of this Agreement and the other Loan Documents, the consummation of the transactions contemplated hereby and thereby and the enforcement of its rights hereunder or thereunder, including, without limitation, the reasonable fees and disbursements of the Lender's outside counsel; provided that notwithstanding Section 7.2.2. of the Merger Agreement, the Borrower agrees to reimburse the Lender for all such costs and expenses (including without limitation the reasonable fees and disbursements of the Lender's outside counsel) incurred by the Lender in connection with the Loan Documents following termination of the Merger Agreement, including without limitation in connection with the enforcement of the Lender's rights hereunder and under the other Loan Documents.

9.10 Captions. The captions of the Sections of this Agreement have been inserted for convenience only and shall have no substantive effect.

9.11 Counterparts. This Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which counterparts together shall constitute one and the same instrument.

9.12 Severability; Reformation. In case any provision of this Agreement shall be held to be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the parties, and if such modification is not possible, such provision shall be severed from this Agreement, and in either case the validity, legality and enforceability of the remaining provisions of this Agreement and the future application of such provision shall not in any way be affected or impaired thereby.

9.13 WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH OF THE BORROWER AND THE LENDER HEREBY WAIVES, AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE SUBJECT MATTER HEREOF, ANY OTHER LOAN DOCUMENT OR THE SUBJECT MATTER THEREOF, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT OR TORT OR OTHERWISE. EACH OF THE BORROWER AND THE LENDER ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTY HERETO THAT THE PROVISIONS OF THIS SECTION CONSTITUTE A MATERIAL INDUCEMENT UPON WHICH SUCH OTHER PARTY HAS RELIED, IS RELYING AND WILL RELY IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 9.13 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE COMPANY AND THE LENDER TO THE WAIVER OF ITS RIGHTS TO TRIAL BY JURY.

9.14 GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PROVISIONS.

9.15 CONSENT TO JURISDICTION/SERVICE OF PROCESS. EACH OF THE BORROWER AND THE LENDER IRREVOCABLY CONSENT AND SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF SANTA CLARA COUNTY, CALIFORNIA, AND THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, WHICHEVER THE LENDER MAY ELECT, AND WAIVE ANY OBJECTION BASED ON VENUE OR FORUM NON CONVENIENS WITH RESPECT TO ANY ACTION INSTITUTED THEREIN ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS WHETHER IN CONTRACT, TORT, EQUITY

OR OTHERWISE, AND AGREE THAT ANY DISPUTE WITH RESPECT TO ANY SUCH MATTERS SHALL BE HEARD ONLY IN THE COURTS DESCRIBED ABOVE (EXCEPT THAT THE LENDER SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST THE BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH THE LENDER DEEMS NECESSARY OR APPROPRIATE IN ORDER TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE ITS RIGHTS AGAINST THE BORROWER OR ITS PROPERTY). THE BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL (RETURN RECEIPT REQUESTED) DIRECTED TO ITS ADDRESS SET FORTH HEREIN AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO DEPOSITED IN THE U.S. MAILS, OR, AT THE LENDER'S OPTION, BY SERVICE UPON THE BORROWER IN ANY OTHER MANNER PROVIDED UNDER THE RULES OF ANY SUCH COURTS.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Loan and Security Agreement to be duly executed and delivered on their behalf as of the date first above written.

COMPUTER MOTION, INC.

By: /s/ Robert W. Duggan

Name: Robert W. Duggan
Title: Chief Executive Officer

INTUITIVE SURGICAL, INC.

By: /s/ Lonnie M. Smith

Name: Lonnie M. Smith
Title: President & Chief Executive Officer

EXHIBIT A
COLLATERAL OF BORROWER

The Collateral shall consist of all right, title and interest of Borrower in and to the following, in each case whether now owned or hereafter arising or acquired by Borrower:

(a) All present and future accounts, general intangibles and other rights of Borrower to the payment of money no matter how evidenced, all chattel paper, instruments and other writings evidencing any such right, and all goods repossessed or returned in connection therewith;

(b) All inventory of Borrower, now owned or hereafter acquired, and all raw materials, work in process, materials used or consumed in Borrower's business and finished goods, together with all additions and accessions thereto and replacements therefor, and products thereof;

(c) All equipment of Borrower, now owned or hereafter acquired, including, without limitation, all vehicles (including motor vehicles and trailers) machinery, tools, dies, blueprints, catalogues, computer hardware and software, furniture, furnishings and fixtures and all attachments, accessories, replacements, substitutions, additions, and improvements to any of the foregoing;

(d) All documents, letters of credit and rights to proceeds of letters of credit, instruments and investment property of Borrower, now owned or hereafter acquired, and all new, substituted and additional documents, securities and instruments issued with respect thereto, all voting or other rights now or hereafter exercisable and all cash and noncash dividends, interest and other property now or hereafter receivable with respect to any of the foregoing, whether such certificates, documents and instruments are in the possession of Borrower or a financial intermediary on behalf of Borrower;

(e) All patents and patent applications of Borrower and all rights corresponding thereto throughout the world, and all unpatented or unpatentable developments and inventions and all license fees, royalties and other similar items received in connection therewith;

(f) All trademarks, service marks and logos of Borrower, and all United States, state and/or foreign applications for registration thereof, all trade names, trade styles, designs, and the like, all elements of package or trade dress of goods, the goodwill of Borrower's business connected with the use of, and symbolized by any of the above, and all property of Borrower necessary to produce any products sold under any of the above;

(g) All copyrights and copyrighted works in which Borrower has any right, title, or interest throughout the world, all derivative works thereof, all copyright registrations and all applications therefor, and United States and/or foreign applications for registration and registrations thereof, and all accounts, accounts receivable and contracts receivable generated by such copyrights;

(h) All computer software programs developed or to be developed by Borrower or in which Borrower asserts or could assert a proprietary interest; all personal property, including but not limited to source codes, object codes or similar information, which is necessary to the practical utilization of such programs; and all tangible property of Borrower embodying or incorporating any such programs;

(i) All trade secrets, proprietary information, customer lists, instructional materials, working drawings, manufacturing techniques, process technology documentation, and product formulations of Borrower and all property and assets of Borrower, whether tangible or intangible, which are or a person may deem to be intellectual property of Borrower;

(j) All rights under any agreement granting any right to use any patent, trademark, copyright, computer software program or any other property or right to property specified in paragraphs (e), (f), (g), (h) or (i) above, whether Borrower is the grantor or the grantee under such agreement;

(k) All commercial tort claims, including without limitation those identified at Schedule I hereto;

(l) All rights to damages or profits due or accrued arising out of past, present or future infringement of the Collateral or injury to Borrower's good will connected with the use of the Collateral and the right to sue therefor;

(m) All renewals, modifications, amendments, re-issues, divisions, continuations in whole or part, and extensions of any Collateral;

(n) All right, title and interest of Borrower in, to and under each contract entered into or to be entered into by Borrower, together with any purchase orders or other supplements thereto, as any such contract may be modified, amended or restated from time to time, and all right, title and interest of Borrower in and to all moneys and claims for moneys due or to become due to Borrower under or arising out of any such contract;

(o) All now existing and hereafter acquired books and records relating to the foregoing Collateral and all equipment containing such books and records; and

(p) All Proceeds of the foregoing Collateral; and

(q) Any and all claims, rights and interests in any of the foregoing of the above and all substitutions for, additions and accessions to and proceeds thereof.

EXHIBIT B
FORM OF INTELLECTUAL PROPERTY SECURITY AGREEMENT

INTELLECTUAL PROPERTY SECURITY AGREEMENT

INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "Agreement") is entered into as of _____, 2003 by and between INTUITIVE SURGICAL, INC. ("Lender") and COMPUTER MOTION, INC., a Delaware corporation ("Grantor").

RECITALS

A. Lender has agreed to make certain advances of money and to extend certain financial accommodations to Grantor (the "Loans") in the amounts and manner set forth in that certain Loan and Security Agreement dated as of March 7, 2003, by and between Lender and Grantor (as the same may be amended, modified or supplemented from time to time, the "Loan Agreement"; capitalized terms used herein are used as defined in the Loan Agreement). Lender is willing to make the Loans to Grantor, but only upon the condition, among others, that Grantor shall grant to Lender a security interest in all of its Copyrights, Trademarks and Patents to secure the obligations of Grantor under the Loan Agreement.

B. Pursuant to the terms of the Loan Agreement, Grantor has granted to Lender a security interest in all of Grantor's right, title and interest, whether presently existing or hereafter acquired, in, to and under all of the Collateral, including, without limitation, all of its Copyrights, Trademarks and Patents.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound, as collateral security for the prompt and complete payment when due of its obligations under the Loan Agreement and the other Loan Documents, Grantor hereby represents, warrants, covenants and agrees as follows:

AGREEMENT

To secure its obligations under the Loan Documents and under all other agreements now existing or hereafter arising between Grantor and Lender, Grantor assigns to Lender for security purposes, and grants and pledges to Lender, a security interest in all of Grantor's right, title and interest in, to and under its Intellectual Property Collateral (including, without limitation, those Copyrights, Patents and Trademarks listed on Schedules A, B and C hereto), together with the goodwill of the businesses associated with the Trademarks, and including, without limitation, all proceeds thereof (such as, by way of example but not by way of limitation, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all re-issues, re-examinations, divisions continuations, renewals, termination rights, extensions and continuations-in-part thereof.

This security interest is granted in conjunction with the security interest granted to Lender under the Loan Agreement. The rights and remedies of Lender with respect to the security interest granted hereby are in addition to those set forth in the Loan Agreement and the

other Loan Documents, and those which are now or hereafter available to Lender as a matter of law or equity. Each right, power and remedy of Lender provided for herein or in the Loan Agreement or any of the Loan Documents, or now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in a addition to every right, power or remedy provided for herein and the exercise by Lender of any one or more of the rights, powers or remedies provided for in this Agreement, the Loan Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity, shall not preclude the simultaneous or later exercise by any person or entity, including Lender, of any or all other rights, powers or remedies.

Grantor represents and warrants that Exhibits A, B, and C attached hereto set forth any and all intellectual property rights in connection to which Grantor has registered or filed an application with either the United States Patent and Trademark Office or the United States Copyright Office, as applicable.

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which counterparts together shall constitute one and the same instrument.

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PROVISIONS, EXCEPT TO THE EXTENT GOVERNED BY FEDERAL LAW, IN WHICH CASE FEDERAL LAW SHALL APPLY.

This Agreement may not be amended, supplemented or modified, nor may the obligations of the parties hereto be waived, except pursuant to a writing signed by both Lender and Grantor.

Grantor may not assign its rights or obligations under this Agreement or otherwise encumber or hypothecate its Intellectual Property Collateral without the consent of Lender. This Agreement shall be binding upon and inure to the benefit of Lender and Grantor and their respective successors and permitted assigns.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties have cause this Intellectual Property Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.

GRANTOR:

COMPUTER MOTION, INC.

Address of Grantor:

130-B Cremona Drive

Santa Barbara, California 93117
Attn: Robert W. Duggan,
Chief Executive Officer

By: _____
Name:
Title:

LENDER:

INTUITIVE SURGICAL, INC.

Address of Lender:

950 Kifer Road
Sunnyvale, California 94086
Attn: Lonnie M. Smith, Chief Executive Officer

By: _____
Name:
Title:

STATE OF [_____].)
) SS
COUNTY OF _____   )

On the _____ day of _____ , 2003, before me, _____ , a notary public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon which the person(s) acted, executed this instrument.

WITNESS my hand and official seal.

_____
Notary Public

My commission expires:

STATE OF [_____])
) SS
COUNTY OF _____   )

On the _____ day of _____ , 2003, before me, _____ , a notary public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon which the person(s) acted, executed this instrument.

WITNESS my hand and official seal.

_____
Notary Public

My commission expires:

EXHIBIT A

Registered Copyrights

[Grantor to provide]

EXHIBIT B

Patents

[Grantor to provide]

EXHIBIT C

Trademarks

[Grantor to provide]

EXHIBIT C
FORM OF NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR WITH THE SECURITIES COMMISSION OF ANY APPLICABLE STATE UNDER SUCH STATE'S SECURITIES OR BLUE SKY LAWS, AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER SUCH SECURITIES ACT AND THE APPLICABLE STATE SECURITIES OR BLUE SKY LAWS, PURSUANT TO REGISTRATION OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS.

$7,300,000 _____, 2003

Computer Motion, Inc., a Delaware corporation ("Borrower"), for value received, hereby promises to pay to the order of Intuitive Surgical, Inc. (the "Lender"), the aggregate principal amount of Seven Million Three Hundred Thousand Dollars ($7,300,000), or the aggregate outstanding principal amount of all Loans made by the Lender to Borrower pursuant to the Loan and Security Agreement (as defined below), whichever is less (the "Principal Amount"), together with accrued and unpaid interest on the Principal Amount, on Maturity Date, in such coin or currency of the United States of America as at the time of payment shall be legal tender therein for the payment of public and private debts. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in that certain Loan and Security Agreement dated as of March 7, 2003, between Borrower and the Lender (as amended from time to time, the "Loan Agreement").

This Note shall accrue interest at a fixed rate per annum of eight percent (8%) (the "Interest Rate") with respect to the outstanding unpaid Principal Amount plus any accrued but unpaid interest thereon and on any other Secured Obligations compounding annually (the "Interest") until and including the date the Principal Amount, such interest and the other Secured Obligations are paid in full. Such Interest shall, except as provided in the last sentence of this paragraph, be due and payable, together with all outstanding Principal Amount, on the Maturity Date (or such earlier date as required under the Loan Agreement), in each case with interest to accrue and be due and payable through and including the applicable payment date. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months, provided, however, that per diem interest shall be calculated on the basis of the actual number of days elapsed over a year of 365 days. The Secured Obligations under this Note are secured by the Collateral of Borrower pursuant to the Loan and Security Agreement. Without duplication of any interest payable hereunder, Borrower hereby unconditionally promises to pay to the Lender interest on any principal, interest and any other Secured Obligations payable by Borrower under this Loan that shall not be paid in full when due (whether at the Maturity Date, by acceleration or otherwise), for the period from and including the due date of such payment to and including the date the same is paid in full, at a rate per annum equal to the Interest Rate plus 400 basis points, which interest shall be payable from time to time on demand of the Lender.

Borrower hereby waives presentment, demand, protest, notice of dishonor, diligence and all other notices, any release or discharge arising from any extension of time, discharge of a prior party, release of any or all of any security given from time to time for this Note, or other cause of release or discharge other than actual payment in full hereof.

The Lender may, but is not obligated to, enter the amount of each Loan and the amount of each payment or prepayment of principal or interest thereon on the appropriate spaces on the last page of this Note; provided, however, that the failure of the Lender to set forth such Loan, principal payments, interest payments or other information shall not in any manner affect the obligations of Borrower to repay such Loan or any Secured Obligations.

The Lender shall not be deemed, by any act or omission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Lender and then only to the extent specifically set forth in such writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. No delay or omission of the Lender to exercise any right, whether before or after a default hereunder, shall impair any such right or shall be construed to be a waiver of any right or default, and the acceptance at any time by the Lender of any past-due amount shall not be deemed to be a waiver of the right to require prompt payment when due of any other amounts then or thereafter due and payable.

Time is of the essence hereof. Upon any default hereunder, the Lender may exercise all rights and remedies provided for herein and by law or equity, including, without limitation, the right to immediate payment in full of this Note.

The remedies of the Lender as provided herein or in law or in equity, or any one or more of them, shall be cumulative and concurrent, and may be pursued singularly, successively or together at Lender's sole discretion, and may be exercised as often as occasion therefor shall occur.

It is expressly agreed that if this Note is referred to an attorney or if suit is brought to collect or interpret this Note or any part hereof or to enforce or protect any rights conferred upon the Lender by this Note or any other Document, then Borrower promises and agrees to pay all costs, including, without limitation, attorneys' fees, incurred by the Lender.

This Note and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of California without giving effect to any conflict of law provisions.

This is the Note referred to in the Loan Agreement and is subject to and entitled to the benefits of said agreement, including, without limitation, acceleration and the right in certain circumstances to require that this Note be prepaid prior to the Maturity Date.

IN WITNESS WHEREOF, Borrower has duly executed and delivered this Note as of the date first written above.

COMPUTER MOTION, INC.

By: _____
Name:
Title:

LAST PAGE OF NOTE

Payments

Date	Amount of Loan	Principal	Interest	Unpaid Principal Balance of Note	Name of Person Making Notation
----	-------	---------	--------	---------------	--------

EXHIBIT D
FORM OF NOTICE OF BORROWING

[Date]

Intuitive Surgical, Inc.
950 Kifer Road
Sunnyvale, California 94086
Attn: Lonnie M. Smith, Chief Executive Officer

Ladies and Gentlemen:

The undersigned, Computer Motion, Inc., refers to that certain Loan and Security Agreement dated as of March 7, 2003 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"; capitalized terms used and not otherwise defined herein shall have the meanings given in the Loan Agreement), between the undersigned, as Borrower, and Intuitive Surgical, Inc., as Lender, and hereby gives you notice, irrevocably, pursuant to Section 2.1(i) of the Loan Agreement that the undersigned hereby requests that the Lender make a Loan in the amount of [up to $2,300,000] (the "Proposed Borrowing"), on _____, 2003, which is a Business Day.

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Borrowing:

(a) the representations and warranties contained in each Loan Document are correct on and as of the date of the Proposed Borrowing, before and after giving effect to the Proposed Borrowing and to the application of the proceeds therefrom, as though made on and as of such date; and

(b) no event has occurred and is continuing, or would result from such Proposed Borrowing or from the application of the proceeds therefrom, that constitutes a Default.

The undersigned hereby directs and authorizes you to disburse the entire proceeds of the Proposed Borrowing as follows:

[Payment information for Agility Capital, LLC]

COMPUTER MOTION, INC.

By _____
Name:
Title:

Exhibit 99.1

INTUITIVE SURGICAL AND COMPUTER MOTION ANNOUNCE MERGER AGREEMENT

SUNNYVALE, CALIF., MARCH 7, 2003 - Intuitive Surgical (NASDAQ: ISRG) and Computer Motion (NASDAQ: RBOT) today announced they are merging into one company that combines their strengths in operative surgical robotics, telesurgery, and operating room integration, to better serve hospitals, doctors and patients.

Under the terms of the definitive merger agreement, Computer Motion's equity holders would receive 32 percent of the combined company on a fully diluted basis (including out-of-the-money options and warrants), and Intuitive's equity holders would receive 68 percent. The merger agreement exchange ratio formula anticipates that each outstanding share of Computer Motion common stock would be converted into approximately 0.52 shares of Intuitive common stock. In the event that Computer Motion's common stock trades at an average of less than $1.86 per share before the merger, the exchange ratio will be reduced, but shall in no event be less than approximately 0.48. (See attached table). Under the merger agreement, it is anticipated that Intuitive will issue an aggregate of approximately 15.39 million shares, on a net fully diluted basis, in exchange for all of Computer Motion's outstanding common stock, preferred stock, options and warrants. The merger is subject to the approval of a majority of the shareholders of each company and is intended to be a tax-free reorganization. In addition, Intuitive may provide a bridge loan to Computer Motion to provide working capital for its operations through the closure period if necessary.

"Both of our companies have made tremendous contributions to medicine by delivering less-invasive surgery with surgical robotics," said Intuitive Surgical President

and CEO Lonnie Smith. "By combining our highly complementary technology and talents, we believe we will be able to provide surgeons and hospitals with the best possible products and support to serve their patients' needs in minimally invasive surgery. We believe both the da Vinci(TM) and ZEUS(R) surgical system platforms will play an important and complementary role in the future of our new company with each delivering unique benefits to our customers."

"Surgical robotics has delivered on its promise of making surgery less invasive, shortening recovery times and lessening the trauma for patients, while providing economic value for our hospital customers," said Robert Duggan, Chairman and CEO of Computer Motion. "Separately, our companies wouldn't be able to accomplish for patients and our shareholders what we will be able to accomplish together. By sharing our complementary technologies in networking, articulation, control and visualization, we believe we will significantly strengthen the surgical capabilities of both the da Vinci and ZEUS product platforms. We look forward to working as one team to enhance the care received by patients through less-invasive surgery."

The merger will also end a series of long-term patent disputes. "With these disputes behind us, we can focus the talent and energy of the combined organization on developing and growing the application of robotics to minimally invasive surgery; the significant benefits we bring to patients, surgeons, and medical centers throughout the world; and the operating efficiencies that the combination will deliver to the bottom line," Mr. Smith concluded.

"This is an important merger for Computer Motion. Eliminating intellectual property litigation and initiating technology sharing should have a positive impact on

market value. In addition, this merger strengthens our organization's financial and operational capabilities," Mr. Duggan added.

Intuitive's da Vinci Surgical System is used by surgeons in more than 100 hospitals around the world and provides all the advantages of open surgery while simultaneously allowing the surgeon to work through small ports of minimally invasive surgery. Intuitive shipped 60 da Vinci Surgical Systems in 2002 and had total sales of $72 million.

Computer Motion is a high-tech medical device company evolving surgical practices to enhance patient lives. Computer Motion plays a significant role in transitioning the surgical community from current open procedures to endoscopic procedures that are less painful and traumatic to the patient. Computer Motion's products include the ZEUS(R) MicroWrist(TM) Robotic Surgical System for minimally invasive surgical procedures, and the HERMES(R) Control Center, a centralized system that enables the surgeon to voice control a network of "smart" medical devices. The AESOP(R) Robotic Endoscope Positioner is the first surgical robot to be made commercially available in the U.S. The company's newest product, the SOCRATES(TM) Telecollaboration System, facilitates surgeon collaboration using video and audio conferencing, shared control of the endoscopic camera, and video annotation on the surgical image in the operating room.

The merged company will be traded on NASDAQ under a symbol to be determined. Mr. Smith will serve as President and CEO and Mr. Duggan will serve as member of the Board of Directors. Mr. Darrin Uecker will join the new executive team as Vice President and Chief Technical Officer and will report to Dr. Gary Guthart, Senior

Vice President of Operations. The company will be headquartered in Sunnyvale, Calif., with operations in both Sunnyvale and Goleta, Calif.

Intuitive Surgical and Computer Motion will host a joint conference call to discuss this merger today at 10:00 AM PST. The dial-in numbers for this call are 877-909-3508 for U.S. calls and 484-630-4228 for International calls. The passcode is ISRG and the leader is Lonnie Smith.

About Intuitive Surgical

The DA VINCI(TM) Surgical System consists of a surgeon's viewing and control console having an integrated, high-performance INSITE(TM) 3-D vision system, a patient-side cart consisting of three robotic arms that position and precisely maneuver endoscopic instruments and an endoscope, and a variety of articulating ENDOWRIST(TM) Instruments. By integrating computer-enhanced technology with surgeons' technical skills, Intuitive believes that its System enables surgeons to perform better surgery in a manner never before experienced. The DA VINCI Surgical System seamlessly and directly translates the surgeon's natural hand, wrist and finger movements on instrument controls at the surgeon's console outside the patient's body into corresponding micro-movements of the instrument tips positioned inside the patient through small puncture incisions, or ports. The company's web site is www.intuitivesurgical.com

About Computer Motion

Computer Motion's products include the ZEUS(R) Surgical System for minimally invasive surgical procedures, and the HERMES(R) Control Center, a centralized system that enables the surgeon to voice control a network of "smart" medical devices. The AESOP(R) Robotic Endoscope Positioner is the first surgical robot to be made commercially available in the U.S. The company's newest product, the SOCRATES(TM) Telecollaboration System, facilitates surgeon collaboration using video and audio conferencing, shared control of the endoscopic camera, and video annotation on the surgical image in the operating room. The company's products are CE-Marked for commercial sale in the European Community. The company's Web site is www.ComputerMotion.com.

# # #

This news release contains forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, including statements about future financial and operating results and Intuitive's anticipated merger with Computer Motion. You can identify these forward-looking statements when you see us using words such as "intends," "expects," "anticipates," "estimates" and other similar expressions. These statements are based on current expectations and beliefs and are subject to a number of risks, uncertainties and assumptions that could cause actual results to differ materially from those described in the forward-looking statements. Actual results could differ materially from those expressed or implied in any forward-looking statements as a result of the certain risks and uncertainties, including, without limitation, competition and market acceptance of products; ability to obtain regulatory approvals and third-party reimbursements; ability to raise additional capital; non-

consummation of the proposed merger; prior to the closing of the proposed merger, the businesses of Intuitive or Computer Motion suffer due to uncertainty; that the parties are unable to successfully execute their integration strategies, or achieve planned synergies; and other factors described in the Securities and Exchange Commission reports filed by Intuitive and Computer Motion, including their most recent filings on Form 10-Q. Intuitive and Computer Motion undertake no obligation to publicly update any forward-looking statements for any reason, even if new information becomes available or other events occur in the future.

Additional Information About the Merger and Where to Find It

In connection with Intuitive Surgical's proposed merger with Computer Motion, Intuitive and Computer Motion intend to file with the SEC a joint proxy statement/prospectus and other relevant materials.

INVESTORS AND SECURITY HOLDERS OF INTUITIVE AND COMPUTER MOTION ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND THE OTHER RELEVANT MATERIALS WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT INTUITIVE, COMPUTER MOTION AND THE MERGER.

The joint proxy statement/prospectus and other relevant materials (when they become available), and any other documents filed by Intuitive or Computer Motion with the SEC, may be obtained free of charge at the SEC's web site at www.sec.gov. In addition, investors and security holders may obtain free copies of the documents (when they are available) filed with the SEC by Intuitive by directing a request to: Intuitive Surgical, Inc., 950 Kifer Road, Sunnyvale, CA 94086, Attn: Sarah Norton. Investors and security holders may obtain free copies of the documents filed with the SEC by Computer Motion by contacting Computer Motion, Inc., 130-B Cremona Drive, Goleta, CA 93117, Attn: Dan Tamkin.

Investors and security holders are urged to read the joint proxy statement/prospectus and the other relevant materials when they become available before making any voting or investment decision with respect to the merger.

Intuitive, Computer Motion and their respective executive officers and directors may be deemed to be participants in the solicitation of proxies from the stockholders of Intuitive and Computer Motion in favor of the merger. Information about the executive officers and directors of Intuitive and their ownership of Intuitive common stock is set forth in the proxy statement for Intuitive's 2002 Annual Meeting of Shareholders, which was filed with the SEC on April 17, 2002. Information about the executive officers and directors of Computer Motion and their ownership of Computer Motion common stock is set forth in the proxy statement for Computer Motion's 2002 Annual Meeting of Shareholders, which was filed with the SEC on June 19, 2002. Investors and security holders may obtain more detailed information regarding the direct and indirect interests of Intuitive, Computer Motion and their respective executive officers and directors in the merger by reading the joint proxy statement/prospectus regarding the merger when it becomes available.

ANTICIPATED EXCHANGE RATIO

The number of shares of Intuitive common stock that each share of Computer Motion common stock will be converted into (the "Exchange Ratio") will be determined based on the total number of fully diluted shares outstanding for Intuitive Surgical and Computer Motion immediately prior to consummation of the merger. Computer Motion's fully diluted share count may vary based upon the number of shares of common stock into which Computer Motion's preferred stock will be convertible. This preferred stock conversion ratio will, in turn, vary inversely based upon the average Computer Motion stock price (the "Average Computer Motion Stock Price") which will be determined based on closing bid prices for Computer Motion during a defined pricing period occurring prior to consummation of the merger.

The table below reflects the anticipated Exchange Ratio based on the number of fully diluted shares (excluding certain Computer Motion warrants expiring in 2003) currently outstanding for each of Intuitive Surgical and Computer Motion and a range of assumed Average Computer Motion Stock Prices.

AVERAGE COMPUTER MOTION STOCK PRICE	ANTICIPATED EXCHANGE RATIO
$1.86 and Higher	0.5214
1.85	0.5205
1.80	0.5171
1.75	0.5136
1.70	0.5100
1.65	0.5061
1.60	0.5022
1.55	0.4980
1.50	0.4936
1.45	0.4890
1.40	0.4842
$1.38 and Lower	0.4822

CERTIFICATE OF DESIGNATIONS

SETTING FORTH THE PREFERENCES, RIGHTS

AND LIMITATIONS OF THE SERIES D CONVERTIBLE

PREFERRED STOCK OF COMPUTER MOTION, INC.

The undersigned officers of COMPUTER MOTION, INC. (the "Corporation"), a Delaware corporation, DO HEREBY CERTIFY that, pursuant to the provisions of Sections 151 of the General Corporation Law of the State of Delaware:

1. The name of the Corporation is Computer Motion, Inc. and the Corporation is validly existing and incorporated.

2. On March 5, 2003, pursuant to authority vested in the Board of Directors by Article IV of the Corporation's Second Amended and Restated Certificate of Incorporation, the Board of Directors established a series of up to an aggregate of 8,965 shares of Series D-1 Convertible Preferred Stock of the Corporation, par value $0.001 per share (the "Series D-1 Convertible Preferred Stock"), and up to an aggregate of 1,785 shares of Series D-2 Convertible Preferred Stock of the Corporation, par value $0.001 per share (the "Series D-2 Convertible Preferred Stock" and together with the Series D-1 Convertible Preferred Stock, the "Series D Convertible Preferred Stock") and adopted the following with respect to the Certificate of Designations of the Series D Convertible Preferred Stock:

> WHEREAS, the Corporation desires to create a new series of its Preferred Stock to be designated as "Series D Convertible Preferred Stock";
>
> NOW, THEREFORE, it is hereby
>
> RESOLVED, that a new series of the class of authorized preferred stock of the Corporation, designated "Series D-1 Convertible Preferred Stock" and "Series D-2 Convertible Preferred Stock" be hereby created, and that the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations and restrictions thereof shall be as set forth below:

SECTION 1. DESIGNATION AND AMOUNT; PAR VALUE.

The shares of Series D Convertible Preferred Stock shall be designated as "Series D-1 Convertible Preferred Stock" and "Series D-2 Convertible Preferred Stock" and the number of shares constituting the Series D-1 Convertible Preferred Stock shall be 8,965 and the number of shares constituting the Series D-2 Convertible Preferred Stock shall be 1,785. The par value of each share of the series shall be $0.001. Each share of the Series D Convertible Preferred Stock shall have a stated value of $1,400 (the "Stated Value"). As used herein, the "Initial Issuance

Date" shall mean the date upon which the Corporation first issues shares of Series D Convertible Preferred Stock.

SECTION 2. DIVIDENDS ON SERIES D CONVERTIBLE PREFERRED STOCK.

The Corporation shall pay dividends on the Stated Value of each share of the Series D Convertible Preferred Stock at the initial rate of 8.0% per annum and increasing to 12% per annum on the second anniversary of the Initial Issuance Date. Dividends shall be computed based on a 360-day year consisting of twelve 30-day months. Dividends shall be cumulative with respect to each share of the Series D Convertible Preferred Stock while such share is outstanding. Dividends shall be payable in arrears semi-annually to the holder of shares of Series D Convertible Preferred Stock registered on the books of the Corporation (the "Holder").

(a) Dividends on Series D-1 Convertible Preferred Stock. At the option of the Corporation, dividends may be payable to the Holders of Series D-1 Convertible Preferred Stock in the form of either (i) such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts or (ii) the number of full shares of Common Stock that the amount of accrued dividends payable would entitle such Holder to acquire based upon a price per share equal to 90% of the average of the VWAP (as defined below) for the twenty (20) Trading Day period immediately prior to the date such dividend becomes due and payable; provided, however, that if the Corporation elects to pay a Holder in shares of Common Stock, the Corporation shall issue to the Holder freely tradeable shares of Common Stock; provided further, that the Corporation may elect to pay a Holder in shares of Common Stock only if the Registration Statement (the "Registration Statement") filed by the Corporation pursuant to the Registration Rights Agreement, dated as of October 31, 2002, among the Corporation and the holders of the Series D Convertible Preferred Stock (the "Registration Rights Agreement") remains effective. The Corporation shall notify the Holder in writing not less than twenty-two (22) Trading Days of the date such dividends are due and payable of the form in which the Corporation elects to pay accumulated dividends. In the event the Corporation fails to timely provide such notice, payments of dividends shall be in cash.

As used herein, "VWAP" shall mean the Volume Weighted Average Price of the Corporation's Common Stock as reported by Bloomberg, L.P. on such day on the NASDAQ National Market (or the NASDAQ Small Cap Market, the New York Stock Exchange or American Stock Exchange in the event any such market or exchange constitutes the principal market on which the Common Stock is quoted or listed or admitted to trading) (such four markets and exchanges, the "Approved Markets") or, if not quoted or listed or admitted to trading on any such Approved Market, the closing bid price in the over-the-counter market as furnished by any New York Stock Exchange member firm that is selected from time to time by the Corporation for that purpose. In lieu of any fractional share of Common Stock to which the Holder would otherwise be entitled upon payment of a dividend, the number of shares of Common Stock issuable upon payment thereof shall be rounded up to the nearest whole number.

(b) Dividends on Series D-2 Convertible Preferred Stock. Dividends shall be payable quarterly to the Holders of Series D-2 Convertible Preferred Stock in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

(c) Failure to Timely Pay Dividends. If the Corporation fails to pay any dividend payment to the Holders on the date such dividend payment is due, the dividend rate then in effect shall increase by a rate per annum equal to three percent (3%). During any period that such dividend payments are in arrears, the Corporation shall not incur any indebtedness.

SECTION 3. REDEMPTION.

(a) Redemption Date. The "Redemption Date" shall mean October 29, 2004.

(b) Corporation's Election to Redeem. At any time following the Redemption Date, the Corporation may elect to redeem on a pro rata basis no less than $2,000,000 of the outstanding Series D Convertible Preferred Stock, by delivering at least 15 days' notice of such election (the "Redemption Election Notice") to the Holders of the Series D Convertible Preferred Stock. Upon receipt of the Redemption Election Notice, the Holder shall surrender to the Corporation its stock certificate representing such Holder's pro rata portion of shares of the Series D Convertible Preferred Stock being redeemed (the "Series D Convertible Stock Certificates") and, upon such surrender, the Corporation shall deliver to the Holder with respect to each share of Series D Convertible Preferred Stock so redeemed, an amount of cash equal to the Stated Value plus any accrued and unpaid dividends (the "Redemption Price"). In the event that less than all of the outstanding shares of Series D Convertible Preferred Stock are redeemed, the Corporation shall promptly return to the Holder its stock certificate representing the balance of such shares of Series D Convertible Preferred Stock not redeemed. Notwithstanding the foregoing, the Holder shall have the right to convert any shares of Series D Convertible Preferred Stock in accordance with Section 4(a) below until the close of business on the date fixed for redemption in such Redemption Election Notice. The Series D Convertible Preferred Stock shall not be redeemable at the election of the Holder.

(c) Effect of Redemption. At any time following delivery of the Redemption Election Notice, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of the shares of Series D Convertible Preferred Stock designated for redemption in the Redemption Election Notice as holders of Series D Convertible Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or deemed to be outstanding for any purpose whatsoever.

SECTION 4. CONVERSION.

(a) Right to Convert. Subject to Section 3 and this Section 4, a Holder has the right to convert shares of the Series D Convertible Preferred Stock, in whole or from time to time in part, into such number of shares of common stock, par value $.001 per share, of the Corporation (the "Common Stock") equal to the aggregate Stated Value of the shares of Series D Convertible Preferred Stock divided by the then effective Conversion Price (as defined below) and any accrued and unpaid dividends shall then be payable in accordance with Section 2 above.

(b) Automatic Conversion. At any time following 180 days after the effectiveness of the Registration Statement, each share of Series D Convertible Preferred Stock shall

automatically be converted into shares of Common Stock equal to the Stated Value divided by the then effective Conversion Price on the sixth (6th) Trading Day following the date that the Corporation provides written notice to each Holder that immediately following any ten (10) consecutive Trading Days during which the VWAP is greater than $3.00 (the "Threshold Appreciation Price"); provided, however, that the Registration Statement remains effective on the sixth (6th) Trading Day referred to above. In the event of an automatic conversion as described above, any accrued and unpaid dividends shall be due and payable on the date of such automatic conversion in accordance with Section 2 above.

(c) Conversion Price; Amount. The price at which the Holder may convert shares of the Series D Convertible Preferred Stock (or any portion thereof) into shares of Common Stock shall be $1.38, subject to adjustment as provided in Section 4(f) (the "Conversion Price"). In lieu of any fractional share of Common Stock to which the Holder would otherwise be entitled upon conversion of shares of the Series D Convertible Preferred Stock, the number of shares of Common Stock issuable upon conversion thereof shall be rounded up to the nearest whole number.

(d) Mechanics of Conversion.

(i) To convert shares of the Series D Convertible Preferred Stock in accordance with Section 4(a), the Holder must (i) complete and sign a Notice of Conversion in form acceptable to the Corporation (the "Notice of Conversion") and deliver the Notice of Conversion to the Corporation as herein provided and (ii) prior to the date on which delivery of Common Stock is required to be made hereunder, (x) duly endorse and deliver to the Corporation the Series D Convertible Stock Certificate(s) representing the shares of the Series D Convertible Preferred Stock being converted and (y) pay any transfer or similar tax with respect to the delivery of such Series D Convertible Stock Certificate(s) if required. The Holder shall surrender such Series D Convertible Stock Certificate(s) and the Notice of Conversion to the Corporation (with an advance copy by facsimile of the Notice of Conversion). The date on which Notice of Conversion is given (the "Date of Conversion") shall be deemed to be the date of receipt by the Corporation of the facsimile of the Notice of Conversion, provided that such Series D Convertible Stock Certificate(s) are received by the Corporation within five (5) business days thereafter. The Corporation shall not be obligated to cause the transfer agent for the Common Stock (the "Transfer Agent") to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless either such Series D Convertible Stock Certificate has been received by the Corporation or, if such Series D Convertible Stock Certificate(s) have been lost, stolen or destroyed, the Holder has executed and delivered to the Corporation an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with the shares of the Series D Convertible Preferred Stock represented by such Series D Convertible Stock Certificate(s).

If the Transfer Agent is participating in the Depository Trust Company ("DTC") Fast Automated Securities Transfer ("FAST") program, the Holder shall deliver to the Corporation valid broker information, including DTC number, and verification that such broker has been instructed to initiate the DWAC transfer (as defined below) (collectively, the "Broker Information") and, thereafter, the Corporation shall cause the Transfer Agent to transmit electronically the shares of Common Stock issuable to the Holder upon conversion of shares of

the Series D Convertible Preferred Stock by crediting the account of the Holder's prime broker with DTC through DTC's Deposit Withdrawal Agent Commission ("DWAC") system, within three (3) business days after delivery to the Corporation of the Broker Information and the Holder's Series D Convertible Stock Certificate(s). In the event the Holder otherwise elects in writing, however, the Corporation shall cause the Transfer Agent to issue and deliver (within such three (3) business day period) to the address of the Holder on the books of the Corporation or as otherwise directed pursuant to the Notice of Conversion, a certificate or certificates for the number of shares of Common Stock to which such Holder shall be entitled as aforesaid. In the event the Corporation fails to complete such delivery as aforesaid, it shall be responsible for actual damages incurred by the Holder as a result thereof. The person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. Notwithstanding that the Holder is required to deliver the Series D Convertible Stock Certificate(s), duly endorsed, within five (5) business days after the Date of Conversion, if such Series D Convertible Certificate(s) are not received by the Corporation within ten (10) business days after the Date of Conversion, the Corporation may at its option elect, by written notice given to the Holder within fifteen (15) business days after the Date of Conversion, elect (A) to treat Notice of Conversion as null and void or (B) to treat the Notice of Conversion as binding and require the Holder to deliver the applicable Series D Convertible Stock Certificate(s). In the event the Corporation elects to treat the Notice of Conversion as binding, the shares of Series D Convertible Preferred Stock with respect to which such Notice of Conversion was given shall thereafter no longer be deemed outstanding and the Holder thereof shall not be entitled to any voting or other rights attendant thereto, excepting only the right to receive, upon the delivery to the Corporation of the applicable Series D Convertible Stock Certificate(s), the shares of Common Stock upon the conversion thereof as contemplated above.

Following conversion of a share of the Series D Convertible Preferred Stock, such share will no longer be outstanding and may not be reissued. In the event of the conversion of less than all of the shares of the Series D Convertible Preferred Stock represented by a Series D Convertible Stock Certificate, the Corporation or its Transfer Agent will issue to the Holder a new stock certificate representing the number of shares of the Series D Convertible Preferred Stock not converted or shall endorse the Series D Convertible Stock Certificate to reflect such conversion.

If, within three (3) business days of the Corporation's receipt of the Conversion Notice and the Series D Convertible Stock Certificate(s) to be converted, the Corporation shall fail to issue and deliver to a Holder the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of the Series D Convertible Preferred Stock or to issue a new Series D Convertible Stock Certificate representing the number of shares of Series D Convertible Preferred Stock to which such Holder is entitled pursuant to this Section 4(d)(i), in addition to all other available remedies which such Holder may pursue hereunder and under the Purchase Agreement, the Corporation shall pay additional damages to such Holder on each business day after such third (3rd) business day that such conversion is not timely effected in an amount equal to 0.5% of the product of (A) the sum of the number of shares of Common Stock not issued to the Holder on a timely basis pursuant to this Section 4(b)(i) and to which such Holder is entitled, and, in the event the Corporation has failed to deliver a Series D Convertible Stock Certificate to the Holder on a timely basis pursuant to this Section 4(b)(i), the number of

shares of Common Stock issuable upon conversion of the shares of Series D Convertible Preferred Stock represented by such Series D Convertible Stock Certificate, as of the last possible date which the Corporation could have issued such Series D Convertible Stock Certificate to such Holder without violating Section 4(b)(i) and (B) the VWAP of the Common Stock on the last possible date which the Corporation could have issued such Common Stock and such Series D Convertible Stock Certificate, as the case may be, to such Holder without violating this Section 4(b)(i). If the Corporation fails to pay the additional damages set forth in this Section 4(b)(i) within five (5) business days of the date incurred, then such payment shall bear interest at the rate of 2% per month (pro rated for partial months) until such payments are made.

(ii) Upon conversion due to the event specified in Section 4(b) above, the holders of Series D Convertible Preferred Stock shall surrender the Series D Preferred Stock Certificate(s) representing such shares at the office of the Corporation or the Transfer Agent. Thereupon, there shall be issued and delivered to such holder in the manner described in Section 4(d)(i) the number of shares of Common Stock into which the shares of Series D Convertible Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred. Upon such automatic conversion, the outstanding shares of Series D Convertible Preferred Stock shall be converted automatically into shares of Common Stock without any further action on the part of the holders of such shares whether or not the certificates representing such shares are surrendered to the Corporation or its Transfer Agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series D Convertible Preferred Stock are either delivered to the Corporation or its Transfer Agent or, if such Series D Convertible Stock Certificate(s) have been lost, stolen or destroyed, the Holder has executed and delivered to the Corporation an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with the shares of the Series D Convertible Preferred Stock represented by such Series D Convertible Stock Certificate(s).

(e) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock or shares of Common Stock held in treasury, or both, solely for the purpose of effecting the conversion of the Series D Convertible Preferred Stock, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of the Series D Convertible Preferred Stock and all other securities of the Corporation convertible or exchangeable into Common Stock.

(f) Adjustment to Conversion Price; Maximum Share Issuance.

(i) If, prior to the conversion of all shares of the Series D Convertible Preferred Stock, the number of outstanding shares of Common Stock is increased by a stock split, stock dividend of shares of Common Stock or other shares of capital stock, reclassification or other similar event, the Conversion Price shall be proportionately reduced, or if the number of outstanding shares of Common Stock is decreased by a combination or reclassification of shares or other similar event, the Conversion Price shall be proportionately increased, in each case, such that a Holder will have the right to receive upon conversion of shares of the Series D Convertible Preferred Stock the number of shares of Common Stock (or other shares of capital stock) of the

Corporation that such Holder would have been entitled to receive had the Holder converted such shares of the Series D Convertible Preferred Stock immediately prior to such action. The Threshold Appreciation Price (as defined in Section 4(c) above) shall likewise be proportionately adjusted upon any increase in the number of outstanding shares of Common Stock on account of any stock split, stock dividend of shares of Common Stock or other shares of capital stock, reclassification or other similar event or upon any decrease in number of outstanding shares of Common Stock on account of any combination or reclassification of shares or other similar event.

(ii) In addition to the adjustments set forth above, if the Corporation distributes to all holders of its Common Stock any of its assets or debt securities or any rights or warrants to purchase securities other than Common Stock, then the Conversion Price shall be adjusted in such a manner as shall be agreed to by the Corporation and the Holders of at least ninety percent (90%) of the outstanding shares of Series D Convertible Preferred Stock (excluding the shares of Series D Preferred Stock beneficially owned by Robert W. Duggan (the "Duggan Shares")) as shall fairly preserve the economic rights and benefits of each Holder as contemplated by this Certificate of Designations. In the event that within 15 days of any such event, the Corporation and such Holders do not reach an agreement as to the appropriate adjustment, the Corporation shall retain, and pay for, a nationally recognized investment bank or accounting firm to determine the appropriate adjustment as soon as possible, but in any event not later than 45 days, after the date of such event; provided that such investment bank or accounting firm is mutually agreeable to the Corporation and at least ninety percent (90%) of the Holders of the outstanding shares of Series D Convertible Preferred Stock (excluding the Duggan Shares).

(iii) In the event that, after the Initial Issuance Date, the Corporation shall (other than (A) upon the exercise, exchange or conversion of any securities of the Corporation that are exercisable or exchangeable for, or convertible into, shares of Common Stock and that are outstanding as of the Initial Issuance Date, (B) upon the issuance of shares of Common Stock to strategic partners and/or in connection with a strategic merger or acquisition, (C) upon the issuance of shares of Common Stock or options to purchase shares of Common Stock to employees, officers, directors, consultants and vendors in accordance with the Issuer's equity incentive plans in effect on the Initial Issuance Date, (D) upon the issuance of securities pursuant to a shareholder rights plan in effect on the Initial Issuance Date, (E) upon the conversion of any shares of Series C Convertible Preferred Stock or Series D Convertible Preferred Stock or (F) upon the issuance of shares of Common Stock to pay dividends) at any time while any shares of Series C Convertible Preferred Stock or Series D Convertible Preferred Stock are outstanding (x) issue shares of Common Stock without consideration or at a price per share less than the then effective Conversion Price (such Conversion Price, the "Minimum Trigger Price"), (y) issue options, rights or warrants to subscribe for or purchase Common Stock that provide for (upon the exercise thereof) the issuance of shares of Common Stock without consideration or at a price per share, which when added to the price or other consideration received for such options, rights or warrants, is less than the Minimum Trigger Price or (z) issue securities convertible into Common Stock having a conversion price less than the Minimum Trigger Price, the Conversion Price to be in effect after the date of such issuance shall be adjusted by multiplying the Conversion Price in effect immediately prior to the date of any such issuances referenced above by a fraction, of which the numerator shall be the number of shares of Common Stock outstanding on the date of such issuance plus the number of shares of Common Stock that the aggregate offering price of

the total number of shares of Common Stock so to be issued (or the aggregate issue price of the convertible securities so to be issued) would purchase at the Minimum Trigger Price and of which the denominator shall be the number of shares of Common Stock outstanding on the date of such issuance plus the number of additional shares of Common Stock to be issued (or into which the convertible securities so to be issued are initially convertible). In case the price for such securities may be paid in a consideration part or all of which shall be in a form other than cash, the value of such consideration shall be as determined in good faith by the Board of Directors of the Corporation, whose determination shall be conclusive. Such adjustment shall be made successively whenever the date of such issuance is fixed and, in the event that such options, rights, warrants or convertible securities (or portions thereof) expire or are otherwise discharged or redeemed without being exercised or converted, any adjustment in the Conversion Price on account of the issuance of the same shall be reversed.

(iv) Adjustments pursuant to this Section 4(f) shall be permanent unless further adjustments are required pursuant to the terms of this Section 4(f). No adjustment to the Conversion Price pursuant to any of the events or circumstances set forth herein shall be made unless such adjustment shall be in an amount of at least one cent ($0.01); provided, however, that any adjustment that would otherwise be required to be made hereunder but for the fact that it is less than one cent ($0.01) shall be carried forward and made part of any subsequent adjustment that (a) when aggregated with prior adjustment(s) that have not been made because it was (or each of them was) less than one cent ($0.01) or (b) is in excess of one cent ($0.01).

(v) If any adjustment under this Section 4(f) would create a fractional share of Common Stock or a right to acquire a fractional share of Common Stock, such fractional share shall be disregarded and the number of shares of Common Stock issuable upon conversion shall be the next higher number of shares.

(g) Restrictions on Conversion.

(i) Notwithstanding anything to the contrary set forth in Section 4 of this Certificate of Designations, at no time may a Holder convert shares of the Series D Convertible Preferred Stock if the number of shares of Common Stock to be issued pursuant to such conversion would exceed, when aggregated with all other shares of Common Stock owned by such holder at such time, the number of shares of Common Stock which would result in such holder owning more than 4.99% of all of the Common Stock outstanding at such time; provided, however, that upon a Holder providing the Corporation with sixty-one (61) days notice (the "Waiver Notice") that such Holder would like to waive Section 4(g) of this Certificate of Designations with regard to any or all shares of Common Stock issuable upon conversion of the Series D Convertible Preferred Stock, this Section 4(g) shall be of no force or effect with regard to those shares of Series D Convertible Preferred Stock reference in the Waiver Notice.

(ii) Notwithstanding anything to the contrary set forth in Section 4 of this Certificate of Designations, at no time may a Holder convert shares of the Series D Convertible Preferred Stock if the number of shares of Common Stock to be issued pursuant to such conversion would exceed, when aggregated with all other shares of Common Stock owned by such holder at such time, would result in such Holder beneficially owning (as determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended , and the

rules thereunder) in excess of 9.999% of the then issued and outstanding shares of Common Stock outstanding at such time; provided, however, that upon a Holder providing the Corporation with a Waiver Notice that such Holder would like to waive Section 4(g) of this Certificate of Designations with regard to any or all shares of Common Stock issuable upon conversion of the Series D Convertible Preferred Stock, this Section 4(g) shall be of no force or effect with regard to those shares of Series D Convertible Preferred Stock reference in the Waiver Notice.

SECTION 5. REORGANIZATIONS, MERGERS, CONSOLIDATIONS OR SALE OF ASSETS.

If at any time or from time to time after the Initial Issuance Date, there is a capital reorganization of the Common Stock (other than a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in Section 4(f)), then, as part of such capital reorganization, provisions shall be made so that the holders of Series D Convertible Preferred Stock shall thereafter have the right to receive upon conversion of shares of the Series D Convertible Preferred Stock, upon the basis and the terms and conditions specified herein, such shares of stock and/or securities as may be issued or payable with respect to or in exchange for the number of shares of Common Stock immediately theretofore receivable upon the conversion of such shares of the Series D Convertible Preferred Stock, and in any such case appropriate provisions shall be made with respect to the rights and interests of the holders of Series D Convertible Preferred Stock such that the provisions hereof shall thereafter be applicable in relation to any shares of stock or securities thereafter deliverable upon the conversion of shares of the Series D Convertible Preferred Stock; provided, however, that this Section 5 shall not apply to any Change of Control Transaction (as defined in Section 6) in respect of which the Holders exercise their rights under Section 6. The Corporation shall not effect any such capital reorganization unless the resulting successor or acquiring entity (if not the Corporation) assumes by written instrument the obligation to deliver to the holders of Series D Convertible Preferred Stock such shares of stock and/or securities as such holder is entitled to receive upon conversion in accordance with the foregoing.

SECTION 6. CHANGE OF CONTROL.

(a) A "Change of Control Transaction" shall mean, (i) the sale, conveyance or disposition of all or substantially all of the assets of the Corporation, (ii) a consolidation or merger of the Corporation with or into any other "Person" (as defined in the Exchange Act) (whether or not the Corporation is the surviving Person) or (iii) (other than a consolidation or merger provided for in clause (ii)) any Person or any "group" (as such term is used in Section 13(d) of the Exchange Act), becomes the beneficial owner or is deemed to beneficially own (as described in Rule 13d-3 under the Exchange Act without regard to the 60-day exercise period) in excess of 50% of the Corporation's voting power of the capital stock of the Corporation normally entitled to vote in the election of directors of the Corporation (other than (A) any Person or any such group that held such voting power as of the Initial Issuance Date or (B) any group that holds such voting power subsequent to the Initial Issuance Date, provided that the Persons that constitute such group include the Person or a majority of the members of, and at least 50% of the voting power held by, a group referenced in the foregoing clause (A)).

(b) Upon the notice or occurrence of, or announcement of the Corporation's intent (or a third party's or parties' intent in the case of a Change of Control Transaction of the type set

forth in clause (iii) of the definition of a Change of Control Transaction) to engage in a Change of Control Transaction, the Series D Convertible Preferred Stock shall, at the option of the Holder thereof, be convertible in full upon the terms set forth in this Section 6(b); provided, however, that the Holder's ability to convert the Series D Convertible Preferred Stock pursuant to this Section 6(b) shall be effective only if the Holder has delivered a Notice of Conversion in accordance with Section 4(d) no later than twelve (12) Trading Days prior to the date of the meeting of the Corporation's stockholders to approve such Change of Control Transaction. In the event that the Holder elects to convert pursuant to this Section 6(b), each share of Series D Convertible Preferred Stock shall be convertible into that number of shares of Common Stock equal to the quotient obtained by dividing (x) $1,890 plus the amount of any accrued and unpaid dividends (the "Conversion Amount"), by (y) the average closing bid prices for the twenty (20) consecutive Trading Days ending on the date immediately preceding fifteen (15) Trading Days immediately preceding the date of the meeting of the Corporation's stockholders to approve such Change of Control Transaction but in no event less than $1.38. The conversion set forth in this Section 6(b) related to a Change of Control Transaction shall be conditioned upon and shall be effective immediately prior to consummation of such Change of Control Transaction and all such shares of Series D Convertible Preferred Stock shall no longer be outstanding and shall be automatically cancelled and retired and shall cease to exist, and each certificate previously representing any such shares shall thereafter represent the right to receive a certificate representing the shares of Common Stock into which the Series D Convertible Preferred Stock was converted.

(c) Unless otherwise converted pursuant to Section 6(b), conditioned upon and effective immediately prior to the consummation of a Change of Control Transaction, each share of Series D Convertible Preferred Stock shall automatically be converted into that number of shares of Common Stock for each share of Series D Convertible Preferred Stock owned by such Holder on the Trading Day immediately preceding any such Change of Control Transaction as set forth in Section 4(a) of the Series C Certificate of Designations. All such shares of Series D Convertible Preferred Stock shall no longer be outstanding and shall be automatically cancelled and retired and shall cease to exist, and each certificate previously representing any such shares shall thereafter represent the right to receive a certificate representing the shares of Common Stock into which the Series D Convertible Preferred Stock was converted.

(d) The Corporation shall promptly mail written notice to the Holder of either the occurrence of, or the announcement of the Corporation's intent to engage in, a Change of Control Transaction (with a copy sent by facsimile), but in any event such notice (other than, if applicable, in the case of a Change of Control Transaction of the type set forth in clause (iii) of the definition of a Change of Control Transaction) shall not be given less than twenty (20) days prior to the effective date of such Change of Control Transaction."

SECTION 7. REACQUIRED SHARES.

Any shares of the Series D Convertible Preferred Stock redeemed, purchased, converted or otherwise acquired by the Corporation in any manner whatsoever shall not be reissued as part of the Series D Convertible Preferred Stock and shall be retired promptly after the acquisition thereof. All such shares of the Series D Convertible Preferred Stock upon their retirement and

the filing of any certificate required in connection therewith pursuant to the Delaware General Corporation Law shall become authorized but unissued shares of Preferred Stock.

SECTION 8. EQUALITY.

All Holders of Series D Convertible Preferred Stock shall be subject to the same terms and conditions as set forth herein. No Holders of Series D Convertible Preferred Stock shall be entitled to or receive terms that are more favorable than those given to any other Holder of Series D Convertible Preferred Stock. In the event a Holder of Series D Convertible Preferred Stock is given by the Corporation or receives from the Corporation terms more favorable than those given by the Corporation or received from the Corporation by any other Holder of Series D Convertible Preferred Stock, then in such event all Holders of Series D Convertible Preferred Stock shall be given and entitled to those more favorable terms.

SECTION 9. REGISTERED HOLDER.

The Corporation may for all purposes treat the holder of shares of the Series D Convertible Preferred Stock registered on the books of the Corporation as the Holder, notwithstanding any notice or claim by any other Person with respect to any interest in such shares.

SECTION 10. VOTING RIGHTS.

(a) Prior to conversion thereof, Holders of the Series D Convertible Preferred Stock shall be voted together with the shares of Common Stock of the Company and not as a separate class, at any annual or special meeting of stockholders of the Company upon the following basis: each share of Series D Convertible Preferred Stock shall be entitled to one thousand (1,000) votes.

(b) So long as any shares of Series D Convertible Preferred Stock are outstanding, the Corporation shall not, without first obtaining the approval of the Holders of at least ninety percent (90%) of the outstanding shares of Series D Convertible Preferred Stock (excluding the Duggan Shares), authorize, create or issue any class or series of stock ranking prior to the Series D Convertible Preferred Stock with respect to the distribution of assets on liquidation, dissolution or winding up as provided in Section 12 below.

SECTION 11. RANK.

All shares of the Series D Convertible Preferred Stock shall rank (i) prior to the Common Stock, the Corporation's Series A Junior Participating Convertible Preferred Stock, the Corporation's Series B Convertible Preferred Stock and prior to any class or series of capital stock of the Corporation hereafter created other than any series or class of capital stock of the Corporation (A) that has been consented to by the Holders of at least ninety percent (90%) of the outstanding shares of Series D Convertible Preferred Stock (excluding the Duggan Shares), and (B) that specially, by its terms, ranks senior to or pari passu with the Series D Convertible Preferred Stock (the Common Stock, the Corporation's Series A Junior Participating Convertible Preferred Stock, the Corporation's Series B Convertible Preferred Stock and any class or series of capital stock of the Corporation hereafter created that does not specifically, by its terms, and

in accordance with the terms of this Section 11, rank senior to or pari passu with the Series D Convertible Preferred Stock being hereinafter referred to collectively as "Junior Securities"); (ii) pari passu with the Corporation's Series D Convertible Preferred Stock and any class or series of capital stock of the Corporation hereafter created (A) that has been consented to by the Holders of at least ninety percent (90%) of the outstanding shares of Series D Convertible Preferred Stock (excluding the Duggan Shares) and (B) that, specifically by its terms and in accordance with the terms of this Section 11, ranks on a parity with the Series D Convertible Preferred Stock (the "Pari Passu Securities"); and (iii) junior to any class or series of capital stock of the Corporation hereafter created (A) that has been consented to by the Holders of at least ninety percent (90%) of the outstanding shares of Series D Convertible Preferred Stock (excluding the Duggan Shares) and (B) that specifically, by its terms, ranks senior to the Series D Convertible Preferred Stock (all of the foregoing, collectively, the "Senior Securities"), in each case as to distribution of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

SECTION 12. LIQUIDATION PREFERENCE.

(a) If the Corporation shall commence a voluntary case under the U.S. Federal bankruptcy laws or any other applicable bankruptcy, insolvency or similar law, or consent to the entry of an order for relief in an involuntary case under any law or to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or make an assignment for the benefit of its creditors, or admit in writing its inability to pay its debts generally as they become due, or if a decree or order for relief in respect of the Corporation shall be entered by a court having jurisdiction in the premises in an involuntary case under the U.S. Federal bankruptcy laws or any other applicable bankruptcy, insolvency or similar law resulting in the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and any such decree or order shall be unstayed and in effect for a period of sixty (60) consecutive days and, on account of any such event, the Corporation shall liquidate, dissolve or wind up, or if the Corporation shall otherwise liquidate, dissolve or wind up (a "Liquidation Event"), no distribution shall be made to the holders of any shares of capital stock of the Corporation (other than Senior Securities and, together with the Holders of Series D Convertible Preferred Stock, the Pari Passu Securities) upon liquidation, dissolution or winding up unless prior thereto the Holders shall have received the Liquidation Preference (as hereinafter defined) with respect to each share of Series D Convertible Preferred Stock. If, upon the occurrence of a Liquidation Event, the assets and funds available for distribution among the Holders and holders of Pari Passu Securities shall be insufficient to permit the payment to such Holders of the preferential amounts payable thereon, then the entire assets and funds of the Corporation legally available for distribution to the Series D Convertible Preferred Stock and the Pari Passu Securities shall be distributed ratably among such shares in proportion to the ratio that the Liquidation Preference payable on each such share bears to the aggregate Liquidation Preference payable on all such shares.

(b) The purchase or redemption by the Corporation of stock of any class or series, in any manner permitted by law, shall not, for the purposes hereof, be regarded as a liquidation, dissolution or winding up of the Corporation. Neither the consolidation or merger of the

Corporation with or into any other entity nor the sale or transfer by the Corporation of all or substantially all of its assets shall, for the purposes hereof, be deemed to be a liquidation, dissolution or winding up of the Corporation.

(c) The "Liquidation Preference" with respect to a share of Series D Convertible Preferred Stock means an amount equal to the Stated Value thereof plus a premium equal to thirty five percent (35%) of the Stated Value thereof, and any other amounts that may be due from the Corporation with respect thereto pursuant to this Certificate of Designations (including, without limitation, accrued and unpaid dividends), the Purchase Agreement or the Registration Rights Agreement. The Liquidation Preference with respect to any Pari Passu Securities shall be as set forth in the Certificate of Designations filed in respect thereof and, as applicable, any other agreements related thereto.

SECTION 13. LOST OR DESTROYED CERTIFICATES.

If a Series D Convertible Stock Certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of such mutilated Series D Convertible Stock Certificate, or in lieu of or in substitution for a lost, stolen or destroyed Series D Convertible Stock Certificate, a new Series D Convertible Stock Certificate for the Series D Convertible Stock Certificate so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Series D Convertible Stock Certificate, and of the ownership thereof, and indemnity, if requested, all reasonably satisfactory to the Corporation.

SECTION 14. CERTAIN DEFINITIONS.

(a) Business Day. For purposes hereof, the term "business day" shall mean any day on which banks are generally open for business in the City of New York.

(b) Trading Day. For purposes hereof, the term "trading day" shall mean any day on which the principal market on which the Common Stock is traded is open for business.

(c) Person. For purposes hereof, the term "Person" means an individual or a corporation, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, governmental authority or other entity of any kind.

SECTION 15. WAIVER AND AMENDMENTS.

Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designations shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of the Series D Convertible Preferred Stock. The failure of the Corporation or the Holder to insist upon strict adherence to any term of this Certificate of Designations on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designations of the Series D Convertible Preferred Stock. Any waiver must be in writing. The provisions of this Certificate of Designations may not be amended, modified or supplemented unless the same shall be in writing and signed by the Company and the Holders of at least ninety percent (90%) of the outstanding shares of Series D

Convertible Preferred Stock (excluding the Duggan Shares); provided, however, any amendment or modification of Section 2 of this Certificate of Designations shall require the written consent of the Company and at least ninety percent (90%) of the outstanding shares of Series D-1 Convertible Preferred Stock (excluding the Duggan Shares) and all of the outstanding shares of Series D-2 Convertible Preferred Stock.

SECTION 16. UNENFORCEABLE PROVISIONS.

If any provision of this Certificate of Designations is invalid, illegal or unenforceable, the remaining provisions of thereof shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances.

SECTION 17. COPIES OF AGREEMENTS, INSTRUMENTS, DOCUMENTS.

Copies of any of the agreements, instruments or other documents referred to in this Certificate of Designations shall be furnished to any Holder of Series D Convertible Preferred Stock upon written request to the Corporation at its principal place of business.

SECTION 18. NOTICES.

All notices, demands, requests, consents, approvals or other communications required or permitted to be given hereunder or that are given with respect to the Series D Convertible Preferred Stock shall be in writing and shall be personally served or deposited in the mail, registered or certified, return receipt requested, postage prepaid, or delivered by reputable air courier service with charges prepaid, or transmitted by hand delivery, telegram, telex or facsimile, addressed as set forth below: (i) if to the Corporation, to: Computer Motion, Inc., 130 Cremona Drive, Goleta, California 93117, Attention: Larry Redfern, Facsimile No.: (805) 685-9277 (or to such other address of which notice has been given as herein provided, with copies (which shall not constitute notice) to: Stradling, Yocca, Carlson & Rauth, 302 Olive Street Santa Barbara, CA 93101, Attention: David Lafitte, Facsimile No.: (805) 564-1044; and (ii) if to the Holder, to the address of the registered holder according to the books and records of the Corporation or its transfer agent. Notice shall be deemed given on the date so served, deposited for mailing, transmitted by hand delivery, telegram, telex or facsimile or delivered to a reputable air courier for delivery as contemplated above and shall be deemed received on the date so served, if served or transmitted by hand delivery, telegram, telex or facsimile, one business day after being so delivered to a reputable air courier for delivery as contemplated above or three business days after being so mailed as contemplated above.

IN WITNESS WHEREOF, COMPUTER MOTION, INC. has caused this Certificate of Designations to be executed by its Chief Executive Officer and attested to by its Secretary this 6th day of March, 2003.

COMPUTER MOTION, INC.

/s/ Robert W. Duggan

Robert W. Duggan, Chief Executive Officer

ATTEST:

/s/ Larry Redfern
- ---
Larry Redfern, Secretary