GAMCO INVESTORS, INC. ET AL
Form 10-K
March 12, 2009

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

FORM 10-K

[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2008
or
[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____
Commission file number 1-14761

GAMCO Investors, Inc.

(Exact name of registrant as specified in its charter)

New York	13-4007862
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
One Corporate Center, Rye, NY	10580-1422
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code (914) 921-5100
Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Class A Common Stock, par value $0.001 per share	New York Stock Exchange, Inc.

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act Yes o No x.

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act Yes o No x.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days Yes x No o.

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K o.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer", and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o	Accelerated filer x
Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

Indicate by check mark whether the registrant is a shell company (as defined in Exchange Act Rule 12b-2) Yes o No x.

The aggregate market value of the class A common stock held by non-affiliates of the registrant as of June 30, 2008 (the last business day of the Registrant's most recently completed second fiscal quarter) was $366,282,100.

As of March 1, 2009, 7,383,415 shares of class A common stock and 20,378,699 shares of class B common stock were outstanding. 20,028,500 shares of class B common stock were held by GGCP, Inc.

DOCUMENTS INCORPORATED BY REFERENCE: The definitive proxy statement for the 2009 Annual Meeting of Shareholders.

GAMCO Investors, Inc.

Annual Report on Form 10-K For the Fiscal Year Ended December 31, 2008

	Computation of Ratios of Earnings to Fixed Charges
	Subsidiaries of GAMCO Investors, Inc.
	Consent of Independent Registered Public Accounting Firm
Certifications	Exhibit 31.1
	Exhibit 31.2
	Exhibit 32.1
	Exhibit 32.2

PART I

Forward-Looking Statements

Our disclosure and analysis in this report and in documents that are incorporated by reference contain some forward-looking statements. Forward-looking statements give our current expectations or forecasts of future events. You can identify these statements because they do not relate strictly to historical or current facts. They use words such as “anticipate,” “estimate,” “expect,” “project,” “intend,” “plan,” “believe,” and other words and terms of meaning. They also appear in any discussion of future operating or financial performance. In particular, these include statements relating to future actions, future performance of our products, expenses, the outcome of any legal proceedings, and financial results.

Although we believe that we are basing our expectations and beliefs on reasonable assumptions within the bounds of what we currently know about our business and operations, there can be no assurance that our actual results will not differ materially from what we expect or believe. Some of the factors that could cause our actual results to differ from our expectations or beliefs include, without limitation: the adverse effect from a decline in the securities markets; a decline in the performance of our products; a general downturn in the economy; changes in government policy or regulation; changes in our ability to attract or retain key employees; and unforeseen costs and other effects related to legal proceedings or investigations of governmental and self-regulatory organizations. We also direct your attention to any more specific discussions of risk contained in Item 1A below and in our other public filings or in documents incorporated by reference here or in prior filings or reports.

We are providing these statements as permitted by the Private Litigation Reform Act of 1995. We do not undertake to update publicly any forward-looking statements if we subsequently learn that we are unlikely to achieve our expectations or if we receive any additional information relating to the subject matters of our forward-looking statements.

ITEM 1: BUSINESS

Unless we have indicated otherwise, or the context otherwise requires, references in this report to “GAMCO Investors, Inc.,” “GBL,” “we,” “us” and “our” or similar terms are to GAMCO Investors, Inc., its predecessors and its subsidiaries.

2008 Selected Dynamics

Since our initial public offering in February 1999, GBL’s class A common stock has generated a 76% total return (including dividends) for its shareholders through December 31, 2008 versus a total negative return of 13% (including dividends) for the S&P 500 Index during the same period. Our class A common stock, which is traded on the New York Stock Exchange under the symbol “GBL”, ended the year at a closing market price of $27.32.

During 2008, we returned $95.6 million of our earnings to shareholders through dividends and our stock buyback program. We paid $56.2 million, or $2.02 per share, in dividends to our common shareholders and purchased 896,525 million shares at $39.4 million, for an investment of $43.93 per share.

In March, Gabelli Funds, LLC ("Funds Advisor") assumed the role of investment advisor to the AXA Enterprise Mergers and Acquisitions Fund, a fund that has been sub-advised by GAMCO Asset Management Inc. (“GAMCO”), an affiliate, since the fund’s inception on February 28, 2001. The portfolio management team, which has managed the fund since inception, remained the same.

In May, Nicholas F. Galluccio was named as the President and CEO of Teton Advisors, Inc. (“Teton”), a subsidiary of GAMCO, effective July 1. GAMCO is finalizing the distribution of its shares held in Teton to shareholders of

GAMCO in March of 2009. Teton is the adviser to seven open-end mutual funds under the GAMCO Westwood brand. Mr. Galluccio was with Trust Company of the West for 25 years, where he served as the Group Managing Director, U.S. Equities and Senior Portfolio Manager.

In July, Jeffrey M. Farber joined us as Executive Vice President Finance/Corporate Development and Chief Financial Officer. Mr. Farber will help us expand our business both internally and through acquisitions and lift-outs. He was previously with Bear Stearns, most recently as Senior Vice President – Finance and Controller; and prior to that with Deloitte & Touche as an audit partner.

In October, GBL privately placed a $60 million convertible promissory note with Cascade Investment, L.L.C. (“Cascade”). The ten-year note pays interest at 6.5% and provides Cascade with certain put rights and an escrow agreement. The note is convertible into GBL class A common stock at $70 per share.

In October, Virgil Chan joined GAMCO to manage our Asia operations from Hong Kong and will oversee all management functions in Asia. Mr. Chan has held a number of positions in investment banking and private equity, most recently with Symphony Capital Partners (formerly Schroder Capital Partners) in Singapore. He received his MBA from the Fellows Program at the MIT of the Sloan School of Management and holds an undergraduate degree from Washington University in St. Louis. A U.S. citizen, Mr. Chan is a Hong Kong Permanent Resident.

During November, the Bjurman, Barry Micro-Cap Growth Fund selected Teton, a subsidiary of GBL, as the interim investment adviser. Shareholders of the fund are in the process of voting to merge the fund into our GAMCO Westwood Mighty MitesSM Fund.

GBL formed a research and portfolio team to focus on the clean-technology and alternative-energy sector, with the future possibility of launching an investment fund. "Gabelli Green", led by John Segrich, will focus on investment opportunities in existing companies whose core operations are within wind, solar, emission controls and energy efficiency, nuclear, water and waste, energy storage, bio fuels, and all aspects of carbon capture, storage and trading. Gabelli Green broadens our platform joining other global teams that focus on Digital, Food of All Nations, Healthcare & Wellness, and Productivity Enhancers.

GAM GAMCO Equity Fund was awarded Standard & Poor’s AAA Rating for the fifth consecutive year and is one of only four S&P AAA rated funds out of the 95 fund Mainstream Equities Group. The Standard & Poor’s AAA rating is a widely acknowledged measure of excellence, awarded only when, in S&P’s words: “The fund demonstrates the highest standards of quality based on its investment process and management’s consistency of performance as compared to funds with similar objectives.”

Our liquid balance sheet, coupled with investment grade credit ratings from both Moody's and Standard & Poor's, provides access to financial markets and the flexibility to opportunistically add operating resources to our firm, repurchase our stock and consider strategic initiatives. As a result of GBL's shelf registration in the third quarter 2006, we have the right to issue any combination of senior and subordinate debt securities, convertible debt securities and equity securities (including common and preferred securities) up to a total amount of $520 million.

Our financial strength is underscored by having received an investment grade rating from two ratings agencies, Moody's Investors Services and Standard and Poor's Ratings Services. We believe that maintaining these investment grade ratings will provide greater access to the capital markets, enhance liquidity and lower overall borrowing costs. However, we will also consider the use of leverage as part of our corporate financial strategy even if it results in a lowering of our investment rating.

Gabelli & Company hosted six institutional symposiums and conferences during 2008. These meetings are an important component of the research services the firm provides its institutional clients. Specifically, 2008 featured our 32nd annual Automotive Aftermarket Symposium, our 18th annual Pump Valve & Motor Symposium, our 14th annual Aircraft Supplier Conference, seventh annual Dental Conference, and our inaugural Specialty Chemicals and Best Ideas Conferences. In 2009, we have already initiated our first Movie Conference to be held in March.

Overview

GAMCO Investors, Inc. (New York Stock Exchange ("NYSE"): GBL), well known for its Private Market Value (PMV) with a CatalystTM investment approach, is a widely-recognized provider of investment advisory services to mutual funds, institutional and private wealth management investors, and investment partnerships, principally in the United States. Through Gabelli & Company, Inc. ("Gabelli & Company"), we provide institutional research services to institutional clients and investment partnerships. We generally manage assets on a discretionary basis and invest in a variety of U.S. and international securities through various investment styles. Our revenues are based primarily on the firm's levels of assets under management ("AUM") and to a lesser extent, incentive fees associated with our various investment products.

Since 1977, we have been identified with and enhanced the "value" style approach to investing. Over the 31 years since the inception of the firm, consistent with our fundamental objective of providing an absolute rate of return for our clients, GBL generated over $10.5 billion in investment returns for our institutional and private wealth management clients. The 31 year CARR (compounded annual rate of return) for the institutional clients (as measured by our composite return) was 16.2% on a gross basis and 15.3% on a net basis. As stated in our mission statement, our investment objective is to earn a superior risk-adjusted return for our value clients over the long-term through our proprietary fundamental research. In addition to our value portfolios, we offer our clients a broad array of investment strategies that include global, growth, international and convertible products. We also offer a series of investment partnership (performance fee-based) vehicles that provide a series of long-short investment opportunities, both market and sector specific opportunities, including offerings of non-market correlated investments in merger arbitrage, as well as fixed income strategies.

As of December 31, 2008, we had $20.7 billion of AUM, 93% of which were in equity products. We conduct our investment advisory business principally through our subsidiaries: GAMCO Asset Management Inc. (Separate Accounts), Gabelli Funds, LLC (Mutual Funds) and Gabelli Securities, Inc. (Investment Partnerships). We also act as an underwriter, are a distributor of our open-end mutual funds and provide institutional research through Gabelli & Company, our broker-dealer subsidiary.

Our assets under management are organized into three groups:

- Investment Partnerships: we provide advisory services to limited partnerships and offshore funds ("Investment Partnerships"). We managed a total of $295 million in Investment Partnership assets on December 31, 2008.

- Institutional and Private Wealth Management: we provide advisory services to a broad range of investors, including private wealth management, corporate pension and profit-sharing plans, foundations, endowments, jointly-trusteed plans and municipalities, and also serve as sub-advisor to certain other third-party investment funds including registered investment companies ("Institutional and

Private Wealth Management"). Each Institutional and Private Wealth Management portfolio is managed to meet the specific needs and objectives of the particular client by utilizing investment strategies and techniques within our areas of expertise. On December 31, 2008, we had $8.5 billion of Institutional and Private Wealth Management AUM.

· Open and Closed-End Funds: we provide advisory services to (i) twenty one open-end funds and nine closed-end funds under Gabelli, GAMCO and Comstock brands; and (ii) seven open-end funds including the Westwood family of funds and the B.B. Micro Cap Growth Fund (collectively, the "Funds"). The Funds had $11.9 billion of assets under management on December 31, 2008.

GBL is a holding company formed in connection with our initial public offering ("Offering") in February 1999. GGCP, Inc. owns a majority of the outstanding shares of class B common stock of GBL, which ownership represented approximately 95% of the combined voting power of the outstanding common stock and approximately 72% of the equity interest on December 31, 2008. GGCP, Inc. is majority-owned by Mr. Mario J. Gabelli ("Mr. Gabelli"). Accordingly, Mr. Gabelli could be deemed to control GBL.

Our principal executive offices are located at One Corporate Center, Rye, New York 10580. Our telephone number is (914) 921-5100. We post or provide a link on our website, www.gabelli.com, to the following filings as soon as reasonably practicable after they are electronically filed with or furnished to the Securities and Exchange Commission ("Commission" or "SEC"): our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and any amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934. All such filings on our website are available free of charge.

Performance Highlights

Institutional and Private Wealth Management

The institutional client composite of our Institutional and Private Wealth Management business has achieved a compound annual return of approximately 15.3% on a net basis for over 31 years since inception through December 31, 2008, even after reflecting a 38.2% decline in this composite last year. The accounts in this composite are managed in our absolute return, research-driven PMV with a CatalystTM style since inception.

The table below compares the long-term performance record for our Institutional and Private Wealth Management composite since 1977, using our traditional value-oriented product, the Gabelli PMV with a CatalystTM investment approach, versus various benchmarks.

GAMCO Value
1977 – 2008

	GAMCO(a)	S&P 500(b)	Russel 2000(b)	CPI+10(b)
Number of Up Years	28	25	21	
Number of Down Years	4	7	9	
Years GAMCO Value Beat Index		22	21	20
Total Return (CAGR) gross (a)	16.2	10.8	10.8	14.0
Total Return (CAGR) net	15.3			
Beta	0.82			

Note: 1977 is a stub period of 10/1/77 to 12/31/77.

Footnotes

(a) The GAMCO Value composite represents fully discretionary, tax-exempt institutional accounts managed for at least one full quarter and meeting minimum account size requirements. The minimum size requirement for inclusion in 1985 was $500,000; $1 million in 1986; and $5 million in 1987 and thereafter. The performance calculations include accounts under management during the respective periods. As of 12/31/08, the GAMCO Value composite included 41 accounts with an aggregate market value of $2.5 billion. No two portfolios are identical. Accounts not within this size and type may have experienced different results. Not all accounts in the GAMCO Value Composite are included in the composite.

· GAMCO Value performance results are computed on a total-return basis, which includes all dividends, interest, and realized and unrealized gains and losses. The summary of past performance is not intended as a prediction of future results. Returns are presented in U.S. dollars. All returns are before taxes and custodial fees. The inception date of the GAMCO Value composite is 10/1/77.

· The net returns from 1990 to 2008 are net of actual fees and actual transaction costs. The net returns before 1990 reflects the calculation using a model investment fee (1% compounded quarterly) and actual transaction costs. Gross returns are before investment management fees.

· GAMCO Value Total Return represents the total net return of the composite from 10/1/77 through 12/31/08.

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Beta is the measure of the GAMCO Value composite's risk (volatility) in relation to the S&P 500 Index.

(b) The S&P 500 is an unmanaged index of 500 U.S. stocks and performance represents total return of the index including reinvestment of dividends. The Russell 2000 is an unmanaged index of 2,000 small capitalization stocks and performance represents total return of the index including reinvestment of dividends. The performance figures for the Russell 2000 are based on an inception date of 1/1/79. The S&P 500 and Russell 2000 do not necessarily reflect how a managed portfolio of equity securities would have performed. The CPI is a widely-used measure of inflation, and the CPI+10 measure is used to show the results that would have been achieved by obtaining a rate of return that exceeded the CPI by a constant 10% as a basis of comparison versus the results of the GAMCO Value composite.

· GAM GAMCO Equity Fund was awarded Standard & Poor's AAA Rating for the fifth consecutive year and is one of only four S&P AAA rated funds out of the 95 fund Mainstream Equities Group. The Standard & Poor's AAA rating is a widely acknowledged measure of excellence, awarded only when, in S&P's words: "The fund demonstrates the highest standards of quality based on its investment process and management's consistency of performance as compared to funds with similar objectives." GAM GAMCO Equity Fund has been sub-advised by GAMCO for London UK based GAM since the fund's launch in October 1987. We plan to enhance our position as a sub-advisor with other financial sponsors where we have investment capacity.

Open and
Closed-End
Funds

· Our 100% US Treasury Money Market Fund[1], exceeded $1 billion as investors fled enhanced-money market funds in favor of funds that focus on the highest quality U.S. Treasury instruments and superior yield. The fund ranked second in total return for the 12 months ended December 31, 2008 among 78 US Treasury money market funds tracked by Lipper Inc.[2], For the 5 year and 10 year periods ended December 31, 2008, the fund ranked 2nd out of 69 funds and 3rd out of 47 funds, respectively, within that category.

(1) Past performance is no guarantee of future results. An investment in any money market fund is not insured or guaranteed by the US government, the Federal Deposit Insurance Corporation or any government agency. Although the Fund seeks to maintain the value of an investment at $1.00 per share it is possible to lose money by investing in the Fund. Dividend yields and returns have been enhanced due to expense limitations initiated by the Adviser. Equity funds involve the risk that the underlying investments may lose value. Accordingly, it is possible to lose money by investing in these funds. Investing in gold stocks is considered speculative and is affected by a variety of worldwide economic, financial, and political risks. Small capitalization companies present greater risks than securities of larger more established companies. They trade less frequently and experience more abrupt price movements. Investors should consider the investment objectives, risks, sales charges and expense of the fund carefully before investing. The prospectus contains more complete information about this and other matters. The prospectus should be read carefully before investing. You can obtain a prospectus by calling Gabelli & Company, Inc. at 1-800-GABELLI (1-800-422-3554) or contacting your financial representative or by visiting http://www.gabelli.com.

(2) Lipper Inc. is a nationally-recognized independent provider of investment company data.

Business Strategy

Our business strategy targets global growth of the franchise through continued leveraging of our proven asset management strengths including our brand name, long-term performance record, diverse product offerings and experienced investment, research and client service professionals. In order to achieve growth in AUM and profitability, we are pursuing a strategy which includes the following key elements:

· Gabelli "Private Market Value (PMV) with a CatalystTM" Investment Approach. While we have expanded our investment product offerings, our "value investing" approach remains the core of our business. This method is based on the value investing principles articulated by Graham & Dodd in 1934 and further augmented by Mario J. Gabelli, CFA with his development of Private Market Value (PMV) with a CatalystTM and his introduction of a catalyst into the value investment methodology. The development of PMV analysis combined with the concept of a catalyst has evolved from the original Graham & Dodd value investing approach to a Gabelli augmented Graham & Dodd and, which attributable to Gabelli, is commonly referred to as Private Market Value (PMV) with a CatalystTM investing.

- Private Market Value (PMV) with a CatalystTM investing is a disciplined, research-driven approach based on intensive security analysis. In this process, we generally select stocks whose intrinsic value, based on our estimate of current asset value and future growth and earnings power, is significantly different from the value as reflected in the public market. We then calculate the firm's PMV, which is defined as the price an informed industrial buyer would be likely to pay to acquire the business.

  - Our value team generally looks for situations in which catalyst(s) is (are) working to help eliminate the premium or realize the discount between the public market price and the estimated PMV. Catalysts which are company specific include: realization of hidden assets, recognition of underperforming subsidiaries, share buybacks, spin-offs, mergers and acquisitions, balance sheet changes, new products, accounting changes, new management and cross-shareholder unwinding. Other catalysts are related to industry dynamics or macroeconomics and include but are not limited to: industry consolidation, deregulation, accounting, tax, pension and political reforms, technological change and the macroeconomic backdrop. The time horizons for catalysts to trigger change can either be short-term, medium-term or long-term.

· Establishing Research and Relationship Centers. To extend our research into new areas and add to our core research competency, we opened two research offices in Shanghai and Singapore supplementing our existing offices in London, New York, Chicago, Greenwich CT, Reno, Palm Beach, and Minneapolis. We will continue to evaluate adding additional research offices throughout the world.

· Introducing New Products and Services. We believe we have the capacity for development of new products and services around the Gabelli and GAMCO brands to complement our existing product offerings. New products since our initial public offering include:

- Six closed-end funds: The Gabelli Dividend & Income Trust, The Gabelli Global Deal Fund, The Gabelli Global Utility and Income Trust, The Gabelli Global Gold, Natural Resources & Income Trust, The Gabelli Utility Trust, and The Gabelli Healthcare and WellnessRX Trust.

- Four open-end funds: Gabelli Blue Chip Value Fund (1999), Gabelli Utilities Fund (1999) Gabelli Woodland Small Cap Value Fund (2003), Gabelli SRI Fund (2007), to be rebranded as Gabelli Green SRI Fund, Inc. in 2009.

- Four offshore funds: Gabelli Global Partners, Ltd., Gabelli Japanese Value Partners, Ltd., Gabelli Capital Structure Arbitrage Fund Ltd., and GAMCO SRI Partners, Ltd.

- Eight private limited partnerships: Gemini Global Partners, L.P., Gabelli Capital Structure Arbitrage Fund LP., Gabelli Intermediate Credit, L.P., Gabelli Japanese Value Partners, L.P., Gabelli Associates Fund II, L.P., GAMA Select Energy Plus, L.P., GAMCO Medical Opportunities, L.P., and the GAMCO Long/Short Equity Fund, L.P. to be launched in 2009.

· Incentive Fees and Fulcrum Fees. Our investment strategy is focused on adding stock specific alpha through our proprietary Private Market Value (PMV) with a CatalystTM equity research efforts. We expect to receive an increasing portion of our revenues and earnings through various products with incentive and fulcrum fees. Since we envision that a growing percentage of the firm's revenues will be directly linked to performance-based fees, this will also increase the variability of our revenues and profits. As of December 31, 2008, approximately $1.0 billion of Institutional and Private Wealth Management assets are managed on a performance fee basis along with $1.0 billion of preferred issues of closed-end funds, the $344 million The Gabelli Global Deal Fund and $295 million of investment partnership assets. Unlike most money management firms, we elected not to receive a management fee on a majority of the preferred offerings in our closed-end funds until the fund’s overall performance exceeds each preferred’s nominal cost of capital. In addition, the incubation of new product strategies using proprietary capital will compensate the investment team with a performance fee model to reinforce our pay-for-performance approach.

· Expanding Mutual Fund Distribution. We continue to expand our distribution network primarily through national and regional brokerage firms and have developed additional classes of shares for most of our mutual funds for sale through these firms and other third-party distribution channels on a commission basis. We intend to increase our wholesaling efforts to market the multi-class shares, which have been designed to meet the needs of investors who seek advice through financial consultants.

· Increasing Presence in Private Wealth Management Market. Our private wealth management business focuses, in general, on serving clients who have established an account relationship of $1 million or more with us. According to industry estimates, the number of households with over $1 million in investable assets will continue to grow in the future, subject to ups and downs in the equity and fixed income markets. With our 32-year history of serving this segment, long-term performance record, customized portfolio approach, dominant, tax-sensitive, buy-hold investment strategy, brand name recognition and broad array of product offerings, we believe that we are well-positioned to capitalize on the growth opportunities in this market.

· Increasing Marketing for Institutional and Private Wealth Management. The Institutional and Private Wealth Management business was principally developed through direct marketing channels. Historically, pension and financial consultants have not been a major source of new institutional and private wealth management business for us. We plan to augment our institutional sales force through the addition of staff to market directly to the consultant community as well as our traditional marketing channels.

· Attracting and Retaining Experienced Professionals. We offer significant variable compensation that provides opportunities to our staff. We have increased the scope of our investment management capabilities by adding portfolio managers and other investment personnel in order to expand our broad array of products. The ability to attract and retain highly-experienced investment and other professionals with a long-term commitment to us and our clients has been, and will continue to be, a significant factor in our long-term growth. At December 2008, we have 369,900 restricted stock awards outstanding to our professional staff recommended by and excluding Mr. Gabelli, which have three- and five-year vesting, which will reward long-term commitment to our goals.

· Sponsorship of Industry Conferences. Gabelli & Company, our institutional research boutique, sponsors industry conferences and management events throughout the year. At these conferences and events, senior management from leading industry companies share their thoughts on the industry, competition, regulatory issues and the challenges and opportunities in their businesses with portfolio managers and securities analysts.

· Hosting of Institutional Investor Symposiums. We have a tradition of sponsoring institutional investor symposiums that bring together prominent portfolio managers, members of academia and other leading business professionals to present, discuss and debate current issues and topics in the investment industry.

-1997	“Active vs. Passive Stock Selection”
-1998	“The Role of Hedge Funds as a Way of Generating Absolute Returns”
-2001	“Virtues of Value Investing”
-2003	“Dividends, Taxable versus Non-Taxable Issues”
-2006	“Closed-End Funds: Premiums vs. Discounts, Dividends and Distributions”

We also hold annual conferences for our investment partnership clients and prospects in New York and London at which our portfolio management team discusses the investment environment, our strategies and portfolios, and event-driven investment opportunities.

- Capitalizing on Acquisitions, Alliances and Lift-outs. We intend to selectively and opportunistically pursue acquisitions, alliances and lift-outs that will broaden our product offerings and add new sources of distribution. In November 2002, we completed our alliance with Woodland Partners LLC, a Minneapolis based investment advisor of institutional, high net-worth and sub-advisory accounts. On October 1, 1999, we completed our alliance with Mathers and Company, Inc. and now act as investment advisor to the Mathers Fund (renamed GAMCO Mathers Fund), and in May 2000, we added Comstock Partners Funds, Inc., (renamed Comstock Funds, Inc.). The Mathers and Comstock funds are part of our Non-Market Correlated mutual fund product line. On March 11, 2008, Funds Advisor assumed the role of investment advisor to the AXA Enterprise Mergers and Acquisitions Fund, a fund that has been sub-advised by GAMCO since the fund's inception on February 28, 2001. In November 2008, the Board of Directors of the B.B. Micro Cap Growth Fund selected Teton, a subsidiary of GBL, as its interim investment adviser. Shareholders of the fund have been asked to approve a merger of the fund into the GAMCO Westwood Mighty MitesSM Fund.

We believe that we have the financial capacity to pursue acquisitions and lift-outs.

We believe that our growth to date is traceable to the following factors:

- Strong Industry Fundamentals: According to data compiled by the U.S. Federal Reserve, the investment management industry has grown faster than more traditional segments of the financial services industry, including the banking and insurance industries. Since GBL began managing for institutional and private wealth management clients in 1977, world equity markets have grown at a 10.2% compounded annual growth rate through December 31, 2008 to nearly $32 trillion(a). The U.S. equity market comprises about $10.6 trillion(a) or roughly 33% of world equity markets. We believe that demographic trends and the growing role of money managers in the placement of capital compared to the traditional role played by banks and life insurance companies will result in continued growth of the investment management industry.

- Long-Term Performance: We have a superior long-term record of achieving relatively high returns for our Institutional and Private Wealth Management clients. We believe that our performance record represents a competitive advantage and a recognized component of our franchise.

- Stock Market Gains: Since we began managing for institutional and private wealth management clients in 1977, our traditional value-oriented Institutional and Private Wealth Management composite has earned a compound annual return of 15.3% net of fees versus a compound annual return of 10.8% for the S&P 500 through December 31, 2008. Since our initial public offering in February 1999 through December 2008, the compound annual return for our traditional value-oriented Institutional and Private Wealth Management composite was 5.3% versus the S&P 500's compound annual total negative return of 1.5%.

- Widely-Recognized "Gabelli" and "GAMCO" Brand Names: For much of our history, our portfolio managers and investment products have been featured in a variety of financial print media, including both U.S. and international publications such as The Wall Street Journal, Financial Times, Money Magazine, Barron's, Fortune, Business Week, Nikkei Financial News, Forbes Magazine, Consumer Reports and Investor's Business Daily. We also underwrite publications written by our investment professionals, including Deals…Deals…and More Deals which examines the practice of merger arbitrage and Global Convertible Investing: The Gabelli Way, a comprehensive guide to effective investing in convertible securities.

· Diversified Product Offerings: Since the inception of our investment management activities, we have sought to expand the breadth of our product offerings. We currently offer a wide spectrum of investment products and strategies, including product offerings in U.S. equities, U.S. fixed income, global and international equities, convertible securities, U.S. balanced and investment partnerships.

(a) Source: Birinyi Associates, LLC

Business Description

GBL was originally founded in 1976 as an institutional broker-dealer. We entered the institutional and private wealth management business in 1977, management of investment partnerships in 1985 and the mutual fund business in 1986. Our initial product offerings centered on our tax sensitive, buy-hold, value-oriented investment philosophy. Starting in the mid-1980s, we began building on our core value-oriented equity investment products by adding new investment strategies designed for a broad array of clients seeking to invest in growth-oriented equities, convertible securities and fixed income products. Since then, we have continued to build our franchise by expanding our investment management capabilities through the addition of industry specific, international, global, non-market correlated, venture capital, leveraged buy-out and merchant banking product offerings. Throughout our 31-year history, we have marketed most of our products under the "Gabelli" and "GAMCO" brand names. Specialty brands offered to investors include Mathers, Comstock, Westwood and Woodland.

Our AUM are clustered mostly in three groups: Institutional and Private Wealth Management, Mutual Funds and Investment Partnerships.

Institutional and Private Wealth Management: Since 1977, we have provided investment management services through our subsidiary GAMCO to a broad spectrum of institutional and private wealth investors. At December 31, 2008, we had $8.5 billion of AUM in approximately 1,700 Institutional and Private Wealth Management accounts, representing approximately 41% of our total AUM. We currently provide advisory services to a broad range of investors, the majority of which (in total number of accounts) are private wealth management client accounts – defined as individuals and their retirement assets generally having minimum account balances of $1 million. As of December 31, 2008, Institutional client accounts, which include corporate pension and profit sharing plans, jointly-trusteed plans and public funds, represented 43% of the Institutional and Private Wealth Management assets and 7% of the accounts. Private wealth management accounts comprised approximately 83% of the total number of Institutional and Private Wealth Management accounts and approximately 28% of the assets as of December 31, 2008.

Private wealth management clients are attracted to us by our returns and the tax efficient nature of the underlying investment process in these traditional products. Foundation and endowment fund assets represented 9% of the number of Institutional and Private Wealth Management accounts and approximately 10% of the assets. The sub-advisory portion of the Institutional and Private Wealth Management (where we act as sub-advisor to certain other third-party investment funds) held approximately $1.6 billion or 19% of total Institutional and Private Wealth Management assets with less than 1% of the number of accounts.

The ten largest relationships comprised approximately 45% of our total Institutional and Private Wealth Management AUM and approximately 20% of our total Institutional and Private Wealth Management revenues as of and for the year ended December 31, 2008, respectively.

In general, our Institutional and Private Wealth Management AUM are managed to meet the specific needs and objectives of each client by utilizing investment strategies – "value", "large cap value", "small cap value", "large cap growth "global", "international growth" and "convertible bond" – and techniques that are within our areas of expertise. We distinguish between taxable and tax-free assets and manage client portfolios with tax sensitivity within given investment strategies.

At December 31, 2008, over 91.7% of our Institutional and Private Wealth Management AUM were obtained through direct sales relationships. Sales efforts are conducted on a regional and product specialist basis. Members of the sales and marketing staff for the Institutional and Private Wealth Management business have an average of more than ten years of experience with us and focus on developing and maintaining direct, long-term relationships with their Institutional and Private Wealth Management clients. The firm will host its 24th Annual Client Conference in May 2009. This event will be held at the Pierre Hotel in New York and will include presentations by our portfolio

managers and analysts.

We act as a sub-advisor on certain funds for several large and well-known fund managers. Similar to corporate clients, sub-advisory clients are also subject to business combinations which may result in the curtailment of product distribution or the termination of the relationship.

Investment advisory agreements for our Institutional and Private Wealth Management are typically subject to termination by the client without penalty on 30 days' notice or less.

Open and Closed-End Funds: Gabelli Funds, LLC provides advisory services to twenty-one open-end funds and nine closed-end funds. The Company, through Teton, advises the GAMCO Westwood family of funds, consisting of six open-end funds, three of which are managed on a day-to-day basis by Teton, and three are sub-advised by Westwood Management Corp., a wholly-owned subsidiary of Westwood Holdings Group, Inc. Teton also advises the B.B. Micro Cap Growth Fund. At December 31, 2008, we had $11.9 billion of AUM in open-end funds and closed-end funds, representing approximately 58% of our total AUM. Our equity funds and closed-end funds were $10.4 billion in AUM on December 31, 2008, 35.7% below the $16.1 billion on December 31, 2007.

On February 25, 2009, we announced the completion of our previously disclosed plan to distribute shares in majority-controlled Teton. On the March 10, 2009 record date for this transaction, shareholders of GBL will receive 14.93 shares of Teton for each 1,000 shares of GBL owned. The distribution date is March 20, 2009.

As a result of the Teton spin-off, the following Teton advised funds will no longer be a part of GBL: GAMCO Westwood Equity Fund, GAMCO Westwood Balanced Fund, GAMCO Westwood Income Fund, GAMCO Westwood SmallCap Equity Fund, GAMCO Westwood Intermediate Bond Fund, GAMCO Westwood Mighty MitesSM Fund and the B.B. Micro Cap Growth Fund.

The Board of Trustees of the B.B. Micro Cap Growth Fund has selected Teton to act as the interim investment advisor and, subject to shareholder approval, the fund will be merged into the GAMCO Westwood Mighty MitesSM Fund.

The GAMCO brand encompasses a panoply of portfolios. It is the brand for our “Growth” business, which is primarily represented by The GAMCO Growth Fund, The GAMCO Global Growth Fund, and The GAMCO International Growth Fund. GAMCO also includes other distinct investment strategies and styles including our gold, convertible securities and contrarian funds.

The eight GAMCO branded open-end funds are:

- GAMCO Growth
- " International Growth
- " Gold
- " Global Telecommunications
- " Global Growth
- " Global Opportunity
- " Global Convertible Securities
- " Mathers

The Gabelli brand represents our "Value" business, primarily representing our absolute return, research-driven Private Market Value (PMV) with a CatalystTM funds. The GAMCO Westwood Mighty MitesSM Fund, GAMCO Westwood SmallCap Equity Fund, GAMCO Westwood Income Fund and the GAMCO Global Telecommunications Fund, are value portfolios but retain the GAMCO name. The Gabelli brand also includes The Gabelli Blue Chip Value Fund and The Gabelli Woodland Small Cap Growth Fund as well as all of the closed-end funds.

Open-end Funds

On December 31, 2008, we had $8.1 billion of AUM in twenty-eight open-end funds. At year-end, of the AUM in open-end funds having an overall rating from Morningstar, Inc. ("Morningstar"), 87% were ranked "three stars" or better, with approximately 77% ranked "five stars" or "four stars" on an overall basis (i.e., derived from a weighted average of the performance figures associated with their three-, five-, and ten-year Morningstar Rating metrics). There can be no assurance, however, that these funds will be able to maintain such ratings or that past performance will be indicative of future results.

At December 31, 2008, approximately 27% of our AUM in open-end, equity funds had been obtained through direct sales relationships. We also sell our open-end funds through Third-Party Distribution Programs, particularly No-Transaction Fee ("NTF") Programs, and have developed additional classes of shares for many of our funds for sale through additional third-party distribution channels on a commission basis. At December 31, 2008, Third Party Distribution Programs accounted for approximately 73% of all assets in open-end funds.

In March 2008, Gabelli Funds, LLC, through acquisition, assumed the role of investment advisor to the AXA Enterprise Mergers and Acquisitions Fund, a fund that has been sub-advised by GAMCO since the fund's inception on February 28, 2001. The GAMCO portfolio management team, which has managed the fund since inception, remained the same.

Closed-end Funds

We act as investment advisor to nine closed-end funds, all of which trade on the NYSE: Gabelli Equity Trust (GAB), Gabelli Global Deal Fund (GDL), Gabelli Global Multimedia Trust (GGT), Gabelli Healthcare & Wellness Rx Trust (GRX), Gabelli Convertible and Income Securities Fund (GCV), Gabelli Utility Trust (GUT), Gabelli Dividend & Income Trust (GDV), Gabelli Global Utility & Income Trust (GLU) and Gabelli Global Gold, Natural Resources & Income Trust (GGN). As of December 31, 2008, the nine Gabelli closed-end funds had total assets of $3.8 billion, representing 31.9% of the total assets in our Mutual Funds business.

The Gabelli Equity Trust, which raised $400 million through its initial public offering in August 1986, finished its 22nd year with net assets of $1.1 billion. Since inception, the Equity Trust has distributed $2.2 billion in cash to common shareholders through its 10% Distribution Policy and spawned three other closed-end funds, the Gabelli Global Multimedia Trust, the Gabelli Utility Trust and the Gabelli HealthCare & Wellness Rx Trust. In 2006, the Equity Trust also received net proceeds of $144.8 million of assets attributable to the issuance of 6.20% Series F Preferred Stock.

The Gabelli Dividend & Income Trust, launched in November 2003, raised $196.6 million in net proceeds through its placement of Series D and Series E Preferred Shares in November 2005. The Gabelli Dividend & Income Trust, which invests primarily in dividend-paying equity securities, had net assets of $1.5 billion as of December 31, 2008.

The Gabelli Global Gold, Natural Resources & Income Trust raised gross proceeds of $352 million through its initial public offering in March 2005 and the exercise of the underwriters' overallotment option in May 2005. The Gabelli Global Gold, Natural Resources & Income Trust, which invests primarily in equity securities of gold and natural resources companies and utilizes a covered call option writing program to generate current income, had net assets of $289 million as of December 31, 2008.

In January 2007, we launched the Gabelli Global Deal Fund, a closed-end fund which seeks to achieve its investment objective by investing primarily in announced merger and acquisition transactions and, to a lesser extent, in corporate reorganizations involving stubs, spin-offs and liquidations.

A detailed description of our Funds is provided within this Item 1 beginning on page 16.

Investment Partnerships: We manage Investment Partnerships through our 92% majority-owned subsidiary, Gabelli Securities, Inc. ("GSI"). The Investment Partnerships consist primarily of limited partnerships, offshore funds, Institutional and Private Wealth Management and merchant banking. We had $295 million of Investment Partnership AUM.

We introduced our first investment partnership, a merger arbitrage partnership, in 1985. An offshore version of this strategy was added in 1989. Building on our strengths in global event-driven value investing, several new Investment Partnerships have been added to balance investors' geographic, strategy and sector needs. Today we offer a broad range of absolute return products. Within our merger arbitrage strategy, we manage approximately $230 million of assets for investors who seek positive returns not correlated to fluctuations of the general market. These funds seek to drive returns by investing in announced merger and acquisition transactions that are primarily dependent on deal closure and less on the overall market environment. In event-driven strategies, we manage $35 million of assets focused on the U.S., Japanese, and European markets. We also manage a series of sector-focused absolute return funds designed to offer investors a mechanism to diversify their portfolios by global economic sector rather than by geographic region. We currently offer three sector-focused portfolios: the Gabelli International Gold Fund Ltd., GAMA Select Energy Plus, L.P., and GAMCO Medical Opportunities, L.P. Merchant banking activities are carried out through ALCE Partners, L.P. and Gabelli Multimedia Partners, L.P., both of which are closed to new investors.

Assets Under Management

The following table sets forth total AUM by product type as of the dates shown and their compound annual growth rates ("CAGR"):

Assets Under Management
By Product Type
(Dollars in millions)

	At December 31,					January 1, 2004 to December 31, 2008	% Change
	2004	2005	2006	2007	2008	CAGR(a)	2008 / 07
Equity:							
Mutual Funds	$ 12,371	$ 12,963	$ 14,195	$ 16,115	$ 10,367	(2.3)%	(35.7)%
Institutional & Private Wealth Management							
Direct	9,881	9,550	10,282	10,708	6,861	(5.5)	(35.9)
Sub-advisory	3,706	2,832	2,340	2,584	1,585	(16.6)	(38.7)
Total Equity	25,958	25,345	26,817	29,407	18,813	(5.3)	(36.0)
Fixed Income:							
Money Market Mutual Funds	1,488	724	734	1,112	1,507	9.2	35.5
Bond Mutual Funds	11	11	10	10	14	4.9	40.0
Institutional & Private Wealth	388	84	50	24	22	(46.5)	(8.3)

Management							
Total Fixed Income	1,887	819	794	1,146	1,543	(7.0)	34.6
Investment Partnerships	814	634	491	460	295	(15.7)	(35.9)
Total Assets Under Management	$ 28,659	$ 26,798	$ 28,102	$ 31,013	$ 20,651	(5.6)	(33.4)
Breakdown of Total Assets Under Management:							
Mutual Funds	$ 13,870	$ 13,698	$ 14,939	$ 17,237	$ 11,888	(2.3)	(31.0)
Institutional & Private Wealth Management							
Direct	10,269	9,634	10,332	10,732	6,883	(6.5)	(35.9)
Sub-advisory	3,706	2,832	2,340	2,584	1,585	(16.6)	(38.7)
Investment Partnerships	814	634	491	460	295	(15.7)	(35.9)
Total Assets Under Management	$ 28,659	$ 26,798	$ 28,102	$ 31,013	$ 20,651	(5.6)	(33.4)

(a) Compound annual growth rate.

Summary of Investment Products

We manage assets in the following wide spectrum of investment products and strategies, many of which are focused on fast-growing areas:

U.S. Equities:	Global and International Equities:	Investment Partnerships:
All Cap Value	International Growth	Merger Arbitrage
Large Cap Value	Global Growth	U.S. Long/Short
Large Cap Growth	Global Value	Global Long/Short
Mid Cap Value	Global Telecommunications	European Arbitrage (a)
Small Cap Value	Global Multimedia	Japanese Long/Short
Small Cap Growth	Gold	Sector-Focused
Micro Cap		- Energy
Natural Resources	U.S. Fixed Income:	- Gold
Income	Corporate	- Medical Opportunities
Utilities	Government	Merchant Banking
Non-Market Correlated	Asset-backed	
Options Income	Intermediate	
	Short-term	
Convertible Securities:		U.S. Balanced:
U.S. Convertible Securities		Balanced Growth
Global Convertible Securities		Balanced Value

(a) This strategy is no longer offered in 2009.

In 2008, we continued to develop the skills of our investment team by allocating firm capital to incubate investment strategies. This began with a capital structure arbitrage strategy (2004) and now includes a merger-arbitrage and a global trading strategy.

Additional Information on Mutual Funds

Through our affiliates, we act as advisor to all of the Funds, except with respect to the Gabelli Capital Asset Fund for which we act as a sub-advisor. Guardian Investment Services Corporation, an unaffiliated company, acts as manager. As sub-advisor, we make day-to-day investment decisions for the $109 million Gabelli Capital Asset Fund.

Funds Advisor, a wholly-owned subsidiary of GBL, acts as the investment advisor for all of the Funds other than the GAMCO Westwood family of funds (six portfolios) and The B.B. Micro Cap Growth Fund.

Teton, a subsidiary controlled by GBL, until its March 20, 2009 spin-off, acts as investment advisor to the GAMCO Westwood family of funds and The B.B. Micro Cap Growth Fund and has retained Westwood Management Corp., the advisory subsidiary of Westwood Holdings Group, Inc. (NYSE: WHG), to act as sub-advisor for three portfolios. The GAMCO Westwood Mighty MitesSM Fund, GAMCO Westwood SmallCap Equity Fund and GAMCO Westwood Income Fund, and B.B. Micro Cap Growth Fund are directly advised by Teton. Subsequent to the Teton spin-off, WHG will own an approximately 15.3% equity interest in Teton.

The following table lists the Funds, together with the December 31, 2008 Morningstar overall rating for the open-end mutual funds, where rated (ratings are not available for the money-market fund and other open-end mutual funds, which collectively represent 20.8% of the open-end mutual fund AUM in the Funds), and provides a description of the primary investment objective, fund characteristics, fees, the date that the fund was initially offered to investors, and the AUM in the funds as of December 31, 2008.

Fund (Morningstar Overall Rating) (1)	Primary Investment Objective	Fund Characteristics	Advisory Fees (%)	12b-1 Fees (%)	Initial Offer Date	Net Assets as of December 31, 2008 (all classes) ($ in millions)
OPEN-END FUNDS:						
EQUITY INCOME:						
The Gabelli Equity Income Fund ««««	High level of total return with an emphasis on income-producing equities with yields greater than the S&P 500 average.	Class AAA, No-load, Open-end, Diversified, Multi-class Shares (2)	1.00	.25	01/02/92	$ 906
GAMCO Westwood Balanced Fund ««««« (12)	Both capital appreciation and current income using portfolios containing stocks, bonds, and cash as appropriate in light of current economic and business conditions.	Class AAA, No-load, Open-end, Diversified, Multi-class shares (2)	.75	.25	10/01/91	$ 143
GAMCO Westwood Income Fund ««««	High level of current income as well as long-term capital	Class AAA, No-load, Open-end,	1.00(9)	.25	09/30/97	$ 6

	appreciation by investing					
(12)	primarily in income producing	Diversified,				
	equity and fixed income	Multi-class shares (2)				
	securities.					
VALUE:						
GAMCO Westwood	Capital appreciation through a	Class AAA,	1.00	.25	01/02/87	$ 143
Equity Fund	diversified portfolio of equity	No-load,				
««««««	securities using bottom-up	Open-end,				
(12)	fundamental research with a	Diversified,				
	focus on identifying	Multi-class shares (2)				
	well-seasoned companies.					
The Gabelli	Growth of capital as a primary	Class AAA,	1.00	.25	03/03/86	$ 1,744
Asset Fund	investment objective, with	No-load,				
«««««	current income as a secondary	Open-end,				
	investment objective. Invests in	Diversified,				
	equity securities of companies	Multi-class shares (2)				
	selling at a significant discount					
	to their private market value.					
The Gabelli Blue Chip	Capital appreciation through	Class AAA,	1.00	.25	08/26/99	$ 19
Value Fund	investments in equity securities	No-load,				
««««	of established companies, which	Open-end,				
	are temporarily out of favor and	Diversified,				
	which have market capitalizations	Multi-class shares (2)				
	in excess of $5 billion.					

SMALL CAP VALUE:						
The Gabelli Small Cap Growth Fund ««««««	High level of capital appreciation from equity securities of smaller companies with market capitalization of $2 billion or less at the time of purchase.	Class AAA, No-load, Open-end, Diversified, Multi-class Shares (2)	1.00	.25	10/22/91	$ 838

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Fund (Morningstar Overall Rating) (1)	Primary Investment Objective	Fund Characteristics	Advisory Fees (%)	12b-1 Fees (%)	Initial Offer Date	Net Assets as of December 31, 2008 (all classes) ($ in millions)
The Gabelli Woodland Small Cap Value Fund ««««	Long Term capital appreciation investing at least 80% of its in equity securities of companies with market capitalizations less than the greater of $3.0 billion or the largest company in the Russell 2000 Index.	Class AAA, No-load, Open-end, Non-diversified, Multi-class shares (2)	1.00 (9)	.25	12/31/02	$ 4
GAMCO Westwood SmallCap Equity Fund «« (12)	Long-term capital appreciation, investing at least 80% of its assets in equity securities of companies with market capitalizations of $2.5 billion or less at the time of purchase.	Class AAA, No-load, Open-end, Diversified, Multi-class shares (2)	1.00 (9)	.25	04/15/97	$ 7
FOCUSED VALUE:						
The Gabelli Value Fund ««	High level of capital appreciation from	Class A, Front end-load, Open-end,	1.00	.25	09/29/89	$ 381

	undervalued equity securities that are held in a concentrated portfolio.	Non-diversified, Multi-class shares (2)				
GROWTH:						
The GAMCO Growth Fund ««	Capital appreciation from companies that have favorable, yet undervalued, prospects for earnings growth. Invests in equity securities of companies that have above-average or expanding market shares and profit margins.	Class AAA, No-load, Open-end, Diversified, Multi-class Shares (2)	1.00	.25	04/10/87	$ 463
GAMCO International Growth Fund ««««	Capital appreciation by investing primarily in equity securities of foreign companies with rapid growth in revenues and earnings.	Class AAA, No-load, Open-end, Diversified, Multi-class shares (2)	1.00	.25	06/30/95	$ 27
AGGRESSIVE GROWTH:						
The GAMCO Global Growth Fund ««««	High level of capital appreciation through investment in a portfolio of equity securities focused on companies involved	Class AAA, No load, Open-end, Non-diversified, Multi-class shares (2)	1.00	.25	02/07/94	$ 53

	in the global marketplace.					
MICRO-CAP:						
GAMCO Westwood Mighty MitesSM Fund	Long-term capital appreciation by investing primarily	Class AAA, No load,	1.00	.25	05/11/98	$ 70
«««««« (12)	in equity securities with market capitalization of $300 million or less at the time of purchase.	Open-end, Diversified, Multi-class shares (2)				

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Fund (Morningstar Overall Rating) (1)	Primary Investment Objective	Fund Characteristics	Advisory Fees (%)	12b-1 Fees (%)	Initial Offer Date	Net Assets as of December 31, 2008 (all classes) ($ in millions)
SPECIALTY EQUITY:						
The GAMCO Global Opportunity Fund ««««	High level of capital appreciation through worldwide investments in equity securities.	Class AAA, No-load, Open-end, Non-diversified, Multi-class shares (2)	1.00 (9)	.25	05/11/98	$ 12
The GAMCO Global Convertible Securities Fund ««	High level of total return through a combination of current income and capital Appreciation through investment in convertible securities of U.S. and non-U.S. issuers.	Class AAA, No-load, Open-end, Non-diversified, Multi-class shares (2)	1.00 (9)	.25	02/03/94	$ 4
The Gabelli Capital Asset Fund (not rated) (8)	Capital appreciation from equity securities of companies selling at a significant discount to their private market value.	No-load, Open-end, Diversified, Variable Annuity	.75	n/a	05/01/95	$ 109
The Gabelli SRI Fund (not rated) (8)	Capital appreciation from equity securities of companies the fund deems to be socially responsible.	Class A, No-load, Open-end, Diversified,	1.00 (9)	.25	6/1/07	$ 2

		Multi-class shares (2)					
SECTOR:							
GAMCO Gold Fund ««««	Seeks capital appreciation and employs a value approach to investing primarily in equity securities of gold-related companies worldwide.	Class AAA, No-load, Open-end, Diversified, Multi-class shares (2)	1.00	.25	07/11/94	$	387
The GAMCO Global Telecommunications Fund «««««	High level of capital appreciation through worldwide investments in equity securities, including the U.S., primarily in the telecommunications industry.	Class AAA, No-load, Open-end, Non-diversified, Multi-class shares (2)	1.00	.25	11/01/93	$	142
The Gabelli Utilities Fund «««««	High level of total return through a combination of capital appreciation and current income from investments in utility companies.	Class AAA, No-load, Open-end, Diversified, Multi-class shares (2)	1.00	.25	08/31/99	$	590
ABSOLUTE RETURN:							
The Gabelli ABC Fund «««««««	Total returns that are attractive to investors in various market conditions without excessive risk of capital loss, utilizing certain arbitrage strategies and investing in value orientated	No-load, Open-end, Non-diversified Multi-class shares (2)	.50 (7)	n/a (7)	5/14/93	$	179

common stocks at a significant discount to their PMV.

Fund (Morningstar Overall Rating) (1)	Primary Investment Objective	Fund Characteristics	Advisory Fees (%)	12b-1 Fees (%)	Initial Offer Date	Net Assets as of December 31, 2008 (all classes) ($ in millions)
The Gabelli Enterprise Mergers and Acquisitions Fund ««««	Capital appreciation through investment in companies believed to be likely acquisition targets within 12 to 18 months and companies involved with publically announced mergers, takeovers, tender offers, leveraged buyouts, spin-offs, liquidations, and other corporate reorganizations.	Class A Load, Open-end, Diversified Multi-class shares (2)	.94	.45		$ 182
CONTRARIAN:						
Comstock Capital Value Fund (not rated) (8)	Maximize total return consisting of capital appreciation and current income.	Class A Load, Open-end, Diversified Multi-class shares (2)	1.00	.25	10/10/85	$ 70
GAMCO Mathers Fund	Long-term capital appreciation in various market conditions	Class AAA: No-load,	1.00	.25	8/19/65	$ 27

««««	without excess risk of capital loss.	Open-end, Diversified					
FIXED INCOME:							
GAMCO Westwood Intermediate Bond Fund ««««« (12)	Total return and current income, while limiting risk to principal. Pursues higher yields than shorter maturity funds and has more price stability than generally higher yielding long-term funds.	Class AAA: No-load, Open-end, Diversified Multi-class shares (2)	.60(9)	.25	10/01/91	$	14
CASH MANAGEMENT-MONEY MARKET:							
The Gabelli U.S. Treasury Money Market Fund (11)	High current income with preservation of principal and liquidity, while striving to keep expenses among the lowest of all U.S. Treasury money market funds.	Money Market, Open-end, Diversified Multi-class shares (2)	.30(9)	n/a	10/01/92	$	1,507

Fund (Morningstar Overall Rating) (1)	Primary Investment Objective	Fund Characteristics	Advisory Fees (%)	Initial Offer Date	Net Assets as of December 31, 2008 (all classes) ($ in millions)
CLOSED-END FUNDS:					
The Gabelli Equity Trust Inc.	Long-term growth of capital by investing in equity securities.	Closed-end, Non-diversified NYSE Symbol: GAB	1.00 (10)	08/14/86	$ 1,107
The Gabelli Convertible and Income Securities Fund Inc. (4)	High total return from investing primarily in convertible instruments.	Closed-end, Diversified NYSE Symbol: GCV	1.00 (10)	07/03/89	$ 92
The Gabelli Global Multimedia Trust Inc. (3)	Long-term capital appreciation from equity investments in global telecommunications, media, publishing and entertainment holdings.	Closed-end, Non-diversified NYSE Symbol: GGT	1.00 (10)	11/15/94	$ 122
The Gabelli Utility Trust (5)	High total return from investments primarily in securities of companies involved in gas, electricity and water industries.	Closed-end, Non-diversified NYSE Symbol: GUT	1.00 (10)	07/09/99	$ 207
The Gabelli	Qualified dividend income	Closed-end, Non-diversified	1.00 (10)	11/24/03	$ 1,522

Dividend & Income Trust	and capital appreciation potential.	NYSE Symbol: GDV				
The Gabelli Global Utility & Income Trust	A consistent level of after-tax total return with an emphasis on tax-advantaged dividend income.	Closed-end, Non-diversified NYSE Symbol: GLU	1.00	5/28/04	$	56
The Gabelli Global Gold, Natural Resources & Income Trust	High level of current income through an option writing strategy on equity securities owned in the gold and natural resources industries.	Closed-end, Non-diversified NYSE Symbol: GGN	1.00	3/29/05	$	289
The Gabelli Global Deal Fund	Achieve absolute return through in various market conditions without excessive risk of capital.	Closed-end, Non-diversified NYSE Symbol: GDL	0.50	1/26/07	$	344
The Gabelli Healthcare and Wellness Rx Fund (6)	Seeks long-term growth of capital within the health and wellness industries.	Closed-end, Non-diversified NYSE Symbol: GRX	1.00	6/28/07	$	53

(1) Morningstar RatingTM as of December 31, 2008 is provided if available for open-end funds only. Morningstar ratings may be available for certain closed-end funds. Morningstar ratings are not an indication of absolute performance. Current performance for some of the funds in 2008 were negative. Call 800-GABELLI for performance results through the most recent month end. For each fund with at least a three-year history, Morningstar calculates a Morningstar RatingTM based on a Morningstar risk-adjusted return measure that accounts for variation in a fund's monthly performance (including the effects of sales charges, loads and redemption fees) placing more emphasis on downward variations and rewarding consistent performance. The top 10% of the funds in an investment category receive five stars, the next 22.5% receive four stars, the next 35% receive three stars, the next 22.5% receive two stars and the bottom 10% receive one star. The Overall Morningstar Rating for a fund is derived from a weighted average of the performance figures associated with its three, five, and ten-year (if applicable) Morningstar Rating metrics. Morningstar Ratings are shown for the respective class shown; other classes may have different performance characteristics. There were 484 Conservative Allocation funds rated for three years, 290 funds for five years and 140 funds for ten years (GAMCO Mathers Fund). There were 423 Mid-Cap Blend funds rated for three years, 337 funds for five years and 163 funds for ten years (The Gabelli Asset Fund, The Gabelli ABC Fund, The Gabelli Value Fund, The Gabelli Enterprise Mergers & Acquisition Fund). There were 1,185 Large Value funds rated for three years, 963 funds for five years and 451 funds for ten years (The Gabelli Blue Chip Value Fund, GAMCO Westwood Equity Fund, The Gabelli Equity Income Fund). There were 72 Convertibles funds rated for three years, 67 funds for five years and 46 funds for ten years (The GAMCO Global Convertible Securities Fund). There were 507 World Stock funds rated for three years, 420 funds for five years and 236 funds for ten years (The GAMCO Global Growth Fund, The GAMCO Global Opportunity Fund). There were 37 Specialty-Communications funds rated for three years, 34 funds for five years and 13 funds for ten years (The GAMCO Global Telecommunications Fund). There were 61 Specialty-Precious Metals funds rated for three years, 58 funds for five years and 36 funds for ten years (GAMCO Gold Fund).

There were 1,507 Large Growth funds rated for three years, 1,243 funds for five years and 608 funds for ten years (The GAMCO Growth Fund). There were 209 Foreign Large Growth funds rated for three years, 164 funds for five years and 80 funds for ten years (GAMCO International Growth Fund). There were 341 Small Value funds rated for three years, 269 funds for five years and 121 funds for ten years (GAMCO Westwood Mighty MitesSM Fund,). There were 93 Specialty-Utilities funds rated for three years, 76 funds rated for five years and 50 funds for ten years (The Gabelli Utilities Fund). There were 962 Moderate Allocation funds rated for three years, 768 funds for five years and 448 funds for ten years (GAMCO Westwood Balanced Fund, GAMCO Westwood Income Fund). There were 991 Intermediate-Term Bond funds rated for three years, 857 funds for five years and 458 funds for ten years (GAMCO Westwood Intermediate Bond Fund). There were 561 Small Blend funds rated for three years and 449 funds for five years and 216 funds for ten years (The Gabelli Small Cap Growth Fund, GAMCO Westwood SmallCap Equity Fund, The Gabelli Woodland Small Cap Value Fund). There were 704 Small Growth funds rated for three years and 574 funds for five years and 291 funds for ten years (B.B. Micro Cap Growth Fund). (a) 2008 Morningstar, Inc. All Rights reserved. This information is (1) proprietary to Morningstar and/or its content providers (2) may not be copied or distributed; and (3) is not warranted to be accurate, complete or timely. Neither Morningstar nor its content providers are responsible for any damages or losses arising from any use of this information. Past performance is no guarantee of future results.

(2) These funds have multi-classes of shares available. Multi-class shares include Class A shares which have a front-end sales charge, Class B shares which are subject to a back-end contingent deferred sales charge for up to 6 years and Class C which shares are subject to a 1% back-end contingent deferred sales charge for up to two years. However, Class B shares are no longer offered for new purchases as of July 2004. Comstock Capital Value Fund Class R shares, which are no-load, are available only for retirement and certain institutional accounts. Comstock Capital Value class AAA shares are no-load and became available on December 8, 2008 Class I shares are available to institutional accounts. Net assets include all share classes.

(3) The Gabelli Global Multimedia Trust Inc. was formed in 1994 through a spin-off of assets from The Gabelli Equity Trust.

(4) The Gabelli Convertible and Income Securities Fund Inc. was originally formed in 1989 as an open-end investment company and was converted to a closed-end investment company in March 1995.

(5) The Gabelli Utility Trust was formed in 1999 through a spin-off of assets from The Gabelli Equity Trust.

(6) The Gabelli Healthcare and WellnessRX Trust was formed in 2007 through a spin-off of assets from The Gabelli Equity Trust.

(7) Funds Advisor has reduced the Advisory fee from 1.00% to 0.50% since April 1, 2002. Gabelli & Company waived receipt of the 12b-1 Plan distribution fees as of January 1, 2003, and on February 25, 2004, the Fund's Board of Directors agreed with the Funds Advisor's request to terminate the 12b-1 Plan. The advisory fee was contractually set at 0.50% as of May 1, 2007. The Gabelli ABC Fund – Advisor class has a 12b-1 Plan which pays 0.25%.

(8) Certain funds are not rated because they do not have a three-year history, or there are not enough similar funds in the category determined by Morningstar.

(9) Funds Advisor and Teton have agreements in place to waive its advisory fee or reimburse expenses of the Fund to maintain fund expenses at a specified level for Class AAA shares; multi-class shares have separate limits as described in the Fund's prospectus. (The Gabelli Woodland Small Cap Value Fund – 2.00%; GAMCO Westwood Income Fund – 1.50%; The GAMCO Global Opportunity Fund – 2.00%; The GAMCO Global Convertible Securities Fund – 2.00%; The Gabelli SRI Fund - 2.00%; GAMCO Westwood SmallCap Equity Fund – 1.50%; GAMCO Westwood Intermediate Bond Fund – 1.00%; The Gabelli Enterprise Mergers and Acquisitions Fund – 1.90% for class A; B.B. Micro Cap Growth Fund – 1.80%; The Gabelli U.S. Treasury Money Market Fund –0.08%. Such agreements are renewable annually).

(10) Funds Advisor has agreed to reduce its advisory fee on the liquidation value of preferred stock outstanding if certain performance levels are not met.

(11) The Gabelli U.S. Treasury Money Market Fund ranked 2nd in total return for the twelve months ended December 31, 2008 among 78 US Treasury money market funds tracked by Lipper Inc. For the 5 year and 10 year periods ended December 31, 2008, the fund ranked 2nd out of 69 funds and 3rd out of 47 funds, respectively, within that category. Investment returns and yield will fluctuate. An investment in a money market fund is not guaranteed by the United States government nor insured by the Federal Deposit Insurance Corporation or any government agency. Although the Fund seeks to preserve the value of an investment at $1.00 per share, it is possible to lose money by investing on the Fund.

(12) These funds are advised by Teton and will be spun-off as part of the Teton distribution to be completed March 20, 2009.

Shareholders of the open-end Funds are allowed to exchange shares among the same class of shares of the other open-end Funds as economic and market conditions and investor needs change at no additional cost. However, as noted below, certain open-end Funds impose a 2% redemption fee on shares redeemed in seven days or less after a purchase. We periodically introduce new funds designed to complement and expand our investment product offerings, respond to competitive developments in the financial marketplace and meet the changing needs of investors.

On December 30, 2004, the shareholders of The Gabelli ABC Fund voted to approve a charter amendment that would require investment accounts held at the fund's transfer agent, State Street Bank & Trust Company, to be directly registered to the beneficial owners of the fund. This permits the redemption of shares held through certain brokers and financial consultants in omnibus and individual accounts where the beneficial owner is not disclosed.

Our marketing efforts for the open-end Funds are currently focused on increasing the distribution and sales of our existing funds as well as creating new products for sale through our distribution channels. We believe that our marketing efforts for the Funds will continue to generate additional revenues from investment advisory fees. We have traditionally distributed most of our open-end Funds by using a variety of direct response marketing techniques, including telemarketing and advertising, and as a result we maintain direct relationships with many of our no-load open-end Fund customers. Beginning in late 1995, we expanded our product distribution by offering several of our open-end Funds through Third-Party Distribution Programs, including NTF Programs. In 1998 and 1999, we further expanded these efforts to include substantially all of our open-end Funds in Third-Party Distribution Programs. More than 27% of the AUM in the open-end Funds are still attributable to our direct response marketing efforts. Third-Party Distribution Programs have become an increasingly important source of asset growth for us. Of the $6.6 billion of AUM in the open-end equity Funds as of December 31, 2008, approximately 73% were generated through Third-Party Distribution Programs. We are responsible for paying the service and distribution fees charged by many of the Third-Party Distribution Programs, although a portion of such service fees under certain circumstances are payable by the funds. During 2000, we completed development of additional classes of shares for many of our Funds for sale through national brokerage and investment firms and other third-party distribution channels on a commission basis. The multi-class shares are available in all of the Gabelli Funds, except for the Gabelli Capital Asset Fund and the GAMCO Mathers Fund. The use of multi-class share products will expand the distribution of Gabelli Fund products into the advised sector of the mutual fund investment community. During 2003, we introduced Class I shares, which are no-load shares with higher minimum initial investment and without distribution fees available to Institutional and Retirement Plan Accounts held directly through Gabelli & Company. The no-load shares are designated as Class AAA shares and are available for new and current investors. In general, distribution through Third-Party Distribution Programs has greater variable cost components and lower fixed cost components than distribution through our traditional direct sales methods.

We provide investment advisory and management services pursuant to an investment management agreement with each Fund. The investment management agreements with the Funds generally provide that we are responsible for the overall investment and administrative services, subject to the oversight of each Fund's Board of Directors or Trustees and in accordance with each Fund's fundamental investment objectives and policies. The investment management agreements permit us to enter into separate agreements for administrative and accounting services on behalf of the respective Funds.

Our affiliated advisors provide the Funds with administrative services pursuant to the management contracts. Such services include, without limitation, supervision of the calculation of net asset value, preparation of financial reports for shareholders of the Funds, internal accounting, tax accounting and reporting, regulatory filings and other services. Most of these administrative services are provided through sub-contracts with unaffiliated third parties. Transfer agency and custodial services are provided directly to the Funds by unaffiliated third parties.

Our Fund investment management agreements may continue in effect from year to year only if specifically approved at least annually by (i) the Fund's Board of Directors or Trustees or (ii) the Fund's shareholders and, in either case, the

vote of a majority of the Fund's directors or trustees who are not parties to the agreement or "interested persons" of any such party, within the meaning of the Investment Company Act of 1940 as amended (the “Investment Company Act”). Each Fund may terminate its investment management agreement at any time upon 60 days' written notice by (i) a vote of the majority of the Board of Directors or Trustees cast in person at a meeting called for the purpose of voting on such termination or (ii) a vote at a meeting of shareholders of the lesser of either 67% of the voting shares represented in person or by proxy or 50% of the outstanding voting shares of such Fund. Each investment management agreement automatically terminates in the event of its assignment, as defined in the Investment Company Act. We may terminate an investment management agreement without penalty on 60 days' written notice.

Mutual Fund Distribution, Institutional Research, Brokerage and Underwriting

Gabelli & Company, the wholly-owned subsidiary of our 92% majority-owned subsidiary GSI, is a broker-dealer registered under the Securities Exchange Act of 1934 and is regulated by the Financial Industry Regulatory Authority (“FINRA”). Gabelli & Company's revenues are derived primarily from the distribution of our Funds, brokerage commissions, underwriting fees and selling concessions.

Mutual Fund Distribution

Gabelli & Company distributes our open-end Funds pursuant to distribution agreements with each Fund. Under each distribution agreement with an open-end Fund, Gabelli & Company offers and sells such open-end Fund's shares on a continuous basis and pays the majority of the costs of marketing and selling the shares, including printing and mailing prospectuses and sales literature, advertising and maintaining sales and customer service personnel and sales and services fulfillment systems, and payments to the sponsors of Third-Party Distribution Programs, financial intermediaries and Gabelli & Company sales personnel. Gabelli & Company receives fees for such services pursuant to distribution plans adopted under provisions of Rule 12b-1 (“12b-1”) of the Investment Company Act. Distribution fees from the open-end Funds are computed daily based on average net assets and are accrued monthly. Distribution fees from the open-end Funds amounted to $23.8 million, $25.0 million and $20.6 million for the years ended December 31, 2008, 2007 and 2006, respectively. Gabelli & Company is the principal underwriter for funds distributed in multiple classes of shares which carry either a front-end or back-end sales charge. Underwriting fees and sales charges retained amounted to $627,000, $983,000 and $859,000 for the years ended December 31, 2008, 2007 and 2006, respectively.

Under the distribution plans, the open-end Class AAA shares of the Funds (except The Gabelli US Treasury Money Market Fund, Gabelli Capital Asset Fund and The Gabelli ABC Fund) and the Class A shares of various funds pay Gabelli & Company a distribution or service fee of .25% per year (except the Class A shares of the GAMCO Westwood Funds which pay .50% per year, the GAMCO Westwood Intermediate Bond Fund which pay 0.35% per year and the Gabelli Enterprise Mergers & Acquisition Fund which pays 0.45% per year) on the average daily net assets of the fund. Class B and Class C shares have a 12b-1 distribution plan with a service and distribution fee totaling 1%. Gabelli & Company’s distribution agreements with the Funds may continue in effect from year to year only if specifically approved at least annually by (i) the Fund's Board of Directors or Trustees or (ii) the Mutual Fund's shareholders and, in either case, the vote of a majority of the Fund's directors or trustees who are not parties to the agreement or "interested persons" of any such party, within the meaning of the Investment Company Act. Each Fund may terminate its distribution agreement, or any agreement thereunder, at any time upon 60 days' written notice by (i) a vote of the majority of its directors or trustees cast in person at a meeting called for the purpose of voting on such termination or (ii) a vote at a meeting of shareholders of the lesser of either 67% of the voting shares represented in person or by proxy or 50% of the outstanding voting shares of such Fund. Each distribution agreement automatically terminates in the event of its assignment, as defined in the Investment Company Act. Gabelli & Company may terminate a distribution agreement without penalty upon 60 days' written notice.

Gabelli & Company also offers our open-end Fund products through our website, www.gabelli.com, where directly registered mutual fund investors can access their personal account information and buy, sell and exchange Fund

shares. Fund prospectuses, quarterly reports, fund applications, daily net asset values and performance charts are all available online.

Institutional Research

Gabelli & Company provides institutional investors with investment ideas on numerous industries and special situations, with a particular focus on small-cap and mid-cap companies. Our research analysts are industry-focused, following sectors that stem from our core competencies. They are experts on their industries, and look at companies of all market capitalizations on a global basis. Their financial models look five years into the past, and project five years forward, to understand earnings power and free cash flow. They look for growing companies, with improving balance sheets and shareholder-sensitive management. The goal is to find companies with the above characteristics that trade at a significant discount to Private Market Value (PMV), or the price an informed industrialist would pay to buy the company.

During 2008, we assigned the analysts to research teams, each coordinated by a senior analyst, in order to enhance idea cross-fertilization, and more efficiently share knowledge acquired in related industry subsectors. Our teams are broken down into Digital, which includes cable, telecommunications, broadcasting, publishing, advertising, and entertainment; Gabelli Green, which researches investment opportunities in clean and renewable energy; Food of All Nations; Health and Wellness; and Industrial.

Brokerage Commissions

Gabelli & Company generates brokerage commission revenues from securities transactions executed on an agency basis on behalf of institutional and private wealth management clients as well as from retail customers and mutual funds. Commission revenues totaled $16.1 million, $15.7 million, and $12.6 million for the years ended December 31, 2008, 2007 and 2006, respectively. Gabelli & Company has considered and continues to explore expansion of such activities.

Underwriting

In 2008, Gabelli & Company did not participate in any underwritings. In 2007, Gabelli & Company participated in 5 underwritings with commitments of $47.0 million, of which 2 included a commitment of $42.5 million for participation in offerings of Gabelli closed-end funds shares. In 2006, Gabelli & Company participated in 4 underwritings with commitments of $15.5 million, of which 1 included a commitment of $14.0 million for participation in offerings of Gabelli closed-end funds shares.

Competition

We compete with other investment management firms and mutual fund companies, insurance companies, banks, brokerage firms and other financial institutions that offer products that have similar features and investment objectives to those offered by us. Many of the investment management firms with which we compete are subsidiaries of large diversified financial companies and many others are much larger in terms of AUM and revenues and, accordingly, have much larger sales organizations and marketing budgets. Historically, we have competed primarily on the basis of the long-term investment performance of many of our investment products. However, we have taken steps to increase our distribution channels, brand name awareness and marketing efforts.

The market for providing investment management services to institutional and private wealth management Institutional and Private Wealth Management is also highly competitive. Approximately 35% of our investment advisory fee revenue for the year ended December 31, 2008 was derived from our Institutional and Private Wealth Management. Selection of investment advisors by U.S. institutional investors is often subject to a screening process and to favorable recommendations by investment industry consultants. Many of these investors require their investment advisors to have a successful and sustained performance record, often five years or longer, and also focus on one-year and three-year performance records. We have significantly increased our AUM on behalf of U.S. institutional investors since our entry into the institutional asset management business in 1977. At the current time, we

believe that our investment performance record would be attractive to potential new institutional and private wealth management clients. However, no assurance can be given that our efforts to obtain new business will be successful.

Intellectual Property

Service marks and brand name recognition are important to our business. We have rights to the service marks under which our products are offered. We have registered certain service marks in the United States and will continue to do so as new trademarks and service marks are developed or acquired. We have rights to use the "Gabelli" name, the "GAMCO" name, and other names. Pursuant to an assignment agreement, Mr. Gabelli has assigned to us all of his rights, title and interests in and to the "Gabelli" name for use in connection with investment management services, mutual funds and securities brokerage services. However, under the agreement, Mr. Gabelli will retain any and all rights, title and interests he has or may have in the "Gabelli" name for use in connection with (i) charitable foundations controlled by Mr. Gabelli or members of his family or (ii) entities engaged in private investment activities for Mr. Gabelli or members of his family. In addition, the funds managed by Mr. Gabelli outside GBL have entered into a license agreement with us permitting them to continue limited use of the "Gabelli" name under specified circumstances. We have taken, and will continue to take, action to protect our interests in these service marks.

Regulation

Virtually all aspects of our businesses are subject to various federal and state laws and regulations. These laws and regulations are primarily intended to protect investment advisory clients and shareholders of registered investment companies. Under such laws and regulations, agencies that regulate investment advisors and broker-dealers have broad administrative powers, including the power to limit, restrict or prohibit such an advisor or broker-dealer from carrying on its business in the event that it fails to comply with such laws and regulations. In such an event, the possible sanctions that may be imposed include the suspension of individual employees, limitations on engaging in certain lines of business for specified periods of time, revocation of the investment advisor and other registrations, censures, and fines. We believe that we are in substantial compliance with all material laws and regulations.

Our business is subject to regulation at both the federal and state level by the SEC and other regulatory bodies. Certain of our subsidiaries are registered with the SEC under the Investment Advisers Act of 1940, and the Funds are registered with the SEC under the Investment Company Act of 1940. We also have a subsidiary that is registered as a broker-dealer with the SEC and is subject to regulation by the FINRA and various states.

The subsidiaries of GBL that are registered with the Commission under the Investment Advisers Act (Funds Advisor, Teton, Gabelli Fixed Income LLC, GAMCO and GSI) are regulated by and subject to examination by the SEC. The Investment Advisers Act imposes numerous obligations on registered investment advisors including fiduciary duties and disclosure obligations and record keeping, operational and marketing requirements. The Commission is authorized to institute proceedings and impose sanctions for violations of the Investment Advisers Act, ranging from censure to termination of an investment advisor's registration. The failure of a subsidiary to comply with the requirements of the SEC could have a material adverse effect on us. We believe that we are in substantial compliance with the requirements of the regulations under the Investment Advisers Act.

We derive a substantial majority of our revenues from investment advisory services through our various investment management agreements. Under the Investment Advisers Act, our investment management agreements terminate automatically if assigned without the client's consent. Under the Investment Company Act, advisory agreements with registered investment companies such as our Funds terminate automatically upon assignment. The term "assignment" is broadly defined and includes direct as well as assignments that may be deemed to occur, under certain circumstances, upon the transfer, directly or indirectly, of a controlling interest in GBL.

In its capacity as a broker-dealer, Gabelli & Company is required to maintain certain minimum net capital and cash reserves for the benefit of our customers. Gabelli & Company’s net capital, as defined, has consistently met or exceeded all minimum requirements. Gabelli & Company is also subject to periodic examination by FINRA.

Subsidiaries of GBL are subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and to regulations promulgated there under, insofar as they are “fiduciaries” under ERISA with respect to certain of their clients. ERISA and applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), impose certain duties on persons who are fiduciaries under ERISA and prohibit certain transactions involving ERISA plan clients. Our failure to comply with these requirements could have a material adverse effect on us.

Investments by GBL and on behalf of our advisory clients investment companies and partnerships often represent a significant equity ownership position in an issuer's class of stock. As of December 31, 2008, we had five percent or more beneficial ownership with respect to approximately 113 equity securities. This activity raises frequent regulatory, legal, and disclosure issues regarding our aggregate beneficial ownership level with respect to portfolio securities, including issues relating to issuers' shareholder rights plans or “poison pills,” state gaming laws and regulations, federal communications laws and regulations, public utility holding company laws and regulations, federal proxy rules governing shareholder communications and federal laws and regulations regarding the reporting of beneficial ownership positions. Our failure to comply with these requirements could have a material adverse effect on us.

The USA Patriot Act of 2001, contains anti-money laundering and financial transparency laws and mandates the implementation of various new regulations applicable to broker-dealers, mutual funds and other financial services companies, including standards for verifying client identification at account opening, and obligations to monitor client transactions and report suspicious activities. Anti-money laundering laws outside of the U.S. contain some similar provisions. Our failure to comply with these requirements could have a material adverse effect on us.

We and certain of our affiliates are subject to the laws of non-U.S. jurisdictions and non-U.S. regulatory agencies or bodies. In particular, we are subject to requirements in numerous jurisdictions regarding reporting of beneficial ownership positions in securities issued by companies whose securities are publicly-traded in those countries. In addition, GAMCO is registered as an international advisor, investment counsel and portfolio manager with the Ontario Securities Commission in Canada in order to market our services to prospective clients who reside in Ontario. Several of our investment partnerships are organized under the laws of foreign jurisdictions. In connection with our opening of an office in London and our plans to market certain products in Europe, we are required to comply with the laws of the United Kingdom and other European countries regarding these activities. Our subsidiary, GAMCO Asset Management (UK) Limited, is regulated by the Financial Services Authority. In connection with our registration in the United Kingdom, we have minimum capital requirements that have been consistently met or exceeded. We opened research offices in Shanghai and Singapore and therefore are subject to national and local laws in those jurisdictions.

Regulatory matters

The investment management industry is likely to continue facing a high level of regulatory scrutiny and become subject to additional rules designed to increase disclosure, tighten controls and reduce potential conflicts of interest. In addition, the Commission has substantially increased its use of focused inquiries in which it requests information from a number of fund complexes regarding particular practices or provisions of the securities laws. We participate in some of these inquiries in the normal course of our business. Changes in laws, regulations and administrative practices by regulatory authorities, and the associated compliance costs, have increased our cost structure and could in the future have a material impact.

See item 3 below.

Personnel

On February 28, 2009, we had a full-time staff of 214 individuals, of whom 65 served in the portfolio management, research and trading areas (including 16 portfolio managers for the Mutual Funds, Institutional and Private Wealth Management and Investment Partnerships), 74 served in the marketing and shareholder servicing areas and 75 served in the administrative area.

ITEM 1A: RISK FACTORS

Business Risks

We caution the reader that the following business risks and those risks described elsewhere in this report and in our other SEC filings could cause our actual results to differ materially from expectations stated in our forward-looking statements.

Risks Related to Our Industry

Changes in laws or regulations or in governmental policies could limit the sources and amounts of our revenues, increase our costs of doing business, decrease our profitability and materially and adversely affect our business.

Our business is subject to extensive regulation in the United States, primarily at the federal level, including regulation by the SEC under the Investment Company Act and the Investment Advisers Act, by the Department of Labor under ERISA, as well as regulation by FINRA and state regulators. The Funds managed by Funds Advisor and Teton are registered with the SEC as investment companies under the Investment Company Act. The Investment Advisers Act imposes numerous obligations on investment advisors, including record-keeping, advertising and operating requirements, disclosure obligations and prohibitions on fraudulent activities. The Investment Company Act imposes similar obligations, as well as additional detailed operational requirements, on registered investment companies and investment advisors. Our failure to comply with applicable laws or regulations could result in fines, censure, suspensions of personnel or other sanctions, including revocation of our registration as an investment advisor or broker-dealer. Industry regulations are designed to protect our clients and investors in our funds and other third parties who deal with us and to ensure the integrity of the financial markets. They are not designed to protect our stockholders. Changes in laws or regulations or in governmental policies could limit the sources and amounts of our revenues, increase our costs of doing business, decrease our profitability and materially and adversely affect our business.

To the extent we are forced to compete on the basis of price, we may not be able to maintain our current fee structure.

The investment management business is highly competitive and has relatively low barriers to entry. To the extent we are forced to compete on the basis of price, we may not be able to maintain our current fee structure. Although our investment management fees vary from product to product, historically we have competed primarily on the performance of our products and not on the level of our investment management fees relative to those of our competitors. In recent years, however, there has been a trend toward lower fees in the investment management industry. In order to maintain our fee structure in a competitive environment, we must be able to continue to provide clients with investment returns and service that make investors willing to pay our fees. In addition, the board of directors of each Fund managed by Funds Advisor and Teton must make certain findings as to the reasonableness of its fees. We cannot be assured that we will succeed in providing investment returns and service that will allow us to maintain our current fee structure. Fee reductions on existing or future new business could have an adverse effect on our profit margins and results of operations.

We derive a substantial portion of our revenues from contracts that may be terminated on short notice.

A substantial majority of all of our revenues are derived from investment management agreements and distribution arrangements. Investment management agreements and distribution arrangements with the Funds are terminable without penalty on 60 days' notice (subject to certain additional procedural requirements in the case of termination by a Fund) and must be specifically approved at least annually, as required by law. Such annual renewal requires, among other things, approval by the disinterested members of each Fund's board of directors or trustees. Investment advisory agreements with the Institutional and Private Wealth Management are typically terminable by the client without

penalty on 30 days' notice or less. Any failure to renew or termination of a significant number of these agreements or arrangements would have a material adverse effect on us.

Investors in the open-end funds can redeem their investments in these funds at any time without prior notice, which could adversely affect our earnings.

Open-end fund investors may redeem their investments in those funds at any time without prior notice. Investors may reduce the aggregate amount of AUM for any number of reasons, including investment performance, changes in prevailing interest rates and financial market performance. In a declining stock market, the pace of mutual fund redemptions could accelerate. Poor performance relative to other asset management firms tends to result in decreased purchases of mutual fund shares and increased redemptions of mutual fund shares. The redemption of investments in mutual funds managed by Funds Advisor or Teton would adversely affect our revenues, which are substantially dependent upon the AUM in our funds. If redemptions of investments in mutual funds caused our revenues to decline, it could have a material adverse effect on our earnings.

Certain changes in control of our company would automatically terminate our investment management agreements with our clients, unless our Institutional and Private Wealth Management clients consent and, in the case of fund clients, the funds' boards of directors and shareholders vote to continue the agreements, and could prevent us for a two-year period from increasing the investment advisory fees we are able to charge our mutual fund clients.

Under the Investment Company Act, an investment management agreement with a fund must provide for its automatic termination in the event of its assignment. The fund's board and shareholders must vote to continue the agreement following its assignment, the cost of which ordinarily would be borne by us.

Under the Investment Advisers Act, a client's investment management agreement may not be "assigned" by the investment advisor without the client's consent. An investment management agreement is considered under both acts to be assigned to another party when a controlling block of the advisor's securities is transferred. In our case, an assignment of our investment management agreements may occur if, among other things, we sell or issue a certain number of additional common shares in the future. We cannot be certain that our clients will consent to assignments of our investment management agreements or approve new agreements with us if an assignment occurs. Under the Investment Company Act, if a fund's investment advisor engages in a transaction that results in the assignment of its investment management agreement with the fund, the advisor may not impose an "unfair burden" on that fund as a result of the transaction for a two-year period after the transaction is completed. The term "unfair burden" has been interpreted to include certain increases in investment advisory fees. This restriction may discourage potential purchasers from acquiring a controlling interest in our company.

Regulatory developments designed to increase oversight of hedge funds may adversely affect our business.

The SEC has proposed a rule that would limit the eligibility of individuals to invest in hedge funds by requiring that such individuals own not less than $2.5 million in investments at the time of their hedge fund investment. The SEC may also propose or enact other rules designed to increase oversight of hedge funds by the SEC. Any regulations applicable to hedge funds that may be adopted could have an impact on our operations and may adversely affect our hedge fund business and decrease our future income.

A decline in the prices of securities would lead to a decline in our assets under management, revenues and earnings.

Substantially all of our revenues are determined by the amount of our AUM. Under our investment advisory contracts with our clients, the investment advisory fees we receive are typically based on the market value of AUM. In addition, we receive asset-based distribution and/or service fees with respect to the open-end funds managed by Funds Advisor or Teton over time pursuant to distribution plans adopted under provisions of Rule 12b-1 under the Investment Company Act. Rule 12b-1 fees typically are based on the market value of AUM and represented approximately 9.7%, 8.6% and 7.9% of our total revenues for the years ended December 31, 2008, 2007 and 2006, respectively. Accordingly, a decline in the prices of securities generally may cause our revenues and net income to decline by either causing the value of our AUM to decrease, which would result in lower investment advisory and Rule 12b-1 fees, or causing our clients to withdraw funds in favor of investments they perceive to offer greater opportunity or lower risk, which would also result in lower fees. The securities markets are highly volatile, and securities prices may increase or decrease for many reasons, including economic and political events and acts of terrorism beyond our control. If a decline in securities prices caused our revenues to decline, it could have a material adverse effect on our earnings.

Catastrophic and unpredictable events could have a material adverse effect on our business.

A terrorist attack, war, power failure, cyber-attack, natural disaster or other catastrophic or unpredictable event could adversely affect our future revenues, expenses and earnings by: interrupting our normal business operations; sustaining employee casualties, including loss of our key executives; requiring substantial expenditures and expenses to repair, replace and restore normal business operations; and reducing investor confidence.

We have a disaster recovery plan to address certain contingencies, but we cannot be assured that this plan will be sufficient in responding or ameliorating the effects of all disaster scenarios. If our employees or vendors we rely upon for support in a catastrophic event are unable to respond adequately or in a timely manner, we may lose clients resulting in a decrease in AUM which may have a material adverse effect on revenues and net income.

Risks Related to Our Business

Control by Mr. Gabelli of a majority of the combined voting power of our common stock may give rise to conflicts of interests.

Since our initial public offering in 1999, Mr. Gabelli, through his majority ownership of GGCP, has beneficially owned a majority of our outstanding class B common stock. As of December 31, 2008, GGCP’s holdings of our class B common stock represent approximately 95% of the combined voting power of all classes of our voting stock. As long as Mr. Gabelli indirectly beneficially owns a majority of the combined voting power of our common stock, he will have the ability to elect all of the members of our Board of Directors and thereby control our management and affairs, including determinations with respect to acquisitions, dispositions, borrowings, issuances of common stock or other securities, and the declaration and payment of dividends on the common stock. In addition, Mr. Gabelli will be able to determine the outcome of matters submitted to a vote of our shareholders for approval and will be able to cause or prevent a change in control of our company. As a result of Mr. Gabelli's control, none of our agreements with Mr. Gabelli and other companies controlled by him can be assumed to have been arrived at through "arm's-length" negotiations, although we believe that the parties endeavor to implement market-based terms. There can be no assurance that we would not have received more favorable terms from an unaffiliated party.

In order to minimize conflicts and potential competition with our investment management business, in 1999 and as part of our initial public offering, Mr. Gabelli entered into a written agreement to limits his activities outside of GBL. On February 6, 2008, Mr. Gabelli entered into an amended and restated employment agreement which was approved by the GBL shareholders on November 30, 2007 and which limits his activities outside of GBL. The amended agreement ("Amended Agreement") amended Mr. Gabelli’s Employment Agreement primarily by (i)

eliminating outdated provisions, clarifying certain language and reflecting our name change, (ii) revising the term of the Employment Agreement from an indefinite term to automatically renewed one-year periods in perpetuity following the initial three-year term unless either party gives 90 days written notice prior to the expiration of the annual term following the initial three-year term, (iii) allowing for services to be performed for former subsidiaries that are spun off to shareholders or otherwise cease to be subsidiaries in similar transactions, (iv) allowing new investors in the permitted outside accounts if all of the performance fees, less expenses, generated by assets attributable to such investors are paid to us, (v) allowing for the management fee to be paid directly to Mr. Gabelli or to an entity designated by him, and (vi) adding certain language to ensure that the Amended Agreement is construed to avoid the imposition of any tax pursuant to Section 409A of the Code.

Prior to our initial public offering in February 1999, GAMCO entered into an Employment Agreement with Mr. Gabelli. Under the Amended Agreement, the manner of computing Mr. Gabelli’s remuneration from GAMCO is unchanged.

Mr. Gabelli (or his designee under the Amended Agreement) will continue receiving an incentive-based management fee in the amount of 10% of our aggregate pre-tax profits, if any, as computed for financial reporting purposes in accordance with U.S. generally accepted accounting principles (before consideration of this fee) so long as he is an executive of GAMCO and devotes the substantial majority of his working time to our business. This incentive-based management fee is subject to the Compensation Committee’s review at least annually for compliance with its terms.

Consistent with the firm’s practice since its inception in 1977, Mr. Gabelli will also continue receiving a percentage of revenues or net operating contribution, which are substantially derived from AUM, as compensation relating to or generated by the following activities: (i) managing or overseeing the management of various investment companies and partnerships, (ii) attracting mutual fund shareholders, (iii) attracting and managing Institutional and Private Wealth Management, and (iv) otherwise generating revenues for the company. Such payments are made in a manner and at rates as agreed to from time to time by GAMCO, which rates have been and generally will be the same as those received by other professionals at GAMCO performing similar services. With respect to our institutional and high net worth asset management and mutual fund advisory business, we pay out up to 40% of the revenues or net operating contribution to the portfolio managers and marketing staff who introduce, service or generate such business, with payments involving the Institutional and Private Wealth Management being typically based on revenues and payments involving the mutual funds being typically based on net operating contribution.

Mr. Gabelli has agreed that while he is employed by us he will not provide investment management services outside of GAMCO, except for certain permitted accounts. These accounts held assets at December 31, 2008 and 2007 of approximately $75.0 million and $91.4 million, respectively. The Amended Agreement may not be amended without the approval of the Compensation Committee.

We depend on Mario J. Gabelli and other key personnel.

We are dependent on the efforts of Mr. Gabelli, our Chairman of the Board, Chief Executive Officer and the primary portfolio manager for a significant majority of our AUM. The loss of Mr. Gabelli's services would have a material adverse effect on us.

In addition to Mr. Gabelli, our future success depends to a substantial degree on our ability to retain and attract other qualified personnel to conduct our investment management business. The market for qualified portfolio managers is extremely competitive and has grown more so in recent periods as the investment management industry has experienced growth. We anticipate that it will be necessary for us to add portfolio managers and investment analysts as we further diversify our investment products and strategies. There can be no assurance, however, that we will be successful in our efforts to recruit and retain the required personnel. In addition, our investment professionals and senior marketing personnel have direct contact with our Institutional and Private Wealth Management clients, which can lead to strong client relationships. The loss of these personnel could jeopardize our relationships with certain Institutional and Private Wealth Management clients, and result in the loss of such accounts. The loss of key management professionals or the inability to recruit and retain sufficient portfolio managers and marketing personnel could have a material adverse effect on our business.

Potential adverse effects on our performance prospects from a decline in the performance of the securities markets.

Our results of operations are affected by many economic factors, including the performance of the securities markets. During the 1990s, unusually favorable and sustained performance of the U.S. securities markets, and the U.S. equity market, in particular, attracted substantial inflows of new investments in these markets and has contributed to significant market appreciation which has, in turn, led to an increase in our AUM and revenues. At December 31, 2008, approximately 93% of our AUM were invested in portfolios consisting primarily of equity securities. More recently, the securities markets in general have experienced significant volatility. Any decline in the securities markets, in general, and the equity markets, in particular, could reduce our AUM and consequently reduce our revenues. In addition, any such decline in the equity markets, failure of these markets to sustain their prior levels of growth, or continued short-term volatility in these markets could result in investors withdrawing from the equity markets or decreasing their rate of investment, either of which would be likely to adversely affect us. From time to time, a relatively high proportion of the assets we manage may be concentrated in particular industry sectors. A general decline in the performance of securities in those industry sectors could have an adverse effect on our AUM and revenues.

Possibility of losses associated with proprietary investment activities.

We may from time to time make or maintain large proprietary investment positions in securities. Market fluctuations and other factors may result in substantial losses in our proprietary accounts, which could have an adverse effect on our balance sheet, reduce our ability or willingness to make new investments or impair our credit ratings.

Future investment performance could reduce revenues and other income.

Success in the investment management and mutual fund businesses is dependent on investment performance as well as distribution and client servicing. Good performance generally stimulates sales of our investment products and tends to keep withdrawals and redemptions low, which generates higher management fees (which are based on the amount of AUM). Conversely, relatively poor performance tends to result in decreased sales, increased withdrawals and redemptions in the case of the open-end Funds, and in the loss of Institutional and Private Wealth Management, with corresponding decreases in revenues to us. Many analysts of the mutual fund industry believe that investment performance is the most important factor for the growth of open and closed-end funds, such as those we offer. Failure of our investment products to perform well could, therefore, have a material adverse effect on us.

Loss of significant Institutional and Private Wealth Management accounts could affect our revenues.

We had approximately 1,700 Institutional and Private Wealth Management accounts as of December 31, 2008, of which the ten largest accounts generated approximately 6% of our total revenues during the year ended December 31, 2008. Loss of these accounts for any reason would have an adverse effect on our revenues. Not withstanding performance, we have from time to time lost large Institutional and Private Wealth Management as a result of

corporate mergers and restructurings, and we could continue to lose accounts under these or other circumstances.

During 2008, as in prior years, we experienced client “turnover”. In 2008, terminated relationships accounted for just over $200 million of the decline in AUM. Alternatively, the level of closed accounts was less than one-fifth of the average for the previous five years.

A decline in the market for closed-end funds could reduce our ability to raise future assets to manage.

Market conditions may preclude us from increasing the assets we manage in closed-end funds. A significant portion of our recent growth in the assets we manage has resulted from public offerings of the common and preferred shares of closed-end funds. We have raised $1.6 billion in gross assets through closed-end fund offerings since January 2004. The market conditions for these offerings may not be as favorable in the future, which could adversely impact our ability to grow the assets we manage and our revenue.

We rely on third-party distribution programs.

We have since 1996 experienced significant growth in sales of our open-end Funds through Third-Party Distribution Programs, which are programs sponsored by third-party intermediaries that offer their mutual fund customers a variety of competing products and administrative services. Most of the sales growth from our Third-Party Distribution Programs is from programs with no transaction fees payable by the customer, which we refer to as NTF Programs. Approximately $2.4 billion of our AUM in the open-end Funds as of December 31, 2008 were obtained through NTF Programs. The cost of participating in Third-Party Distribution Programs is higher than our direct distribution costs, and it is anticipated that the cost of Third-Party Distribution Programs will increase in the future. Any increase would be likely to have an adverse effect on our profit margins and results of operations. In addition, there can be no assurance that the Third-Party Distribution Programs will continue to distribute the Funds. At December 31, 2008, approximately 89% of the NTF Program net assets in the Gabelli/GAMCO and Westwood families of funds are attributable to two NTF Programs. The decision by these Third-Party Distribution Programs to discontinue distribution of the Funds, or a decision by us to withdraw one or more of the Funds from the programs, could have an adverse effect on our growth of AUM.

Possibility of losses associated with underwriting, trading and market-making activities.

Our underwriting and trading activities are primarily conducted through our subsidiary, Gabelli & Company, primarily as agent. Such activities subject our capital to significant risks of loss. The risks of loss include those resulting from ownership of securities, extension of credit, leverage, liquidity, counterparty failure to meet commitments, client fraud, employee errors, misconduct and fraud (including unauthorized transactions by traders), failures in connection with the processing of securities transactions and litigation. We have procedures and internal controls to address such risks, but there can be no assurance that these procedures and controls will prevent losses from occurring.

We may have liability as a general partner or otherwise with respect to our alternative investment products.

Certain of our subsidiaries act as general partner for investment partnerships, including arbitrage, event-driven long/short, sector focused and merchant banking limited partnerships. As a general partner of these partnerships, we may be held liable for the partnerships' liabilities in excess of their ability to pay such liabilities. In addition, in certain circumstances, we may be liable as a control person for the acts of our investment partnerships. As of December 31, 2008, our AUM included approximately $295 million in investment partnerships. A substantial adverse judgment or other liability with respect to our investment partnerships could have a material adverse effect on us.

Operational risks may disrupt our businesses, result in regulatory action against us or limit our growth.

We face operational risk arising from errors made in the execution, confirmation or settlement of transactions or from transactions not being properly recorded, evaluated or accounted for. Our business is highly dependent on our ability to process, on a daily basis, transactions across markets in an efficient and accurate manner. Consequently, we rely heavily on our financial, accounting and other data processing systems. If any of these systems do not operate properly or are disabled, we could suffer financial loss, a disruption of our businesses, liability to clients, regulatory intervention or reputational damage.

Dependence on information systems.

We operate in an industry that is highly dependent on its information systems and technology. We outsource a significant portion of our information systems operations to third parties who are responsible for providing the management, maintenance and updating of such systems. There can be no assurance, however, that our information systems and technology will continue to be able to accommodate our growth or that the cost of maintaining such outsourcing arrangements will not increase from its current level. Such a failure to accommodate growth, or an increase in costs related to these information systems, could have a material adverse effect on us.

We may not be able to refinance or have the funds necessary to repurchase our existing indebtedness.

On August 10, 2001, we and certain of our affiliates entered into a note purchase agreement with Cascade, pursuant to which Cascade purchased $100 million in principal amount of a convertible promissory note (the “2011 Note”). Pursuant to the terms of the 2011 Note, Cascade may require us, or upon a change in control or Mr. Gabelli ceasing to provide our predominant executive leadership, to repurchase the 2011 Note (i.e., put option) at par plus accrued and unpaid interest on the 2011 Note. In March 2005, we amended the terms of the 2011 Note. The new terms extended the exercise date of Cascade's put option to September 15, 2006, reduced the principal of the 2011 Note to $50 million, effective April 1, 2005, and removed limitations on the issuance of additional debt. In June 2006, GBL and Cascade agreed to amend the terms of the 2011 Note. Effective September 15, 2006, the rate on the 2011 Note increased from 5% to 6% while the conversion price was raised to $53 per share from $52 per share. In addition, the exercise date of Cascade’s put option was extended to May 15, 2007, the expiration date of the related letter of credit was extended to May 22, 2007 and a call option was included giving GBL the right to redeem the 2011 Note at 101% of its principal amount together with all accrued but unpaid interest thereon upon at least 30 days prior written notice, subject to certain provisions. On April 18, 2007, the Company and Cascade amended the terms of the 2011 Note maturing in August 2011, to extend the exercise date for Cascade’s put option from May 15, 2007 to December 17, 2007 and to extend the expiration date of the related letter of credit to December 24, 2007. The put option expired on December 17, 2007, the related letter of credit expired on December 24, 2007, and the collateral securing the letter of credit was released and became unrestricted company assets as of that date. On January 3, 2008, GBL filed a Form S-3 to register the resale of shares of GBL by Cascade. On January 22, 2008, Cascade elected to convert $10 million of the 2011 Note into 188,679 GBL shares. Cascade requested that the remaining $40 million face value of the 2011 Note be segregated into eight notes each with a face value of $5 million.

In October 2008, GBL privately placed a $60 million convertible note with Cascade (“2018 Note”). The ten-year note pays interest at 6.5% and provides Cascade with certain put rights and an escrow agreement. The 2018 Note is convertible into GBL class A common stock at $70 per share.

Our credit ratings affect our borrowing costs.

Our borrowing costs and our access to the debt capital markets depend significantly on our credit ratings. A reduction in our credit ratings could increase our borrowing costs and limit our access to the capital markets.

We face exposure to litigation and arbitrage claims within our business.

The volume of litigation and arbitrage claims against financial services firms and the amount of damages claimed has increased over the past several years. The types of claims that we may face are varied. For example, we may face claims against us for purchasing securities that are inconsistent with a client’s investment objectives or guidelines, in connection with the operation of the Funds or arising from an employment dispute. The risk of litigation is difficult to assess or quantify, and may occur years after the activities or events at issue. Even if we prevail in a legal action brought against us, the costs alone of defending against the action could have a material adverse effect on us.

Compliance failures and changes in regulation could adversely affect us.

Our investment management activities are subject to client guidelines, and our Mutual Fund business involves compliance with numerous investment, asset valuation, distribution and tax requirements. A failure to adhere to these guidelines or satisfy these requirements could result in losses which could be recovered by the client from us in certain circumstances. Although we have installed procedures and utilize the services of experienced administrators, accountants and lawyers to assist us in adhering to these guidelines and satisfying these requirements, and maintain insurance to protect ourselves in the case of client losses, there can be no assurance that such precautions or insurance will protect us from potential liabilities.

Our businesses are subject to extensive regulation in the United States, including by the SEC and FINRA. We are also subject to the laws of non-U.S. jurisdictions and non-U.S. regulatory agencies or bodies. Our failure to comply with applicable laws or regulations could result in fines, suspensions of personnel or other sanctions, including revocation of our subsidiaries' registrations as an investment advisor or broker-dealer. Changes in laws or regulations or in governmental policies could have a material adverse effect on us. The regulatory matters described in the “Regulatory Matters” section above or other regulatory or compliance matters could also have a material adverse effect on us.

Our reputation is critical to our success.

Our reputation is critical to maintaining and developing relationships with our clients, Mutual Fund shareholders and third-party intermediaries. In recent years, there have been a number of well-publicized cases involving fraud, conflicts of interest or other misconduct by individuals in the financial services industry. Misconduct by our staff, or even unsubstantiated allegations, could result not only in direct financial harm but also harm to our reputation, causing injury to the value of our brands and our ability to retain or attract AUM. In addition, in certain circumstances, misconduct on the part of our clients or other parties could damage our reputation. Harm to our reputation could have a material adverse effect on us.

We face strong competition from numerous and sometimes larger companies.

We compete with numerous investment management companies, stock brokerage and investment banking firms, insurance companies, banks, savings and loan associations and other financial institutions. Continuing consolidation in the financial services industry has created stronger competitors with greater financial resources and broader distribution channels than our own. Additionally, competing securities dealers whom we rely upon to distribute our mutual funds also sell their own proprietary funds and investment products, which could limit the distribution of our investment products. To the extent that existing or potential customers, including securities dealers, decide to invest in or distribute the products of our competitors, the sales of our products as well as our market share, revenues and net income could decline.

Fee pressures could reduce our profit margins.

There has been a trend toward lower fees in some segments of the investment management industry. In order for us to maintain our fee structure in a competitive environment, we must be able to provide clients with investment returns and service that will encourage them to be willing to pay such fees. Accordingly, there can be no assurance that we will be able to maintain our current fee structure. Fee reductions on existing or future new business could have an adverse impact on our profit margins and results of operations.

Risks Related to the Company

The disparity in the voting rights among the classes of shares may have a potential adverse effect on the price of our class A common stock.

The holders of class A common stock and class B common stock have identical rights except that (i) holders of class A common stock are entitled to one vote per share, while holders of class B common stock are entitled to ten votes per share on all matters to be voted on by shareholders in general, and (ii) holders of class A common stock are not eligible to vote on matters relating exclusively to class B common stock and vice versa. The differential in voting rights and the ability of our company to issue additional class B common stock could adversely affect the value of the class A common stock to the extent the investors, or any potential future purchaser of our company, view the superior voting rights of the class B common stock to have value. On November 30, 2007, class A common stock shareholders approved that the Board of Directors should consider the conversion and reclassification of our shares of class B common stock into class A common stock at a ratio of 1.15 shares of class A common stock for each share of class B common stock. The Board of Directors have yet to take action.

Future sales of our class A common stock in the public market or sales or distributions of our class B common stock could lower our stock price, and any additional capital raised by us through the sale of equity or convertible securities may dilute our stockholders' ownership in us.

We may sell additional shares of class A common stock in subsequent public offerings. We also may issue additional shares of class A common stock or convertible debt securities. As of December 31, 2008, we had 7,367,090 outstanding shares of class A common stock. On September 1, 2006, a shelf registration statement on Form S-3 was declared effective by the SEC for the re-sale of up to 2,486,763 class A shares. On January 18, 2008, a registration statement on Form S-3 was declared effective by the SEC for the registration for resale by Cascade of an aggregate of 943,396 shares of class A common stock issuable upon conversion of the 2011 Note. The 2011 Note matures on August 14, 2011. On January 22, 2008, Cascade elected to convert $10 million of the 2011 Note into 188,697 GBL shares. Cascade requested that the remaining $40 million face value of the 2011 Notes be segregated into eight notes each with a face value of $5 million. 857,143 shares of class A common stock are issuable to Cascade upon conversion of the $60 million 6.5% note due October 2, 2018. Cascade has registration rights with respect to these shares.

No prediction can be made as to the effect, if any, that future sales or distributions of class B common stock owned by GGCP will have on the market price of the class A common stock prevailing from time to time. Sales or distributions of substantial amounts of class A or class B common stock, or the perception that such sales or distributions could occur, could adversely affect the prevailing market price for the class A common stock.

ITEM 1B: UNRESOLVED STAFF COMMENTS

None.

ITEM 2: PROPERTIES

At December 31, 2008, we leased our principal offices which consisted of a single 60,000 square foot building located at 401 Theodore Fremd Avenue, Rye, New York which expires on December 31, 2023. This building was leased in December 1997 (prior to our 1999 IPO) from an entity controlled by members of Mr. Gabelli's immediate family. For 2008, 2007 and 2006 we paid approximately $890,000, $856,000 and $834,000, respectively, and $14.83, $14.27 and $13.90 per square foot, respectively, under this lease. 5,000 square feet was subleased to affiliates. We receive rental payments under the sublease agreements, which totaled approximately $151,000 in 2008 and were used to offset operating expenses incurred for the property. The lease provides that in addition to the lease payments, all operating expenses related to the property, which are estimated at $770,000 annually, are to be paid by us.

We have also entered into leases for office space in both the U.S. and overseas principally for portfolio management, research, sales and marketing personnel. These offices are generally less than 4,000 square feet and leased for periods of five years or less.

ITEM 3: LEGAL PROCEEDINGS

In the normal course of business, the Company has been, and may continue to be, named in legal actions, including recently-filed FINRA arbitration claims. These claims may seek substantial compensatory as well as punitive damages. At this early stage the Company cannot predict the ultimate outcome of these claims nor can it estimate a possible loss amount, if any. However, in the opinion of management, the resolution of such claims will not be material to the financial condition of the Company.

In September 2008, Gabelli Funds, LLC ("Gabelli Funds") reached agreement in principle with the staff of the Securities and Exchange Commission ("SEC"), subject to Commission approval, on a previously disclosed matter that had been ongoing for several years involving compliance with Section 19(a) of the Investment Company Act of 1940 and Rule 19a-1 there under by two closed-end funds. The agreement was finalized with the Commission on January 12, 2009. The provisions of Section 19(a) of Rule 19a-1 require registered investment companies, when making a distribution in the nature of a dividend from sources other than net investment income, to contemporaneously provide written statements to shareholders that adequately disclose the source or sources of such distribution. While the two funds sent annual statements and provided other materials containing this information, the shareholders did not receive the notices required by Rule 19a-1 with any of the distributions that were made for 2002 and 2003. Gabelli Funds believes that the funds have been in compliance with Section 19(a) and Rule 19a-1 since the beginning of 2004. As part of the settlement, in which Gabelli Funds neither admits nor denies the findings by the SEC, Gabelli Funds agreed to pay a civil monetary penalty of $450,000 and to cease and desist from causing violations of Section 19(a) and Rule 19a-1. In connection with the settlement, the SEC noted the remedial actions previously undertaken by Gabelli Funds.

ITEM 4: SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of our security holders during the fourth quarter of 2008.

PART II

ITEM 5: MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our shares of class A common stock have been traded on the NYSE under the symbol GBL since our initial public offering on February 11, 1999. Prior to that, there was no public market for our common stock.

As of March 1, 2009, there were 242 class A common stockholders of record and 27 class B common stockholders of record. These figures do not include stockholders with shares held under beneficial ownership in nominee name, which are estimated to be approximately 2,000.

The following table sets forth the high and low prices of our class A common stock for each quarter of 2008 and 2007 as reported by the NYSE.

Quarter Ended	High	Low
March 31, 2008	$ 73.36	$ 47.06
June 30, 2008	$ 60.01	$ 45.06
September 30, 2008	$ 68.52	$ 36.84
December 31, 2008	$59.00	$ 21.66
March 31, 2007	$ 43.85	$ 37.51
June 30, 2007	$ 58.63	$ 42.67
September 30, 2007	$ 62.43	$ 41.90
December 31, 2007	$ 70.15	$ 52.02

In 2006, we paid $0.12 per share in dividends to our common shareholders. This included four quarterly dividends of $0.03 per share on March 28, 2006, June 28, 2006, September 28, 2006, and December 26, 2006, respectively, to all shareholders of record on February 7, 2006, May 9, 2006, August 8, 2006, and November 13, 2006, respectively.

In June 2006, the holders of 2,347,473 Class B shares exchanged their B shares for an equal number of Class A shares. Subsequently, the holders of an additional 154,383 Class B shares have exchanged their B shares for an equal number of Class A shares.

In 2007, we paid $1.12 per share in dividends to our common shareholders. This included four quarterly dividends of $0.03 per share on March 28, 2007, June 28, 2007, September 28, 2007, and December 28, 2007, respectively, to all shareholders of record on March 15, 2007, June 15, 2007, September 14, 2007, and December 14, 2007, respectively. We also paid a special dividend of $1.00 per share to all of our shareholders, payable on July 30, 2007 to shareholders of record on July 23, 2007.

In 2008, we paid $2.02 per share in dividends to our common shareholders. This included four quarterly dividends of $0.03 per share on March 28, 2008, June 27, 2008, September 30, 2008, and December 30, 2008, respectively, to all shareholders of record on March 14, 2008, June 13, 2008, September 16, 2008, and December 16, 2008, respectively. We also paid special dividends of $1.00 and $0.90 per share, respectively, to all of our shareholders, payable on September 16, 2008 and December 23, 2008, respectively, to shareholders of record on September 2, 2008 and December 9, 2008, respectively.

Since our IPO, we have returned to shareholders approximately $385 million in the form of dividends and stock buybacks.

The following table provides information with respect to the shares of our class A common stock we repurchased during the three months ended December 31, 2008:

Period	(a) Total Number of Shares Repurchased	(b) Average Price Paid Per Share, net of Commissions	(c) Total Number of Shares Repurchased as Part of Publicly Announced Plans or Programs	(d) Maximum Number of Shares (or Approximate Dollar Value) That May Yet Be Purchased Under the Plans or Programs
10/01/08 – 10/31/08	61,500	$ 29.68	61,500	1,000,436
11/01/08 – 11/30/08	93,300	27.01	93,300	907,136
12/01/08 – 12/31/08	42,300	25.07	42,300	864,836
Totals	197,100	$ 27.43	197,100	

Our stock repurchase program is not subject to an expiration date.

We are required to provide a comparison of the cumulative total return on our class A common stock as of December 31, 2008 with that of a broad equity market index and either a published industry index or a peer group index selected by us. The following chart compares the return on the class A common stock with the return on the S&P 500 Index and an index comprised of public asset managers (“Peer group index”). The comparison assumes that $100 was invested in the class A common stock and in each of the named indices, including the reinvestment of dividends, on December 31, 2003. This chart is not intended to forecast future performance of our common stock.

	Dec. 31, 2003	Dec. 31, 2004	Dec. 31, 2005	Dec. 31, 2006	Dec. 31, 2007	Dec. 31, 2008
GAMCO Investors, Inc.	100.00	126.50	113.71	100.78	184.96	77.27
Peer group index	100.00	110.88	116.33	134.70	142.10	89.53

Net cash provided by (used in) financing activities	(13,402)	(24,159)	54
Effect of exchange rate changes on cash and cash equivalents	(2,579)	1,172	9,771
Net increase in cash and cash equivalents	1,981	26,456	16,737
Cash and cash equivalents, beginning of fiscal year	71,872	45,416	28,679
Cash and cash equivalents, end of fiscal year	$ 73,853	$ 71,872	$ 45,416

See accompanying Notes to the Consolidated Financial Statements.

TRIMBLE NAVIGATION LIMITED

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1: DESCRIPTION OF BUSINESS

Trimble Navigation Limited began operations in 1978 and incorporated in California in 1981. Trimble provides advanced positioning product solutions, most typically to commercial and government users. The principal applications served include surveying, construction, agriculture, machine guidance, asset and fleet management, and telecommunications infrastructure. Trimble's products typically provide its customers benefits that can include lower costs, and higher productivity. Examples of products include systems that guide agricultural and construction equipment, surveying instruments, systems that track fleets of vehicles, and data collection systems that enable the management of large amounts of geo referenced information. In addition, Trimble also manufactures components for in vehicle navigation and telematics systems, and timing modules used in the synchronization of wireless networks.

NOTE 2: ACCOUNTING POLICIES

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Estimates are used for revenue recognition, allowances for doubtful accounts, sales returns reserve, allowances for inventory valuation, warranty costs, investments, goodwill impairments, and income taxes among others. The actual results experienced by Trimble may differ materially from management's estimates.

Basis of Presentation

Trimble has a fiscal year that ends on the Friday nearest to December 31. Fiscal 2005, a 53-week year, ended on December 30, 2005 and fiscal 2004 and fiscal 2003, 52-week years, ended on December 31, 2004 and January 2, 2004, respectively.

These Consolidated Financial Statements include the results of Trimble and its subsidiaries. Inter-company accounts and transactions have been eliminated. Certain amounts from prior years have been reclassified to conform to the current year presentation.

In 2005 Trimble revised its statements of cash flows for 2004 and 2003. The changes relate to Trimble's classification of the foreign exchange impact on its cash and cash equivalents that was erroneously included in cash flows from operations. These corrections have been made retrospectively modifying the presentation for 2004 and 2003. The changes resulted in an increase to cash flows from operations of $1.5 million and a decrease of $6.9 million in 2004 and 2003, respectively. These revisions to the statements of cash flows had no impact on Trimble's cash and cash equivalents, balance sheet, or income statement.

Foreign Currency Translation

Assets and liabilities of non-U.S. subsidiaries that operate in local currencies are translated to U.S. dollars at exchange rates in effect at the balance sheet date, with the resulting translation adjustments directly recorded to a separate component of accumulated other comprehensive income. Income and expense accounts are translated at average exchange rates during the year. Where the U.S. dollar is the functional currency, translation adjustments are recorded in foreign currency transaction adjustments, net of tax in accumulated other comprehensive income within the shareholders' equity section of the consolidated balance sheets.

Cash and Cash Equivalents

Cash and cash equivalents include all cash and highly liquid investments with insignificant interest rate risk and maturities of three months or less at the date of purchase. The carrying amount of cash and cash equivalents approximates fair value because of the short maturity of those instruments.

Fair Value of Financial Instruments

The fair value of certain of Trimble's financial instruments, including cash and cash equivalents, and other accrued liabilities approximate cost because of their short maturities. The fair value of investments is determined using quoted market prices for those securities or similar financial instruments.

Concentration of Risk

Cash and cash equivalents are maintained with several financial institutions. Deposits held with banks may exceed the amount of insurance provided on such deposits. Generally, these deposits may be redeemed upon demand and are maintained with financial institutions of reputable credit and therefore bear minimal credit risk.

Trimble is also exposed to credit risk in Trimble's trade receivables, which are derived from sales to end user customers in diversified industries as well as various resellers. Trimble performs ongoing credit evaluations of its customers' financial condition and limits the amount of credit extended when deemed necessary but generally does not require collateral.

With the selection of Solectron Corporation in August 1999 as an exclusive manufacturing partner for many of its GPS products, Trimble became substantially dependent upon a sole supplier for the manufacture of many of its products. In addition, Trimble relies on sole suppliers for a number of its critical components.

Allowance for Doubtful Accounts

Trimble maintains allowances for doubtful accounts for estimated losses resulting from the inability of its customers to make required payments.

Trimble evaluates the collectibility of its trade accounts receivable based on a number of factors such as age of the accounts receivable balances, credit quality, historical experience, and current economic conditions that may affect a customer's ability to pay. In circumstances where Trimble is aware of a specific customer's inability to meet its financial obligations to Trimble, a specific allowance for bad debts is estimated and recorded which reduces the recognized receivable to the estimated amount Trimble believes will ultimately be collected. In addition to specific customer identification of potential bad debts, bad debt charges are recorded based on Trimble's recent past loss history and an overall assessment of past due trade accounts receivable amounts outstanding.

Inventories

Inventories are stated at the lower of standard cost or market (net realizable value). Standard costs approximate actual costs, which are generally on a first-in, first-out basis. Trimble uses a standard cost accounting system to value inventory and these standards are reviewed at a minimum of once a year

and multiple times a year in the most active manufacturing plants. Trimble provides inventory allowances based on excess and obsolete inventories determined primarily by future demand forecasts. If actual future demand or market conditions are less favorable than those projected by management, additional inventory write-downs may be required.

Software Development Costs

Trimble capitalizes material software development costs for internal use pursuant to Statement of Position No. 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use."

Goodwill, Purchased Intangible Assets and Long-Lived Assets

Intangible assets include goodwill, distribution channels, patents, licenses, technology, acquired backlog and trademarks which are capitalized at cost. Intangible assets with definite lives are amortized on the straight-line basis. Useful lives generally range from three to seven years with weighted average useful life of 5.2 years.

If facts and circumstances indicate that intangible assets or property and equipment may be impaired, an evaluation of continuing value would be performed. If an evaluation is required, the estimated future undiscounted cash flows associated with these assets would be compared to their carrying amount to determine if a write-down to fair market value or discounted cash flow value is required. Trimble performed an annual impairment test of goodwill at the end of the third fiscal quarter of 2005, 2004 and 2003, respectively, and found there was no impairment of goodwill. Trimble will continue to evaluate its goodwill for impairment on an annual basis at the end of each fiscal third quarter and whenever events and changes in circumstances suggest that the carrying amount may not be recoverable.

Revenue Recognition

Trimble's revenues are recorded in accordance with the Securities and Exchange Commission's (SEC) Staff Accounting Bulletin (SAB) No. 104, "Revenue Recognition." Trimble recognizes product revenue when persuasive evidence of an arrangement exists, delivery has occurred, the fee is fixed or determinable, and collectibility is reasonably assured. In instances where final acceptance of the product is specified by the customer or is uncertain, revenue is deferred until all acceptance criteria have been met.

Contracts and customer purchase orders are typically used to determine the existence of an arrangement. Shipping documents and customer acceptance, when applicable, are used to verify delivery. Trimble assesses whether the fee is fixed or determinable based on the payment terms associated with the transaction and whether the sales price is subject to refund or adjustment. Trimble assesses collectibility based primarily on the creditworthiness of the customer as determined by credit checks and analysis, as well as the customer's payment history.

Trimble's shipment terms for US orders, and international orders fulfilled from its European distribution center are typically FCA (Free Carrier) shipping point, except certain sales to US government agencies which are shipped FOB destination. FCA shipping point means that Trimble fulfills the obligation to deliver when the goods are handed over, cleared for export, and into the

charge of the carrier named by the buyer at the named place or point. If no precise point is indicated by the buyer, Trimble may choose within the place or range stipulated where the carrier will take the goods into carrier's charge. Shipping and handling costs are included in the cost of goods sold.

Other international orders are shipped FOB destination, which means these international orders are not recognized as revenue until the product is delivered and title has transferred to the buyer or FCA shipping point. FOB destination means that Trimble bears all costs and risks of loss or damage to the goods up to that point.

Revenue to distributors and resellers is recognized upon delivery, assuming all other criteria for revenue recognition have been met. Distributors and resellers do not have a right of return.

Revenues from purchased extended warranty and support agreements are deferred and recognized ratably over the term of the warranty/support period.

In accordance with Emerging Issues Task Force (EITF) Issue 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables," when a sale involves multiple elements the entire fee from the arrangement is allocated to each respective element based on its relative fair value and recognized when revenue recognition criteria for each element are met.

Software revenue is recognized in accordance with Statement of Position (SOP) No. 97-2, "Software Revenue Recognition" and Statement of Position (SOP) No. 98-9, "Modification of SOP 97-2." Trimble's software arrangements generally consist of a perpetual license fee and post contract customer support (PCS). Trimble has established vendor-specific objective evidence (VSOE) of fair value for its PCS contracts based on the renewal rate. The remaining value of the software arrangement is allocated to the license fee using the residual method, which revenue is primarily recognized when the software has been delivered and there are no remaining obligations. Revenue from PCS is recognized ratably over the term of the PCS agreement.

A reserve for sales returns is established based on historical trends in product return rates experienced in the ordinary course of business. The reserve for estimated future returns is recorded as a reduction of our accounts receivable and revenue. If the actual returns were to deviate from the historical data on which the sales reserve had been established, Trimble's revenue could be adversely affected.

Warranty

Trimble accrues for warranty costs as part of its cost of sales based on associated material product costs, technical support labor costs, and costs incurred by third parties performing work on Trimble's behalf. The products sold are generally covered by a warranty for periods ranging from 90 days to three years, and in some instances up to 5.5 years.

While Trimble engages in extensive product quality programs and processes, including actively monitoring and evaluating the quality of component suppliers, its warranty obligation is affected by product failure rates, material usage, and service delivery costs incurred in correcting a product failure. Should actual product failure rates, material usage, or service delivery costs differ from the estimates, revisions to the estimated warranty accrual and related costs may be required.

Changes in Trimble's product warranty liability during the 12 months ended December 30, 2005 and December 31, 2004, are as follows:

	Fiscal Years Ended	
	December 30, 2005	December 31, 2004
	(in thousands)	
Beginning balance	$ 6,425	$ 5,147
Warranties accrued	7,960	7,333
Warranty claims	(6,919)	(6,055)
Ending Balance	$ 7,466	$ 6,425

Guarantees, Including Indirect Guarantees of Indebtedness of Others

In the normal course of business to facilitate sales of its products, Trimble indemnifies other parties, including customers, lessors, and parties to other transactions with Trimble, with respect to certain matters. Trimble has agreed to hold the other party harmless against losses arising from a breach of representations or covenants, or out of intellectual property infringement or other claims made against certain parties. These agreements may limit the time within which an indemnification claim can be made and the amount of the claim. In addition, Trimble has entered into indemnification agreements with its officers and directors, and Trimble's bylaws contain similar indemnification obligations to Trimble's agents.

It is not possible to determine the maximum potential amount under these indemnification agreements due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each particular agreement. Historically, payments made by Trimble under these agreements were not material and no liabilities have been recorded for these obligations on the Consolidated Balance Sheets as of December 30, 2005 and December 31, 2004.

Advertising Costs

Trimble expenses all advertising costs as incurred. Advertising expenses were approximately $14.8 million, $9.5 million, and $9.2 million in fiscal 2005, 2004, and 2003, respectively.

Research and Development Costs

Research and development costs are charged to expense as incurred. Cost of software developed for external sale subsequent to reaching technical feasibility were not considered material and were expensed as incurred. Trimble received third party funding of approximately $9.0 million, $7.7 million, and $4.9 million in fiscal 2005, 2004, and 2003 respectively. Trimble offsets research and development expenses with any third party funding received. Trimble retains the rights to any technology developed under such arrangements.

Stock-Based Compensation

In accordance with the provisions of Statement of Financial Accounting Standards No. 123 ("SFAS 123"), "Accounting for Stock-Based Compensation" and "Statement of Financial Accounting

Standards No. 148" ("SFAS 148"), "Accounting for Stock-Based Compensation Transition and Disclosure," Trimble applies Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") and related interpretations in accounting for its stock-based compensation. Accordingly, Trimble does not recognize compensation cost for stock options granted at fair market value. Note 15 of the Consolidated Financial Statements describe the plans operated by Trimble.

For purposes of pro forma disclosures, the estimated fair value of the options is amortized to expense over the options' vesting period, and the estimated fair value of purchases under the employee stock purchase plan is expensed in the year of purchase as well as the stock-based employee compensation cost, net of related tax effects, that would have been included in the determination of net income if the fair value based method had been applied to all awards.

Pro forma information regarding net income and earnings per share is required by SFAS 123 and has been determined as if Trimble had accounted for its employee stock options and purchases under the employee stock purchase plan using the fair value method of SFAS 123.

Options

For options granted prior to October 1, 2005, the fair value for these options was estimated at the date of grant using the Black-Scholes option-pricing model. For stock options granted on or after October 1, 2005, the fair value of each award is estimated on the date of grant using a binomial valuation model. Similar to the Black-Scholes model, the binomial model takes into account variables such as volatility, dividend yield rate, and risk free interest rate. In addition, the binomial model incorporates actual option-pricing behavior and changes in volatility over the option's contractual term. For these reasons, Trimble believes that the binomial model provides a fair value that is more representative of actual experience and future expected experience than the value calculated using the Black-Scholes model.

Under the Black-Scholes and binomial models, the estimated values of employee stock options granted during fiscal years 2005, 2004, and 2003 were $14.53, $13.85, and $10.03, respectively. The value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model and binomial model with the following assumptions:

	December 30, 2005	**December 31, 2004**	**January 2, 2004**
Expected dividend yield			
Expected stock price volatility	47%	56%	60%
Risk free interest rate	4.3%	3.5%	3.3%
Expected life of options after vesting	1.7 years	1.6 years	1.6 years

An analysis of historical information is used to determine Trimble's assumptions, to the extent that historical information is relevant, based on the terms of the grants being issued in any given period. The expected life for options granted reflects options granted to existing employees that generally vest ratably over five years from the date of grant.

Employee Stock Purchase Plan

Under the Employee Stock Purchase Plan, rights to purchase shares are granted during the second and fourth quarter of each year. The fair value of rights granted under the Employee Stock Purchase Plan was estimated at the date of grant using the Black-Scholes option-pricing model. The estimated weighted average value of rights granted under the Employee Stock Purchase Plan during fiscal years 2005, 2004, and 2003 were $9.88, $7.31, and $3.57 respectively. The fair value of rights granted during 2005, 2004, and 2003 was estimated at the date of grant using the following assumptions:

	Fiscal years ended		
	December 30, 2005	**December 31, 2004**	**January 2, 2004**
Expected dividend yield			
Expected stock price volatility	47%	46%	60%
Risk free interest rate	3.5%	1.7%	1.1%
Expected life of purchase	0.5 years	0.5 years	0.5 years

Trimble's pro forma information is as follows:

	December 30, 2005	**December 31, 2004**	**January 2, 2004**
	(in thousands, except per share amounts)		
Net income, as reported	$ 84,855	$ 67,680	$ 38,485
Compensation expense, net of tax	8,682	8,617	9,817
Pro-forma net income	$ 76,173	$ 59,063	$ 28,668
Reported basic earnings per share	$ 1.59	$ 1.32	$ 0.81
Pro-forma basic earnings per share	$ 1.43	$ 1.15	$ 0.60
Reported diluted earnings per share	$ 1.49	$ 1.23	$ 0.77
Pro-forma diluted earnings per share	$ 1.34	$ 1.07	$ 0.57

SFAS 123 requires the use of option pricing models that were not developed for use in valuing employee stock options. The Black-Scholes option pricing model were developed for use in estimating the fair value of short-lived exchange-traded options that have no vesting restrictions and are fully transferable. In addition, the models require the input of highly subjective assumptions. Because Trimble's stock-based compensation has characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in the opinion of management, the existing models do not necessarily provide a reliable single measure of the fair value of employee stock-based compensation.

Depreciation

Depreciation of property and equipment owned is computed using the straight-line method over the shorter of the estimated useful lives or the lease terms. Useful lives include a range from two to six years for machinery and equipment, five years for furniture and fixtures, two to five years for computer equipment and software, and the life of the lease for leasehold improvements. The costs of repairs and maintenance are expensed when incurred, while expenditures for refurbishments and

improvements that significantly add to the productive capacity or extend the useful life of an asset are capitalized. Depreciation expense was $10.7 million in fiscal 2005, $8.9 million in fiscal 2004, and $8.9 million in fiscal 2003.

Income Taxes

Income taxes are accounted for under the liability method whereby deferred tax asset or liability account balances are calculated at the balance sheet date using current tax laws and rates in effect for the year in which the differences are expected to affect taxable income. A valuation allowance is recorded to reduce the carrying amounts of deferred tax assets if it is more likely than not that such assets will not be realized.

Computation of Earnings Per Share

Number of shares used in calculation of basic earnings per share represents the weighted average common shares outstanding during the period and excludes any dilutive effects of options, warrants, and convertible securities. The dilutive effects of options, warrants, and convertible securities are included in diluted earnings per share.

New Accounting Standards

In May 2005, the FASB issued SFAS No. 154, "Accounting Changes and Error Corrections" ("SFAS 154") which replaces Accounting Principles Board Opinions No. 20 "Accounting Changes" and SFAS No. 3, "Reporting Accounting Changes in Interim Financial Statements-An Amendment of APB Opinion No. 28." SFAS 154 provides guidance on the accounting for and reporting of accounting changes and error corrections. It establishes retrospective application, or the latest practicable date, as the required method for reporting a change in accounting principle and the reporting of a correction of an error. SFAS 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005 and is required to be adopted by Trimble in the first quarter of fiscal 2006. Trimble is currently evaluating the effect that the adoption of SFAS 154 will have on its consolidated results of operations and financial condition but does not expect it to have a material impact.

In March 2005, the FASB issued FIN 47, "Accounting for Conditional Asset Retirement Obligations, an interpretation of FASB Statement No. 143" ("FIN 47"). FIN 47 requires an entity to recognize a liability for the fair value of a conditional asset retirement obligation when incurred if the liability's fair value can be reasonably estimated. FIN 47 is effective for fiscal years ending after December 15, 2005. Trimble was not impacted by the adoption of FIN 47 in fiscal 2005.

In December 2004, the FASB issued SFAS No. 123R, "Share-Based Payment." SFAS No. 123R requires employee stock options and rights to purchase shares under stock participation plans to be accounted for under the fair value method, and eliminates the ability to account for these instruments under the intrinsic value method prescribed by APB Opinion No. 25, and allowed under the original provisions of SFAS No. 123. SFAS No. 123R requires the use of an option pricing model for estimating fair value, which is amortized to expense over the service periods. The requirements of SFAS No. 123R are effective for fiscal years beginning after June 15, 2005. SFAS No. 123R allows for either prospective recognition of compensation expense or retrospective recognition, which may be back to the original issuance of SFAS No. 123 or only to interim periods in the year of adoption. Trimble will use the

prospective method for future fiscal periods after the SFAS No. 123R effective date of 12/31/05. As a result, financial statements for fiscal periods after our SFAS No. 123R effective date will include stock-based compensation expenses that are not comparable to financial statements of fiscal periods prior to the SFAS No. 123R effective date. Due to constant fluctuations to the expected volatility, expected term, risk free interest rate, and expected forfeiture assumptions used in valuating stock-based compensation, expected stock-based compensation expense in future fiscal periods is not predictable.

NOTE 3: EARNINGS PER SHARE

The following data show the amounts used in computing earnings per share and the effect on the weighted-average number of shares of potentially dilutive common stock.

	Fiscal Years Ended		
	December 30, 2005	December 31, 2004	January 2, 2004
	(in thousands, except per share data)		
Numerator:			
Income available to common shareholders:			
Used in basic and diluted earnings per share	$ 84,855	$ 67,680	$ 38,485
Denominator:			
Weighted average number of common shares used in basic earnings per share	53,216	51,163	47,505
Effect of dilutive securities (using treasury stock method):			
Common stock options	2,950	2,947	2,058
Common stock warrants	653	838	449
Weighted average number of common shares and dilutive potential common shares used in diluted earnings per share	56,819	54,948	50,012
Basic earnings per share	$ 1.59	$ 1.32	$ 0.81
Diluted earnings per share	$ 1.49	$ 1.23	$ 0.77

3-for-2 Stock Split

Trimble's Board of Directors approved a 3-for-2 split of all outstanding shares of Trimble's Common Stock, payable March 4, 2004 to stockholders of record on February 17, 2004. Cash was paid in lieu of fractional shares. All shares and per share information presented has been adjusted to reflect the stock split on a retroactive basis for all periods presented.

NOTE 4: BUSINESS COMBINATIONS

Acquisitions

The following is a summary of acquisitions made by Trimble during fiscal 2005, 2004 and 2003 all of which were accounted for as purchases:

Acquisition	Primary Service or Product	Operating Segment	Acquisition Date
Advanced Public Safety	Mobile and handheld software for public safety	Mobile Solutions	December 30, 2005
MobileTech Solutions	Field workforce automation solutions	Mobile Solutions	October 25, 2005
Apache Technologies	Laser detection technology	Engineering & Construction	April 19, 2005
Pacific Crest Corporation	Wireless data communication systems	Engineering & Construction	January 10, 2005
GeoNav GmbH	Customized field data collection solutions	Engineering and Construction	July 5, 2004
TracerNET Corp.	Wireless fleet management solutions	Mobile Solutions	March 5, 2004
MENSI S.A.	3D laser scanning technology	Engineering & Construction	December 9, 2003
Applanix	Inertial navigation systems and GPS	Portfolio Technologies	July 7, 2003

The Consolidated Financial Statements include the operating results of each business from the date of acquisition. Pro forma results of operations have not been presented because the effects of each of these acquisitions were not material to Trimble's results.

The total purchase consideration for each of the above acquisitions was allocated to the assets acquired and liabilities assumed based on their estimated fair values as of the date of acquisition. Acquisition costs directly related to the acquisitions are capitalized. Assets acquired and liabilities assumed for certain acquisitions in the fourth quarter of fiscal 2005 were allocated based on preliminary estimates. Trimble is in the process of finalizing these estimates pending the completion of fair value assessments and asset appraisals on identified intangible assets. Final changes to the value of estimated intangible assets will also adjust the amounts attributable from goodwill.

At the date of each acquisition, the projects associated with in-process research and development (IPR&D) efforts had not yet reached technological feasibility and the research and development in process had no alternative future uses. Accordingly, the value assigned to these IPR&D amounts were charged to expense on the respective acquisition date of each of the acquired companies. Trimble recorded IPR&D expense of $1.1 million relating to acquisitions made in fiscal 2005. As mentioned above, Trimble is in the process of finalizing the acquisitions in the fourth quarter of fiscal 2005, pending the completion of fair value assessments. Final changes to the estimated value of the IPR&D will also adjust the amounts attributable to goodwill. We did not record any IPR&D expense in fiscal 2004 and fiscal 2003.

The following table summarizes Trimble's business combinations completed during fiscal years 2005, 2004 and 2003 (in thousands):

	Fiscal Years Ended		
	December 30, 2005	December 31, 2004	January 2, 2004
Purchase price	$ 63,830	$ 12,246	$ 22,352
Purchase price adjustments	1,595	1,167	4,010
Acquisition costs	466	279	810
Total purchase price	$ 65,891	$ 13,692	$ 27,172
Purchase price allocation:			
Fair value of net assets acquired	$ 1,237	$ 2,649	$ 4,020
Identified intangible assets	21,171	2,117	3,440
In-Process Research & Development	1,100		
Goodwill	42,383	8,926	11,749
Total	$ 65,891	$ 13,692	$ 19,229

Certain acquisitions include additional earn-out cash payments based on future revenue derived from existing products. These earn-out payments are considered additional purchase price consideration. Earn-out cash payments made for fiscal 2005, fiscal 2004 and fiscal 2003 were $1.6 million, $1.2 million and $4.0 million respectively. Earn-outs and changes in purchase price allocation estimates were recorded as purchase price adjustments and goodwill adjustments. Acquisitions made by Trimble have additional potential earn-out cash payments not to exceed approximately $44.7 million.

Intangible Assets

The following tables present details of Trimble's total intangible assets:

	As of	
	December 30, 2005	December 31, 2004
	(in thousands)	
Intangible assets:		
Intangible assets with definite life:		
Existing technology	$ 48,100	$ 35,037
Trade names, trademarks, patents, backlog and other intellectual properties	26,808	22,111
Total intangible assets with definite life	74,908	57,148
Less accumulated amortization	(47,598)	(43,313)
Total net intangible assets	$ 27,310	$ 13,835

Total intangibles assets before accumulated amortization increased by $17.8 million primarily due to $20.7 million increase in intangible assets purchased in connection with acquisitions in fiscal 2005 offset by $2.5 million in exchange rate impact on non-US currency denominated intangible assets.

Accumulated amortization increased by $4.3 million primarily due to a $7.0 million increased in amortization expense partially offset by $2.2 million in exchange rate impact on non-US currency denominated intangible assets.

The following table presents details of the amortization expense of purchased and other intangible assets as reported in the Consolidated Statements of Income:

	Fiscal Years Ended		
	December 30, 2005	December 31, 2004	January 2, 2004
	(in thousands)		
Reported as:			
Cost of sales	$ 165	$ 183	$ 604
Operating expenses	6,855	8,327	7,312
Total	$ 7,020	$ 8,510	$ 7,916

The decrease in amortization expense is due to certain intangibles becoming fully amortized in the second quarter of fiscal 2005.

The estimated future amortization expense of intangible assets as of December 30, 2005, is as follows (in thousands):

	Amortization Expense
2006	$ 8,392
2007	6,603
2008	5,560
2009	3,976
2010	2,612
Thereafter	167
Total	$ 27,310

Goodwill

Goodwill consisted of the following:

	As of	
	December 30, 2005	December 31, 2004
	(in thousands)	
Goodwill, Spectra Precision acquisition	$ 196,676	$ 212,915
Goodwill, other acquisitions	89,470	46,607
Goodwill	$ 286,146	$ 259,522

The net increase in goodwill of approximately $26.6 million during fiscal 2005 was primarily due to a $39.9 million increase in goodwill from acquisitions of Pacific Crest, Apache, MobileTech Solutions and APS and $1.9 million in earn-out amounts recorded fiscal 2005 related to the Apache, Mensi and

Levelite acquisitions. This amount was offset by the foreign exchange rate impact of approximately $15.8 million on non-US currency denominated goodwill assets. See Note 7 of the Notes to the Consolidated Financial Statements for additional information regarding Trimble's goodwill by operating segment.

NOTE 5: JOINT VENTURE

Caterpillar Trimble Control Technologies Joint Venture

On April 1, 2002, Caterpillar Trimble Control Technologies LLC ("CTCT"), a joint venture formed by Trimble and Caterpillar began operations. The joint venture is 50% owned by Trimble and 50% owned by Caterpillar, with equal voting rights. The joint venture is accounted for under the equity method of accounting. Under the equity method, Trimble's share of profits and losses are included in expenses for affiliated operations, net in the non-operating income (expense), net section of the Consolidated Statements of Income. CTCT develops and markets advanced electronic guidance and control products for earth moving machines in the construction, mining and waste industries.

During fiscal 2002, Trimble received a special cash distribution of $11.0 million from CTCT. The distribution was recorded as a deferred gain and amortized to the extent that losses were attributable from CTCT under the equity method of accounting. Since the joint venture is now profitable on a sustainable basis, future operating losses are not anticipated and there are no future outstanding financial obligations by Trimble to the joint venture, Trimble recognized the unamortized portion of the gain or $9.2 million in fiscal 2005 as non operating income.

Trimble acts as a contract manufacturer for CTCT. Products are manufactured based on orders received from CTCT and are sold at cost plus a mark up to CTCT. CTCT resells products to both Caterpillar and Trimble for sales through their respective distribution channels. Generally, Trimble sells products to the after market dealer channel, and Caterpillar sells products for factory and dealer installation. CTCT does not hold inventory in that the resale of products to Caterpillar and Trimble occur simultaneously when the products are purchased from the subcontract manufacturer in Trimble.

The net expenses for affiliated operations at CTCT also includes incremental costs as a result of purchasing products from CTCT at a higher price than Trimble's original manufacturing costs, partially offset by contract manufacturing fees charged to CTCT. In addition, Trimble received reimbursement of employee-related costs from CTCT for Trimble employees dedicated to CTCT totaling $9.7 million for

both fiscal 2005 and fiscal 2004 and $7.9 million for fiscal 2003. The reimbursements were offset against operating expenses.

	Fiscal Years Ended		
	December 30, 2005	December 31, 2004	January 2, 2004
	(In millions)		
CTCT incremental pricing effects, net	$ 11.4	$ 8.8	$ 5.9
Trimble's 50% share of CTCT's reported (gain) loss	(2.0)	0.5	0.9
Amortization of deferred gain	(9.2)	(0.7)	(0.9)
Total CTCT expense for affiliated operations, net	$ 0.2	$ 8.6	$ 5.9

The net outstanding balance due from CTCT was $0.2 million at December 30, 2005 and $0.7 million at December 31, 2004 and is included in account receivables, net on the Consolidated Balance Sheets.

Nikon-Trimble Joint Venture

On March 28, 2003, Nikon-Trimble Co., Ltd ("Nikon-Trimble"), a joint venture was formed by Trimble and Nikon Corporation. The joint venture began operations in July 2003 and is 50% owned by Trimble and 50% owned by Nikon, with equal voting rights. It focuses on the design and manufacture of surveying instruments including mechanical total stations and related products.

Nikon-Trimble is the distributor in Japan for Nikon and Trimble products. Trimble is the exclusive distributor outside of Japan for Nikon branded survey products. For products sold from Trimble to the Nikon-Trimble, revenue is recognized by Trimble on a sell-through basis from Nikon-Trimble to the end customer. Profits from these inter-company sales are eliminated.

The terms and conditions of the sales of products from Trimble to Nikon-Trimble are comparable with those of the standard distribution agreements which Trimble maintains with its dealer channel and margins earned are similar to those from third party dealers. Similarly, the purchases of product by Trimble from the Nikon-Trimble are made on terms comparable with the arrangements which Nikon maintained with its international distribution channel prior to the formation of the joint venture with Trimble.

Trimble uses the equity method of accounting for its investment in Nikon-Trimble, with 50% share of profit or loss from this joint venture reported by Trimble in the Consolidated Statements of Income under the heading of expenses for affiliated operations, net. Trimble reported a loss of approximately $36,000 and a profit of $1.1 million for fiscal 2005 and fiscal 2004, respectively, as its proportionate share of the net income. At December 30, 2005, the net payable by Trimble to Nikon-Trimble related to the purchase and sale of products from and to Nikon-Trimble is $2.0 million and was included in accounts payable on the Consolidated Balance Sheets. In addition, Trimble received reimbursement of employee-related costs from Nikon-Trimble for one Trimble employee dedicated to Nikon-Trimble totaling $0.4 million for fiscal 2005. The reimbursements were offset against operating expenses. The

carrying amount of the investment was approximately $12.9 million at December 30, 2005 and $13.5 million at December 31, 2004.

NOTE 6: CERTAIN BALANCE SHEET COMPONENTS

The following tables provide details of selected balance sheet items (in thousands):

	As of	
	December 30, 2005	**December 31, 2004**
Inventories:		
Raw materials	$ 52,199	$ 36,425
Work-in-process	7,249	3,989
Finished goods	48,403	47,331
Total	$ 107,851	$ 87,745
Property and equipment, net:		
Machinery and equipment	$ 72,273	$ 71,882
Furniture and fixtures	10,110	10,521
Leasehold improvements	8,695	5,861
Buildings	5,707	5,297
Land	1,231	1,231
	98,016	94,792
Less accumulated depreciation	(55,352)	(63,801)
Total	$ 42,664	$ 30,991
Other Non-Current Liabilities:		
Deferred compensation	$ 3,234	$ 1,761
Pension	5,529	6,247
Deferred Rent	3,364	426
Other long term liabilities	6,917	3,296
Total	$ 19,041	$ 11,730

During the year, accumulated depreciation decreased by $8.4 million due to the write-off of fully depreciated assets and disposals in the amount of $16.2 million and the foreign exchange rate impact of $2.6 million offset by $10.7 million in depreciation expense.

Other non-current liabilities include deferred rent as a result of the new Sunnyvale lease executed in fiscal 2005.

NOTE 7: REPORTING SEGMENT AND GEOGRAPHIC INFORMATION

To achieve distribution, marketing, production, and technology advantages in Trimble's targeted markets, Trimble manages its operations in the following five segments:

Engineering and Construction Consists of products currently used by survey and construction professionals in the field for positioning data collection, field computing, data management, and automated machine guidance and control. These products provide solutions for numerous construction applications including surveying, general construction, site preparation and excavation, road and runway construction, and underground construction. During fiscal 2005 Trimble acquired Apache and Pacific Crest and their performances are reported in this business segment

Field Solutions Consists of products that provide solutions in a variety of agriculture and fixed asset applications, primarily in the areas of precise land leveling, machine guidance, yield monitoring, variable-rate applications of fertilizers and chemicals, and fixed asset data collection for a variety of governmental and private entities. This segment is an aggregation of the mapping and geographic information systems (GIS) and agriculture businesses. Trimble has aggregated these business operations under a single general manager in order to continue to leverage its research and development activities due to the similarities of products across the segment.

Component Technologies Consists of products including proprietary chipsets, printed circuit boards, modules, and licenses of intellectual property. The applications into which end users currently incorporate the component products include timing applications for synchronizing wireless networks, in-vehicle navigation and telematics systems, fleet management, security systems, data collection networks, and wireless handheld consumer products.

Mobile Solutions Consists of products that enable end users to monitor and manage their mobile assets by communicating location and activity-relevant information from the field to the office. Trimble offers a range of products that address a number of sectors of this market including truck fleets, security, telematics, and public safety vehicles. During fiscal 2005 Trimble acquired MobileTech Solutions and Advanced Public Safety and their performances are reported in this business segment.

Portfolio Technologies The various operations that comprise this segment were aggregated on the basis that no single operation accounted for more than 10% of Trimble's total revenue. The operations in this segment are Applanix, Military and Advanced Systems (MAS) and Trimble Outdoors.

Trimble evaluates each of its segment's performance and allocates resources based on profit and loss from operations before income taxes, and some corporate allocations. Trimble and each of its segments employ the same accounting policies.

The following table presents revenues, operating income (loss), and identifiable assets for the five segments. Operating income (loss) is net revenue less operating expenses, excluding general corporate expenses, amortization, restructuring charges, non-operating income (expense), and income taxes. The

identifiable assets that Trimble's chief operating decision maker views by segment are accounts receivable and inventory.

	Fiscal Years Ended		
	December 30, 2005	December 31, 2004	January 2, 2004
	(in thousands)		
Engineering & Construction			
Revenue	$ 524,461	$ 440,478	$ 367,058
Operating income before corporate allocations	117,993	79,505	60,664
Accounts receivable	105,980	90,743	84,897
Inventories	80,590	65,116	56,008
Goodwill	229,176	238,801	229,287
Field Solutions			
Revenue	127,843	105,591	79,879
Operating income before corporate allocations	32,527	25,151	14,500
Accounts receivable	21,823	19,141	16,589
Inventories	11,790	7,016	3,398
Goodwill			
Component Technologies			
Revenue	53,902	65,522	64,193
Operating income before corporate allocations	8,034	13,880	16,560
Accounts receivable	6,283	9,377	10,003
Inventories	7,154	5,271	2,021
Goodwill			
Mobile Solutions			
Revenue	31,481	23,531	12,981
Operating loss before corporate allocations	(3,072)	(5,997)	(6,452)
Accounts receivable	10,789	9,073	4,103
Inventories	1,983	5,735	3,038
Goodwill	44,118	7,660	
Portfolio Technologies			
Revenue	37,226	33,686	16,792
Operating income (loss) before corporate allocations	5,178	4,866	(1,686)
Accounts receivable	7,750	8,283	7,321
Inventories	6,334	4,607	6,361
Goodwill	12,852	13,061	12,138
Total			
Revenue	$ 774,913	$ 668,808	$ 540,903
Operating income before corporate allocations	160,660	117,405	83,586
Accounts receivable(1)	152,625	136,617	122,913
Inventories	107,851	87,745	70,826
Goodwill	286,146	259,522	241,425

(1) As presented, accounts receivable represents trade receivables, gross, which are specified between segments.

The following are reconciliations corresponding to totals in the accompanying Consolidated Financial Statements:

	Fiscal Years Ended		
	December 30, 2005	December 31, 2004	January 4, 2004
	(in thousands)		
Consolidated segment operating income	$ 160,660	$ 117,405	$ 83,586
Unallocated corporate expense	(27,483)	(22,901)	(20,320)
Restructuring charges	(278)	(552)	(2,019)
Amortization of purchased intangible assets	(6,855)	(8,327)	(7,312)
In-process research and development	(1,100)		
Non-operating expense, net	(156)	(10,701)	(18,350)
Consolidated income before income taxes	$ 124,788	$ 74,924	$ 35,585

	As of	
	December 30, 2005	December 31, 2004
	(in thousands)	
Assets:		
Accounts receivable total for reportable segments	$ 152,625	$ 136,617
Unallocated (1)	(7,525)	(12,679)
Accounts receivable, net	$ 145,100	$ 123,938

(1)
Includes trade-related accruals and cash received in advance that are not allocated by segment.

The distribution of Trimble's gross consolidated revenue by segment is summarized in the table below. Gross consolidated revenue includes external and internal sales. Total external consolidated revenue is reported net of eliminations of internal sales between segments.

	December 30, 2005	December 31, 2004
	(in thousands)	
Engineering and Construction	$ 529,034	$ 443,973
Field Solutions	127,843	105,591
Component Technologies	53,956	65,713
Mobile Solutions	31,481	23,531
Portfolio Technologies	37,226	33,686
Total Gross Consolidated Revenue	779,540	672,494
Eliminations	(4,627)	(3,686)
Total External Consolidated Revenue	$ 774,913	$ 668,808

December 30, 2005	December 31, 2004

The geographic distribution of Trimble's revenues and identifiable assets is summarized in the table below. Other foreign countries include Canada, and countries in South and Central America, the

Middle East, Africa, and the Pacific Rim. Identifiable assets indicated in the table below exclude inter-company receivables, investments in subsidiaries, goodwill, and intangibles assets.

	Geographic Area					
Fiscal Years Ended	**US**	**Europe**	**Asia Pacific**	**Other Non-US Countries**	**Eliminations**	**Total**
			(in thousands)			
December 30, 2005						
Sales to unaffiliated customers(1)	$ 415,443	$ 191,734	$ 88,315	$ 79,421	$	$ 774,913
Inter-geographic transfers	222,909	175,739	1,198	1,661	(401,507)	
Total revenue	$ 638,352	$ 367,473	$ 89,513	$ 81,082	$ (401,507)	$ 774,913
Identifiable assets	$ 295,196	$ 120,582	$ 4,602	$ 9,251	$	$ 429,631
December 31, 2004						
Sales to unaffiliated customers(1)	$ 331,607	$ 186,197	$ 86,117	$ 64,886	$	$ 668,808
Inter-geographic transfers	149,499	138,159	3,479	2,640	(293,777)	
Total revenue	$ 481,106	$ 324,356	$ 89,596	$ 67,527	$ (293,777)	$ 668,808
Identifiable assets	$ 242,141	$ 118,194	$ 6,959	$ 13,286	$	$ 380,580
January 2, 2004						
Sales to unaffiliated customers(1)	$ 265,846	$ 160,094	$ 70,257	$ 44,706	$	$ 540,903
Inter-geographic transfers	112,623	116,185	3,755		(232,563)	
Total revenue	$ 378,469	$ 276,279	$ 74,012	$ 44,706	$ (232,563)	$ 540,903

(1) Sales attributed to countries based on the location of the customer.

Transfers between US and non-US geographic areas are made at prices based on total costs and contributions of the supplying geographic area. Trimble's subsidiaries in Asia have derived revenue from commissions from US operations in each of the periods presented. These commission revenues and expenses are excluded from total revenue and operating income (loss) in the preceding table. Other than the United States, no other country comprised more than 10% of sales to unaffiliated customers for any periods presented, except as disclosed above.

Revenues by product groups are not practicable to obtain and therefore are not presented.

No single customer accounted for 10% or more of Trimble's total revenues in fiscal years 2005, 2004, and 2003.

NOTE 8: RESTRUCTURING CHARGES

Restructuring charges of $0.3 million, $0.6 million, and $2.0 million were recorded in fiscal years 2005, 2004 and 2003, respectively. The charges in fiscal 2005 were primarily related to office closure costs due to integration efforts of the Mensi acquisition. The charges in fiscal 2004 were primarily related to severance costs due to the realignment of Trimble Mobile Solutions Inc. while charges in fiscal 2003 were primarily related to our Japanese office relocation due to the Nikon-Trimble joint venture formation. As a result of these actions, the headcount of the affected operations decreased by 36 and 77 in fiscal 2004, and 2003, respectively. As of December 30, 2005, the remaining accrual balance of $0.3 million is related to facilities closure expected to be paid over the next several years. The restructuring accrual is included in the Condensed Consolidated Balance Sheets under the heading of "Accrued Liabilities".

NOTE 9: LONG-TERM DEBT

Long-term debt consisted of the following:

	As of	
	December 30, 2005	December 31, 2004
	(in thousands)	
Credit Facilities:		
Term loan	$	$ 31,250
Revolving credit facility		7,000
Promissory notes and other	649	746
	649	38,996
Less current portion of long-term debt	216	12,500
Non-current portion	$ 433	$ 26,496

The following summarizes the future cash payment obligations (excluding interest) as of December 30, 2005:

	Total	2006	2007	2008	2009	2010	2011 and Beyond
	(in thousands)						
Promissory note and other	649	216		104	329		
Total contractual cash obligations	$ 649	$ 216	$	$ 104	$ 329	$	$

Credit Facilities

On July 28, 2005, Trimble entered into a $200 million unsecured revolving credit agreement ("2005 Credit Facility") with a syndicate of 10 banks with The Bank of Nova Scotia as the administrative agent. The 2005 Credit Facility replaces Trimble's $175 million secured 2003 Credit Facility. The funds available under the new 2005 Credit Facility may be used by Trimble for general corporate purposes and up to $25 million of the 2005 Credit Facility may be used for letters of credit.

Trimble may borrow funds under the 2005 Credit Facility in U.S. Dollars or in certain other currencies, and will bear interest, at Trimble's option, at either: (i) a base rate, based on the administrative agent's prime rate, plus a margin of between 0% and 0.125%, depending on Trimble's leverage ratio as of its most recently ended fiscal quarter, or (ii) a reserve-adjusted rate based on LIBOR, EURIBOR, STIBOR or other agreed-upon rate, depending on the currency borrowed, plus a margin of between 0.625% and 1.125%, depending on Trimble's leverage ratio as of the most recently ended fiscal quarter. Trimble's obligations under the 2005 Credit Facility are guaranteed by certain of Trimble's domestic subsidiaries.

The 2005 Credit Facility contains customary affirmative, negative and financial covenants including, among other requirements, negative covenants that restrict Trimble's ability to dispose of assets, create liens, incur indebtedness, repurchase stock, pay dividends, make acquisitions, make investments, enter into mergers and consolidations and make capital expenditures, and financial covenants that require the maintenance of leverage and fixed charge coverage ratios. The 2005 Credit Facility contains events of default that include, among others, non-payment of principal, interest or fees, breach of covenants,

inaccuracy of representations and warranties, cross defaults to certain other indebtedness, bankruptcy and insolvency events, material judgments, and events constituting a change of control. Upon the occurrence and during the continuance of an event of default, interest on the obligations will accrue at an increased rate and the lenders may accelerate Trimble's obligations under the 2005 Credit Facility, however that acceleration will be automatic in the case of bankruptcy and insolvency events of default. Trimble incurs a commitment fee if the 2005 Credit Facility is not used. The commitment fee is not material to Trimble's results during all periods presented.

At December 30, 2005, Trimble has a zero balance outstanding and was in compliance with all financial debt covenants.

Promissory Note

As of December 30, 2005, Trimble had other notes payable totaling approximately $0.6 million consisting of government loans to foreign subsidiaries.

NOTE 10: COMMITMENTS AND CONTINGENCIES

Operating Leases

On May 13, 2005, Trimble entered into a lease agreement for the lease of real property located in Sunnyvale, California. The lease agreement has a seven year term, commencing January 1, 2006 and ending December 31, 2012.

Trimble's principal facilities in the United States are leased under various cancelable and non-cancelable operating leases that expire at various dates through 2012. For tenant improvement allowances and rent holidays, Trimble records a deferred rent liability on the consolidated balance sheets and amortizes the deferred rent over the terms of the leases as reductions to rent expense on the consolidated statements of income. Trimble has options to renew certain of these leases for an additional five years.

Future minimum payments required under non-cancelable operating leases are as follows:

	Operating Lease Payments
	(in thousands)
2006	$ 9,664
2007	8.094
2008	6,927
2009	6,073
2010	5,487
Thereafter	5,779
Total	$ 42,024

Net rent expense under operating leases was $12.6 million in fiscal 2005, $10.9 million in fiscal 2004, and $13.2 million in fiscal 2003. Sublease income was $39,000, $38,000, and $1.7 million for fiscal 2005, 2004 and 2003, respectively.

Purchase Commitments with a Supplier

Trimble entered into a significant supply agreement in fiscal 2004 that sets forth minimum purchase commitments for outsourced services. The term of the supply agreement is the earlier of four years from the initial product ship date, or when Trimble has paid for a cumulative total of 200,000 billable hours (approximately $10.4 million). Should Trimble not purchase and pay for 200,000 hours, then Trimble will compensate the supplier for 20% of the shortfall. Thereafter, the contract continues in effect until terminated by either party with 30 days prior written notice to the other party. As of December 30, 2005, based on current hours earned to date the future obligation is approximately $3.1 million which is expected to be paid over the next year. Trimble does not expect a shortfall based on current hours earned to date.

NOTE 11: FAIR VALUE OF FINANCIAL INSTRUMENTS

The estimated fair values of financial instruments outstanding are as follows:

	As of			
	December 30, 2005		December 31, 2004	
	Carrying Amount	Fair Value	Carrying Amount	Fair Values
	(in thousands)			
Assets:				
Cash and cash equivalents	$ 73,853	$ 73,853	$ 71,872	$ 71,872
Forward foreign currency exchange contracts	516	577		
Accounts and other receivable, net	145,100	145,100	123,938	123,938
Liabilities:				
Credit facilities	$	$	$ 38,250	$ 38,250
Forward foreign currency exchange contracts			639	539
Promissory note and other	649	562	746	737
Accounts payable	45,206	45,206	43,551	43,551

The fair value of the bank borrowings, and promissory notes have been estimated using an estimate of the interest rate Trimble would have had to pay on the issuance of notes with a similar maturity and discounting the cash flows at that rate. The fair values do not give an indication of the amount that Trimble would currently have to pay to extinguish any of this debt.

The fair value of forward foreign exchange contracts is estimated based on the difference between the market price and the carrying amount of comparable contracts. These contracts are adjusted to fair value at the end of every month.

NOTE 12: INCOME TAXES

Trimble's income tax provision (benefit) consisted of the following:

	Fiscal Years Ended		
	December 30, 2005	December 31, 2004	January 2, 2004
	(in thousands)		
US Federal:			
Current	$ 36,493	$ 18,196	$ 513
Deferred	(1,534)	(17,995)	(7,000)
	34,959	201	(6,487)
US State:			
Current	3,500	2,895	250
Deferred	(2,348)	(897)	(600)
	1,152	1,998	(350)
Non-US:			
Current	3,102	3,137	1,594
Deferred	720	1,908	2,343
	3,822	5,045	3,937
Income tax provision (benefit)	$ 39,933	$ 7,244	$ (2,900)

The pre-tax US income was approximately $99.5 million, $70.0 million and $39.5 million in fiscal years 2005, 2004 and 2003, respectively. The pre-tax non-US income (loss) was approximately $25.3 million, $4.9 million and ($3.9) million in fiscal years 2005, 2004 and 2003, respectively.

The fiscal year 2005 and 2004 tax provisions reflected above were reduced by $14.5 million and $14.4 million of tax benefits, respectively attributable to stock option deductions which were credited to equity.

The income tax provision (benefit) differs from the amount computed by applying the statutory US federal income tax rate to income before taxes. The sources and tax effects of the differences are as follows:

	Fiscal Years Ended		
	December 31, 2005	December 31, 2004	January 2, 2004
	(in thousands)		
Expected tax from continuing operations at 35% in all years	$ 43,677	$ 26,223	$ 12,455
Change in valuation allowance		(24,004)	(15,028)
US State income taxes	749	1,299	
Export sales incentives	(2,316)	(1,176)	
Non-US tax rate differential and unbenefitted losses	3,684	5,134	
US Federal research and development credit	(895)	(508)	
Benefit from repatriation legislation	(6,445)		
Other	1,479	276	(327)
Income tax provision (benefit)	$ 39,933	$ 7,244	$ (2,900)
Effective tax rate	32%	10%	(8)%

The components of deferred taxes consist of the following:

	As of		
	December 30, 2005	December 31, 2004	January 2, 2004
		(in thousands)	
Deferred tax liabilities:			
Purchased intangibles	$ 11,058	$ 3,247	$ 1,338
Depreciation and amortization	11,711	10,183	3,776
Other individually immaterial items	1,516	229	251
Total deferred tax liabilities	24,285	13,659	5,365
Deferred tax assets:			
Inventory valuation differences	8,983	8,782	9,001
Expenses not currently deductible	6,233	8,034	5,528
US Federal credit carryforwards		5,619	9,150
Deferred revenue	564	3,857	4,280
US State credit carryforwards	8,530	6,722	6,999
Warranty	2,361	2,216	2,374
		0	2,871
US Federal net operating loss carryforward	2,669	2,998	
Net foreign tax credits on undistributed foreign earnings	5,743	2,682	
Other individually immaterial items	7,452	7,655	3,106
Total deferred tax assets	42,535	48,565	43,309
Valuation allowance	(5,855)	(12,989)	(34,756)
Total deferred tax assets	36,680	35,576	8,553
Total net deferred tax assets	$ 12,395	$ 21,917	$ 3,188

Trimble has $2.7 million of tax effected US federal net operating loss carryforwards from an acquisition, which is subject to certain limitations under IRC Section 382. Trimble has state research and development credit carryforwards of approximately $13.1 million, which do not expire.

The valuation allowance decreased by $7.1 million in fiscal 2005, $21.8 million in fiscal 2004 and $13.1 million in fiscal 2003. Approximately, $1.2 million, $8.0 million and $14.1 million of the valuation allowance at December 30, 2005, December 31, 2004 and January 2, 2004 respectively relate to the tax benefit of stock option deduction, which will be credited to equity if and when realized.

Repatriation of foreign earnings. The American Jobs Creation Act of 2004 (the Act) provides for a special one-time elective dividends received deduction on the repatriation of certain foreign earnings to a U.S. taxpayer equal to 85% of the eligible distribution. During the fourth quarter of 2005, Trimble repatriated $39.5 million, of which $24 million qualified for the special one-time elective dividends received deduction and $15.5 million constituted earnings that do not qualify under the Act; previously taxed income and return of capital. Trimble recorded a $6.4 million tax benefit from these foreign earnings.

NOTE 13: COMPREHENSIVE INCOME

The components of comprehensive income and related tax effects were as follows:

	Fiscal Years Ended		
	December 30, 2005	December 31, 2004	January 2, 2004
	(in thousands)		
Net income	$ 84,855	$ 67,680	$ 38,485
Foreign currency translation adjustments, net of tax of $308 in 2005 and $(912) in 2004	(24,690)	14,025	31,198
Net gain (loss) on hedging transactions	(106)	106	(7)
Net unrealized gain (loss) on investments	(34)	(6)	74
Total comprehensive income	$ 60,025	$ 81,805	$ 69,750

The components of accumulated other comprehensive, net of related tax were as follows:

	Fiscal Years Ended	
	December 30, 2005	December 31, 2004
	(in thousands)	
Accumulated foreign currency translation adjustments	$ 19,504	$ 44,191
Accumulated net gain on hedging transactions		106
Accumulated net unrealized gain on foreign currency	30	67
Total accumulated other comprehensive income	$ 19,534	$ 44,364

NOTE 14: EMPLOYEE STOCK BENEFIT PLANS

Employee Stock Purchase Plan

Trimble has an Employee Stock Purchase Plan ("Purchase Plan") under which an aggregate of 5,325,000 shares of Common Stock have been reserved for sale to eligible employees as approved by the shareholders to date. The plan permits full-time employees to purchase Common Stock through payroll deductions at 85% of the lower of the fair market value of the Common Stock at the beginning or at the end of each six-month offering period. The Purchase Plan terminates on September 8, 2008. In fiscal 2005 and 2004, the shares issued under the Purchase Plan were 179,999 and 183,214 shares, respectively. At December 30, 2005, the number of shares reserved for future purchases by eligible employees was 367,836.

Restricted Stock Award

During the second quarter of fiscal 2005, Trimble granted 20,000 shares of restricted common stock. The award vests 20% on June 30, 2005 and an additional 20% each June 30 thereafter. Trimble recorded compensation expense of $120,000 for fiscal 2005. Trimble did not grant any restricted stock in fiscal 2004 and fiscal 2003.

2002 Stock Plan

In 2002, Trimble's Board of Directors adopted the 2002 Stock Plan ("2002 Plan"). The 2002 Plan approved by the shareholders provides for the granting of incentive and non-statutory stock options for up to 4,500,000 shares plus any shares currently reserved but un-issued to employees, consultants, and directors of Trimble. Incentive stock options may be granted at exercise prices that are not less than 100% of the fair market value of Common Stock on the date of grant. Employee stock options granted under the 2002 Plan have 120-month terms, and vest at a rate of 20% at the first anniversary of grant, and monthly thereafter at an annual rate of 20%, with full vesting occurring at the fifth anniversary of the grant. The exercise price of non-statutory stock options issued under the 2002 Plan must be at least 85% of the fair market value of Common Stock on the date of grant. As of December 30, 2005, options to purchase 3,641,850 shares were outstanding and 1,509,230 were available for future grant under the 2002 Plan.

1993 Stock Option Plan

In 1992, Trimble's Board of Directors adopted the 1993 Stock Option Plan ("1993 Plan"). The 1993 Plan, as amended to date and approved by shareholders, provided for the granting of incentive and non-statutory stock options for up to 9,562,500 shares of Common Stock to employees, consultants, and directors of Trimble. Incentive stock options may be granted at exercise prices that are not less than 100% of the fair market value of Common Stock on the date of grant. Employee stock options granted under the 1993 Plan have 120-month terms, and vest at a rate of 20% at the first anniversary of grant, and monthly thereafter at an annual rate of 20%, with full vesting occurring at the fifth anniversary of grant. The exercise price of non-statutory stock options issued under the 1993 Plan must be at least 85% of the fair market value of Common Stock on the date of grant. As of December 30, 2005 options to purchase 2,364,495 shares were outstanding and no shares were available for future grant.

1992 Management Discount Stock Option Plan

In 1992, Trimble's Board of Directors approved the 1992 Management Discount Stock Option Plan ("Discount Plan"). As of December 30, 2005, options to purchase 187,500 shares were outstanding and no shares were available for future grant under the 1992 Management Discount Stock Option Plan.

1990 Director Stock Option Plan

In December 1990, Trimble adopted a Director Stock Option Plan under which an aggregate of 570,000 shares of Common Stock have been reserved for issuance to non-employee directors as approved by the shareholders to date. At December 30, 2005, options to purchase 220,000 shares were outstanding, and no shares were available for future grants under the Director Stock Option Plan.

SFAS 123 Disclosures

As stated in Note 2 of the Notes to the Consolidated Financial Statements, Trimble has elected to follow APB 25 and related interpretations in accounting for its employee stock options and stock purchase plans. The alternative fair value accounting provided for under SFAS 123 requires use of option pricing models that were not developed for use in valuing employee stock options. Under

APB 25, because the exercise price of Trimble's employee stock options equals the market price of the underlying stock on date of grant, no compensation expense is recognized.

Exercise prices for options outstanding as of December 30, 2005, ranged from $5.33 to $43.43. The weighted average remaining contractual life of those options is 6.46 years. In view of the wide range of exercise prices, Trimble considers it appropriate to provide the following additional information with respect to options outstanding at December 30, 2005:

	Options Outstanding			Options Exercisable	
Range	Number Outstanding	Weighted-Average Exercise Price per Share	Weighted-Average Remaining Contractual Life (Years)	Number Exercisable	Weighted-Average Exercise Price per Share
$ 5.33 - 7.13	693,327	$ 5.80	3.33	678,527	$ 5.78
7.67 - 10.23	1,006,555	9.36	5.61	708,522	9.14
10.25 - 11.65	805,720	11.25	5.12	687,278	11.23
11.67 - 16.04	472,282	13.22	4.05	455,292	13.16
17.00	858,000	17.00	7.54	369,181	17.00
17.55 - 27.42	832,755	25.15	5.86	650,221	26.10
27.56	3,300	27.56	8.06	525	27.56
29.06	722,456	29.06	8.81	168,173	29.06
30.57 - 33.99	893,350	33.37	9.69	30,167	32.49
34.46 - 43.43	126,250	37.75	8,46	34,498	35.67
Total	6,413,995	$ 18.70	6.46	3,782,384	$ 14.40

Activity during fiscal 2005, 2004, and 2003, under the combined plans was as follows:

	Fiscal Years Ended					
	December 30, 2005		December 31, 2004		January 2, 2004	
	Options	Weighted average exercise price	Options	Weighted average exercise price	Options	Weighted average exercise price
	(in thousands, except for per share data)					
Outstanding at beginning of year	6,721	16.10	7,601	13.62	7,691	$ 12.35
Granted	874	34.10	1,119	28.20	1,298	16.87
Exercised	(1,060)	14.74	(1,710)	12.92	(1,263)	8.90
Cancelled	(121)	20.39	(289)	16.55	(125)	15.51
Outstanding at end of year	6,414	18.70	6,721	16.10	7,601	$ 13.62
Exercisable at end of year	3,782	14.40	3,721	13.40	4,136	$ 12.76
Available for grant	1,513		2,275		1,605	
Weighted-average fair value of options granted during year		$ 14.53		$ 13.85		$ 10.03

Non-statutory Options

On May 3, 1999, Trimble entered into an agreement to grant a non-statutory option to purchase up to 45,000 shares of common stock at an exercise price of $6.50 per share, with an expiration date of March 29, 2004. These non-statutory options were exercised January 15, 2004.

Warrants

On April 12, 2002, Trimble issued to Spectra-Physics Holdings USA, Inc., a warrant to purchase up to 564,350 shares of Trimble's Common Stock over a fixed period of time. Initially, Spectra-Physics' warrant entitled it to purchase 300,000 shares of Common Stock over a five-year period at an exercise price of $10.07 per share. On a quarterly basis beginning July 14, 2002, Spectra-Physics' warrant became exercisable for an additional 375 shares of Common Stock for every $1 million of principal and interest outstanding to Spectra-Physics until the obligation was paid off in full. These shares are purchasable at a price equal to the average of Trimble's closing price for the five days immediately proceeding the last trading day of each quarter. On July 14, 2002 an additional 26,046 shares became exercisable at an exercise price of $9.64 per share. On October 14, 2002 an additional 26,736 shares became exercisable at an exercise price of $6.12. On January 14, 2003, an additional 27,426 shares became exercisable at an exercise price of $9.03. On April 14, 2003, an additional 14,312 shares became exercisable at an exercise price of $13.37. The additional shares are exercisable over a 5-year period. No additional shares will be issuable under the warrant as the underlying obligation has been paid off in full.

The approximate fair value of the warrants of $2.4 million was determined using the Black-Scholes pricing model with the following assumptions: contractual life of 5-year period, risk-free interest rate of 4%; volatility of 65%; and no dividends during the contractual term. The value of the warrants was being amortized to interest expense over the term of the Subordinated Note and the unamortized balance was written off to interest expense on June 2003 upon repayment of the note.

On December 21, 2001 and January 15, 2002, in connection with the first and second closing of the private placement of Trimble's Common Stock, Trimble granted five-year warrants to purchase an additional 919,008 shares of Common Stock, subject to certain adjustments, at an exercise price of $12.97 per share.

NOTE 15: BENEFIT PLANS

401(k) Plan

Under Trimble's 401(k) Plan, US employee participants (including employees of certain subsidiaries) may direct the investment of contributions to their accounts among certain mutual funds and the Trimble Navigation Limited Common Stock Fund. The Trimble Fund sold net 42,945 shares of Common Stock for an aggregate of $1.6 million in fiscal 2005. Trimble, at its discretion, matches individual employee 401(k) Plan contributions at a rate of fifty cents of every dollar that the employee contributes to the 401(k) Plan up to 5% of the employee's annual salary to an annual maximum of $2,500. Trimble's matching contributions to the 401(k) Plan were $2.2 million in fiscal 2005, $1.9 million in fiscal 2004 and $1.8 million in fiscal 2003.

Profit-Sharing Plan

In 1995, Trimble introduced an employee profit-sharing plan in which all employees, excluding executives and certain levels of management, participate. The plan distributes to employees approximately 5% of quarterly adjusted pre-tax income. Payments under the plan during fiscal 2005, 2004 and 2003 were $5.9 million, $4.4 million, and $2.5 million, respectively.

Defined Contribution Pension Plans

Certain of Trimble's European subsidiaries participate in state sponsored pension plans. Contributions are based on specified percentages of employee salaries. For these plans, Trimble contributed and charged to expense approximately $0.6 million for fiscal 2005, $0.6 million for fiscal 2004, and $2.0 million for fiscal 2003.

Defined Benefit Pension Plan

Trimble provides defined benefit pension plans in certain countries outside the United States, including Sweden and Germany. The largest of these plans is provided by the Swedish subsidiary which has an unfunded defined benefit pension plan that covered substantially all of its full-time employees through 1993. Benefits are based on a percentage of eligible earnings. The employee must have had a projected period of pensionable service of at least 30 years as of 1993. If the period was shorter, the pension benefits were reduced accordingly. Active employees do not accrue any future benefits; therefore, there is no service cost and the liability will only increase for interest cost.

Net periodic benefit costs in fiscal 2005, 2004, and 2003 were not material.

The changes in the benefit obligations and plan assets of the significant non-US defined benefit pension plans for fiscal 2005 and 2004 were as follows:

	Fiscal Years Ended	
	December 30, 2005	December 31, 2004
	(in thousands)	
Change in benefit obligation:		
Benefit obligation at beginning of year	$ 7,208	$ 6,204
Service cost	90	74
Interest cost	270	388
Benefits paid	(312)	(196)
Foreign exchange impact	(1,145)	699
Actuarial (gains) losses	818	39
Benefit obligation at end of year	6,929	7,208
Change in plan assets:		
Fair value of plan assets at beginning of year	1,088	872
Actual return on plan assets	36	64
Employer contribution	339	238
Plan participants' contributions		
Benefits paid	(312)	(196)
Foreign exchange impact	(172)	110
Fair value of plan assets at end of year	980	1,088
Benefit obligation in excess of plan assets	5,949	6,120
Unrecognized prior service cost		
Unrecognized net actuarial gain (loss)	(419)	127
Accrued pension costs (included in accrued liabilities)	$ 5,529	$ 6,247

Actuarial assumptions used to determine the net periodic pension costs for the year ended December 30, 2005 were as follows:

	Swedish Subsidiary	German Subsidiaries
Discount rate	4.8%	4.0%
Rate of compensation increase	2.5%	2.0%
Measurement Date	12/30/05	12/30/05

Trimble's accumulated benefits obligation was $7.0 million and $7.3 million for fiscal 2005 and fiscal 2004 respectively.

Trimble's plan assets are primarily located in our German subsidiaries. For fiscal 2005 and fiscal 2004, the asset allocation of our total plan assets was approximately as follows: 89% local government bonds, 7% real estate and 4% equity securities. Long-term asset allocation and expected return on assets assumptions are derived from detailed annual studies conducted by Trimble's asset management group and actuaries. Trimble's asset management group limits allocation to equity securities and real estate to a maximum of 10% and 25%, respectively, with the remaining assets to be allocated to local

government bonds. While the asset allocation give appropriate consideration to recent performance and historical returns, the strategy is focused primarily on conservative and sustainable long-term returns. Based on historical returns, Trimble expects future return on assets to be approximately 4%.

Trimble expects to contribute approximately $300,000 to plan assets in fiscal year ended 2006.

The following benefit payments, which reflect estimated future employee service, as appropriate, are expected to be paid:

	Expected Benefit Payments
	(in thousands)
2006	$ 222
2007	$ 265
2008	$ 310
2009	$ 368
2010	$ 869
2011-2015	$ 1,966
Total	$ 4,000

NOTE 16: RELATED-PARTY TRANSACTIONS

Related-Party Lease

Trimble currently leases office space in Ohio from an association of three individuals, one of whom is an employee of Trimble, under a non-cancelable operating lease arrangement expiring in 2011. The annual rent is subject to adjustment based on the terms of the lease. The Consolidated Statements of Income include expenses from this operating lease of $350,000 for fiscal years 2005, 2004, and 2003.

As part of the Apache Technologies, Inc. acquisition in the second quarter of fiscal 2005, Trimble currently leases an office, manufacturing facility and equipment from a group of individuals, all of whom are now employees of Trimble, under a non-cancelable operating lease expiring in January 2013. The Consolidated Statements of Income include expenses for this operating lease of approximately $148,000 for fiscal year 2005.

These related-party leases were entered into at rates that were similar to comparable market rates.

Related-Party Notes Receivable

Trimble has notes receivable from employees of approximately $0.1 million as of December 30, 2005 and $0.4 million as of December 31, 2004. The notes bear interest from 4.52% to 6.62% and have an average remaining life of 0.3 years as of December 30, 2005.

See Note 5 to the Notes to the Consolidated Financial Statements for additional information regarding Trimble's related party transactions with joint venture partners.

NOTE 17: STATEMENT OF CASH FLOW DATA

	Fiscal Years Ended		
	December 30, 2005	December 31, 2004	January 2, 2004
		(in thousands)	
Supplemental disclosure of cash flow information:			
Interest paid	$ 1,081	$ 3,142	$ 10,208
Income taxes paid	$ 8,938	$ 6,694	$ 688
Significant non-cash investing activities:			
Issuance of shares related to investment in joint venture	$	$	$ 5,922
Issuance of shares related to acquisition related earn-out payments	$	$ 899	$ 1,349

NOTE 18: LITIGATION

From time to time, Trimble is involved in litigation arising out of the ordinary course of its business. There are no known claims or pending litigation expected to have a material effect on Trimble's overall financial position, results of operations, or liquidity.

Annex A

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

TRIMBLE NAVIGATION LIMITED,

ROADRUNNER ACQUISITION CORP.

AND

@ROAD, INC.

DATED AS OF DECEMBER 10, 2006

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "**Agreement**") is entered into as of December 10, 2006, by and among Trimble Navigation Limited, a California corporation ("**Buyer**"), Roadrunner Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Buyer ("**Merger Sub**"), and @Road, Inc., a Delaware corporation (the "**Company**").

RECITALS

A. The Boards of Directors of Buyer, Merger Sub and the Company deem it advisable and in the best interests of each corporation and their respective stockholders that Buyer acquire the Company on the terms and conditions set forth in this Agreement;

B. The acquisition of the Company shall be effected through a merger (the "**Merger**") of Merger Sub with and into the Company in accordance with the terms of this Agreement and the Delaware General Corporation Law (the "**DGCL**"), as a result of which the Company shall become a wholly owned subsidiary of Buyer;

C. Concurrently with the execution of this Agreement, and as a condition and inducement to Buyer's willingness to enter into this Agreement, all current executive officers and members of the Board of Directors of the Company (the "**Company Board**"), and Institutional Venture Partners are entering into Voting Agreements and irrevocable proxies (the "**Voting Agreements**"); and

D. Buyer, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and to prescribe certain conditions to the consummation of the Merger.

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

ARTICLE I
THE MERGER

1.1 *Effective Time of the Merger.* Subject to the terms and conditions of this Agreement, at the Closing, Buyer and the Company shall jointly prepare and cause to be filed with the Secretary of State of the State of Delaware a certificate of merger in such form as is required by, and executed by the Company in accordance with, the relevant provisions of the DGCL and shall make all other filings or recordings required under the DGCL. The Merger shall become effective upon the filing of the certificate of merger with the Secretary of State of the State of Delaware or at such later time as is agreed in writing by Buyer and the Company and set forth in the certificate of merger (the "**Effective Time**").

1.2 *Closing.* The closing of the Merger (the "**Closing**") shall take place at 1:00 p.m., Pacific Time, on a date to be specified by Buyer and the Company (the "**Closing Date**"), which shall be on the same Business Day as all of the conditions set forth in Article VII are satisfied or waived, at the offices of Heller Ehrman LLP, 275 Middlefield Road, Menlo Park, California, unless another date, place or time is agreed to in writing by Buyer and the Company. For purposes of this Agreement, a "**Business Day**" shall be any day other than (i) a Saturday or Sunday or (ii) a day on which banking institutions located in San Francisco, California are required by law, executive order or governmental decree to remain closed.

1.3 *Effects of the Merger.* At the Effective Time, the separate existence of Merger Sub shall cease and Merger Sub shall be merged with and into the Company. The Company, as the corporation surviving the Merger, is sometimes referred to herein as the "**Surviving Corporation**." The Merger shall have the effects set forth in Section 259 of the DGCL.

1.4 *Certificate of Incorporation.* At the Effective Time, the Certificate of Incorporation of the Company, as in effect immediately prior to the Effective Time, shall be amended and restated to read in its entirety so as to conform to the Certificate of Incorporation of Merger Sub, as in effect immediately prior to the Effective Time (except that Article I of the certificate of incorporation of the Surviving Corporation shall read as follows "The name of the Company is @Road, Inc.") and, as so amended and restated, shall be the Certificate of Incorporation of the Surviving Corporation until thereafter amended in accordance with the provisions thereof and as provided by applicable law.

1.5 *Bylaws.* At the Effective Time, the Bylaws of the Company, as in effect immediately prior to the Effective Time, shall be amended and restated to read in their entirety so as to conform to the Bylaws of Merger Sub, as in effect immediately prior to the Effective Time and, as so amended and restated, shall become the Bylaws of the Surviving Corporation until thereafter amended as provided by applicable law, the Certificate of Incorporation of the Surviving Corporation and such Bylaws.

1.6 *Directors and Officers of the Surviving Corporation.*

(a) 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 Bylaws of the Surviving Corporation.

(b) 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 Bylaws of the Surviving Corporation.

ARTICLE II
CONVERSION OF SECURITIES

2.1 *Conversion of Capital Stock.* As of the Effective Time, by virtue of the Merger and without any action on the part of Buyer, Merger Sub, the Company or the holder of any shares of the capital stock of the Company or capital stock of Merger Sub:

(a) *Capital Stock of Merger Sub.* Each share of the common stock, par value $0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and nonassessable share of common stock, $0.0001 par value per share, of the Surviving Corporation.

(b) *Cancellation of Treasury Stock and Buyer-Owned Stock.* All shares of capital stock of the Company that are owned by the Company as treasury stock and any shares of the capital stock of the Company owned by Buyer, Merger Sub or any other wholly owned Subsidiary (as defined in Section 3.1(a) below) of the Company or Buyer immediately prior to the Effective Time shall be cancelled and shall cease to exist and no consideration shall be delivered in exchange therefor.

(c) *Merger Consideration for Company Common Stock.* Each share of common stock, par value $0.0001 per share, of the Company ("**Company Common Stock**") (other than (i) shares to be cancelled in accordance with Section 2.1(b) and (ii) Dissenting Shares (as defined in Section 2.3(a) below)) issued and outstanding immediately prior to the Effective Time shall be automatically converted into the right to receive: (i) an amount in cash equal to $5.00 (the "**Company Common Tranche One Consideration**") and (ii) a mixture of cash and/or a fraction of a validly issued, fully paid and nonassessable share of common stock, no par value, of Buyer ("**Buyer Common Stock**") having an aggregate Value (as determined in accordance with the procedures set forth below) of $2.50, the proportions of which mixture of cash and/or Buyer Common Stock shall be determined in the sole discretion of Buyer (the consideration to be paid pursuant to this clause (ii), the "**Company Common Tranche Two Consideration**" and, together with the Company Common Tranche One consideration, the "**Company Common Consideration**"). For purposes of this Agreement, the "**Value**" of the components of the Company Common Tranche Two Consideration to be paid pursuant to clause (ii) in the preceding sentence shall be determined (A) for the

portion of the consideration to be paid in cash, if any, with reference to the cash amount of such portion, and (B) for the portion of the consideration to be paid in shares of Buyer Common Stock, if any, with reference to the average of the closing sales price for a share of Buyer Common Stock on the Nasdaq Global Market ("**Nasdaq**") for the five (5) consecutive trading days ending with, but including, the trading day that is six (6) trading days prior to the date of the Closing Date (the "**Applicable Buyer Stock Price**"). Buyer shall notify the Company in writing of its election with respect to relative proportions of the components of the Company Common Tranche Two Consideration at least five (5) Business Days prior to the scheduled date for the Company Stockholders Meeting and shall publicly disseminate an announcement of such election within 24 hours following delivery of such notice to the Company; provided that Buyer may revoke such election in the event of any postponement of the Company Stockholders Meeting in accordance with the procedures set forth in Section 6.3(a). As of the Effective Time, all such shares of Company Common Stock shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock shall cease to have any rights with respect thereto, except the right to receive the Company Common Consideration pursuant to this Section 2.1(c) upon the surrender of such certificate in accordance with Section 2.2, without interest.

(d) *Merger Consideration for Series A-1 and Series A-2 Redeemable Preferred Stock.* Each share of Series A-1 Redeemable Preferred Stock, par value $0.001 per share, of the Company ("**Series A-1 Preferred Stock**") and each share of Series A-2 Redeemable Preferred Stock, par value $0.001 per share, of the Company ("**Series A-2 Preferred Stock**") (other than (i) shares to be cancelled in accordance with Section 2.1(b) and (ii) Dissenting Shares issued and outstanding immediately prior to the Effective Time) shall be automatically converted into the right to receive an amount in cash equal to $100.00 *plus* all declared or accumulated but unpaid dividends with respect to such shares as of immediately prior to the Effective Time, calculated in accordance with Section 2 of the Company's Certificate of Designations, Rights and Preferences (the "**Certificate of Designations**") of Series A-1 and Series A-2 Redeemable Preferred Stock and Series B-1 and Series B-2 Redeemable Preferred Stock (the "**Series A Consideration**"). The Series A-1 Preferred Stock and the Series A-2 Preferred Stock are sometimes collectively referred to herein as the "**Series A Preferred Stock**." As of the Effective Time, all such shares of Series A Preferred Stock shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and each holder of a certificate representing any such shares of Series A Preferred Stock shall cease to have any rights with respect thereto, except the right to receive the Series A Consideration pursuant to this Section 2.1(d) upon the surrender of such certificate in accordance with Section 2.2, without interest.

(e) *Merger Consideration for Series B-1 and Series B-2 Redeemable Preferred Stock.* Each share of Series B-1 Redeemable Preferred Stock, par value $0.001 per share, of the Company ("**Series B-1 Preferred Stock**") and each share of Series B-2 Redeemable Preferred Stock, par value $0.001 per share, of the Company ("**Series B-2 Preferred Stock**") (other than (i) shares to be cancelled in accordance with Section 2.1(b) and (ii) Dissenting Shares issued and outstanding immediately prior to the Effective Time) shall be automatically converted into the right to receive an amount in cash equal to $830.48 *plus* all declared or accumulated but unpaid dividends with respect to such shares as of immediately prior to the Effective Time, calculated in accordance with Section 2 of the Certificate of Designations (the "**Series B Consideration**"). The Series B-1 Preferred Stock and the Series B-2 Preferred Stock are sometimes collectively referred to herein as the "**Series B Preferred Stock**" and the Series A Preferred Stock and the Series B Preferred Stock are sometimes collectively referred to herein as the "**Company Preferred Stock**." As of the Effective Time, all such shares of Series B Preferred Stock shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and each holder of a certificate representing any such shares of Series B Preferred Stock shall cease to have any rights with respect thereto,

except the right to receive the Series B Consideration pursuant to this Section 2.1(e) upon the surrender of such certificate in accordance with Section 2.2, without interest. The Company Common Consideration, the Series A Consideration and the Series B Consideration are sometimes collectively referred to herein as the "**Merger Consideration**."

(f) *Adjustments to Merger Consideration.* The Merger Consideration shall be adjusted as appropriate to reflect fully the effect of any reclassification, stock split, reverse split, stock dividend (including any dividend or distribution of securities convertible into Company Common Stock or Company Preferred Stock), reorganization, recapitalization or other like change with respect to Company Common Stock or Company Preferred Stock occurring (or for which a record date is established) after the date hereof and prior to the Effective Time.

(g) *Fractional Shares.* No fraction of a share of Buyer Common Stock will be issued by virtue of the Merger, but in lieu thereof each holder of shares of Company Common Stock or Company Stock Options who would otherwise be entitled to a fraction of a share of Buyer Common Stock (after aggregating all fractional shares of Buyer Common Stock that otherwise would be received by such holder) shall, upon surrender of such holder's Certificate(s), be entitled to receive from Buyer an amount of cash (rounded down to the nearest whole cent), without interest, equal to the product of: (i) such fraction, multiplied by (ii) the Applicable Buyer Stock Price.

2.2 *Exchange of Certificates.* The procedures for exchanging certificates representing shares of Company Common Stock and/or Company Preferred Stock for the applicable Merger Consideration pursuant to the Merger are as follows:

(a) *Exchange Agent.* At or promptly following the Effective Time, Buyer shall deposit with a bank or trust company designated by Buyer and reasonably acceptable to the Company (the "**Exchange Agent**"), for the benefit of the holders of shares of Company Common Stock and the holders of shares of Company Preferred Stock, in each case issued and outstanding immediately prior to the Effective Time, for payment through the Exchange Agent in accordance with this Section 2.2, cash and Buyer Common Stock in an amount sufficient to make payment of the Merger Consideration pursuant to Section 2.1 in exchange for all of the outstanding shares of Company Common Stock and Company Preferred Stock (the "**Exchange Fund**").

(b) *Exchange Procedures.* Promptly after the Effective Time, Buyer shall cause the Exchange Agent to mail to each holder of record of a certificate which immediately prior to the Effective Time represented outstanding shares of Company Common Stock or Company Preferred Stock (each, a "**Certificate**") (i) a letter of transmittal in customary form and (ii) instructions for effecting the surrender of the Certificates in exchange for the applicable Merger Consideration payable with respect thereto. Upon surrender of a Certificate for cancellation to the Exchange Agent, together with such letter of transmittal, duly completed and executed, the holder of such Certificate shall be entitled to receive in exchange therefor the applicable Merger Consideration that such holder has the right to receive pursuant to the provisions of this Article II, and the Certificate so surrendered shall immediately be cancelled. In the event of a transfer of ownership of Company Common Stock or Company Preferred Stock which is not registered in the transfer records of the Company, the applicable Merger Consideration may be delivered to a Person other than the Person in whose name the Certificate so surrendered is registered, if such Certificate is presented to the Exchange Agent, accompanied by all documents required to evidence and effect such transfer (in form and substance reasonably satisfactory to Buyer) and by evidence satisfactory to Buyer that all applicable stock transfer taxes that may be payable in connection with the issuance of shares of Buyer Common Stock in any name other than the name of the registered holder of the Certificates surrendered 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 applicable Merger Consideration as contemplated by

this Section 2.2. For purposes of this Agreement, the term "**Person**" means any natural person, company, corporation, limited liability company, general partnership, limited partnership, trust, proprietorship, joint venture, business organization or Governmental Entity.

(c) *No Further Ownership Rights in Company Stock.* All Merger Consideration paid upon the surrender for exchange of Certificates evidencing shares of Company Common Stock or Company Preferred Stock in accordance with the terms hereof shall be deemed to have been paid in satisfaction of all rights pertaining to such shares of Company Common Stock or Company Preferred Stock, and from and after the Effective Time there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of Company Common Stock or Company Preferred Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation or the Exchange Agent for any reason, they shall be cancelled and exchanged as provided in this Article II.

(d) *Investment of Exchange Fund.* The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Buyer on a daily basis; provided that no such investment or loss thereon shall affect the amounts payable to the holders of Company Common Stock or Company Preferred Stock pursuant to this Article II. Any interest and other income resulting from such investment shall become a part of the Exchange Fund, and any amounts in excess of the amounts payable to the holders of Company Common Stock or Company Preferred Stock pursuant to this Article II shall be paid to Buyer as soon as practicable at the end of each calendar month.

(e) *Termination of Exchange Fund.* Any portion of the Exchange Fund which remains undistributed to the holders of Company Common Stock or Company Preferred Stock for six months after the Effective Time shall be delivered to Buyer, upon demand, and any holder of Company Common Stock or Company Preferred Stock who has not previously complied with this Section 2.2 shall look only to Buyer for payment of its claim for Merger Consideration without interest. Any such portion of the Exchange Fund remaining unclaimed by holders of shares of Company Common Stock or Company Preferred Stock immediately prior to such time as such amounts would otherwise escheat to or become property of any Governmental Entity shall, to the extent permitted by law, become the property of Buyer free and clear of any claims or interest of any Person previously entitled thereto.

(f) *No Liability.* To the extent permitted by applicable law, none of Buyer, Merger Sub, the Company, the Surviving Corporation or the Exchange Agent shall be liable to any holder of shares of Company Common Stock or Company Preferred Stock for any Merger Consideration in respect of such shares delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

(g) *Withholding Rights.* Each of Buyer, the Surviving Corporation and the Exchange Agent shall be entitled to deduct and withhold from the Merger Consideration or any other payment otherwise payable pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code of 1986, as amended (the "**Code**"), or any other applicable state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts (i) shall be remitted to the applicable Governmental Entity (as defined in Section 3.3(c)), and (ii) shall be treated for all purposes of this Agreement as having been paid to the holder of the shares of Company Common Stock or Company Preferred Stock in respect of which such deduction and withholding was made.

(h) *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, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration deliverable in respect thereof pursuant to this Agreement; *provided,*

however, that Buyer may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificates to deliver a bond in such sum as it may reasonably direct as indemnity against any claim that may be made against Buyer, the Surviving Corporation, the Company or the Exchange Agent with respect to the Certificates alleged to have been lost, stolen or destroyed.

2.3 *Appraisal Rights*.

(a) Notwithstanding anything to the contrary contained in this Agreement, shares of Company Common Stock or Company Preferred Stock held by a holder who is entitled to demand and has made a demand for appraisal of such shares of Company Common Stock or Company Preferred Stock, as the case may be, in accordance with Section 262 of the DGCL and has not voted in favor of the approval of this Agreement (any such shares being referred to as "**Dissenting Shares**" until such time as such holder fails to perfect or otherwise loses such holder's appraisal rights under the DGCL with respect to such shares) shall not be converted into or represent the right to receive Merger Consideration in accordance with Section 2.1, but shall be entitled only to such rights as are granted by the DGCL to a holder of Dissenting Shares.

(b) If any Dissenting Shares shall lose their status as such (through failure to perfect or otherwise), then, as of the later of the Effective Time or the date of loss of such status, such shares shall automatically be converted into and shall represent only the right to receive Merger Consideration in accordance with Section 2.1, without interest thereon, upon surrender of the Certificates representing such shares.

(c) The Company shall give Buyer (i) prompt notice of any written demand for appraisal received by the Company prior to the Effective Time pursuant to the DGCL, any withdrawal of any such demand and any other demand, notice or instrument delivered to the Company prior to the Effective Time pursuant to the DGCL that relate to such demand; and (ii) the opportunity to participate in all negotiations and proceedings with respect to any such demand, notice or instrument.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Buyer and Merger Sub, except as set forth in the disclosure schedule delivered by the Company to Buyer and Merger Sub and dated as of the date of this Agreement (the "**Company Disclosure Schedule**") and which Company Disclosure Schedule shall be arranged in sections and paragraphs corresponding to the numbered and lettered sections and paragraphs set forth in this Article III and disclosures set forth in one section of the Company Disclosure Schedule shall be deemed to apply to any other section or subsection thereof to the extent the applicability of the disclosure is reasonably apparent on its face without reference to further documentation, as of the date of this Agreement and as of the Closing Date, as follows:

3.1 *Organization; Standing and Power; Charter Documents; Subsidiaries*.

(a) *Organization; Standing and Power.* The Company and each of its Subsidiaries (as defined below): (i) is a corporation or other organization duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (except, in the case of good standing, for entities organized under the laws of any jurisdiction that does not recognize such concept), (ii) has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted, and (iii) is duly qualified or licensed to do business and, where applicable as a legal concept, in good standing as a foreign corporation in each jurisdiction in which the character of the properties it owns, operates or leases or nature of its business makes such qualification or licensing necessary, except in the case of clause (iii) above where any failure to be so qualified, licensed or in good standing, when

taken together with all other such failures to be so qualified, licensed or in good standing, would not reasonably be expected to have a Company Material Adverse Effect (as defined below). For purposes of this Agreement, "**Subsidiary**," when used with respect to any party, means any corporation or other organization, whether incorporated or unincorporated, of which such party or any one or more of its Subsidiaries, or by such party and one or more of its Subsidiaries: (i) directly or indirectly, owns or controls at least a majority of the securities or other interests which have by their terms voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization or (ii) is entitled, by Contract or otherwise, to elect, appoint or designate directors constituting a majority of the members of the board of directors or other governing body of such corporation or other organization. For purposes of this Agreement, the term "**Company Material Adverse Effect**" means any change, event, circumstance or development that: (i) is or would reasonably be expected to be materially adverse to the business, assets (including intangible assets), condition (financial or otherwise) or results of operations of the Company and its Subsidiaries, taken as a whole other than any change, effect or circumstance resulting primarily from one or more of any of the following: (A) changes in national or international economic or business conditions generally which do not disproportionately affect the Company and its Subsidiaries, taken as a whole, as compared with other participants in the industries in which the Company and its Subsidiaries operate; (B) the outbreak or escalation of hostilities, including acts of war or terrorism, which do not disproportionately affect the Company and its Subsidiaries, taken as a whole; (C) changes generally affecting the industries in which the Company and its Subsidiaries operate which do not disproportionately affect the Company and its Subsidiaries, taken as a whole; (D) changes in any law, rule or regulation or GAAP or the interpretation thereof; (E) any action required to be taken by the Company or its Subsidiaries pursuant to this Agreement or taken by the Company or any of its Subsidiaries at the request of Buyer or Merger Sub; (F) any failure by the Company to meet securities' analysts' published estimates of revenues or earnings for any period ending after the date of this Agreement and prior to the Closing Date, and which failure shall have occurred in the absence of any other change, event or circumstance that would otherwise constitute a Company Material Adverse Effect; (G) changes resulting from the public announcement of the execution of this Agreement or the consummation of the Merger; or (H) disruptions in financial, banking or securities markets generally which do not disproportionately affect the Company and its Subsidiaries, taken as a whole, or the securities of the Company or (ii) would reasonably be expected to prevent or materially delay the consummation by the Company of the transactions contemplated by this Agreement.

(b) *Charter Documents.* The Company has delivered or made available to Buyer: (i) a true and correct copy of the certificate of incorporation and bylaws of the Company, each as amended to date (collectively, the "**Company Charter Documents**") and (ii) the certificate of incorporation and bylaws, or like organizational documents (collectively, "**Subsidiary Charter Documents**"), of each of its Subsidiaries. Each such instrument is in full force and effect. The Company is not in violation of any of the provisions of the Company Charter Documents and no Subsidiary is in violation of any of the provisions of its respective Subsidiary Charter Documents.

(c) *Subsidiaries.* Section 3.1(c) of the Company Disclosure Schedule lists each Subsidiary of the Company, the authorized and issued capital stock of each such Subsidiary (and the holder thereof), the officers and directors of each such Subsidiary and the jurisdiction of organization of each such Subsidiary. All the outstanding shares of capital stock of, or other equity or voting interests in, each such Subsidiary have been duly authorized and validly issued and are fully paid and nonassessable and are owned by the Company or by a direct or indirect wholly owned Subsidiary of the Company, free and clear of all pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever, other than liens for taxes not yet due and payable (collectively, "**Liens**") or restrictions imposed by applicable securities laws. Other than the

capital stock of the Subsidiaries of the Company listed on Schedule 3.1(c) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries owns any capital stock of, or other equity or voting interests of any nature in, or any interest convertible into or exchangeable or exercisable for, capital stock of, or other equity or voting interests of any nature in, any other entity.

3.2 *Capital Structure*.

(a) The authorized capital stock of the Company consists of 250,000,000 shares of Company Common Stock and 10,000,000 shares of preferred stock, par value $0.001 per share, 44,248 shares of which are designated as shares of Series A-1 Preferred Stock, 44,248 shares of which are designated as shares of Series A-2 Preferred Stock, 4,868 shares of which are designated as shares of Series B-1 Preferred Stock, and 4,868 shares of which are designated as shares of Series B-2 Preferred Stock. As of the close of business on December 8, 2006: 62,212,369 shares of Company Common Stock were issued and outstanding, 23,441 shares of Series A-1 Preferred Stock were issued and outstanding, 44,242 shares of Series A-2 Preferred Stock were issued and outstanding, 4,835 shares of Series B-1 Preferred Stock were issued and outstanding, and 4,862 shares of Series B-2 Preferred Stock were issued and outstanding. There are no shares of Company capital stock were held by the Company in its treasury and no shares of Company capital stock are owned or held by any Subsidiary of the Company. All of the outstanding shares of capital stock of the Company are duly authorized and validly issued, fully paid and nonassessable and not subject to any preemptive rights.

(b) Section 3.2(b) of the Company Disclosure Schedule sets forth a complete and accurate list, as of the close of business on December 8, 2006 of: (i) the number of shares of Company Common Stock subject to outstanding options under each Company Stock Plan and the number of shares of Company Common Stock available for grant under each Company Stock Plan; and (ii) all outstanding options to acquire shares of Company Common Stock ("**Company Stock Options**"), indicating with respect to each such Company Stock Option the name of the holder thereof and whether such holder is an employee of the Company or any of its Subsidiaries, the Company Stock Plan under which it was granted and whether such Company Stock Option is an "incentive stock option" (as defined in Section 422 of the Code) or a non-qualified stock option, the number of shares of Company Common Stock subject to such Company Stock Option, the exercise price and the date of grant thereof, the applicable vesting schedule of such Company Stock Option and the extent to which such Company Stock Option was vested and exercisable as of December 8, 2006, whether such Company Stock Option was granted with a per share exercise price lower than the fair market value of one share of Company Common Stock on the date of grant as determined in good faith by the Administrator of the Company Stock Plan (as defined in each such plan), and the expiration date of such Company Stock Option. As of the close of business on December 8, 2006, approximately 63,000 shares of Company Common Stock were issuable pursuant to the Company's 2000 Employee Stock Purchase Plan (the "**Employee Stock Purchase Plan**"). For purposes of this Agreement, "**Company Stock Plans**" means the Company's 1996 Stock Option Plan, the Company's 2000 Stock Option Plan, the Company's 2005 Stock Option Plan and the Company's 2000 Directors' Stock Option Plan, and all sub-plans relating thereto, taken together.

(c) No bonds, debentures, notes or other indebtedness of the Company or any of its Subsidiaries (i) has the right to vote on any matters on which stockholders may vote (or which is convertible into, or exchangeable for, securities having such right) or (ii) the value of which is any way based upon or derived from capital or voting stock of the Company, are issued or outstanding (collectively, "**Voting Debt**").

(d) Except as set forth in Sections 3.2(a) or Section 3.2(b) above, as of the close of business on December 8, 2006, (i) there were no shares of capital stock of the Company authorized, issued

or outstanding; (ii) there were no options, warrants, calls, preemptive rights, subscription or other rights, agreements, arrangements or commitments of any character, relating to the issued or unissued capital stock of the Company, obligating the Company or any of its Subsidiaries to issue, transfer, redeem, purchase or sell or cause to be issued, transferred, redeemed, purchased or sold any shares of capital stock or Voting Debt of, or other equity interest in, the Company or any of its Subsidiaries, or securities convertible into or exchangeable for such shares or equity interests or to otherwise make any payment in respect of any such shares, Voting Debt or other equity interest or obligating the Company or any of its Subsidiaries to grant, extend or enter into any such option, warrant, call, preemptive right, subscription or other right, agreement, arrangement or commitment; and (iii) there were no rights, agreements or arrangements of any character which provide for any stock appreciation or similar right or grant any right to share in the equity, income, revenue or cash flow of the Company. There are no anti-takeover, stockholder rights plans or agreements, registration rights agreements or any other similar arrangement with respect to any shares of the capital stock of, or other equity or voting interests in the Company or any of its Subsidiaries to which the Company or any of its Subsidiaries is a party or by which any of them are bound. Section 3.2(d) of the Company Disclosure Schedule sets forth a list of all: (i) stockholder agreements, voting trusts and other agreements or understandings to which the Company is a party or which are otherwise known to the Company and relating to the voting or disposition of any shares of the Company's capital stock or the capital stock of any of its Subsidiaries; or (ii) granting to any Person or group of Persons the right to elect, or to designate or nominate for election, a director to the Company Board or the board of directors of any of its Subsidiaries.

(e) Since the close of business on December 8, 2006, other than (i) the issuance of Company Common Stock pursuant to the exercise of Company Stock Options outstanding as of the close of business on December 8, 2006 as disclosed in Section 3.2(b) of the Company Disclosure Schedule in accordance with their terms as in effect on the date hereof, (ii) the issuance of Company Common Stock pursuant to the terms of the Employee Stock Purchase Plan as in effect on the date hereof, (iii) the redemption of Company Preferred Stock in accordance with the provisions of the Company Charter Documents as in effect on the date hereof, (iv) the vesting, expiration or termination of Company Stock Options outstanding as of the close of business on December 8, 2006 as disclosed in Section 3.2(b) of the Company Disclosure Schedule in accordance with the terms of the Company Stock Plans as in effect on the date hereof, (v) the issuance of those Company Stock Options identified in Section 3.2(e) of the Company Disclosure Schedule that have been approved but not granted as of the close of business on December 8, 2006, and (vi) the issuance of no more than 150,000 Company Stock Options to new hires and to non-officer employees of the Company since the close of business on December 8, 2006, in each case in the ordinary course of business consistent with past practice and within the guidelines set forth in Section 5.2(h) of the Company Disclosure Schedule and with a per share exercise price no lower than the fair market value of one share of Company Common Stock on the date of grant, there has been no change in (A) the outstanding capital stock of the Company, (B) the number of Company Stock Options outstanding, or (C) the other options, warrants or other rights, commitments, agreements or arrangements relating to capital stock of the Company or any of its Subsidiaries.

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

(a) The Company has all requisite corporate power and authority to enter into this Agreement and, subject to the adoption of this Agreement (the "**Company Voting Proposal**") by the Required Company Stockholder Vote (as defined below), to perform its obligations hereunder and consummate the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, the Company Board, at a meeting duly called and held, with all directors present and voting in favor, (i) determined that the Merger is fair and in the best interests of the

Company and its stockholders, (ii) approved the Merger in accordance with the provisions of the DGCL, and (iii) directed that this Agreement be submitted to the stockholders of the Company for their approval and resolved to recommend, subject to the provisions of Section 6.1 of this Agreement, that the stockholders of the Company vote in favor of the approval of this Agreement. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement by the Company have been duly authorized by all necessary corporate action on the part of the Company, subject only to the receipt of the Required Company Stockholder Vote. This Agreement has been duly executed and delivered by the Company and constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(b) The execution, delivery and performance of this Agreement by the Company do not, and the consummation by the Company of the transactions contemplated by this Agreement will not, (i) conflict with, or result in any violation or breach of, any provision of the Company Charter Documents or the Subsidiary Charter Documents, (ii) conflict with, result in any violation or breach of, constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any material benefit) under, require a consent or waiver under, require the payment of a penalty or increased fees under or result in the imposition of any Lien on the Company's or any of its Subsidiaries' assets pursuant to, any of the terms, conditions or provisions of any lease, license, contract, subcontract, indenture, note, option or other agreement, instrument or obligation, written or oral, to which the Company or any of its Subsidiaries is a party or by which any of them or any of their properties or assets may be bound (each, a "**Contract**"), or (iii) subject to obtaining the Required Company Stockholder Vote and compliance with the requirements specified in clauses (i) through (vi) of Section 3.3(c), conflict with or violate any permit, concession, franchise, license, judgment, injunction, order, writ, decree, statute, law, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries or any of its or their respective properties or assets, except, in the case of clauses (ii) and (iii) of this Section 3.3(b), for any such conflicts, violations, breaches, defaults, terminations, cancellations, modifications, accelerations, losses, penalties, increased fees or Liens, and for any consents or waivers not obtained, that, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect.

(c) No consent, approval, action, license, permit, order, certification, concession, franchise or authorization of, or registration, declaration, notice or filing with, any federal, state, local or foreign court, arbitrational tribunal, administrative agency or commission or other governmental or regulatory authority, agency or instrumentality (a "**Governmental Entity**") or any other Person is required to be obtained or made, as the case may be, by the Company or any of its Subsidiaries in connection with the execution, delivery and performance of this Agreement by the Company or the consummation by the Company of the transactions contemplated by this Agreement, except for (i) the pre-merger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**") and applicable foreign Antitrust Laws (as defined in Section 6.5(b)), (ii) the filing of the certificate of merger with the Secretary of State of the State of Delaware, (iii) the filing of the Proxy Statement (as defined in Section 3.4(b)) with the Securities and Exchange Commission ("**SEC**") under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), (iv) the filing and effectiveness of the Registration Statement with the SEC in accordance with the requirements of the Securities Act of 1933, as amended (the "**Securities Act**"), (v) the filing of such reports, schedules or materials under Section 13 of, or Rule 14a-12 under, the Exchange Act as may be required in connection with this Agreement and the transactions contemplated hereby, (vi) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable state securities laws or the rules and

regulations of Nasdaq, and (vii) such other consents, approvals, licenses, permits, orders, authorizations, registrations, declarations, notices and filings which, if not obtained or made, would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(d) The affirmative vote for approval and adoption of the Company Voting Proposal by the holders of a majority in voting power of the outstanding shares of Company Common Stock and Company Preferred Stock on the record date for the meeting of the Company's stockholders to consider the Company Voting Proposal (the "**Company Stockholders Meeting**"), voting together as a single class (the "**Required Company Stockholder Vote**") is the only vote of the holders of any class or series of the Company's capital stock or other securities necessary for the approval and adoption of this Agreement and for the consummation by the Company of the transactions contemplated by this Agreement.

3.4 *SEC Filings; Financial Statements; Information Provided.*

(a) The Company has filed or furnished all registration statements, reports, schedules and other documents required to be filed or furnished by it or any of its Subsidiaries with the SEC since December 31, 2003 (collectively, including any amendments thereto, the "**Company SEC Reports**"). As of their respective filing dates (or, if amended, as of the date of such amendment), the Company SEC Reports were prepared in accordance with, and complied in all material respects with, the requirements of the Exchange Act and the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder, and none of the Company SEC Reports contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading, except to the extent corrected by a Company SEC Report filed subsequently (but prior to the date hereof). The Company has made available to Buyer complete and correct copies of all amendments and modifications effected prior to the date of this Agreement that have not yet been filed by the Company with the SEC but which are required to be filed. The Company has made available to Buyer true, correct and complete copies of all correspondence between the SEC, on the one hand, and the Company and any of its Subsidiaries, on the other, since December 31, 2003, including all SEC comment letters and responses to such comment letters by or on behalf of the Company. To the knowledge of the Company, as of the date hereof, none of the Company SEC Reports is the subject of ongoing SEC review or outstanding SEC comment. Each of the financial statements (including the related notes and schedules) of the Company included in, or incorporated by reference into, the Company SEC Reports (the "**Company Financials**") complies in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with United States generally accepted accounting principles ("**GAAP**") (except, in the case of unaudited financial statements, as permitted by applicable rules and regulations of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and their consolidated results of operations for the periods then ended (subject, in the case of unaudited financial statements, to normal year-end audit adjustments and the absence of footnotes). The Company has no current intention to correct or restate, and to the knowledge of the Company, there is not any basis to correct or restate any of the Company Financials. The Company has not had any disagreement with any of its auditors regarding material accounting matters or policies during any of its past three full fiscal years or during the current fiscal year-to-date.

(b) None of the information supplied or to be supplied by or on behalf of the Company for inclusion or incorporation by reference in the registration statement on Form S-4 (or similar successor form) to be filed with the SEC by Buyer in connection with the issuance of Buyer Common Stock in the Merger (including amendments or supplements thereto) (the "**Registration Statement**") will, at the time the Registration Statement becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. None of the information supplied or to be supplied by or on behalf of the Company for inclusion or incorporation by reference in the Prospectus/Proxy Statement to be filed with the SEC as part of the Registration Statement (the "**Prospectus/Proxy Statement**"), will, at the time the Prospectus/Proxy Statement is first mailed to the stockholders of the Company or at the time of the Company Stockholders Meeting or as of 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 therein, in the light of the circumstances under which they are made, not misleading. If at any time prior to the Company Stockholders Meeting any fact or event relating to the Company or any of its Affiliates which should be set forth in an amendment or supplement to the Prospectus/Proxy Statement should be discovered by the Company or should occur, the Company shall, promptly after becoming aware thereof, inform Buyer of such fact or event. Notwithstanding the foregoing, no representation or warranty is made by the Company with respect to statements made or incorporated by reference therein about Buyer or Merger Sub supplied by Buyer or Merger Sub for inclusion or incorporation by reference in the Registration Statement or the Prospectus/Proxy Statement. For purposes of this Agreement, the term "**Affiliate**" when used with respect to any Person shall mean any Person who is an "affiliate" of that Person within the meaning of Rule 405 under the Securities Act.

(c) The Company maintains disclosure controls and procedures as required by Rule 13a-15 or 15d-15 under the Exchange Act to ensure that all material information concerning the Company and its Subsidiaries is made known on a timely basis to the individuals responsible for the preparation of the Company's filings with the SEC and other public disclosure documents, and all such material information that is required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. The Company has established and maintains a system of internal controls over financial reporting required by Rules 13a-15(f) or 15d-15(f) of the Exchange Act sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of its consolidated financial statements in accordance with GAAP including policies and procedures that (i) require the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company and its Subsidiaries, (ii) provide reasonable assurance that material information relating to the Company and its Subsidiaries is promptly made known to the officers responsible for establishing and maintaining the system of internal controls, (iii) provide assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the Company and its Subsidiaries are being made only in accordance with appropriate authorizations of management and the Company Board, (iv) provide reasonable assurance that access to assets is permitted only in accordance with management's general or specific authorization, (v) provide reasonable assurance that the reporting of assets is compared with existing assets at regular intervals and appropriate action is taken with respect to any differences, (vi) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company and its Subsidiaries and (vii) provide assurance that any significant deficiencies or material weaknesses in the design or operation of internal controls which are reasonably likely to materially and adversely

affect the ability to record, process, summarize and report financial information, and any fraud, whether or not material, that involves the Company's management or other employees who have a role in the preparation of financial statements or the internal controls utilized by the Company and its Subsidiaries, are adequately and promptly disclosed to the Company's independent auditors and the audit committee of the Company's Board of Directors. The Company has disclosed, based on its most recent evaluations, to the Company's outside auditors and the audit committee of the Company Board (A) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) which are known to the Company and (B) any fraud, whether or not material, known to the Company that involves management or other employees who have a role in the preparation of financial statements or the Company's internal control over financial reporting. The principal executive officer and principal financial officer of the Company have made all certifications required by the Sarbanes-Oxley Act of 2002 and any related rules and regulations promulgated thereunder (the "**Sarbanes-Oxley Act**").

3.5 *No Undisclosed Liabilities.* Except as disclosed in the Company SEC Reports filed prior to the date of this Agreement or in the consolidated unaudited balance sheet of the Company as of September 30, 2006 (the "**Company Balance Sheet**"), neither the Company nor any of its Subsidiaries has any liabilities (whether accrued, absolute, contingent or otherwise) that would be required by GAAP to be reflected on a consolidated balance sheet of the Company and its Subsidiaries (including the notes thereto), except for liabilities (i) incurred in connection with the transactions contemplated hereby, (ii) incurred since the date of the Company Balance Sheet in the ordinary course of business consistent with past practice or (iii) that, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect. Neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K of the SEC).

3.6 *Absence of Certain Changes or Events.* Except as disclosed in the Company SEC Reports, since the date of the Company Balance Sheet: (i) the Company and its Subsidiaries have conducted their respective businesses in the ordinary course of business consistent with past practice and (ii) neither the Company nor any of its Subsidiaries has taken any action which, if taken after the date hereof, would require the consent of Buyer under Section 5.1 of this Agreement. Since the date of the Company Balance Sheet, there has not been any change, event, circumstance or development that, individually or in the aggregate, has had a Company Material Adverse Effect.

3.7 *Taxes*.

(a) The Company and each of its Subsidiaries have timely filed all material Tax Returns (as defined below) that they were required to file, and all such Tax Returns were correct and complete in all material respects. The Company and each of its Subsidiaries have paid on a timely basis all material Taxes due and payable (whether or not shown on any such Tax Returns), other than Taxes for which adequate reserves exist on the Company Balance Sheet. The material unpaid Taxes of the Company and its Subsidiaries for Tax periods through the date of the Company Balance Sheet do not exceed the accruals and reserves for Taxes set forth on the Company Balance Sheet exclusive of any accruals and reserves for "deferred taxes" or similar items that reflect timing differences between Tax and financial accounting principles. All liabilities for Taxes that arose since the date of the Company Balance Sheet arose in the ordinary course of business. All material Taxes that the Company or any of its Subsidiaries is or was required by law to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper Governmental Entity. There are no liens or encumbrances with respect to Taxes upon any of the assets or property of the Company or its Subsidiaries, other than liens for Taxes not yet due and payable. For purposes of this Agreement, (i) "**Taxes**" means (A) all taxes, charges, fees, levies or other similar assessments or liabilities, including income, gross receipts, ad valorem, premium,

value-added, excise, real property, personal property, sales, use, services, license alternative or add-on minimum, transfer, withholding, employment, payroll and franchise taxes imposed by any federal, state, local or foreign government, or any agency thereof, and any interest, fines, penalties, assessments or additions to tax resulting from, attributable to or incurred in connection with any tax or any contest or dispute thereof, (B) any liability for the payment of any amounts of the type described in clause (A) of this sentence as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group for any taxable period, and (C) any liability for the payment of any amounts of the type described in clauses (A) or (B) of this sentence as a result of being a transferee of or successor to any Person or entity or as a result of any express or implied obligation to make a payment to any other Person or entity, and (ii) "**Tax Returns**" means all reports, returns, declarations, statements or other information required to be supplied to a taxing authority in connection with Taxes, including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

(b) There are no material deficiencies for any amount of Taxes claimed, proposed or assessed by any taxing or other Governmental Entity in writing that have not been fully paid, settled or accrued for. The Company has made available to Buyer correct and complete copies of all federal income Tax Returns filed, and examination reports and statements of deficiencies assessed against or agreed to by the Company since January 1, 2004. Except as set forth in Schedule 3.7(b) of the Company Disclosure Schedule, the federal income Tax Returns of the Company and each of its Subsidiaries have never been audited by the Internal Revenue Service (the "**IRS**"). The Company has made available to Buyer correct and complete copies of all other material Tax Returns of the Company and its Subsidiaries together with all related examination reports and statements of deficiency for all periods from and after January 1, 2004. No examination or audit of any Tax Return of the Company or any of its Subsidiaries by any Governmental Entity is currently in progress or, to the knowledge of the Company, threatened or contemplated. Neither the Company nor any of its Subsidiaries has been informed by any Governmental Entity that the Governmental Entity believes that the Company or any of its Subsidiaries was required to pay any Tax or file any Tax Return that was not filed. Neither the Company nor any of its Subsidiaries has waived any statute of limitations with respect to Taxes or agreed to an extension of time with respect to a Tax assessment or deficiency, which waiver or extension is still in effect.

(c) Neither the Company nor any of its Subsidiaries: (i) has made any payments, is obligated to make any payments, or is a party to any agreement that could obligate it to make any payments that will be treated as an "excess parachute payment" under Section 280G of the Code or would give rise to an excise Tax pursuant to Section 4999 of the Code; or (ii) has any actual or potential liability for any Taxes of any Person or entity (other than the Company and its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of law in any jurisdiction), or as a transferee or successor, by contract or otherwise.

(d) Neither the Company nor any of its Subsidiaries (i) is or has ever been a member of a group of corporations with which it has filed (or been required to file) consolidated, combined or unitary Tax Returns, other than a group of which only the Company and its Subsidiaries are or were members or (ii) is a party to or bound by any Tax indemnity, Tax sharing, Tax allocation agreement or agreement where liability is determined by reference to the Tax liability of a third party.

(e) Neither the Company nor any of its Subsidiaries has been either a "distributing corporation" or a "controlled corporation" in a distribution occurring during the last five years in which the parties to such distribution treated the distribution as one to which Section 355 of the Code is applicable.

3.8 *Owned and Leased Real Properties.* Neither the Company nor any of its Subsidiaries owns any real property. Section 3.8 of the Company Disclosure Schedule sets forth a complete and accurate list of all real property leased, subleased or licensed by the Company or any of its Subsidiaries (the "**Leased Real Property**"). The Company has made available to Buyer true, correct and complete copies of all Contracts under which the Leased Real Property is currently leased, licensed or subleased (collectively, the "**Leases**"). Each Lease is in full force and effect, valid and binding, and is enforceable by the Company or its Subsidiaries in accordance with its respective terms (subject to the bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles), except for such failures to be in full force or effect or valid, binding and enforceable that, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect. There is not any existing material breach, default or event of default (or event which with notice or lapse of time, or both, would constitute a default) by the Company or its Subsidiaries or, to the knowledge of the Company, any third party under any of the Leases. No parties other than the Company or any of its Subsidiaries have a right to occupy any material Leased Real Property. The Leased Real Property is used only for the operation of the business of the Company and its Subsidiaries. Neither the Company nor any of its Subsidiaries will be required to incur any material cost or expense for any restoration or surrender obligations, or any other material costs otherwise qualifying as asset retirement obligations under Financial Accounting Standards Board Statement of Financial Accounting Standard No. 143 "Accounting for Asset Retirement Obligations," upon the expiration or earlier termination of any leases or other occupancy agreements for the Leased Real Property.

3.9 *Tangible Personal Property.* The Company and its Subsidiaries have legal and valid title to, or, in the case of leased properties, a valid and enforceable leasehold interest in, all of the tangible personal properties and assets used or held for use by the Company and its Subsidiaries in connection with the conduct of the business of the Company and its Subsidiaries, including all the tangible personal properties and assets reflected in the latest Company Financials included in the Company SEC Reports, except for such imperfections of title, if any, which do not materially impair the continued use of the properties or assets subject thereto or affected thereby, or otherwise materially impair business operations at such properties. All such tangible personal properties and assets are free and clear of all Liens, except for Permitted Liens or for such Liens, if any, which do not materially impair the continued use of the properties or assets subject thereto or affected thereby, or otherwise materially impair business operations at such properties. As used in this Agreement, "**Permitted Liens**" means: (i) statutory liens to secure obligations to landlords, lessors or renters under leases or rental agreements; (ii) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by applicable law; (iii) statutory liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and other like liens; and (iv) statutory purchase money liens.

3.10 *Intellectual Property*.

(a) The Company and its Subsidiaries own, license, sublicense or otherwise possess (and immediately following Closing will own, license, sublicense or otherwise possess) legally enforceable rights to use all Intellectual Property necessary to conduct the business of the Company and its Subsidiaries as currently conducted free and clear of all Liens, except for any such failures to own, license, sublicense or possess that, individually or in the aggregate, would not result in a Company Material Adverse Effect. For purposes of this Agreement, the term "**Intellectual Property**" means all intellectual property, including without limitation, all (i) patents (including, but not limited to, any continuations, divisionals, continuations-in-part, renewals and reissues of any of the foregoing), inventions, trademarks, service marks, trade names, domain names, copyrights, designs and trade secrets, (ii) applications for and registrations of such patents, trademarks, service marks, trade names, domain names, copyrights and designs, (iii) lists (including

customer lists), databases, processes, formulae, methods, schematics, technology, know-how, computer software programs and related documentation, and (iv) other tangible or intangible proprietary or confidential information and materials.

(b) The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated by this Agreement will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, the Company's or any Subsidiary's right to own, use or hold for use any of the Intellectual Property as owned, used or held for use in the conduct of the business of the Company and Subsidiaries as currently conducted and will not result in the breach of; or create in any third party the right to terminate, suspend or modify; or result in the payment of any additional fees or any obligation not to compete or otherwise materially restrict business operations under, any Intellectual Property Licenses (as defined below), nor will the consummation of such transactions result in the Company or any of its Subsidiaries being required to procure or attempt to procure from Buyer or any of Buyer's Subsidiaries a license to or covenant not to assert Buyer's Intellectual Property. Section 3.10(b)(i) of the Company Disclosure Schedule sets forth a complete and accurate list of all registrations and applications for registration of Intellectual Property owned by the Company or its Subsidiaries, and Section 3.10(b)(ii) of the Company Disclosure Schedule sets forth a complete and accurate list of all licenses, sublicenses and other agreements as to which the Company or any of its Subsidiaries is a party and pursuant to which the Company or any of its Subsidiaries is authorized to use any third party Intellectual Property that is material to the business of the Company and its Subsidiaries, excluding non-exclusive, generally commercially available, off-the-shelf software programs (collectively, "**Intellectual Property Licenses**").

(c) All patents and registrations for trademarks, service marks and copyrights which are held by the Company or any of its Subsidiaries that are material to the business of the Company and its Subsidiaries are subsisting and have not expired or been cancelled or abandoned. To the knowledge of the Company, no third party is infringing, violating or misappropriating Intellectual Property owned by the Company or any of its Subsidiaries and no such claim has been asserted or threatened against any third party by the Company, any of its Subsidiaries or any other Person or entity, in the past three (3) years.

(d) To the knowledge of the Company, the conduct of the business of the Company and its Subsidiaries as currently conducted does not infringe, violate or constitute a misappropriation of any Intellectual Property of any third party and, except as disclosed in Section 3.10(d) of the Company Disclosure Schedule, there has been no such claim asserted or threatened in the past three (3) years against the Company, its Subsidiaries or any other Person or entity.

(e) The Company has taken commercially reasonable steps to protect and preserve its rights in any proprietary Intellectual Property (including executing confidentiality and intellectual property assignment agreements with the current executive officers and current employees and contractors that have or have had a material role in the development of the Company's products and Intellectual Property).

(f) No source code for any Company Intellectual Property owned by the Company or its Subsidiaries has been delivered, licensed, or is subject to any source code escrow obligation by the Company or its Subsidiaries to a third party. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in a release from escrow or other disclosure or delivery to any third party of any source code that is part of the Company's products, services or technology. Neither the Company nor any of its Subsidiaries has disclosed or delivered or is under any contractual obligation to disclose or deliver to any third party any source code that is Company Intellectual Property.

(g) The Company and its Subsidiaries have used commercially reasonable efforts to: (i) identify Open Source Materials (as defined below); and (ii) to avoid the release of the source code of the Company Intellectual Property. There has been no material deviation from such effort and procedures of the Company and its Subsidiaries with respect to Open Source Materials. Section 3.10(g) of the Company Disclosure Schedule sets forth a list describing the material Open Source Materials and the parties (as applicable) to all material license agreements for Open Source Materials to which the Company or any of its Subsidiaries is a party. Neither the Company nor its Subsidiaries is or will be required to disclose or distribute in source code form any of the software into which such Open Source Materials are incorporated. "**Open Source Materials**" means all Software or other material that is distributed as "open source software" or under a similar open source licensing or distribution model, including, but not limited to, the GNU General Public License (GPL), GNU Lesser General Public License (LGPL) and Mozilla Public License (MPL).

(h) To the knowledge of the Company, all products of the Company and its Subsidiaries are free of: (i) any critical defects, including without limitation any critical error or critical omission in the processing of any transactions; and (ii) any disabling codes or instructions and any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other software routines or hardware components that permit unauthorized access or the unauthorized disruption, impairment, disablement or erasure of such product or data or other software of users. The products licensed, sold, leased and delivered and all services provided by the Company and its Subsidiaries conform in all material respects with all applicable contractual commitments and all express and implied warranties, the Company's published product specifications and with all regulations, certification standards and other requirements of any applicable Governmental Entity or third party.

3.11 *Contracts*.

(a) For purposes of this Agreement, "**Company Material Contract**" shall mean:

(i) any "material contract" (within the meaning of Item 601(b)(10) of Regulation S-K under the Securities Act and the Exchange Act) with respect to the Company;

(ii) any employment, consulting or other Contract with (A) any member of the Company Board or a member of the board of directors of any Subsidiary of the Company, (B) any executive officer of the Company or any of its Subsidiaries or (C) any other employee of the Company or any of its Subsidiaries earning an annual salary equal to or in excess of $200,000, other than those Contracts terminable by the Company or any of its Subsidiaries on no more than thirty (30) days notice without liability or financial obligation to the Company or any of its Subsidiaries;

(iii) any Contract containing any covenant (A) limiting, in any material respect, the ability of the Company or any of its Subsidiaries to engage in any line of business or compete with any Person or (B) granting any exclusive rights to make, sell or distribute the Company's products or the products of any of its Subsidiaries;

(iv) any Contract containing "most favored nations" pricing or commercial terms or other similar terms in favor of a third party;

(v) any Contract (A) relating to the disposition or acquisition by the Company or any of its Subsidiaries, with obligations remaining to be performed or liabilities continuing after the date of this Agreement, of assets for consideration in excess of $500,000, other than in the ordinary course of business, other than inventory purchase commitments entered into in the ordinary course of business consistent with past practice, or (B) relating to any interest in any other Person or other business enterprise other than its Subsidiaries;

(vi) any Contract to provide source code into any escrow or to any third party (under any circumstances) for any product or technology that is material to the business of the Company and its Subsidiaries, taken as a whole;

(vii) any Contract to license to any third party the right to reproduce any of the Company's Intellectual Property, products, services or technology or any Contract to sell or distribute any of the Company's Intellectual Property, products, services or technology, except (A) agreements with sales representatives or other resellers in the ordinary course of business, or (B) agreements allowing internal backup copies made or to be made by end-user customers in the ordinary course of business;

(viii) any mortgages, indentures, guarantees, loans or credit agreements, security agreements, promissory notes or other Contracts relating to the borrowing of money, extension of credit or other indebtedness, other than accounts receivable and accounts payable in the ordinary course of business;

(ix) any settlement agreement entered into within the three (3) years prior to the date of this Agreement or which is otherwise still executory, other than (A) releases immaterial in nature or amount entered into with former employees or independent contractors of the Company in the ordinary course of business in connection with the cessation of such employee's or independent contractor's employment or association with the Company, (B) settlement agreements for cash only (which has been paid) in an amount not exceeding $200,000 or (C) settlements pursuant to which neither the Company nor any of its Subsidiaries has any material continuing obligation or liability;

(x) any Contract under which the Company or any of its Subsidiaries has received or granted a license relating to any Intellectual Property that is material to the business of the Company and its Subsidiaries, taken as a whole, other than non-exclusive licenses extended to customers, clients, distributors or other resellers in the ordinary course of business and other than non-exclusive licenses for generally commercially available, off-the-shelf software programs;

(xi) any partnership or joint venture agreement to which the Company or any of its Subsidiaries is a party;

(xii) any Contract with a customer that accounted for net recognized revenues in 2005 or 2006 of more than $1,000,000 in the aggregate; and

(xiii) any Contract (other than Leases) with a vendor pursuant to which the Company incurred payables in 2005 or 2006 of more than $1,000,000 in the aggregate.

(b) Section 3.11(b) of the Company Disclosure Schedule sets forth a list (organized in subsections corresponding to the subsections of Section 3.11(a) of this Agreement) of all Company Material Contracts as of the date hereof.

(c) Each Company Material Contract is valid and binding, in full force and effect and is enforceable by the Company or its Subsidiaries in accordance with its respective terms (subject to the bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles), except to the extent it has previously expired in accordance with its terms and except for such failures to be valid and binding or in full force and effect that, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect. The Company and its Subsidiaries have performed in all material respects all respective obligations required to be performed by them under the Company Material Contracts and are not, and, as of the date hereof, are not alleged in writing to be (with or without notice, the lapse of time or both) in

breach thereof or default thereunder, and, neither the Company nor any of its Subsidiaries has violated any provision of, or committed or failed to perform any act which, with or without notice, lapse of time or both, would constitute a default under the provisions of any Company Material Contract, except in each case, for those failures to perform, breaches, violations and defaults that, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect.

3.12 *Litigation.* Except as disclosed in Section 3.12 of the Company Disclosure Schedule, there is no action, suit, proceeding, claim, arbitration or investigation pending or, to the knowledge of the Company, threatened against the Company, any of its Subsidiaries, or any of their assets, properties or rights. There are no judgments, orders, settlements or decrees outstanding against the Company or any of its Subsidiaries that have or would reasonably be expected to have the effect of prohibiting or impairing any business practice or prohibited the transfer of Intellectual Property of the Company or any of its Subsidiaries in such a way as, individually or in the aggregate, would reasonably be expected to have a Company Material Adverse Effect. As of the date of this Agreement, no officer or director of the Company or any of its Subsidiaries is a defendant in any action or, to the knowledge of the Company, the subject of any investigation commenced by any Governmental Entity with respect to the performance of his or her duties as an officer and/or director of the Company. There are not currently, nor, to the knowledge of the Company, have there been since January 1, 2003, any internal investigations or inquiries being conducted by the Company, the Company Board (or any committee thereof) or any third party at the request of any of the foregoing concerning any financial, accounting, tax, conflict of interest, illegal activity, fraudulent or deceptive conduct or other misfeasance or malfeasance issues.

3.13 *Environmental Matters*

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect:

(i) neither the Company nor its Subsidiaries has received (A) any written notice alleging that any of them has not complied with applicable Environmental Laws or (B) any written notice, demand, claim or request for information alleging that the Company or any of its Subsidiaries may be in violation of or subject to liability under any Environmental Law;

(ii) neither the Company nor any of its Subsidiaries has received a written notice alleging that any of them may be subject to liability for any Hazardous Substance disposal, release or contamination;

(iii) neither the Company nor any of its Subsidiaries is subject to any investigations, proceedings, orders, decrees or injunctions by or issued by any Governmental Entity or is subject to any indemnity agreement with any third party relating to liability under any Environmental Law;

(iv) the Company and its Subsidiaries are, and at all prior times have been, in compliance with all applicable Environmental Laws, including possession and compliance with the terms of all Company Permits required by Environmental Laws; and

(v) Hazardous Substances have not been generated, transported, treated, stored, disposed of, arranged to be disposed of or released by the Company or any of its Subsidiaries or, to the knowledge of the Company, otherwise at, on, from or under any of the properties or facilities currently or formerly owned, leased or otherwise used by any of the Company or its Subsidiaries, in a manner or to a location that would give rise to liability to the Company or any of its Subsidiaries, or require any remediation or reporting by the Company or any of its Subsidiaries, under or relating to, any Environmental Laws.

(b) For purposes of this Agreement, the term "**Environmental Law**" means any law, statute, regulation, rule, judgment, order, decree or permit requirement of, or issued by, any Governmental Entity relating to: (i) pollution or the protection, investigation or restoration of the environment, human health and safety, or natural resources, (ii) the manufacture, processing, distribution, handling, use, storage, treatment, transport, disposal, release or threatened release of any Hazardous Substance or (iii) noise, odor or wetlands protection.

(c) For purposes of this Agreement, the term "**Hazardous Substance**" means: (i) any substance that is regulated or which falls within the definition of a "hazardous substance," "hazardous waste," "hazardous material," "solid waste," "pollutant," "contaminant," "toxic waste" or any other term of similar import under any Environmental Law; or (ii) any petroleum product or by-product, chemical, asbestos-containing material, polychlorinated biphenyls, radioactive materials, lead or lead-based paints or materials, toxic fungus or mold, mycotoxins or radon.

3.14 *Employee Benefit Plans*.

(a) Section 3.14(a) of the Company Disclosure Schedule sets forth a complete and accurate list as of the date of this Agreement of all material Employee Benefit Plans to which the Company, any of the Company's Subsidiaries or any of their ERISA Affiliates contribute, sponsor or have any liability (together, the "**Company Employee Plans**"). For purposes of this Agreement, the following terms shall have the following meanings: (i) "**Employee Benefit Plan**" means any "employee pension benefit plan" (as defined in Section 3(2) of ERISA), any "employee welfare benefit plan" (as defined in Section 3(1) of ERISA), including the Company Stock Plans and, without limitation, all severance, employment, change-in-control, material fringe benefit, bonus, incentive, deferred compensation and employee loan arrangements, whether or not subject to ERISA (including any funding mechanism therefore now in effect or required in the future as a result of the transaction contemplated by this Agreement or otherwise), whether formal or informal, oral or written under which (A) any current or former employee, director or consultant of the Company or its Subsidiaries (the "**Company Employees**") has any present or future right to benefits and which are contributed to, sponsored by or maintained by the Company or any of its Subsidiaries or (B) the Company or any of its Subsidiaries has any present or future liability, for the benefit of, or relating to, any current or former employee of the Company or any of its Subsidiaries or an ERISA Affiliate; (ii) **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended; and (iii) **"ERISA Affiliate"** means any entity which is a member of (A) a controlled group of corporations (as defined in Section 414(b) of the Code), (B) a group of trades or businesses under common control (as defined in Section 414(c) of the Code), or (C) an affiliated service group (as defined under Section 414(m) of the Code or the regulations under Section 414(o) of the Code), any of which includes or included the Company or a Subsidiary of the Company.

(b) With respect to each Company Employee Plan, the Company has made available to Buyer a complete and accurate copy of each Company Employee Plan and, to the extent applicable or in existence: (i) the most recent IRS determination letter; (ii) any summary plan description; (iii) a summary of any proposed amendments or changes anticipated to be made to the Company Employee Plans at any time within the twelve months immediately following the date hereof and which have been communicated to employees; (iv) the most recent annual report (Form 5500) filed with the IRS; and (v) each trust agreement, group annuity contract or other funding instrument, if any, relating to such Company Employee Plan.

(c) Each Company Employee Plan that is not a Foreign Benefit Plan (as defined in Section 3.14(i)) has been administered in all material respects in accordance with ERISA, the Code and all other applicable laws and the regulations thereunder and in accordance with its terms; (ii) no event has occurred and, to the knowledge of the Company, no condition exists that

would subject the Company or its Subsidiaries, either directly or by reason of their affiliation with any ERISA Affiliate, to any tax, fine, lien, penalty or other liability imposed by ERISA, the Code or other applicable laws, rules and regulations that would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect; (iii) no Company Employee Plan is a split-dollar life insurance program or otherwise provides for loans (except for routine advances for business expenses in the ordinary course and similar items) to executive officers (within the meaning of the Sarbanes-Oxley Act); and (iv) neither the Company nor any of its Subsidiaries has incurred any current or projected liability in respect of post-employment or post-retirement health, medical or life insurance benefits for current, former or retired employees of Company or any of its Subsidiaries in the United States, except as required to avoid an excise tax under Section 4980B of the Code or otherwise except as may be required pursuant to any other applicable law.

(d) With respect to the Company Employee Plans that are not Foreign Benefit Plans, there are no material benefit obligations for which contributions have not been made if due or properly accrued in the Company's financial books and records to the extent required by GAAP. The assets of each Company Employee Plan which is funded are reported at their fair market value on the financial books and records of such Employee Benefit Plan.

(e) All the Company Employee Plans that are intended to be qualified under Section 401(a) of the Code are so qualified and have received determination letters from the IRS to the effect that such Company Employee Plans are qualified and the plans and trusts related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, or the period for obtaining such a determination letter has not yet closed.

(f) Neither the Company, any of its Subsidiaries nor any of their ERISA Affiliates has ever (i) contributed to a Company Employee Plan or any other employee benefit plan which was ever subject to Section 412 of the Code or Title IV of ERISA or (ii) been obligated to contribute to a "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA).

(g) Neither the Company nor any of its Subsidiaries is a party to any oral or written (i) agreement with any stockholders, or any present or former director, executive officer or other key employee of the Company or any of its Subsidiaries (A) the benefits of which are contingent, or the terms of which are materially altered, upon the occurrence of a transaction involving the Company or any of its Subsidiaries of the nature of any of the transactions contemplated by this Agreement, (B) providing any term of employment or compensation guarantee or (C) providing severance benefits or other benefits after the termination of employment of such director, executive officer or key employee; or (ii) agreement or plan binding the Company or any of its Subsidiaries, including any stock option plan, stock appreciation right plan, restricted stock plan, stock purchase plan or severance benefit plan, any of the benefits of which shall be increased, or the vesting of the benefits of which shall be accelerated or resulting in any payment to or funding of any trust, by the occurrence of any of the transactions contemplated by this Agreement or the value of any of the benefits of which shall be calculated on the basis of any of the transactions contemplated by this Agreement.

(h) With respect to any Company Employee Plan, no administrative investigation, audit or other administrative proceeding by the Department of Labor, the IRS or other United States governmental agencies is in progress or, to the knowledge of the Company, pending or threatened.

(i) Section 3.14(i) of the Company Disclosure Schedule sets forth a list of all Company Employee Plans that are maintained outside the jurisdiction of the United States, or that cover any employee residing or working outside the United States (except for those Company Employee Plans set forth as such in Section 3.14(b) of the Company Disclosure Schedule, each a "**Foreign Benefit Plan**"). With respect to any Foreign Benefit Plans, (i) all Foreign Benefit Plans have been established, maintained and administered in material compliance with their terms and all applicable statutes, laws, ordinances, rules, orders, decrees, judgments, writs, and regulations of any controlling governmental authority or instrumentality; (ii) all Foreign Benefit Plans that are required to be funded are fully funded, and with respect to all other Foreign Benefit Plans, adequate reserves therefor have been established on the accounting statements of the applicable Company or Subsidiary entity, and (iii) no liability or obligation of the Company or its Subsidiaries exists with respect to such Foreign Benefit Plans that would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(j) Any Company Employee Plan that is a nonqualified deferred compensation plan within the meaning of Section 409A(d)(1) of the Code has been operated since January 1, 2005 in good faith compliance with Section 409A of the Code, IRS Notice 2005-1 and all other guidance issued thereunder.

3.15 *Compliance With Laws.* The Company and each of its Subsidiaries is in compliance in all material respects with all applicable statutes, laws, rules, orders and regulations material to the operation of the business of the Company and each of its Subsidiaries. No notice has been received by the Company or any of its Subsidiaries from any Governmental Entity alleging any violation of any applicable statutes, laws, rules, orders or regulations, except for violations that, individually or in the aggregate, would not reasonably be expected to be material to the Company and its Subsidiaries.

3.16 *Permits.* The Company and each of its Subsidiaries have all permits, licenses, franchises, certificates and authorizations (the "**Company Permits**") from Governmental Entities required to conduct their businesses as now being conducted, except for such permits, licenses, franchises, certificates and authorizations, the absence of which, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect. The Company and each of its Subsidiaries are in compliance in all material respects with the terms of the Company Permits.

3.17 *Labor Matters.* The Company and each of its Subsidiaries are in compliance in all material respects with all applicable statutes, laws, rules, orders and regulations respecting employment, employment practices, terms, conditions and classifications of employment, employee safety and health, immigration status and wages and hours, and in each case, with respect to employees/independent contractors (i) are not liable for any arrears of wages, severance pay or any Taxes or any penalty for failure to comply with any of the foregoing and (ii) are not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Entity, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees/independent contractors (other than routine payments to be made in the normal course of business and consistent with past practice), except, in each case, individually or in the aggregate, as would not reasonably be expected to have a Company Material Adverse Effect. There are no actions, grievances, investigations, suits, claims, charges or administrative matters pending, or, to the knowledge of the Company, threatened or reasonably anticipated against the Company or any of its Subsidiaries relating to any employees/independent contractors which, individually or in the aggregate, would reasonably be expected to have a Company Material Adverse Effect. There are no pending or, to the knowledge of the Company, threatened or reasonably anticipated claims or actions against the Company, any of its Subsidiaries, any Company trustee or any trustee of any Subsidiary under any workers' compensation policy or long term disability policy except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. Except as would not reasonably be expected to have a Company Material Adverse Effect, there are no actions, suits, claims, labor disputes or

grievances pending or, to the knowledge of the Company, threatened by or on behalf of any employee/independent contractor against the Company or its Subsidiaries, including charges of unfair labor practices. No work stoppage, slowdown, lockout or labor strike against the Company or any of its Subsidiaries is pending as of the date of this Agreement, or to the knowledge of the Company threatened nor has there been any such occurrence for the past three years. Neither the Company nor any of its Subsidiaries is party to any collective bargaining agreement or other labor union contract applicable to persons employed by the Company or any Subsidiary, nor, to the knowledge of the Company, are there any activities by any labor unions to organize such employees. Within the past year, neither the Company nor any of its Subsidiaries has incurred any liability or obligation under WARN or any similar state or local law that remains unsatisfied, and no terminations prior to the Closing Date shall result in unsatisfied liability or obligation under WARN or any similar state or local law. No employee/independent contractor of the Company or any of its Subsidiaries has experienced an employment loss, as defined by the WARN Act or any similar applicable state or local law requiring notice to employees in the event of a closing or layoff, within ninety days prior to the date of this Agreement.

3.18 *Insurance.* Schedule 3.18 of the Company Disclosure Schedule lists all policies of liability, fire, casualty, business interruption, worker's compensation and other forms of insurance insuring the Company and its Subsidiaries and their respective assets, properties and operations. All such policies are in full force and effect. All premiums due and payable under all such policies have been paid and neither the Company nor any Subsidiary is otherwise in material breach or default (including any such breach or default with respect to the giving of notice), and, to the knowledge of the Company, no event has occurred which, with notice or the lapse of time, would constitute such a material breach or default of the Company or any Subsidiary, or permit termination or modification by the insurance carrier, under any policy. There is no material claim pending under any of such policies or bonds as to which coverage has been denied or disputed by the underwriters of such policies or bonds. To the knowledge of the Company, there has been no threatened termination of, or material premium increase with respect to, any of such policies.

3.19 *Transactions with Affiliates.* Except as disclosed in the Company SEC Reports, there are no Contracts or transactions between the Company or any of its Subsidiaries, on the one hand, and any (i) officer or director of the Company or any of its Subsidiaries, (ii) record or beneficial owner of five percent or more of any class of the voting securities of the Company or (iii) Affiliate or family member of any such officer, director or record or beneficial owner, in each case of a type that would be required to be disclosed under Item 404 of Regulation S-K under the Securities Act and the Exchange Act.

3.20 *State Takeover Statutes.* Except for Section 203 of the DGCL, no "fair price," "moratorium," "control share acquisition," "business combination" or other similar anti-takeover statute or regulation enacted under state or federal laws in the United States applicable to the Company is applicable to the Merger or the other transactions contemplated by this Agreement. The Company Board has taken all actions so that the restrictions contained in Section 203 of Delaware Law applicable to a "business combination" (as defined in such Section 203) will not apply to Buyer, including the execution, delivery or performance of this Agreement and the consummation of the Merger and the other transactions contemplated hereby.

3.21 *Opinion of Financial Advisor.* The financial advisor of the Company, J.P. Morgan Securities Inc. ("**J.P. Morgan**"), has delivered to the Company an opinion dated the date of this Agreement to the effect that, as of such date, that the Company Common Consideration is fair to the holders of Company Common Stock from a financial point of view. An executed copy of this opinion will be delivered to Buyer promptly after it becomes available.

3.22 *Brokers; Fees.* Except for the fees payable to J.P. Morgan pursuant to an engagement letter dated August 7, 2006, no agent, broker, investment banker, financial advisor or other firm or Person is or shall be entitled, as a result of any action, agreement or commitment of the Company, or any of its Subsidiaries or their respective officers, directors or employees, to any broker's, finder's, financial advisor's or other similar fee or commission in connection with any of the transactions contemplated by this Agreement, nor has the Company or any of its Subsidiaries entered into any indemnification agreement or other arrangement with any Person specifically in connection with this Agreement and the transactions contemplated hereby.

3.23 *No Other Representations and Warranties.* Except as set forth in this Agreement or any exhibit or schedule to, or certificate delivered by the Company in connection with, this Agreement, the Company makes no other representation or warranty, express or implied, at law, or in equity, in respect of the Company, any of its Subsidiaries or any of their respective assets, liabilities or operations in connection with the transactions contemplated by this Agreement, and any such other representations or warranties are hereby expressly disclaimed. Without limiting the foregoing, the Company has not made, and shall not be deemed to have made, any representations or warranties in the materials relating to the Company or any of its Subsidiaries made available to Buyer or its representatives, including due diligence materials, in connection with the transactions contemplated by this Agreement (except, for the avoidance of doubt, as set forth in this Agreement and the exhibits and schedules to, or certificate delivered by the Company in connection with, this Agreement).

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF BUYER AND MERGER SUB

Buyer and Merger Sub each represent and warrant to the Company as of the date of this Agreement and as of the Closing Date, as follows:

4.1 *Organization, Standing and Power.* Each of Buyer and Merger Sub (i) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, (ii) has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted, and (iii) is duly qualified or licensed to do business and, where applicable as a legal concept, is in good standing as a foreign corporation in each jurisdiction in which the character of the properties it owns, operates or leases or the nature of its business makes such qualification or licensing necessary, except in the case of clause (iii) above) where any failure to be so qualified, licensed or in good standing, when taken together with all other such failures to be so qualified, licensed or in good standing, would not be reasonably be expected to have a Buyer Material Adverse Effect. For purposes of this Agreement, the term "**Buyer Material Adverse Effect**" means (i) unless Buyer has elected to pay the Company Common Tranche Two Consideration entirely in cash and has not revoked such election (in which case this clause (i) shall not apply), any change, event, circumstance or development that is or would reasonably be expected to be materially adverse to the business, assets (including intangible assets), condition (financial or otherwise) or results of operations of Buyer and its Subsidiaries, taken as a whole other than any change, effect or circumstance resulting primarily from one or more of any of the following: (A) changes in national or international economic or business conditions generally which do not disproportionately affect Buyer and its Subsidiaries, taken as a whole, as compared with other participants in the industries in which Buyer and its Subsidiaries operate; (B) the outbreak or escalation of hostilities, including acts of war or terrorism, which do not disproportionately affect Buyer and its Subsidiaries, taken as a whole; (C) changes generally affecting the industries in which Buyer and its Subsidiaries operate which do not disproportionately affect Buyer and its Subsidiaries, taken as a whole; (D) changes in any law, rule or regulation or GAAP or the interpretation thereof; (E) any action required to be taken by Buyer or its Subsidiaries pursuant to this Agreement or taken by the Company or any of its Subsidiaries at the

request of the Company; (F) any failure by Buyer to meet securities' analysts' published estimates of revenues or earnings for any period ending after the date of this Agreement and prior to the Closing Date, and which failure shall have occurred in the absence of any other change, event or circumstance that would otherwise constitute a Buyer Material Adverse Effect; (G) changes resulting from the public announcement of the execution of this Agreement or the consummation of the Merger; or (H) disruptions in financial, banking or securities markets generally which do not disproportionately affect Buyer and its Subsidiaries, taken as a whole, or the securities of Buyer or (ii) any change, event, circumstance or development that would reasonably be expected to prevent or materially delay the consummation by Buyer of the transactions contemplated by this Agreement.

4.2 *Authority; No Conflict; Required Filings and Consents*.

(a) Each of Buyer and Merger Sub has all requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated by this Agreement. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement by Buyer and Merger Sub have been duly authorized by all necessary corporate action on the part of each of Buyer and Merger Sub. This Agreement has been duly executed and delivered by each of Buyer and Merger Sub and constitutes the valid and binding obligation of each of Buyer and Merger Sub, enforceable against each of them in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(b) The execution, delivery and performance of this Agreement by each of Buyer and Merger Sub do not, and the consummation by Buyer and Merger Sub of the transactions contemplated by this Agreement will not, (i) conflict with, or result in any violation or breach of, any provision of the certificate of incorporation or bylaws of Buyer or Merger Sub, (ii) conflict with, result in any violation or breach of, constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any material benefit) under, require a consent or waiver under, require the payment of a penalty or increased fees under or result in the imposition of any Lien on Buyer's or Merger Sub's assets pursuant to, any of the terms, conditions or provisions of any lease, license, contract, subcontract, indenture, note, option or other agreement, instrument or obligation, written or oral, to which Buyer or Merger Sub is a party or by which any of them or any of their properties or assets may be bound, or (iii) subject to compliance with the requirements specified in clauses (i) through (iii) of Section 4.2(c), conflict with or violate any permit, concession, franchise, license, judgment, injunction, order, writ, decree, statute, law, ordinance, rule or regulation applicable to Buyer or Merger Sub or any of their respective properties or assets, except in the case of clauses (ii) and (iii) of this Section 4.2(b) for any such conflicts, violations, breaches, defaults, terminations, cancellations, modifications, accelerations, losses, penalties, increased fees or Liens, and for any consents or waivers not obtained, that, individually or in the aggregate, could not result in a Buyer Material Adverse Effect.

(c) No consent, approval, action, license, permit, order, certification, concession, franchise or authorization of, or registration, declaration, notice or filing with, any Governmental Entity is required to be obtained or made, as the case may be, by Buyer or Merger Sub in connection with the execution, delivery and performance of this Agreement by Buyer or Merger Sub or the consummation by Buyer or Merger Sub of the transactions contemplated by this Agreement, except for (i) the pre-merger notification requirements under the HSR Act and applicable foreign Antitrust Laws, (ii) the filing of the certificate of merger with the Secretary of State of the State of Delaware and, as applicable, appropriate corresponding documents with the appropriate authorities of other states in which the Company or Buyer are qualified as a foreign corporation to transact business (iii) the filing and effectiveness of the Registration Statement with the SEC in accordance

with the requirements of the Securities Act, (iv) such consents, approvals, orders, authorizations, registrations, declarations, notices and filings as may be required under applicable state securities laws and the rules and regulations of Nasdaq, and (v) such other consents, approvals, licenses, permits, orders, authorizations, registrations, declarations, notices and filings which, if not obtained or made, could not, individually or in the aggregate, result in a Buyer Material Adverse Effect.

(d) No vote of the holders of any class or series of Buyer's capital stock or other securities is necessary for the approval and adoption of this Agreement and the consummation by Buyer of the transactions contemplated by this Agreement.

4.3 *Capitalization.* The authorized capital stock of Buyer consists of 90,000,000 shares of Buyer Common Stock. As of the close of business on December 7, 2006: (i) 55,665,581 shares of Buyer Common Stock were issued and outstanding, (ii) no shares of Buyer capital stock were held by the Company in its treasury, (iii) no shares of Buyer capital stock are owned or held by any Subsidiary of Buyer, (iv) 5,682,733 shares of Buyer Common Stock are subject to issuance pursuant to outstanding options to purchase Buyer Common Stock and (v) approximately 720,137 shares of Buyer Common Stock were issuable pursuant to Buyer's employee stock purchase plan. All of the outstanding shares of capital stock of Buyer are duly authorized and validly issued, fully paid and nonassessable and not subject to any preemptive rights.

4.4 *SEC Filings; Financial Statements.*

(a) Buyer has filed or furnished all registration statements, reports, schedules and other documents required to be filed or furnished by it or any of its Subsidiaries with the SEC since December 31, 2003 (collectively, including any amendments thereto, the "**Buyer SEC Reports**"). As of their respective filing dates (or, if amended, as of the date of such amendment), Buyer SEC Reports were prepared in accordance with, and complied in all material respects with, the requirements of the Exchange Act and the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder, and none of Buyer SEC Reports contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading, except to the extent corrected by a Buyer SEC Report filed subsequently (but prior to the date hereof). Buyer has made available to the Company complete and correct copies of all amendments and modifications effected prior to the date of this Agreement that have not yet been filed by Buyer with the SEC but which are required to be filed. Buyer has made available to the Company true, correct and complete copies of all correspondence between the SEC, on the one hand, and Buyer and any of its Subsidiaries, on the other, since December 31, 2003, including all SEC comment letters and responses to such comment letters by or on behalf of Buyer. To the knowledge of Buyer, as of the date hereof, none of Buyer SEC Reports is the subject of ongoing SEC review or outstanding SEC comment. Each of the financial statements (including the related notes and schedules) of Buyer included in, or incorporated by reference into, Buyer SEC Reports (the "**Buyer Financials**") complies in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP (except, in the case of unaudited financial statements, as permitted by applicable rules and regulations of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of Buyer and its consolidated Subsidiaries as of the dates thereof and their consolidated results of operations for the periods then ended (subject, in the case of unaudited financial statements, to normal year-end audit adjustments and the absence of footnotes). Buyer has no current intention to correct or restate, and to the knowledge of Buyer, there is not any basis to correct or restate any of Buyer Financials. Buyer has not had any disagreements with any of its auditors regarding material

accounting matters or policies during any of its past three full fiscal years or during the current fiscal year-to-date.

(b) None of the information supplied or to be supplied by or on behalf of Buyer and Merger Sub for inclusion or incorporation by reference in the Registration Statement will, at the time the Registration Statement becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. None of the information supplied or to be supplied by or on behalf of Buyer and Merger Sub for inclusion or incorporation by reference in the Prospectus/Proxy Statement, will, at the time the Prospectus/Proxy Statement is first mailed to the stockholders of the Company or at the time of the Company Stockholders Meeting or as of 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 therein, in the light of the circumstances under which they are made, not misleading. If at any time prior to the Company Stockholders Meeting any fact or event relating to Buyer or Merger Sub or any of their Affiliates which should be set forth in an amendment or supplement to the Prospectus/Proxy Statement should be discovered by Buyer or should occur, Buyer shall, promptly after becoming aware thereof, inform the Company of such fact or event. Notwithstanding the foregoing, no representation or warranty is made by Buyer or Merger Sub with respect to statements made or incorporated by reference therein about the Company and its Subsidiaries and Affiliates supplied by the Company for inclusion or incorporation by reference in the Registration Statement or the Prospectus/Proxy Statement.

(c) Buyer maintains disclosure controls and procedures as required by Rule 13a-15 or 15d-15 under the Exchange Act to ensure that all material information concerning Buyer and its Subsidiaries is made known on a timely basis to the individuals responsible for the preparation of Buyer's filings with the SEC and other public disclosure documents, and all such material information that is required to be disclosed by Buyer in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Buyer has established and maintains a system of internal controls over financial reporting required by Rules 13a-15(f) or 15d-15(f) of the Exchange Act sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of its consolidated financial statements in accordance with GAAP including policies and procedures that (i) require the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Buyer and its Subsidiaries, (ii) provide reasonable assurance that material information relating to Buyer and its Subsidiaries is promptly made known to the officers responsible for establishing and maintaining the system of internal controls, (iii) provide assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of Buyer and its Subsidiaries are being made only in accordance with appropriate authorizations of management and the Board of Directors of Buyer, (iv) provide reasonable assurance that access to assets is permitted only in accordance with management's general or specific authorization, (v) provide reasonable assurance that the reporting of assets is compared with existing assets at regular intervals and appropriate action is taken with respect to any differences, (vi) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of Buyer and its Subsidiaries and (vii) provide assurance that any significant deficiencies or material weaknesses in the design or operation of internal controls which are reasonably likely to materially and adversely affect the ability to record, process, summarize and report financial information, and any fraud, whether or not material, that involves Buyer's management or other employees who have a role in the preparation of financial statements or the internal controls utilized by Buyer and its Subsidiaries, are adequately and promptly disclosed to Buyer's independent auditors and the audit committee of Buyer's Board of Directors. Buyer has

disclosed, based on its most recent evaluations, to Buyer's outside auditors and the audit committee of Buyer's Board of Directors (A) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) which are known to Buyer and (B) any fraud, whether or not material, known to Buyer that involves management or other employees who have a role in the preparation of financial statements or Buyer's internal control over financial reporting. The principal executive officer and principal financial officer of Buyer have made all certifications required by the Sarbanes-Oxley Act.

4.5 *Operations of Merger Sub.* Merger Sub was formed solely for the purpose of engaging in the transactions contemplated by this Agreement, has engaged in no other business activities and has conducted its operations only as contemplated by this Agreement.

4.6 *Litigation.* There is no action, suit, proceeding, claim, arbitration or investigation pending or, to the knowledge of Buyer, threatened or contemplated against Buyer or Merger Sub or any of their assets, properties or rights that, individually or in the aggregate, would be reasonably expected to result in a Buyer Material Adverse Effect.

4.7 *Financing.* Buyer has or has access to, and at the Effective Time will have or will have access to, sufficient funds to consummate the transactions contemplated by this Agreement.

4.8 *Absence of Certain Changes or Events.* Since September 29, 2006, there has not been any change, event, circumstance or development that, individually or in the aggregate, has had a Buyer Material Adverse Effect.

4.9 *No Other Representations and Warranties.* Except as set forth in this Agreement or any exhibit or schedule to, or certificate delivered by Buyer in connection with, this Agreement, neither Buyer nor Merger Sub makes any other representation or warranty, express or implied, at law, or in equity, in respect of Buyer, Merger Sub any of its other Subsidiaries or any of their respective assets, liabilities or operations in connection with the transactions contemplated by this Agreement, and any such other representations or warranties are hereby expressly disclaimed. Without limiting the foregoing, neither Buyer nor Merger Sub has made, and shall not be deemed to have made, any representations or warranties in the materials relating to Buyer, Merger Sub or any of its other Subsidiaries made available to the Company or its representatives, including due diligence materials, in connection with the transactions contemplated by this Agreement (except, for the avoidance of doubt, as set forth in this Agreement and the exhibits and schedules to, or certificate delivered by Buyer in connection with, this Agreement).

ARTICLE V
CONDUCT OF BUSINESS

5.1 *Ordinary Course.* Except as expressly provided herein or as consented to in writing by Buyer, which consent shall not be unreasonably withheld, delayed or conditioned, during the period commencing on the date of this Agreement and ending at the Effective Time or such earlier date as this Agreement may be terminated in accordance with its terms (the "**Pre-Closing Period**"), the Company shall, and shall cause each of its Subsidiaries to: (i) act and carry on its business in the ordinary course of business, in substantially the same manner as heretofore conducted and in compliance with all applicable laws and regulations, (ii) pay their material debts when due, subject to good faith disputes over such debts, and pay or perform other material obligations when due and (iii) use commercially reasonable efforts consistent with past practice to (x) preserve intact their present business organization and employee base and (y) preserve their relationships with customers, suppliers, licensors, licensees, and others with which they have business dealings. In addition, the Company shall promptly notify Buyer in writing of any occurrence of a Company Material Adverse Effect.

5.2 *Required Consents.* Without limiting the generality of the foregoing, except as expressly provided herein or as set forth in Section 5.2 of the Company Disclosure Schedule, during the Pre-Closing Period the Company shall not, and shall not permit or cause any of its Subsidiaries to, directly or indirectly, do any of the following without the prior written consent of Buyer, which consent shall not be unreasonably withheld, delayed or conditioned:

(a) (i) declare, set aside or pay any dividends on, or make any other distributions (whether in cash, securities or other property) in respect of, or convertible into or exchangeable or exercisable for, any of its capital stock (other than dividends and distributions by a direct or indirect wholly owned Subsidiary of the Company to its parent and other than dividends required to be accrued or accumulated on Company Preferred Stock); (ii) adjust, split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or any of its other securities; or (iii) purchase, redeem or otherwise acquire any shares of its capital stock or any other of its securities or any rights, warrants or options to acquire any such shares or other securities (other than redemptions of Company Preferred Stock at the option of the holders' thereof in accordance with the Company's Charter Documents as in effect on the date hereof);

(b) issue, deliver, sell, grant, pledge or otherwise dispose of or encumber any shares of its capital stock, Voting Debt, any other voting securities or any securities convertible into or exchangeable for, or any rights, warrants or options to acquire, any such shares, Voting Debt, voting securities or convertible or exchangeable securities (other than (i) the issuance of Company Common Stock pursuant to the exercise of Company Stock Options outstanding as of December 8, 2006, (ii) the issuance of shares of Company Common Stock pursuant to obligations existing under the Employee Stock Purchase Plan as of December 8, 2006 and (iii) the issuance of those Company Stock Options identified in Section 3.2(e) of the Company Disclosure Schedule that have been approved but not granted as of the close of business on December 8, 2006, and (vi) the issuance of no more than 150,000 Company Stock Options to new hires and to non-officer employees of the Company since the close of business on December 8, 2006, in each case, in the ordinary course of business consistent with past practice and within the guidelines set forth in Schedule 5.2(h) of the Company Disclosure Schedule and with a per share exercise price no less than the fair market value of one share of Company Common Stock on the date of grant);

(c) amend the Company Charter Documents or the Subsidiary Charter Documents;

(d) acquire (i) by merger or consolidation or by any other means, any business, whether a corporation, partnership, joint venture, limited liability company, association or other business organization or division thereof or (ii) any assets outside the ordinary course of business which have an aggregate value in excess of $500,000;

(e) sell, lease, license, assign, pledge, subject to a Lien or otherwise dispose of or encumber any properties or assets of the Company or of any of its Subsidiaries outside the ordinary course of business which have an aggregate value in excess of $500,000;

(f) (i) incur or assume any indebtedness for borrowed money or guarantee any indebtedness of another Person or entity (other than a wholly-owned Subsidiary of the Company) or amend any such existing indebtedness or guarantee, (ii) issue, sell or amend any debt securities or warrants or other rights to acquire any debt securities of the Company or any of its Subsidiaries, or (iii) guarantee any debt securities of another Person or entity (other than a wholly-owned Subsidiary of the Company) or enter into any "keep well" or other agreement to maintain any financial condition of another Person or entity (other than a wholly-owned Subsidiary of the Company) or (iv) enter into any arrangement having the economic effect of any of the foregoing;

(g) make any material changes in accounting methods or principles or revalue any of its assets, except as may be required by a change in GAAP or SEC requirements as may be advised by the Company's independent accountants;

(h) except as required to comply with applicable law or agreements, plans or arrangements binding on the Company as of the date hereof, (i) adopt, enter into, terminate or amend any material employment, severance or similar agreement or benefit plan, including any Company Employee Plan, policy, trust, fund or program or other arrangement for the benefit or welfare of any current or former director, officer, employee or consultant, or any collective bargaining agreement; (ii) increase in any manner the compensation or benefits of any present or former directors, officers, employees or consultants of the Company or its Subsidiaries, except, in the case of non-officer employees of the Company or one of its Subsidiaries, for normal salary increases and increase in bonus payments in the ordinary course of business consistent with past practice; (iii) accelerate the payment, right to payment or vesting of any compensation or benefits, including any outstanding options or restricted stock awards or waive any stock repurchase rights, other than as required by this agreement; (iv) grant any awards under any bonus, incentive, performance or other compensation plan or arrangement or benefit plan, including the grant of stock options, stock appreciation rights, stock based or stock related awards, performance units or restricted stock, except for (A) the issuance of those Company Stock Options identified in Section 3.2(e) of the Company Disclosure Schedule that have been approved but not granted as of the close of business on December 8, 2006, and of no more than 150,000 Company Stock Options to new hires and to non-officer employees of the Company since the close of business on December 8, 2006, in each case, in the ordinary course of business consistent with past practice and within the guidelines set forth in Section 5.2(h) of the Company Disclosure Schedule and with a per share exercise price no lower than the fair market value of one share of Company Common Stock on the date of grant, and (B) the payment of bonuses to employees in accordance with the provisions of the Company bonus plans identified on Section 5.2(h) of the Company Disclosure Schedule, or (v) loan or advance any money or other property to any present or former director, officer or employee of the Company or its Subsidiaries, other than routine advances for business expenses in the ordinary course;

(i) enter into any joint venture, partnership or other similar arrangement;

(j) make any loan, advance or capital contribution to or investment in any Person, other than (i) inter-company loans, advances or capital contributions among the Company or any other wholly-owned Subsidiary and any wholly-owned Subsidiary, (ii) investments in any wholly-owned Subsidiary of the Company or (iii) routine advances for business expenses in the ordinary course consistent with past practice and in accordance with the Company's policies as in effect on the date hereof;

(k) cancel any debts or waive any claims or rights of substantial value (including the cancellation, compromise, release or assignment of any indebtedness owed to, or claims held by, the Company or any its Subsidiaries), except for cancellations made or waivers granted in the ordinary course of business consistent with past practice;

(l) enter into, or materially amend, modify or supplement any Company Material Contract or Lease outside the ordinary course of business or waive, release, grant, assign or transfer any of its material rights or claims (whether such rights or claims arise under a Material Contract or Lease or otherwise);

(m) Effect any material restructuring activities by the Company or any of its Subsidiaries with respect to their respective employees, including any material reductions in force;

(n) Fail to file, on a timely basis, including allowable extensions, with the appropriate Governmental Entities, all material Tax Returns required to be filed by or with respect to the Company and each of its Subsidiaries on or prior to the Closing Date, or fail to timely pay or remit (or cause to be paid or remitted) any material Taxes due in respect of such Tax Returns;

(o) (A) Amend any material Tax Returns, make any material election relating to Taxes, change any material election relating to Taxes already made, adopt any material accounting method relating to Taxes, change any material accounting method relating to Taxes unless required by a change in the Code, or (B) settle, consent, or enter into any closing agreement relating to any Audit or consent to any waiver of the statutory period of limitations in respect of any Audit;

(p) Cancel or terminate without reasonable substitute policy therefor, or amend in any material respect or enter into, any material insurance policy, other than the renewal of existing insurance policies;

(q) Enter into any Contracts containing, or otherwise subject the Surviving Corporation or Buyer to, any (A) non-competition, "most favored nations," unpaid future deliverables, service requirements in each case outside the ordinary course of business, or (B) exclusivity or future royalty payments, or other material restrictions on the Company or the Surviving Corporation or Buyer, or any of their respective businesses, following the Closing;

(r) Provide any material refund, credit or rebate to any customer, reseller or distributor, in each case, other than in the ordinary course of business consistent with past practice;

(s) Hire any non-officer employees other than in the ordinary course of business consistent with past practice or hire, elect or appoint any officers other than to fill vacancies or elect any directors, except in accordance with the Company Charter Documents with respect to director vacancies;

(t) (A) Enter into any agreement to purchase or sell any interest in real property or grant any security interest in any real property, or (B) enter into any material lease, sublease or other occupancy agreement with respect to any real property or materially alter, amend, modify or terminate any of the terms of any Lease;

(u) Enter into any customer Contract that contains any material non-standard terms, including but not limited to, non-standard discounts, provisions for unpaid future deliverables, non-standard service requirements or future royalty payments, other than as is consistent with past practice;

(v) Enter into any Contract that materially and adversely affects any patents or applications therefor, in each case, of the Company, its Subsidiaries or any other affiliates of such entity;

(w) Dispose of, transfer, permit to lapse or abandon any Intellectual Property or Intellectual Property Rights, or dispose of or unlawfully disclose to any Person, other than representatives of Buyer, any Trade Secrets, and other than in the ordinary course of business consistent with past practice;

(x) Abandon or permit to lapse any rights to any United States patent or patent application without first consulting with Buyer; or

(y) Take, commit, agree (in writing or otherwise) or announce the intention to take any of the foregoing actions.

5.3 *Buyer Actions.* Buyer shall promptly notify the Company in writing of any occurrence of a Buyer Material Adverse Effect.

ARTICLE VI
ADDITIONAL AGREEMENTS

6.1 *No Solicitation*.

(a) *No Solicitation or Negotiation.* During the Pre-Closing Period, neither the Company nor any of its Subsidiaries shall, and the Company shall cause its directors, officers, employees, investment bankers, attorneys, accountants and other advisors or representatives (such directors, officers, employees, investment bankers, attorneys, accountants, other advisors and representatives, collectively, "**Representatives**") not to, directly or indirectly:

(i) solicit, initiate, or knowingly encourage or facilitate (including by way of furnishing information) any inquiries or the making of any proposal or offer (including any proposal from or offer to the Company's stockholders) with respect to, or that could reasonably be expected to lead to, any Acquisition Proposal; or

(ii) enter into, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any Person any non-public information or grant access to its properties, books and records or personnel in connection with, any Acquisition Proposal.

Notwithstanding anything to the contrary set forth in this Agreement, the Company may, to the extent necessary for the Company Board to comply with its fiduciary obligations under applicable law, as determined in good faith by the Company Board after consultation with outside counsel, in response to a bona fide, unsolicited Acquisition Proposal received by the Company after the date of this Agreement that the Company Board determines in good faith after consultation with outside counsel and its financial advisor would reasonably be expected to result in a Superior Proposal, in each case, so long as such Acquisition Proposal did not result from a material breach by the Company of this Section 6.1 and the Company has complied in all material respects with this Section 6.1, (x) furnish information with respect to the Company to the Person making such Acquisition Proposal and its Representatives pursuant to a customary confidentiality agreement not materially less restrictive of the other party than the Confidentiality Agreement (as defined in Section 6.4); provided that contemporaneously with furnishing any such nonpublic information to such third party, the Company furnishes such nonpublic information to Buyer (to the extent that such nonpublic information has not been previously so furnished), (y) participate in discussions or negotiations (including solicitation of a revised Acquisition Proposal) with such Person and its Representatives regarding any Acquisition Proposal, and (z) amend, or grant a waiver or release under, any standstill or similar agreement with respect to any Company Common Stock.

As promptly as practicable (and in any event no later than 24 hours) after receipt of any Acquisition Proposal or any request for nonpublic information or inquiry that would reasonably be expected to lead to an Acquisition Proposal or from any Person seeking to have discussions or negotiations with the Company relating to a possible Acquisition Proposal, the Company shall provide Buyer with notice of such Acquisition Proposal, request or inquiry, including: (i) the material terms and conditions of such Acquisition Proposal, request or inquiry; (ii) the identity of the Person or group making any such Acquisition Proposal, request or inquiry; and (iii) a copy of all written materials provided by or on behalf of such Person or group in connection with such Acquisition Proposal, request or inquiry. The Company shall provide Buyer with 48 hours prior notice (or such lesser prior notice as is provided to the members of its Board of Directors) of any meeting of its Board of Directors at which its Board of Directors is expected to consider any Acquisition Proposal or any such inquiry or to consider providing nonpublic information to any Person. The Company shall notify Buyer, in writing, of any decision of its Board of Directors as to whether to consider such Acquisition Proposal, request or inquiry or to enter into discussions or negotiations concerning any Acquisition Proposal or to provide nonpublic information or data to any Person, which notice shall be given as promptly as practicable after such meeting (and in any

event no later than 24 hours after such determination was reached and 24 hours prior to entering into any discussions or negotiations or providing any nonpublic information or data to any Person). The Company agrees that it shall promptly provide Buyer with oral and written notice setting forth all such information as is reasonably necessary to keep Buyer currently informed in all material respects of the status and material terms of any such Acquisition Proposal, request or inquiry (including any negotiations contemplated by this Section) and shall promptly provide Buyer a copy of all written materials subsequently provided to, by or on behalf of such Person or group in connection with such Acquisition Proposal, request or inquiry.

(b) *No Change in Recommendation or Alternative Acquisition Agreement.* During the Pre-Closing Period, the Company Board shall not:

(i) withhold, withdraw or modify in a manner adverse to Buyer, the approval or recommendation by the Company Board with respect to the Merger or the Company Voting Proposal;

(ii) cause or permit the Company to enter into (or publicly propose that the Company enter into) any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement or other Contract (an "**Alternative Acquisition Agreement**") with respect to any Acquisition Proposal or approve or recommend or propose to approve or recommend any Acquisition Proposal or any agreement, understanding or arrangement relating to any Acquisition Proposal (or resolve or authorize or propose to agree to do any of the foregoing actions), except for a confidentiality agreement, waiver or release referred to in Section 6.1(a) entered into in the circumstances referred to in Section 6.1(a) and subject to Section 6.1(c); or

(iii) approve, recommend or take any position other than to recommend rejection (including modifying any recommendation of rejection) of, any Acquisition Proposal.

Notwithstanding anything to the contrary set forth in this Agreement, the Company may, prior to the adoption of the Company Voting Proposal only, to the extent necessary for the Company Board to comply with its fiduciary obligations under applicable law, as determined in good faith by the Company Board after consultation with outside counsel and the Company's financial advisors, (i) withhold, withdraw or modify in a manner adverse to Buyer the Company Recommendation (as defined below) (a "**Change in the Company Recommendation**") and/or (ii) terminate this Agreement to enter into an Alternative Acquisition Agreement with respect to a Superior Proposal, but, in each case, only if (w) such Superior Proposal, if any, did not result from a material breach by the Company of this Section 6.1; (x) the Company has complied in all material respects with this Section 6.1, including Section 6.1(c); (y) the Company Board shall have first provided prior written notice to Buyer that it is prepared to effect a Change in the Company Recommendation or terminate this Agreement to enter into an Alternative Acquisition Agreement; and (z) Buyer does not make, within four Business Days after the receipt of such notice, a proposal that the Company Board determines in good faith, after consultation with its financial adviser, is more favorable to the stockholders of the Company than such Superior Proposal or that results in the Company Board no longer being required to make a Change in the Company Recommendation in order to comply with its fiduciary obligations under applicable law. The Company agrees that, during the four Business Day period prior to effecting a Change in the Company Recommendation or terminating this Agreement to enter into an Alternative Acquisition Agreement, the Company and its Representatives shall negotiate in good faith with Buyer and its Representatives regarding any revisions to the terms of the transaction contemplated by this Agreement that are proposed by Buyer.

(c) *Notices to Buyer.* The Company shall as promptly as reasonably practicable provide oral and written notice to Buyer of receipt by the Company of any Acquisition Proposal, and, subject to

any confidentiality provisions set forth in such Acquisition Proposal and to any other confidentiality arrangements with third parties that may be in effect on the date of this Agreement, the material terms and conditions of any such Acquisition Proposal and the identity of the Person making any such Acquisition Proposal, and shall keep Buyer reasonably informed of any material modifications or material developments with respect to such Acquisition Proposal, including without limitation, either copies of all written Acquisition Proposals, including draft agreements or term sheets, or summaries of the material terms thereof.

(d) *Certain Permitted Disclosure.* Nothing contained in this Agreement shall be deemed to prohibit the Company from taking and disclosing to its stockholders a position with respect to a tender or exchange offer contemplated by Rule 14d-9 or Rule 14e-2 promulgated under the Exchange Act or from making any required disclosure to the Company's stockholders if the Company Board determines in good faith, after consultation with outside counsel, that such action is necessary for the Company Board to comply with its fiduciary obligations under applicable law; provided, however, that neither the Company nor the Company Board (nor any committee thereof) shall (i) recommend that the stockholders of the Company tender or exchange their shares of Company Common Stock in connection with any such tender or exchange offer (or otherwise approve or recommend any Acquisition Proposal) or (ii) withhold, withdraw or modify in a manner adverse to Buyer the Company Board's recommendation with respect to the Merger or the Company Voting Proposal, unless in each case the requirements of this Section 6.1 shall have been satisfied.

(e) *Cessation of Ongoing Discussions.* The Company shall, and shall direct its Representatives to, cease immediately all discussions and negotiations that commenced prior to the date of this Agreement regarding any proposal that constitutes, or could reasonably be expected to lead to, an Acquisition Proposal and shall request that all confidential information previously furnished to any such third parties be promptly returned or destroyed.

(f) *Definitions.* For purposes of this Agreement:

"**Acquisition Proposal**" means (i) any proposal or offer (A) relating to a merger, reorganization, consolidation, dissolution, sale of substantial assets, tender offer, exchange offer, recapitalization, liquidation, dissolution, joint venture, share exchange or other business combination involving the Company or any of its Subsidiaries, (B) for the issuance by the Company of 20% or more of its equity securities, (C) to acquire in any manner, directly or indirectly, in a single transaction or a series of related transactions, 20% or more of the capital stock of the Company or any of its Subsidiaries (on a consolidated basis), or (D) to acquire, directly or indirectly, in a single transaction or a series of related transactions, assets of the Company and its Subsidiaries having a fair market value equal to 20% or more of the Company's consolidated assets, in each case other than the transactions contemplated by this Agreement or (ii) any written inquiry with respect to, any oral inquiry to which the Company or its representatives have responded with respect to, or any other oral inquiry that might reasonably be expected to lead to, any proposal or offer described in the foregoing clause (i).

"**Superior Proposal**" means any unsolicited, bona fide written proposal made by a third party to acquire, directly or indirectly, a majority of the equity securities or a majority of the assets of the Company, pursuant to a tender or exchange offer, a merger, a consolidation or a sale of its assets, which the Company Board determines in its good faith judgment to be (i) on terms more favorable to the holders of Company Common Stock from a financial point of view than the transactions contemplated by this Agreement (after consultation with its financial advisor), taking into account all the terms and conditions of such proposal and this Agreement (including any alteration to the terms of this Agreement agreed to in writing by Buyer), (ii) reasonably capable of being completed on the terms proposed, taking into account all financial, regulatory, legal and other aspects of such proposal, and (iii) to the extent the

Company Board determines in good faith that financing is material to such proposal, accompanied by one or more financing commitment letters or without a financing condition.

(g) *State Takeover Statute.* The Company Board shall not, in connection with any Change in the Company Recommendation, take any action to change the approval of the Company Board for purposes of causing any state takeover statute or other state law to be applicable to the transactions contemplated hereby. For the avoidance of doubt, this Section 6.1(g) shall not prohibit the Company from effecting a Change in the Company Recommendation under the circumstances and subject to the conditions set forth in this Section 6.1.

(h) *Continuing Obligation to Call, Hold and Convene Company Stockholders Meeting; No Other Vote.* Notwithstanding anything to the contrary contained in this Agreement, the obligation of the Company to call, give notice of, convene and hold the Company Stockholders Meeting shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission to it of any Acquisition Proposal, or by any Change in the Company Recommendation. The Company shall not submit to the vote of its stockholders any Acquisition Proposal, or propose to do so.

(i) *Specific Performance.* The parties hereto agree that irreparable damage would occur in the event that the provisions of this Section 6.1 were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed by the parties hereto that Buyer shall be entitled to an immediate injunction or injunctions, without the necessity of proving the inadequacy of money damages as a remedy and without the necessity of posting any bond or other security, to prevent breaches of the provisions of this Section 6.1 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 Buyer may be entitled at law or in equity.

6.2 *Prospectus/Proxy Statement; Registration Statement.* As promptly as reasonably practicable after the execution of this Agreement, Buyer and the Company will prepare and file with the SEC the Prospectus/Proxy Statement, and Buyer will prepare and file with the SEC the Registration Statement in which the Prospectus/Proxy Statement is to be included as a prospectus. Buyer and the Company will provide each other with any information which may be required in order to effectuate the preparation and filing of the Prospectus/Proxy Statement and the Registration Statement pursuant to this Section 6.2. Each of Buyer and the Company will respond to any comments from the SEC, will use all reasonable efforts to cause the Registration Statement to be declared effective under the Securities Act as promptly as reasonably practicable after such filing and to keep the Registration Statement effective as long as is necessary to consummate the Merger and the transactions contemplated hereby. Each of Buyer and the Company will notify the other promptly upon the receipt of any comments from the SEC or its staff in connection with the filing of, or amendments or supplements to, the Registration Statement and/or the Prospectus/Proxy Statement. Whenever any event occurs which is required to be set forth in an amendment or supplement to the Prospectus/Proxy Statement and/or the Registration Statement, Buyer or the Company, as the case may be, will promptly inform the other of such occurrence and cooperate in filing with the SEC or its staff, and/or mailing to stockholders of the Company, such amendment or supplement. Each party shall cooperate and provide the other (and its counsel) with a reasonable opportunity to review and comment on any amendment or supplement to the Registration Statement and Prospectus/Proxy Statement prior to filing such with the SEC, and will provide each other with a copy of all such filings made with the SEC. The Company will cause the Prospectus/Proxy Statement to be mailed to its stockholders at the earliest practicable time after the Registration Statement is declared effective by the SEC. Buyer shall also use all commercially reasonable efforts to take any action required to be taken by it under any applicable state securities laws in connection with the issuance of Buyer Common Stock in the Merger and the conversion of the Company Stock Options into options to acquire Buyer Common Stock, and the Company shall furnish any information concerning the Company and the holders of the Company Common Stock and the Company Stock Options as may be reasonably requested in connection with any such action.

6.3 *Stockholders Meeting*.

(a) *Meeting of Company Stockholders.* Promptly after the Registration Statement is declared effective under the Securities Act, the Company will take all action necessary in accordance with the DGCL and its certificate of incorporation and bylaws to call, hold and convene the Company Stockholders Meeting to be held as promptly as reasonably practicable, and in any event, will use all commercially reasonable efforts (to the extent permissible under applicable law) to cause the Company Stockholders Meeting to be convened within 45 days after the mailing of the Prospectus/Proxy Statement to the Company's stockholders. Subject to Section 6.1(b), the Company will use commercially reasonable efforts to solicit from its stockholders proxies in favor of the adoption and approval of this Agreement and the approval of the Merger, and will take all other action necessary or advisable to secure the vote or consent of its stockholders required by the DGCL to obtain such approvals. Notwithstanding anything to the contrary contained in this Agreement, (i) the Company may adjourn or postpone the Company Stockholders Meeting after consultation with Buyer to the extent necessary to ensure that any necessary supplement or amendment to the Prospectus/Proxy Statement is provided to its stockholders in advance of a vote on the Merger and this Agreement or, if as of the time for which the Company Stockholders Meeting is scheduled (as set forth in the Prospectus/Proxy Statement) there are insufficient shares of Company Common Stock and Company Preferred Stock represented (either in person or by proxy) to constitute a quorum necessary to conduct the business of the Company Stockholders Meeting; and (ii) upon Buyer's written notice (provided no later than the Business Day before the Company Stockholders Meeting and in any event at least 24 hours prior to the scheduled time of the Company Stockholders Meeting) that Buyer has determined in good faith that the conditions to the respective parties' obligations set forth in Article VII are not expected to be satisfied or waived by the date of the Company Stockholders Meeting, the Company shall adjourn or postpone the Company Stockholders Meeting to the date notified by Buyer in its reasonable discretion, but prior to the Outside Date and to a date that would permit compliance with the requirements set forth below. In the event that Buyer shall revoke its election with respect to the Company Common Tranche Two Consideration in connection with its election to adjourn or postpone the Company Stockholders Meeting, notice of such revocation shall be made in writing and delivered to the Company simultaneously with the notice of adjournment or postponement. In addition, if Buyer shall revoke its election with respect to the Company Common Tranche Two Consideration, Buyer shall be required to notify the Company in writing of its new election with respect to the relative proportions of the components of the Company Common Tranche Two Consideration at least five (5) Business Days prior to the rescheduled date for the Company Stockholders Meeting and shall publicly disseminate an announcement of such election with 24 hours following delivery of such notice to the Company; provided that Buyer shall be permitted to further revoke such election at a later date following delivery thereof in accordance with the terms of this Agreement. The Company shall ensure that the Company Stockholders Meeting is called, noticed, convened, held and conducted, and that all proxies solicited by it in connection with the Company Stockholders Meeting are solicited in compliance with the DGCL, its certificate of incorporation and bylaws and the applicable rules and regulations of Nasdaq.

(b) *Board Recommendation.* Except to the extent expressly permitted by Section 6.1(b): (i) the Company Board shall recommend that the Company's stockholders vote in favor of the adoption of this Agreement at the Company Stockholders Meeting; (ii) the Prospectus/Proxy Statement shall include a statement to the effect that the Company Board has unanimously recommended that the Company's stockholders vote in favor of adoption of this Agreement at the Company Stockholders Meeting (the "**Company Recommendation**"); and (iii) neither the Company Board nor any committee thereof shall withdraw, amend or modify, or propose or resolve to withdraw, amend or modify in a manner adverse to Buyer, the unanimous recommendation of its

Board of Directors that the Company's stockholders vote in favor of the adoption of this Agreement.

6.4 *Access to Information.* The parties acknowledge that Buyer and the Company have previously executed a confidentiality agreement, dated as of September 7, 2006 (the "**Confidentiality Agreement**"), which Confidentiality Agreement shall continue in full force and effect in accordance with its terms, except as expressly waived or modified as provided herein or therein. During the Pre-Closing Period, the Company shall, and shall cause each of its Subsidiaries to, afford to Buyer's officers, employees, accountants, counsel, and other Representatives, reasonable access, upon reasonable notice, during normal business hours and in a manner that does not unreasonably disrupt or interfere with business operations, to all of its properties, books, contracts, commitments, management personnel and records as Buyer shall reasonably request, and, during such period, the Company shall (and shall cause each of its Subsidiaries to) furnish promptly to Buyer (x) a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of federal or state securities laws and (y) all other information concerning its business, finances, operations, properties, assets and personnel as Buyer may reasonably request, in each case, subject to any restrictions contained in the Confidentiality Agreement; provided that the foregoing shall not require the Company to permit any inspection or disclose any information that, in the reasonable judgment of the Company, would result in the disclosure of any trade secrets of third parties or otherwise privileged information so long as the existence of such trade secrets of third parties or privileged information and the lack of disclosure thereof is identified to Buyer. Without limiting the generality of any of the foregoing, the Company shall promptly provide Buyer with copies of: (i) any written materials or communications sent by or on behalf of the Company to its stockholders; (iii) any notice, document or other communication relating to the Merger sent by or on behalf of any of the Company or any of its subsidiaries to any customer, supplier, employee, or other party with whom the Company or any of its subsidiaries has a contractual relationship; provided that a form of such notice, document or other communication shall suffice where such notice, document or other communication is substantially identical but for the addressee; (iv) any notice, report or other document filed with or sent to any Governmental Entity on behalf of the Company or any of its subsidiaries in connection with the Merger; and (v) any material notice, report or other document received by the Company or any of its subsidiaries from any Governmental Entity. Buyer will hold, and instruct all such officers, employees, accountants, counsel, and other Representatives to hold, any such information that is nonpublic in confidence in accordance with the Confidentiality Agreement.

6.5 *Legal Requirements*.

(a) Subject to the terms hereof, including Section 6.5(b) below, each of the Company and Buyer shall, and the Company shall cause its Subsidiaries to, each use their commercially reasonable efforts to:

(i) take, or cause to be taken, all actions, and do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective the transactions contemplated hereby as promptly as practicable;

(ii) as promptly as practicable, obtain from any Governmental Entity or any other third party any consents, licenses, permits, waivers, approvals, authorizations, or orders required to be obtained by the Company or Buyer or any of their Subsidiaries in connection with the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby;

(iii) as promptly as practicable, make all necessary filings, notifications, and thereafter make any other required submissions, with respect to this Agreement and the Merger required under (A) the Exchange Act, and any other applicable federal or state securities laws, (B) the

HSR Act and any related governmental request thereunder, and (C) any other applicable law; and

(iv) contest any legal proceeding relating to the Merger or the other transactions contemplated by this Agreement; and

(v) execute or deliver any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement.

The Company and Buyer shall cooperate with each other in connection with the making of all such filings. The Company and Buyer shall each use their commercially reasonable efforts to furnish to each other all information required for any application or other filing to be made pursuant to the rules and regulations of any applicable law (including all information required to be included in the Proxy Statement) in connection with the transactions contemplated by this Agreement. For the avoidance of doubt, Buyer and the Company agree that nothing contained in this Section 6.5(a) shall modify or affect their respective rights and responsibilities under Section 6.5(b).

(b) Buyer and the Company agree, and shall cause each of their respective Subsidiaries, to cooperate and to use their commercially reasonable efforts to obtain any government clearances or approvals required for Closing under the HSR Act, the Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other federal, state or foreign law, regulation or decree designed to prohibit, restrict or regulate actions for the purpose or effect of monopolization or restraint of trade (collectively "**Antitrust Laws**"), to respond to any government requests for information under any Antitrust Law, and to contest and resist any action, including any legislative, administrative or judicial action, and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order (whether temporary, preliminary or permanent) (an "**Antitrust Order**") that restricts, prevents or prohibits the consummation of the Merger or any other transactions contemplated by this Agreement under any Antitrust Law. The parties hereto will consult and cooperate with one another, and consider in good faith the views of one another, in connection with, and provide to the other parties in advance, any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals prepared for submission to a government agency in connection with an antitrust filing relating to the Merger and made or submitted by or on behalf of any party hereto in connection with proceedings under or relating to any Antitrust Law.

Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall be deemed to require Buyer or any Subsidiary or affiliate thereof to agree to any Action of Divestiture. The Company shall not, without the prior written consent of Buyer, take or agree to take any Action of Divestiture. For purposes of this Agreement, an "**Action of Divestiture**" shall mean (i) any license, sale or other disposition or holding separate (through establishment of a trust or otherwise) of any shares of capital stock or of any business, assets or properties of Buyer, its subsidiaries or affiliates, or of the Company or its Subsidiaries that are material to Buyer or the Company, (ii) the imposition of any material limitation on the ability of Buyer, its Subsidiaries or affiliates, or the Company or its Subsidiaries to conduct their respective businesses or own any capital stock or assets or to acquire, hold or exercise full rights of ownership of their respective businesses and, in the case of Buyer, the businesses of the Company and its Subsidiaries or (iii) the imposition of any material impediment on Buyer, its Subsidiaries or affiliates, or the Company or its Subsidiaries under any statute, rule, regulation, executive order, decree, order or other legal restraint governing competition, monopolies or restrictive trade practices.

6.6 *Public Disclosure.* Prior to the Closing, the parties shall not issue any report, statement or press release or otherwise make any public statements with respect to this Agreement and the transactions contemplated by this Agreement without the prior written approval of the other party, except (i) as may be required by law or the rules and regulations of Nasdaq or in connection with the

enforcement of this Agreement, in which case the parties will use their commercially reasonable efforts to reach mutual agreement as to the language of any such report, statement or press release in advance of publication or (ii) in connection with the exercise of the Company's rights pursuant to Section 6.1 of this Agreement. Any press release announcing the execution of this Agreement or the Closing shall be issued only in such form as shall be mutually agreed upon by the Company and Buyer, and Buyer and the Company shall consult with the other party before issuing any other press release or otherwise making any public statement with respect to the Merger or this Agreement.

6.7 *Indemnification*.

(a) From the Effective Time through the sixth anniversary of the date on which the Effective Time occurs, Buyer will cause the Surviving Corporation to honor and fulfill in all respects the obligations of the Company pursuant to any indemnification agreements between the Company and any directors and officers of the Company or any of its Subsidiaries (the "**Indemnified Parties**") in effect on the date hereof as set forth in Section 6.7 of the Company Disclosure Schedule, and under the Company Charter Documents, subject to applicable law. Each Indemnified Party will be entitled, subject to applicable law, to advancement of expenses incurred in the defense of any such claim, action, suit, proceeding or investigation from the Surviving Corporation within ten (10) Business Days of receipt by Buyer or the Surviving Corporation from the Indemnified Party of a request therefore; provided that any Person to whom expenses are advanced provides an undertaking, to the extent then required by the DGCL, to repay such advances if it is ultimately determined that such Person is not entitled to indemnification. Notwithstanding the foregoing, if any claim, action, suit, proceeding or investigation is made against any Indemnified Party prior to the sixth anniversary of the Effective Time, the provisions of this Section 6.7(a) shall continue in effect until the final disposition thereof.

(b) The certificate of incorporation and bylaws of the Surviving Corporation shall contain provisions no less favorable with respect to indemnification, advancement of expenses and exculpation of present and former directors and officers of the Company and its Subsidiaries than are presently set forth in the Company Charter Documents, which provisions shall not be amended, modified or repealed for a period of six (6) years time from the Effective Time in a manner that would adversely affect the rights thereunder of individuals who, at or prior to the Effective Time, were officers or directors of the Company, unless such amendment, modification or repeal is required by applicable law after the Effective Time.

(c) The Surviving Corporation shall maintain, and Buyer shall cause the Surviving Corporation to maintain, at no expense to the beneficiaries, in effect for six (6) years from the Effective Time insurance "tail" or other insurance policies with respect to directors', officers' and fiduciaries' liability insurance with respect to matters existing or occurring at or prior to the Effective Time (including the transactions contemplated by this Agreement) in an amount and scope at least as favorable as the coverage applicable to directors and officers as of the date hereof under the Company's directors' and officers' liability insurance policy; provided that if the annual premiums for such "tail" or other policies are not available at a cost not greater than 200% of the annual premiums paid as of the date hereof under such policy (the "**Insurance Cap**") (which premium the Company hereby represents and warrants is as set forth on Section 6.7(c) of the Company Disclosure Schedule), then the Surviving Corporation shall be required to obtain as much coverage as is possible under substantially similar policies for such annual premiums as do not exceed the Insurance Cap.

(d) The Surviving Corporation shall pay all expenses, including reasonable attorneys' fees, that may be incurred by the Persons referred to in this Section 6.7 in connection with their enforcement of their rights provided in this Section 6.7; provided that the Indemnified Party must provide a written undertaking to repay all expenses if it is finally judicially determined that such Indemnified Party is not entitled to indemnification.

(e) The provisions of this Section 6.7 are intended to be in addition to the rights otherwise available to the current or former officers and directors of the Company by law, charter, statute, Bylaw or agreement, and shall operate for the benefit of, and shall be enforceable by, each of the Indemnified Parties, their heirs and their representatives.

(f) In the event the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger, or (ii) transfers all or substantially all of its assets to any individual, corporation or other entity, then, in each such case, proper provision shall be made so that the successors or assigns of the Surviving Corporation shall assume and succeed to all the obligations set forth in this Section 6.7.

(g) Buyer shall, subject to applicable law, cause the Surviving Corporation to perform all of the obligations of the Surviving Corporation under this Section 6.7.

6.8 *Notification of Certain Matters.* During the Pre-Closing Period, Buyer shall give prompt notice to the Company, and the Company shall give prompt notice to Buyer, of (a) the occurrence, or failure to occur, of any event, which occurrence or failure to occur is reasonably likely to cause any representation or warranty of such party contained in this Agreement to be untrue or inaccurate in any material respect, in each case at any time from and after the date of this Agreement until the Effective Time, or (b) any material failure of Buyer and Merger Sub or the Company, as the case may be, or of any officer, director, employee or agent thereof, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement. Notwithstanding the above, the delivery of any notice pursuant to this Section will not limit or otherwise affect the remedies available hereunder to the party receiving such notice or the conditions to such party's obligation to consummate the Merger and the other transactions contemplated by this Agreement.

6.9 *Exemption from Liability Under Section 16.* Prior to the Closing, the Company shall take all such steps as may be required to cause to be exempt under Rule 16b-3 promulgated under the Exchange Act any dispositions of Company Common Stock (including derivative securities with respect to Company Common Stock) under such rule resulting from the transactions contemplated by Articles I and II of this Agreement by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company.

6.10 *Employee Stock Purchase Plan.* As of the Effective Time, the Employee Stock Purchase Plan shall be terminated. The Company shall consult with Buyer in its preparation of any materials to be distributed to participants in connection with the termination of the Employee Stock Purchase Plan. The rights of participants in the Employee Stock Purchase Plan shall be determined by treating the last Business Day (as defined in the Employee Stock Purchase Plan) prior to the Effective Time as the last day of such Offering Period(s) (as defined in the Employee Stock Purchase Plan) then in effect and by making such other pro-rata adjustments as may be required pursuant to the Employee Stock Purchase Plan to reflect the shortened Offering Period but otherwise treating such Offering Period as a fully effective and completed Offering Period for all purposes of such Employee Stock Purchase Plan. Prior to the Effective Time, the Company shall take all actions that are necessary to give effect to the transactions contemplated by this Section 6.10; provided, however, that the change in the Offering Period referred to in this Section 6.10 shall be conditioned upon the consummation of the Merger. If the Closing has not occurred on or prior to April 30, 2007, the Company will take all commercially reasonable steps to suspend new enrollment under the terms of the Employee Stock Purchase Plan from such time, and to provide that no new Offering Periods shall commence on or after April 30, 2007, until (A) immediately prior to the Effective Time when the Employee Stock Purchase Plan shall be terminated or, if earlier (B) termination of this Agreement; provided, however, that in conjunction with the taking such actions Buyer and the Company shall meet and confer regarding potential employee retention measures that might be taken in lieu of the Employee Stock Purchase Plan. Outstanding rights to purchase shares of Company Common Stock shall be exercised in accordance

with the terms of the Employee Stock Purchase Plan, and each share of Company Common Stock purchased pursuant to such exercise shall by virtue of the Merger, and without any action on the part of Buyer, Merger Sub, the Company or holder thereof, be converted into the right to receive Company Common Consideration without issuance of certificates representing issued and outstanding shares of Company Common Stock to participants under the Employee Stock Purchase Plan.

6.11 *Assumption of Options and Related Matters*.

(a) *Assumption and Termination of Unvested Company Stock Options.* At the Effective Time, each Company Stock Option that is unvested, unexpired and outstanding immediately prior to the Effective Time that has a per share exercise price that is equal to or less than $7.50 shall, on the terms and subject to the conditions set forth in this Agreement, be assumed by Buyer (each such Company Stock Option an "**Assumed Option**"). Each Assumed Option shall continue to have, and be subject to, the same terms and conditions (including, if applicable, the vesting arrangements and other terms and conditions set forth in the Company Stock Plan and the applicable stock option or other agreement) as are in effect immediately prior to the Effective Time, except that (i) such option shall become exercisable for that number of whole shares of Buyer Common Stock equal to the product (rounded down to the next whole number of shares of Buyer Common Stock) of (A) the number of shares of Company Common Stock that would have been issuable upon exercise of such Assumed Option immediately prior to the Effective Time and (B) the Option Exchange Ratio (as defined below) and (ii) the per share exercise price for the shares of Buyer Common Stock issuable upon exercise of such Assumed Option shall be equal to the quotient (rounded up to the next whole cent) obtained by dividing the exercise price per share of Company Common Stock at which such Assumed Option was exercisable immediately prior to the Effective Time by the Option Exchange Ratio. For purposes of this Agreement, the "**Option Exchange Ratio**" shall be equal to the quotient obtained by dividing (A) $7.50 by (B) the Applicable Buyer Stock Price. It is the intent of the parties that to the extent permitted by applicable laws and regulations, all Assumed Options that prior to the Effective Time were treated as incentive or non-qualified stock options under the Code shall from and after the Effective Time continue to be treated as incentive or non-qualified stock options, respectively, under the Code, and that the assumption of all Company Stock Options hereunder shall be done in a manner that complies with Treas. Reg. Section 1.424-1. As soon as administratively practicable after the Closing Date, Buyer shall issue to each individual who is a holder of an Assumed Option a document evidencing the foregoing assumption of such option by Buyer. With respect to the Assumed Options, the Company will not take any action to accelerate the vesting of any such options beyond what is contractually provided as of the date of this Agreement (including those change of control agreements and arrangements identified in Section 3.14(g) of the Company Disclosure Schedule), and will take any action that it is permitted to take so that the vesting of such options is not accelerated.

(b) *Registration of Assumed Options.* Buyer will use commercially reasonable efforts to cause Buyer Common Stock issuable upon exercise of the Assumed Options to be registered with the SEC on Form S-8 promptly after the Effective Time (and in any event, within 15 Business Days), will exercise commercially reasonable efforts to maintain the effectiveness of such registration statement for so long as such Assumed Options remain outstanding and will maintain a sufficient number of reserved shares of Buyer Common Stock for issuance upon exercise thereof. The Company shall reasonably cooperate with and assist Buyer in the preparation of such registration statement prior to the Closing Date.

(c) *Termination of Certain Vested and Unvested Company Stock Options.* At the Effective Time, each Company Stock Option that is vested as of the Effective Time or that becomes vested as a result of the transactions set forth in this Agreement as of the Effective Time, and that is unexpired, unexercised and outstanding immediately prior to the Effective Time and that has a per

share exercise price that is less than or equal to $7.50 (collectively, the "**Cashed-Out Options**") shall, on the terms and subject to the conditions set forth in this Agreement, terminate in its entirety at the Effective Time, and the holder of each Cashed-Out Option shall be entitled to receive therefor at the Effective Time or as soon thereafter as reasonably practicable: (i) in the event the Company Common Tranche Two Consideration consists solely of cash, an amount of cash equal to the product of (A) the number of shares of Company Common Stock as to which such Company Stock Option is exercisable at the Effective Time and (B) the excess, if any, of (1) $7.50 over (2) the per share exercise price of such Company Stock Option immediately prior to the Effective Time; and (ii) in the event the Company Tranche Two Consideration includes any Buyer Common Stock, (A) an amount of cash equal to the product of (X) the number of shares of Company Common Stock as to which such Company Stock Option is exercisable at the Effective Time and (Y) the excess, if any, of (1) the product of $7.50 multiplied by the Tranche Two Cash Multiple over (2) the product of the Tranche Two Cash Multiple multiplied by the per share exercise price of such Company Stock Option immediately prior to the Effective Time plus (B) a number of shares of Buyer Common Stock equal to (X) the product of (1) the number of shares of Company Common Stock as to which such Company Stock Option is exercisable at the Effective Time and (2) the excess, if any, of (aa) the product of the $7.50 multiplied by the Tranche Two Stock Multiple over (bb) the product of the Tranche Two Stock Multiple multiplied by the per share exercise price of such Company Stock Option immediately prior to the Effective Time divided by (Y) the Applicable Buyer Stock Price. To the extent that no excess, as referred to in clauses (i)(B), (ii)(A)(Y) and (ii)(B)(X)(2) above, shall exist with respect to a particular Company Stock Option under the above formulas, then such Company Stock Option shall be terminated and the holder thereof shall be entitled to no consideration in connection with such cancellation. The "**Tranche Two Stock Multiple**" means the proportion of the Company Common Tranche Two Consideration to be paid in Buyer Common Stock multiplied by 0.333 (rounded to the nearest one-thousandth). The "**Tranche Two Cash Multiple**" means the proportion of the Company Common Tranche Two Consideration to be paid in cash multiplied by 0.333, plus 0.667 (rounded to the nearest one-thousandth). If and to the extent necessary or required by the terms of the Company Stock Plans or pursuant to the terms of any Company Stock Option granted to directors of the Company thereunder, the Company shall use commercially reasonable efforts to obtain the consent of each such holder of outstanding Company Stock Options to effectuate the treatment of such Company Stock Options pursuant to the terms of this Agreement. The Company agrees that the Company Stock Plans and related agreements shall be amended, to the extent necessary, to reflect the transactions contemplated herein. Notwithstanding the foregoing, the failure to obtain any consents pursuant to this Section 6.11(c) shall not be deemed a failure of any conditions to the obligations of Buyer and Merger Sub under Section 7.2(b). At the Effective Time, each Company Stock Option that is unvested, unexpired and outstanding immediately prior to the Effective Time that has a per share exercise price that is greater than $7.50 shall terminate in its entirety at the Effective Time.

6.12 *Employee Matters.* With respect to any accrued but unused personal, sick or vacation time to which any of its employees and employees of the Surviving Corporation or their respective Subsidiaries who shall have been employees of the Company or any of its Subsidiaries immediately prior to the Effective Time ("**Continuing Employees**") is entitled pursuant to the personal, sick or vacation policies applicable to such Continuing Employee immediately prior to the Effective Time (the "**PSV Policies**"), such Continuing Employee shall be allowed to use such accrued personal, sick or vacation time; provided, however, that if Buyer deems it necessary to disallow any such Continuing Employee from taking such accrued personal, sick or vacation time, Buyer shall cause the Surviving Corporation to pay in cash to each such Continuing Employee an amount equal to such personal, sick or vacation time; and provided, further, that Buyer shall cause the Surviving Corporation to pay in cash an amount equal to such accrued personal, sick and vacation time to any Continuing Employees whose employment terminates for any reason subsequent to the Effective Time. Following the Effective Time,

Buyer shall cause the Surviving Corporation to give each Continuing Employee full credit for prior service with the Company or its Subsidiaries (and to the extent credited by the Company or its Subsidiaries, with any prior employer) for purposes of (i) eligibility and vesting under any Surviving Corporation Employee Plans (as defined below) and (ii) determination of benefit levels under any Surviving Corporation Employee Plan or policy relating to vacation, sick time and any other paid time off program or severance, in each case for which the Continuing Employee is otherwise eligible and in which the Continuing Employee is offered participation, but except where such credit would result in a duplication of benefits. In addition, Buyer shall waive, or cause to be waived, any limitations on benefits relating to pre-existing conditions to the same extent such limitations are waived under any comparable plan of the Surviving Corporation and recognize for purposes of annual deductible and out-of-pocket limits under its medical and dental plans, deductible and out-of-pocket expenses paid by Continuing Employees in the calendar year in which the Effective Time occurs. For purposes of this Agreement, the term "**Surviving Corporation Employee Plan**" means, to the extent applicable, any "employee pension benefit plan" (as defined in Section 3(2) of ERISA), any "employee welfare benefit plan" (as defined in Section 3(1) of ERISA), and any other written or oral plan, agreement or arrangement providing insurance coverage, severance benefits, disability benefits, or vacation pay, for the benefit of, or relating to, any current or former employee of the Surviving Corporation or any of its Subsidiaries or any entity which is a member of (A) a controlled group of corporations (as defined in Section 414(b) of the Code), (B) a group of trades or businesses under common control (as defined in Section 414(c) of the Code) or (C) an affiliated service group (as defined in Section 414(m) of the Code or the regulations under Section 414(o) of the Code), any of which includes or included the Surviving Corporation or a Subsidiary of the Surviving Corporation.

6.13 *Resignations*. The Company shall use commercially reasonable efforts to obtain and deliver to Buyer at the Closing evidence reasonably satisfactory to Buyer of the resignation, effective as of the Effective Time, of all directors of the Company and each of its Subsidiaries.

6.14 *Third-Party Consents.* As soon as practicable following the date hereof, the Company will use commercially reasonable efforts to obtain such material consents, waivers and approvals under any of its or its Subsidiaries' respective Contracts required to be obtained in connection with the consummation of the transactions contemplated hereby as may be reasonably requested by Buyer after consultation with the Company, including all consents, waivers and approvals set forth in Section 3.3(c) of the Company Disclosure Schedule. In connection with seeking such consents, waivers and approvals, the Company shall keep Buyer informed of all material developments. Such consents, waivers and approvals shall be in a form reasonably acceptable to Buyer. In the event the Merger does not close for any reason, neither Buyer nor Merger Sub shall have any liability to the Company, its stockholders or any other Person for any costs, claims, liabilities or damages resulting from the Company seeking to obtain such consents, waivers and approvals. Notwithstanding the foregoing, the failure to obtain any consents, waivers and approvals pursuant to this Section 6.14 shall not be deemed a failure of any conditions to the obligations of Buyer and Merger Sub under Section 7.2(b).

6.15 *145 Affiliates.* As soon as practicable after the date hereof, and in no event less than ten (10) days prior to the Closing Date, the Company shall deliver to Buyer a letter identifying all Persons who are, at the time this Agreement is submitted for adoption by the stockholders of the Company, "affiliates" of the Company for purposes of Rule 145 under the Securities Act. The Company shall use commercially reasonable efforts to cause each such Person to deliver to Buyer at least ten (10) days prior to the Closing Date a written agreement substantially in the form attached as **Exhibit A** hereto.

ARTICLE VII
CONDITIONS TO MERGER

7.1 *Conditions to Each Party's Obligation to Effect the Merger.* The respective obligations of each party to this Agreement to effect the Merger shall be subject to the satisfaction on or prior to the Closing Date of the following conditions:

(a) *Stockholder Approval.* The Company Voting Proposal shall have been approved and adopted at the Company Stockholders Meeting, at which a quorum is present, by the Required Company Stockholder Vote.

(b) *HSR Act and Foreign Antitrust Laws.* All mandatory waiting periods (and any extensions thereof) applicable to the consummation of the Merger under the HSR Act and applicable foreign Antitrust Laws shall have expired or otherwise been terminated.

(c) *Governmental Approvals.* Other than the filing of the certificate of merger, all material authorizations, consents, orders or approvals of, or declarations or filings with, or expirations of waiting periods imposed by, any Governmental Entity in connection with the Merger and the consummation of the other transactions contemplated by this Agreement shall have been filed or been obtained.

(d) *S-4 Effectiveness.* In the event, and only in the event, that the Company Common Tranche Two Consideration includes any Buyer Common Stock, the S-4 shall have been declared effective under the Securities Act, and no stop order suspending the effectiveness of the S-4 shall be in effect and no proceedings for that purpose shall be pending before or threatened by the SEC.

7.2 *Additional Conditions to Obligations of Buyer and Merger Sub.* The obligations of Buyer and Merger Sub to effect the Merger shall be subject to the satisfaction on or prior to the Closing Date of each of the following additional conditions, any of which may be waived, in writing, exclusively by Buyer and Merger Sub:

(a) *Representations and Warranties.* The representations and warranties of the Company set forth in this Agreement shall be true and correct as of the Closing Date as though made on and as of the Closing Date (except to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties shall be true and correct as of such date), in each case, except (other than the representations and warranties of the company contained in Sections 3.2, which shall be true and correct in all material respects and Section 3.3(a) which shall be true and correct in all respects) where the failure to be true and correct, individually or in the aggregate, has not had and would not reasonably be expected to have a Company Material Adverse Effect; and Buyer shall have received a certificate signed on behalf of the Company by an officer of the Company to such effect.

(b) *Performance of Obligations of the Company.* The Company shall have performed in all material respects all obligations required to be performed by it under this Agreement on or prior to the Closing Date; and Buyer shall have received a certificate signed on behalf of the Company by an officer of the Company to such effect.

(c) *No Restraints.* (i) No Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any order, executive order, stay, decree, judgment or injunction (preliminary or permanent) or statute, rule or regulation which is in effect which would, and (ii) there shall not be instituted or pending any action or proceeding in which any Governmental Entity seeks to, (A) make the Merger illegal or otherwise challenge, restrain or prohibit consummation of the Merger or the other transactions contemplated by this Agreement or (B) cause the transactions contemplated by this Agreement to be rescinded following

consummation or (C) require Buyer or the Company or any Subsidiary or affiliate thereof to effect an Action of Divestiture; provided, however, that each of Buyer and Merger Sub shall have used reasonable efforts to prevent the entry of any such order or injunction and to appeal as promptly as possible any order or injunction that may be entered.

(d) *Material Adverse Effect.* No event has occurred or circumstance shall have come into existence, either individually or in the aggregate, since the date hereof that has or would reasonably be expected to have a Company Material Adverse Effect.

(e) *Non-Competition Agreement.* Mr. Krishna Panu shall have entered into a non-competition agreement in the form attached hereto as **Exhibit B**, and such agreement shall be in full force and effect.

7.3 *Additional Conditions to Obligations of the Company.* The obligation of the Company to effect the Merger shall be subject to the satisfaction on or prior to the Closing Date of each of the following additional conditions, any of which may be waived, in writing, exclusively by the Company:

(a) *Representations and Warranties.* The representations and warranties of Buyer and Merger Sub set forth in this Agreement shall be true and correct as of the Closing Date as though made on and as of the Closing Date (except to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties shall be true and correct as of such date), in each case, except where the failure to be true and correct, individually or in the aggregate, has not had, or would not reasonably be expected to have a Buyer Material Adverse Effect; and the Company shall have received a certificate signed on behalf of Buyer by an officer of Buyer to such effect.

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

(c) *No Restraints.* (i) No Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any order, executive order, stay, decree, judgment or injunction (preliminary or permanent) or statute, rule or regulation which is in effect which would, and (ii) there shall not be instituted or pending any action or proceeding in which any Governmental Entity seeks to, (A) make the Merger illegal or otherwise challenge, restrain or prohibit consummation of the Merger or the other transactions contemplated by this Agreement or (B) cause the transactions contemplated by this Agreement to be rescinded following consummation; provided, however, that the Company shall have used reasonable efforts to prevent the entry of any such order or injunction and to appeal as promptly as possible any order or injunction that may be entered.

(d) *Material Adverse Effect.* Unless Buyer elects to pay all Company Common Tranche Two Consideration in cash and does not revoke such election, in which case this Section 7.3(d) shall not apply, no event has occurred or circumstance shall have come into existence, either individually or in the aggregate, since the date hereof that has had or would reasonably be expected to have a Buyer Material Adverse Effect.

ARTICLE VIII
TERMINATION AND AMENDMENT

8.1 *Termination.* This Agreement may be terminated at any time prior to the Effective Time (whether before or after the Company Stockholders Meeting) (with respect to Sections 8.1(b) through

8.1(h), by written notice by the terminating party to the other party specifying the provision hereof pursuant to which such termination is effected):

(a) by mutual written consent of Buyer, Merger Sub and the Company; or

(b) by either Buyer or the Company if the Merger shall not have been consummated by September 10, 2007 (the "**Outside Date**"); provided that the right to terminate this Agreement under this Section 8.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been a principal cause of the failure of the Merger to occur on or before the Outside Date;

(c) by either Buyer or the Company if a Governmental Entity of competent jurisdiction shall have issued a nonappealable final order, decree or ruling or taken any other nonappealable final action, in each case having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger; provided, that the party seeking to terminate this Agreement pursuant to this Section 8.1(c) shall have used commercially reasonable efforts to prevent the occurrence of and to remove such order, decree or ruling;

(d) by either Buyer or the Company if at the Company Stockholders Meeting at which a vote on the Company Voting Proposal is taken, the Required Company Stockholder Vote in favor of the adoption of the Company Voting Proposal shall not have been obtained; *provided, however*, that the right to terminate this Agreement under this Section 8.1(d) shall not be available to the Company where the failure to obtain the Required Company Stockholder Vote shall have been caused by the action or failure to act of the Company, and such action or failure to act constitute a breach by the Company of this Agreement;

(e) by the Company, in accordance with the procedures set forth in Section 6.1 and the Company shall have paid Buyer the Termination Fee described in Section 8.3(b);

(f) by Buyer (at any time prior to the adoption of this Agreement by the required vote of the stockholders of the Company) if a Triggering Event with respect to the Company shall have occurred.

For the purposes of this Agreement, a "**Triggering Event**," with respect to the Company, shall be deemed to have occurred if: (i) the Company Board or any committee thereof shall for any reason have withdrawn or shall have amended or modified in a manner adverse to Buyer its recommendation in favor of the adoption of the Agreement by the stockholders of the Company; (ii) it shall have failed to include in the Prospectus/Proxy Statement the recommendation of the Company Board in favor of the adoption of the Agreement by the stockholders of the Company; (iii) the Company Board fails to reaffirm (publicly, if so requested, in connection with an Acquisition Proposal that has been publicly announced or otherwise known to the public generally) its recommendation in favor of the adoption of this Agreement by the stockholders of the Company within ten (10) Business Days after Buyer requests in writing that such recommendation be affirmed; (iv) the Company Board or any committee thereof fails to reject within ten (10) Business Days after the receipt thereof or shall have approved or publicly recommended any Acquisition Proposal; (v) the Company shall have entered into any letter of intent or similar document or any agreement, contract or commitment accepting any Superior Offer, following notice of such Superior Offer to Buyer as promptly as practicable (and in any event no later than 24 hours) after the Company Board has determined, in good faith, after consultation with its outside legal counsel and its financial advisors that the failure to take such action with respect to the Superior Offer would reasonably be expected to result in a breach of the Company Board's fiduciary duties to the stockholders of the Company under applicable law, and a reasonable opportunity to make such adjustments in the terms and conditions of this Agreement during the four-Business Day period following such notice, as would enable the Company to proceed with the

Merger; (vi) a tender or exchange offer relating to its securities shall have been commenced by a Person unaffiliated with Buyer, and the Company shall not have sent to its security holders pursuant to Rule 14e-2 promulgated under the Exchange Act, within ten (10) Business Days after such tender or exchange offer is first published, sent or given, a statement disclosing that the Company Board recommends rejection of such tender or exchange offer; or (vii) the Company materially breaches any of its obligations set forth in Sections 6.1 or 6.3 (provided that with respect to Section 6.1, such breach must have been intentional on the part of the Company and the Company Board and with respect to the notice provisions of Sections 6.1 and 6.3, Buyer must have been materially prejudiced thereby).

(g) by Buyer, if there has been a breach of or failure to perform any representation, warranty, covenant or agreement on the part of the Company set forth in this Agreement, which breach or failure to perform (i) would cause the conditions set forth in Section 7.2(a) or 7.2(b) not to be satisfied, and (ii) shall not have been cured within twenty (20) Business Days following receipt by the Company of written notice of such breach or failure to perform from Buyer or which by its nature or timing cannot reasonably be cured by the Outside Date; or

(h) by the Company, if there has been a breach of or failure to perform any representation, warranty, covenant or agreement on the part of Buyer or Merger Sub set forth in this Agreement, which breach or failure to perform (i) would cause the conditions set forth in Section 7.3(a) or 7.3(b) not to be satisfied, and (ii) shall not have been cured within twenty (20) Business Days following receipt by Buyer of written notice of such breach or failure to perform from the Company or which by its nature or timing cannot reasonably be cured by the Outside Date.

(i) by Buyer, if any event has occurred or circumstance has arisen, either individually or in the aggregate, since the date hereof that has had, or would reasonably be expected to have, a Company Material Adverse Effect and (x) such Company Material Adverse Effect is not capable of being cured prior to the Outside Date or (y) such Company Material Adverse Effect is not cured prior to the earlier of the Outside Date and twenty (20) Business Days following the receipt of written notice from Buyer to the Company of such Company Material Adverse Effect (it being understood that Buyer may not terminate this Agreement pursuant to this subsection (i) if it shall have materially breached this Agreement or if such Company Material Adverse Effect is cured); and

(j) by Company, unless Buyer has elected to pay the Company Common Tranche Two Consideration entirely in cash and has not revoked such election (in which case this Section 8.1(j) shall not apply), if any event has occurred or circumstance has arisen, either individually or in the aggregate, since the date hereof that has had, or would reasonably be expected to have, a Buyer Material Adverse Effect and (x) such Buyer Material Adverse Effect is not capable of being cured prior to the Outside Date or (y) such Buyer Material Adverse Effect is not cured prior to the earlier of the Outside Date and twenty (20) Business Days following the receipt of written notice from the Company to Buyer of such Buyer Material Adverse Effect (it being understood that the Company may not terminate this Agreement pursuant to this subsection (j) if it shall have materially breached this Agreement or if such Buyer Material Adverse Effect is cured).

8.2 *Effect of Termination.* In the event of termination of this Agreement as provided in Section 8.1, this Agreement shall immediately become void and there shall be no liability or obligation on the part of Buyer, the Company, Merger Sub or their respective officers, directors, stockholders or Affiliates under this Agreement; provided that:

(a) any such termination shall not relieve any party from liability for any willful breach of this Agreement prior to such termination, and

(b) the provisions of Sections 6.4, this Section 8.2, Section 8.3 and Article IX of this Agreement and the Confidentiality Agreement shall remain in full force and effect and survive any termination of this Agreement in accordance with its terms.

8.3 *Fees and Expenses*.

(a) All fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including the fees and disbursements of counsel, financial advisors and accountants, shall be paid by the party incurring such fees and expenses, whether or not the Merger is consummated.

(b) If this Agreement is terminated (i) by the Company pursuant to Section 8.1(e), or (ii) by Buyer or the Company, as applicable, pursuant to Section 8.1(d), (f) or (g) (provided, however, in the case of termination pursuant to Section 8.1(g) that the breach by the Company giving rise to the termination is willful and occurs after receipt by the Company of an Acquisition Proposal) and (A) if this Agreement is terminated pursuant to Section 8.1(d) or (f), after the execution of this Agreement but prior to such termination, an Acquisition Proposal shall have been publicly disclosed, announced, commenced, submitted or made and (B) within twelve (12) months after such termination, the Company consummates any Company Change in Control Transaction, then, concurrently with any such termination pursuant to Section 8.1(e) and, in the case of any such termination pursuant to Sections 8.1(d), (f) or (g), concurrently with the consummation of such transaction, the Company shall pay to Buyer an amount equal to $17,360,000. All amounts payable by the Company to Buyer under Section 8.3(b) shall be paid in immediately available funds to such U.S. bank account as Buyer may designate in writing to the Company.

For purposes of this Agreement, the term "**Company Change of Control Transaction**" shall mean any transaction or series of transactions in which: (i) the Company merges with or into, or is acquired, directly or indirectly, by merger or otherwise by any Person or "group" (as defined in the Exchange Act and the rules promulgated thereunder) of related Persons (other than Buyer or any of its affiliates) pursuant to which the stockholders of the Company immediately preceding such transaction hold, by virtue of retaining or converting their equity interests in the Company, less than 50% of the aggregate equity interests in the surviving or resulting entity of such transaction or any direct or indirect parent thereof; (ii) any Person or "group" (as defined above) of related Persons acquires, directly or indirectly, by means of an issuance of securities, direct or indirect acquisition of securities, tender offer, exchange offer or similar transaction, more than 50% of the outstanding shares of Company Common Stock; or (iii) any Person or "group" (as defined above) of related Persons acquires, directly or indirectly, by means of a sale, lease, exchange, transfer, license, acquisition or disposition of any business or businesses or of assets or rights that, in each case, constitute or account for 50% or more of the consolidated net revenues, net income or assets of the Company and its Subsidiaries, taken as a whole.

8.4 *Amendment.* This Agreement may be amended by the parties hereto, by action taken or authorized by their respective Boards of Directors, at any time before or after receipt of the Required Company Stockholder Vote in favor of the adoption of the Company Voting Proposal, but, after receipt of any such Required Company Stockholder Vote, no amendment shall be made which by law requires further approval by such stockholders without such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

8.5 *Extension; Waiver.* At any time prior to the Effective Time, the parties hereto, by action taken or authorized by their respective Boards of Directors, may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or

waiver shall be valid only if set forth in a written instrument signed on behalf of such party. Such extension or waiver shall not be deemed to apply to any time for performance, inaccuracy in any representation or warranty, or noncompliance with any agreement or condition, as the case may be, other than that which is specified in the extension or waiver. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

ARTICLE IX
MISCELLANEOUS

9.1 *Nonsurvival of Representations, Warranties and Agreements.* None of the representations, warranties and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time, except for the provisions contained in Article II, Section 8.3 and Article IX and those covenants and agreements contained in this Agreement which by their terms are to be performed following the Effective Time.

9.2 *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed duly delivered (i) four (4) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid, (ii) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service, or (iii) on the date of confirmation of receipt (or, the first Business Day following such receipt if the date of such receipt is not a Business Day) of transmission by facsimile, in each case to the intended recipient as set forth below:

(a) if to Buyer or Merger Sub, to:

Trimble Navigation Limited

935 Stewart Drive
Sunnyvale, CA 94085
Attn: General Counsel
Facsimile: (408) 481-7780

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue
Palo Alto, CA 94301
Attn: Thomas Ivey
Facsimile: (650) 470-4570

If to the Company, to:

@Road, Inc.
47071 Bayside Parkway
Fremont, CA 94538
Attn: General Counsel
Facsimile: (510) 687-2040

with a copy to:

Heller Ehrman LLP
275 Middlefield Road
Menlo Park, CA 94025
Attn: Mark Weeks
Facsimile: (650) 324-0638

Any party to this Agreement may give any notice or other communication hereunder using any other means (including Personal delivery, messenger service, ordinary mail or electronic mail), but no such notice or other communication shall be deemed to have been duly given unless and until it actually is received by the party for whom it is intended. Any party to this Agreement may change the address to which notices and other communications hereunder are to be delivered by giving the other parties to this Agreement notice in the manner herein set forth.

9.3 *Entire Agreement.* This Agreement (including the schedules and exhibits hereto and the documents and instruments referred to herein that are to be delivered at the Closing) constitutes the entire agreement among the parties to this Agreement and supersedes any prior understandings, agreements or representations by or among the parties hereto, or any of them, written or oral, with respect to the subject matter hereof; provided that the Confidentiality Agreement shall remain in effect in accordance with its terms.

9.4 *No Third Party Beneficiaries.* Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement except for (i) the rights, benefits and remedies granted to the Indemnified Persons under Section 6.7, (ii) the rights of the Company Stockholders and the holders of Company Options to receive Merger Consideration in accordance with the provisions of this Agreement after the Effective Time, (iii) the rights of the Continuing Employees granted under Section 6.12, and (iv) the right of the Company, on behalf of the Company's stockholders and holders of Company Options, to pursue claims for damages and other relief, including equitable relief, for Buyer's or Merger Sub's intentional breach of this Agreement fraud, wrongful repudiation or termination of this Agreement or wrongful failure to consummate the Merger, provided, however, that the rights granted pursuant to clause (iv) of this Section 9.4 shall only be enforceable on behalf of the Company's stockholders and the holders of Company Options by the Company in its sole and absolute discretion.

9.5 *Assignment.* Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise by any of the parties hereto without the prior written consent of the other parties, and any such assignment without such prior written consent shall be null and void; provided that notwithstanding the foregoing, Buyer may designate, by written notice to the Company, another wholly owned direct or indirect subsidiary to replace Merger Sub, in which event all references herein to Merger Sub shall be deemed references to such other subsidiary, except that all representations and warranties made herein with respect to Merger Sub as of the date of this Agreement shall be deemed representations and warranties made with respect to such other subsidiary as of the date of such designation; provided further that no such assignment shall relieve Buyer of its obligations hereunder. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns.

9.6 *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity, legality or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid, illegal or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid, illegal or unenforceable term or provision with a term or provision that is valid, legal and enforceable and that comes closest to expressing the intention of the invalid, illegal or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid, illegal or unenforceable term or provision with a valid,

legal and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid, illegal or unenforceable term.

9.7 *Counterparts and Signature.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile transmission.

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

9.9 *Governing Law.* This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the State of Delaware.

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

9.11 *Submission to Jurisdiction.* Each of the parties to this Agreement (a) consents to submit itself to the personal jurisdiction of the courts of the State of Delaware in any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, (c) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (d) agrees not to bring any action or proceeding arising out of or relating to this Agreement or any of the transaction contemplated by this Agreement in any other court. Each of the parties hereto waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect thereto. Any party hereto may make service on another party by sending or delivering a copy of the process to the party to be served at the address and in the manner provided for the giving of notices in Section 9.2. Nothing in this Section 9.11, however, shall affect the right of any party to serve legal process in any other manner permitted by law.

9.12 *Knowledge of the Company.* For all purposes of this Agreement, the phrase "**to the knowledge of the Company**" shall mean the actual knowledge of Krish Panu, Thomas Allen, Kenneth

Colby, James D. Fay, Ian Gray, Mike Martini, Leo Jolicoeur, Carol Rice-Murphy and Michael Walker after due inquiry.

[Remainder of Page Intentionally Left Blank]

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

TRIMBLE NAVIGATION LIMITED

By: /s/ STEVEN W. BERGLUND

Name: Steven W. Berglund
Title: President & Chief Executive Officer

ROADRUNNER ACQUISITION CORP.

By: /s/ IRWIN KWATEK

Name: Irwin Kwatek
Title: Vice President

@ROAD, INC.

By: /s/ KRISH PANU

Name: Krish Panu
Title: Chief Executive Officer

Exhibit A

Form of Affiliate Letter

, 2006

Trimble Navigation Limited
935 Stewart Drive
Sunnyvale, CA 94085
Attention: General Counsel
Telecopy: (408) 481-7780

Ladies and Gentlemen:

I have been advised that I may be deemed to be an "affiliate" of @Road, Inc., a Delaware corporation (the "*Company*"), as that term is defined in Rule 145 promulgated by the Securities and Exchange Commission (the "*SEC*") under the Securities Act of 1933, as amended (the "*Securities Act*"). I understand that pursuant to the terms of the Agreement and Plan of Merger, dated as of December 10, 2006 (the "*Merger Agreement*"), by and among the Company, Trimble Navigation Limited, a California corporation ("Trimble"), and Roadrunner Acquisition Corp., a Delaware corporation and wholly owned subsidiary of Trimble ("*Merger Sub*"), the Company plans to merge with and into Merger Sub (the "*Merger*"), with Merger Sub being the surviving company. Capitalized terms used herein but not otherwise defined shall have the meanings given to such terms in the Merger Agreement.

I further understand that, as a result of the Merger, in exchange for shares of common stock, par value $0.0001 per share, of the Company ("*Company Common Stock*") I will receive common stock, no par value per share of Trimble ("*Trimble Common Stock*").

If in fact I were an affiliate under the Securities Act, my ability to sell, assign or transfer the Trimble Common Stock received by me in exchange for any shares of Company Common Stock pursuant to the Merger may be restricted unless such transaction is registered under the Securities Act or an exemption from such registration is available. I have read this letter and reviewed the Merger Agreement and discussed their requirements and other applicable limitations upon my ability to sell, transfer or otherwise dispose of Trimble Common Stock, including information with respect to the applicability to the sale of such securities of Rules 144 and 145(d) promulgated under the Securities Act, to the extent I felt necessary with my counsel or counsel for the Company. I understand that Trimble will not be required to maintain the effectiveness of any registration statement under the Securities Act for purposes of resale of Trimble Common Stock by me.

I represent, warrant and covenant with and to Trimble that in the event I receive any Trimble Common Stock as a result of the Merger, I shall not effect any sale, transfer, or other disposition of such Trimble Common Stock unless: (i) such sale, transfer or other disposition has been registered under the Securities Act, (ii) such sale, transfer or other disposition is made in conformity with the provisions of Rule 145 under the Securities Act (as such rule may be amended from time to time), or (iii) in the opinion of counsel in form and substance reasonably satisfactory to Trimble, or under a "no-action" letter or interpretive letter from the staff of the SEC, such sale, transfer or other disposition will not violate or is otherwise exempt from registration under the Securities Act.

In the event of a sale or other disposition by me of Trimble Common Stock received by me in the Merger pursuant to Rule 145, I will supply Trimble with evidence of compliance with such Rule 145, in the form of a letter in the form of *Annex I* hereto or the opinion of counsel or no-action letter referred to above. I understand that Trimble may instruct its transfer agent to withhold the transfer of any Trimble Common Stock disposed of by the undersigned, but that (provided such transfer is not

prohibited by any other provision of this letter agreement) upon receipt of such evidence of compliance the transfer agent shall effectuate the transfer of the Trimble Common Stock sold as indicated in the letter.

I understand that Trimble is under no obligation to register the sale, transfer or other disposition of Trimble Common Stock by me or on my behalf under the Securities Act or, other than as set forth below, to take any other action necessary in order to make compliance with an exemption from such registration available.

I acknowledge and agree that, unless the transfer by me of the Trimble Common Stock issued to me as a result of the Merger has been registered under the Securities Act or such transfer is made in conformity with the provisions of Rule 145(d) under the Securities Act, the following legend may be placed on certificates, if any, representing such shares of Trimble Common Stock:

"The shares represented by this certificate were issued in a transaction to which Rule 145 under the Securities Act of 1933, as amended (the "Act"), applies. The shares may not be sold, transferred or otherwise disposed of except in compliance with the requirements of rule 145 or pursuant to an effective registration statement under, or in accordance with an exemption from the registration requirements of, the Act."

It is understood and agreed that the legend set forth above shall be removed by delivery of substitute certificates without such legend and/or any stop transfer instructions will be lifted if (A) one year (or such other period as may be required by Rule 145(d)(2) or any successor thereto) shall have elapsed from the date I acquired the Trimble Common Stock received in the Merger and the provisions of Rule 145(d)(2) (or any successor thereto) are then available to me, (B) two years (or such other period as may be required by Rule 145(d)(3) or any successor thereto) shall have elapsed from the date I acquired the Trimble Common Stock received in the Merger and the provisions of Rule 145(d)(3) (or any successor thereto) are then available to me or (C) I shall have delivered to Trimble a copy of a "no-action" letter or interpretative letter from the staff of the SEC, or an opinion of counsel in form and substance reasonably satisfactory to Trimble, to the effect that such legend is not required for purposes of the Securities Act.

At the time that I make any offer to or otherwise sell, pledge, transfer or dispose of any Trimble Common Stock that I own after the Merger, I shall notify my broker, dealer or nominee in whose name my shares are held or registered that such Trimble Common Stock is subject to this letter.

Execution of this letter should not be considered an admission on my part of "affiliate" status as described in the first paragraph of this letter agreement, or as a waiver of any rights I may have to object to any claim that I am such an affiliate on or after the date of this letter.

The representations, warranties, covenants and other agreements in this letter shall only become effective as of the Effective Time.

This letter agreement shall be binding on my heirs, legal representatives and successors.

This letter agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

This letter agreement may be executed in counterparts, all of which when so executed shall constitute one agreement, notwithstanding that all of the signatories are not signatories to the original or the same counterpart.

Very truly yours,

By: _____

Name:

Accepted this day of
, 200 .

TRIMBLE NAVIGATION LIMITED

By: _____

Name:
Title:

Annex I

[Name] [Date]

On , the undersigned sold the securities of Trimble Navigation Limited, a California corporation ("*Trimble*"), described below in the space provided for that purpose (the "*Securities*"). The Securities were received by the undersigned in connection with the merger of @Road, Inc., a Delaware corporation, with and into Roadrunner Acquisition Corp., a Delaware corporation and wholly owned subsidiary of Trimble

Based upon the most recent report or statement filed by Trimble with the Securities and Exchange Commission, the Securities sold by the undersigned were within the prescribed limitations set forth in paragraph (e) of Rule 144 promulgated under the Securities Act of 1933, as amended (the "*Securities Act*").

The undersigned hereby represents that the Securities were sold in "brokers' transactions" within the meaning of Section 4(4) of the Securities Act or in transactions directly with a "market maker" as that term is defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended. The undersigned further represents that the undersigned has not solicited or arranged for the solicitation of orders to buy the Securities, and that the undersigned has not made any payment in connection with the offer or sale of the Securities to any person other than to the broker who executed the order in respect of such sale.

Very truly yours,

Description of the Securities:

Exhibit B

FORM OF NONCOMPETITION AGREEMENT

THIS NONCOMPETITION AGREEMENT (this "*Agreement*") is entered into as of [ ], by and between Trimble Navigation Limited, a California corporation (the "*Company*") and Krish Panu ("*Shareholder*"), a shareholder and chief executive officer of @Road, Inc., a Delaware corporation ("*Target*").

RECITALS

A. Target is engaged in business of providing solutions designed to automate the management of mobile resources such as field force management, field service management and field asset management (the "Business").

B. Shareholder is the chief executive officer and a significant shareholder of Target and accordingly has acquired confidential and proprietary information relating to the Business and operations of Target, and has directly or indirectly participated in, supervised or managed such operations of Target, in the United States.

C. Shareholder's covenant not to compete with the Company, as reflected in this Agreement, is an essential inducement to the Company to enter into the transactions described in the Agreement and Plan of Merger dated as of the date hereof (the "*Merger Agreement*"), among the Company, Target and Roadrunner Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the Company (the transactions contemplated by the Merger Agreement are referred to hereinafter as the "Merger").

D. Shareholder holds a significant number of the issued and outstanding shares of stock of Target, for which he will receive valuable consideration as part of the transactions contemplated by the Merger Agreement, and therefore has a material economic interest in the consummation of the Merger.

E. In order to protect the goodwill related to the Business, and as a condition precedent to the obligations of the Company to complete the Merger, Shareholder has agreed to the restrictive covenants and other terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and to induce the Company to consummate the transactions contemplated by the Merger Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Shareholder hereby covenants and agrees as follows:

1. *Noncompetition*.

(a) Shareholder and the Company agree that due to the nature of Shareholder's association with Target, Shareholder has Confidential Information (as defined below) relating to the business and operations of Target and the Company. Shareholder acknowledges that such information is of extreme importance to the business of Target and the Company and will continue to be so after the Merger and that disclosure of the Confidential Information to others, or the unauthorized use of such information by Shareholder, may cause substantial loss and harm to the Company.

(b) Shareholder and the Company further agree that the market for the Business is intensely competitive and that Target and the Company may engage in the Business throughout the entire world.

(c) Shareholder and the Company intend and agree that this Agreement is an ancillary agreement to the Merger Agreement.

(d) During the period which shall commence at the Closing and shall terminate eighteen (18) months from the Closing, Shareholder shall not, anywhere in the Business Area (as defined below), directly or indirectly (including without limitation, through any Affiliate (as defined below) of Shareholder), own, manage, operate, control, be employed by or otherwise engage or participate in, or be connected as an owner, partner, principal, sales representative, advisor, member of the board of directors of, employee of or consultant of any Competitor (as defined below).

(e) Notwithstanding the foregoing provisions of Section 1(d) and the restrictions set forth therein, Shareholder may own securities in any of the Competitors, but only to the extent that Shareholder does not own, of record or beneficially, more than 2% (two percent) of the outstanding beneficial ownership of any such Competitor.

(f) "*Competitor*" as used herein, means any entity or person that is directly, or indirectly through an Affiliate, actively competing with Target or the Company in the Business.

(g) "*Business Area*" as used herein, means North America, the United Kingdom and Australia.

(h) "*Affiliate*" as used herein, means, with respect to any person or entity, any person or entity directly or indirectly controlling, controlled by or under direct or indirect common control with such other person or entity.

2. *Nonsolicitation of Employees.* During the period which shall commence at the Closing and shall terminate two (2) years from the Closing, Shareholder shall not, without the prior written consent of the Company, directly or indirectly encourage, solicit, request, cause, induce or attempt to induce any person who was an employee of or a consultant of Target or any of its Affiliates as of the Closing to leave the employ of or terminate such person's relationship with Target, its Affiliates or the Company.

3. *Nonsolicitation of Customers and Suppliers.* During the period which shall commence at the Closing and shall terminate two (2) years from the Closing, Shareholder shall not, directly or indirectly, (i) solicit, induce or attempt to induce any Customer (as defined below) or Supplier to cease doing business in whole or in part with Target, its Affiliates or the Company with respect to the Business; (ii) attempt to limit or interfere with any Business agreement or relationship existing between Target or the Company and/or their Affiliates with respect to the Business with any third party; or (iii) disparage or take any actions that are harmful to the business reputation of Target, its Affiliates or the Company (or their respective management teams). "*Customer*" as used herein means any customer or client of Target, its Affiliates or the Company with respect to the Business that, as of the Closing, Shareholder has or had contact with, supervision over or access to confidential information regarding, by virtue of his association with Target, its Affiliates or the Company. "*Supplier*," as used herein, means any supplier or Target, its Affiliates or the Company with respect to the Business that, as of the Closing, Shareholder has or had contact with, supervision over or access to confidential information regarding, by virtue of his association with Target, its Affiliates or the Company.

4. *Confidentiality.* Shareholder covenants that he will not, at any time, directly or indirectly, use for his own account, or disclose to any person, firm or corporation, other than authorized officers, directors and employees of Target or the Company, Confidential Information (as hereinafter defined) of Target and/or the Company. As used herein, "*Confidential Information*" means information about Target, its Affiliates or the Company of any kind, nature or description, including, but not limited to, any proprietary knowledge, trade secrets, data, formulae, employees, and client and customer lists and all documents, papers, resumes, and records (including computer records) which is disclosed to or otherwise known to Shareholder as a direct or indirect consequence of his association with Target, its

Affiliates and his association with the Company in the context of the Merger; provided, however, that Confidential Information does not include information that (i) is in or enters the public domain otherwise than as a result of Shareholder's breach of an obligation of confidentiality to the Company or (ii) is disclosed to Shareholder without restriction by a third party who rightfully possesses the information and is under no duty of confidentiality with respect thereto. Shareholder acknowledges that such Confidential Information is specialized, unique in nature and of great value to the Company and that such information gives Target and the Company a competitive advantage in the Business. Shareholder further agrees to deliver to the Company, at the Company's request, all documents, computer tapes and disks, records, lists, data, drawings, prints, notes and written or electronic information (and all copies thereof) furnished by Target, its Affiliates or the Company or created by Shareholder in connection with his association with Target and/or the Company.

5. *Injunctive Relief.* The parties agree that the remedy at law for any breach of this Agreement is and will be inadequate, and in the event of a breach or threatened breach by Shareholder of the provisions of Sections 1, 2, 3 or 4 of this Agreement, the Company shall be entitled to seek an injunction restraining Shareholder from the conduct which would constitute a breach of this Agreement. Nothing herein contained shall be construed as prohibiting the Company from pursuing any other remedies available to it or them for such breach or threatened breach, including, without limitation, the recovery of damages from Shareholder.

6. *Reasonableness and Enforceability of Covenants*.

(a) The parties expressly agree that the character, duration and geographical scope of this Agreement are reasonable in light of the circumstances as they exist on the date upon which this Agreement has been executed, including, but not limited to, Shareholder's material economic interest in the transactions contemplated in the Merger Agreement as well as his position of confidence and trust as an executive employee of Target.

(b) If any court of competent jurisdiction determines that any of the covenants and agreements contained herein, or any part thereof, is unenforceable because of the character, duration or geographic scope of such provision, such court shall have the power to reduce the duration or scope of such provision, as the case may be, and, in its reduced form, such provision shall then be enforceable to the maximum extent permitted by applicable law.

(c) Shareholder expressly agrees to be bound by the restrictive covenants and the other agreements contained in this Agreement to the maximum extent permitted by law, it being the intent and spirit of the parties that the restrictive covenants and the other agreements contained herein shall be valid and enforceable in all respects, and, subject to the terms and conditions of this Agreement.

(d) Shareholder acknowledges that (i) as part of the Merger, the Company will be vested with the goodwill of, and will carry on, the Business that had been conducted by Target prior to the Merger; (ii) the restrictive covenants and the other agreements contained herein are an essential part of this Agreement and (iii) the transactions contemplated by the Merger Agreement are designed and intended to qualify as a sale (or other disposition) by Shareholder of all of Shareholder's interests in Target within the meaning of section 16601 of the Business and Professions Code of California (the "BPCC"), which section provides as follows:

> **§ 16601. Sale of goodwill or corporation shares; agreement not to compete.** Any person who sells the goodwill of a business, or any Shareholder of a corporation selling or otherwise disposing of all his shares in said corporation, or any Shareholder of a corporation which sells (a) all or substantially all of its operating assets together with the goodwill of the corporation, (b) all or substantially all of the operating assets of a division or a subsidiary of the corporation together with the goodwill of such division or

subsidiary, or (c) all of the shares of any subsidiary, may agree with the buyer to refrain from carrying on a similar business within a specified county or counties, city or cities, or a part thereof, in which the business so sold, or that of said corporation, division, or subsidiary has been carried on, so long as the buyer, or any person deriving title to the goodwill or shares from him, carries on a like business therein. For the purposes of this section, "subsidiary" shall mean any corporation, a majority of whose voting shares are owned by the selling corporation.

(d) Shareholder further represents, warrants and agrees that (i) Shareholder has been fully advised by, or has had the opportunity to be advised by, counsel in connection with the negotiation, preparation, execution and delivery of this Agreement and the transactions contemplated by this Agreement and the Merger Agreement; and (ii) Shareholder has read section 16601 of the BPCC, understands its terms and agrees that section 16601 of the BPCC applies in the context of the transactions contemplated by the Merger Agreement and this Agreement and such transactions are within the scope and intent of section 16601 and an exception to section 16600 of the BPCC and agrees to be fully bound by the restrictive covenants and the other agreements contained in this Agreement. Accordingly, Shareholder agrees to be bound by the restrictive covenants and the other agreements contained in this Agreement to the maximum extent permitted by law, it being the intent and spirit of the parties that the restrictive covenants and the other agreements contained herein shall be valid and enforceable in all respects, and, subject to the terms and conditions of this Agreement.

7. *Legitimate Business Interest.* Shareholder expressly agrees that the Company has a legitimate business interest justifying the restrictions contained in Sections 1, 2, 3 and 4 hereof.

8. *Severability.* If any of the provisions of this Agreement shall otherwise contravene or be invalid under the laws of any state where this Agreement is applicable but for such contravention or invalidity, such contravention or invalidity shall not invalidate all of the provisions of this Agreement but rather it shall be construed, insofar as the laws of that state, country or jurisdiction are concerned, as not containing the provision or provisions contravening or invalid under the laws of that state, and the rights and obligations created hereby shall be construed and enforced accordingly.

9. *Construction.* This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without regard to principles of conflicts or choice of laws.

10. *Amendments and Waivers.* This Agreement may be modified only by a written instrument duly executed by each party hereto. No breach of any covenant, agreement, warranty or representation shall be deemed waived unless expressly waived in writing by the party who might assert such breach. No waiver of any right hereunder shall operate as a waiver of any other right or of the same or a similar right on another occasion.

11. *Entire Agreement.* This Agreement, together with the Merger Agreement and the ancillary documents executed in connection therewith, contains the entire understanding of the parties relating to the subject matter hereof, supersedes all prior and contemporaneous agreements and understandings relating to the subject matter hereof and shall not be amended except by a written instrument signed by each of the parties hereto.

12. *Counterparts.* This Agreement may be executed by the parties in separate counterparts, each of which, when so executed and delivered, shall be an original, but all of which, when taken as a whole, shall constitute one and the same instrument.

13. *Section Headings.* The headings of each Section, subsection or other subdivision of this Agreement are for reference only and shall not limit or control the meaning thereof.

14. *Assignment.* Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof nor any of the documents executed in connection herewith may be assigned by any party without the consent of the other parties; provided, however, that the Company may assign their rights hereunder, without the consent of Shareholder, to any entity that acquires or succeeds to the Business.

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

(a) if to the Company:

Trimble Navigation Limited
935 Stewart Drive
Sunnyvale, CA 94085
Attention: General Counsel
Fax: (408) 481-7780

(b) if to Shareholder:

to the address set forth below the name of Shareholder on the signature page hereof.

16. *Each Party the Drafter.* This Agreement and the provisions contained herein shall not be construed or interpreted for or against any party to this Agreement because that party drafted or caused that party's legal representative to draft any of its provisions.

17. *Defined Terms.* Capitalized terms not otherwise defined herein shall have the meanings given to them in the Merger Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Noncompetition Agreement as of the date first above written.

COMPANY

TRIMBLE NAVIGATION LIMITED

By: _____

Name: _____

Title: _____

SHAREHOLDER

_____

Krish Panu

Address: _____

_____

Facsimile: _____

Annex B

FORM OF VOTING AGREEMENT

This Voting Agreement ("Agreement") is made and entered into as of December 10, 2006, by and among Trimble Navigation Limited, a California corporation ("Acquirer"), Roadrunner Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Acquirer ("Merger Sub"), and the undersigned stockholder (the "Stockholder") of @Road, Inc., a Delaware corporation (the "Company"). Certain capitalized terms used in this Agreement are defined in Section 6 hereof and certain other capitalized terms used in this Agreement that are not defined herein shall have the meaning given to such terms in the Merger Agreement (as defined below).

RECITALS

WHEREAS, Stockholder is the holder of record and the "beneficial owner" (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934) of certain common stock of the Company;

WHEREAS, concurrently with the execution and delivery of this Agreement, Acquirer, Merger Sub and the Company are entering into an Agreement and Plan of Merger (the "Merger Agreement") which provides, upon the terms and subject to the conditions set forth therein, for the merger of Merger Sub with and into the Company (the "Merger"); and

WHEREAS, as a condition and inducement to Acquirer's willingness to enter into the Merger Agreement, the Stockholder has agreed to execute and deliver this Agreement.

AGREEMENT

NOW, THEREFORE, the parties to this Agreement, intending to be legally bound, agree as follows:

1. Agreement to Vote Shares. Prior to the Termination Date, at every meeting of the stockholders of the Company (or of the holders of any class of stock of the Company's capital stock) called with respect to any of the following, and at every adjournment or postponement thereof, with respect to any of the following, the Stockholder shall vote with respect to the Subject Securities: (a) in favor of adoption of the Merger Agreement and approval of the Merger and the other actions contemplated by the Merger Agreement or would reasonably be expected to facilitate the Merger Agreement, the Merger and the other actions and transactions contemplated by the Merger Agreement, this Agreement or the Proxy (the "Merger Proposals"), (b) against any proposal for any Acquisition Transaction between the Company and any Person other than Acquirer or Merger Sub, and (c) against any other action, agreement or proposal that could reasonably be expected to result in a breach of any covenant, representation or warranty or any other obligation or agreement of the Company under the Merger Agreement or the related transactions or which could reasonably be expected to result in any of the conditions to the consummation of the Merger under the Merger Agreement not being fulfilled or which could reasonably be expected to otherwise impede, interfere with, delay, postpone or materially adversely affect the Merger or the other transactions contemplated by the Merger Agreement.

2. Irrevocable Proxy. Concurrently with the execution of this Agreement, the Stockholder agrees to deliver to Acquirer a proxy in the form attached hereto as Exhibit A (the "Proxy"), which is coupled with an interest and shall be irrevocable to the fullest extent permitted by law, with respect to the shares referred to therein, which Proxy shall remain in effect until the Termination Date.

3. Agreement to Retain Shares.

(a) **Restriction on Transfer.** Except pursuant to the terms of the Merger Agreement or otherwise provided in Section 3(c) of this Agreement, during the period from the date of this Agreement through the Termination Date, the Stockholder shall not, directly or indirectly, cause or permit any Transfer of any of the Subject Securities to be effected. Any Transfer of any Subject Securities in violation of this Section 3 shall be void and have no force or effect.

(b) **Restriction on Transfer of Voting Rights.** During the period from the date of this Agreement through the Termination Date, the Stockholder shall not: (a) grant any proxy or power of attorney, deposit any of the Subject Securities into a voting trust or enter into a voting agreement or similar arrangement with respect to the Subject Securities except as provided in this Agreement; or (b) take any other action that would make any representation or warranty of the Stockholder contained herein untrue or incorrect or have the effect of preventing or disabling the Stockholder from performing its obligations under this Agreement or the Transaction Documents.

(c) **Permitted Transfers.** Section 3(a) shall not prohibit a Transfer of Company Capital Stock by the Stockholder upon the death of the Stockholder; *provided*, *however*, that a Transfer referred to in this sentence shall be permitted only if, as a precondition to such Transfer, the transferee (i) agrees in a writing, reasonably satisfactory in form and substance to Acquirer, to be bound by the terms of this Agreement and refrain from any and all Transfers of the Subject Securities, and (ii) delivers a Proxy to Acquirer in substantially the form of Exhibit A. In addition, Section 3(a) shall not prohibit a Transfer of Company Capital Stock by the Stockholder pursuant to the terms of a trading plan adopted pursuant to Rule 1065-1 under the Exchange Act in effect prior to the date hereof.

4. Representations, Warranties and Covenants of Stockholder. The Stockholder hereby represents and warrants to Acquirer as follows:

(a) **Due Authorization, Etc.** All consents, approvals, authorizations, filings and orders necessary for the execution and delivery by the Stockholder of this Agreement and the Proxy have been obtained or made, and the Stockholder has legal capacity, power and authority to enter into this Agreement and the Proxy. This Agreement and the Proxy have been duly and validly executed and delivered by the Stockholder and constitute valid and binding agreements or instruments of the Stockholder enforceable in accordance with their terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally and subject to general principles of equity.

(b) **No Conflict.** The execution and delivery of this Agreement and the Proxy by the Stockholder do not, and the performance of this Agreement and the Proxy by the Stockholder will not conflict with, violate or result in a breach of or constitute (with or without notice or the passage of time) a default (or give rise to any third party right of termination, cancellation, material modification or acceleration) under (i) the organizational documents of the Stockholder, if any, (ii) any law, rule, regulation, order, decree or judgment applicable to the Stockholder, the Subject Securities held by the Stockholder or any of the Stockholder's other properties or assets or (iii) any contract, indenture, guarantee, lease, mortgage, license or other agreement, instrument, obligation or undertaking of any kind to which Stockholder is a party or by which the Stockholder or any of its properties or assets are bound.

(c) **Title to Securities.** As of the date of this Agreement: (a) the Stockholder holds of record the outstanding Company Common Stock set forth under the heading "Stock Held of Record" on the signature page hereof; (b) the Stockholder holds the options and other rights to acquire shares of Company Common Stock set forth under the heading "Options and Other Rights" on the signature page hereof; (c) the Stockholder Owns the additional securities of the

Company set forth under the heading "Additional Securities Beneficially Owned" on the signature page hereof; and (d) the Stockholder does not directly or indirectly Own any capital stock or other securities of the Company, or any option, warrant or other right to acquire (by purchase, conversion or otherwise) any capital stock or other securities of the Company, other than the stock and options, warrants and other rights set forth on the signature page hereof. The Stockholder has voting power and power to issue instructions with respect to the matters set forth herein, power of disposition, power of conversion, power to demand appraisal rights and power to agree to all of the matters set forth in this Agreement, in each case with respect to all of the Subject Securities with no limitations, qualifications or restrictions on such rights. Except as permitted by this Agreement the Subject Securities are now and, at all times during the term hereof, the Subject Securities will be, held by the Stockholder or by a nominee or custodian for the benefit of the Stockholder, free and clear of all mortgages, claims, charges, liens, security interests, pledges or options, proxies, voting trusts or agreements, understandings or arrangements or any other rights whatsoever.

(d) **Community Property.** The Stockholder either (i) is not, and will not be during the term of this Agreement, subject to community property laws or (ii) has delivered a Community Property Waiver in the form of Exhibit B hereto with respect to each person who has or who may acquire community property rights in any of the Subject Securities.

(e) **Reliance by Acquirer.** The Stockholder understands and acknowledges that Acquirer is entering into the Merger Agreement in reliance upon the Stockholder's execution and delivery of this Agreement.

(f) **Stop Transfer.** The Stockholder hereby agrees and covenants that it will not request that the Company register the transfer of any certificate or uncertificated interest representing any of the Subject Securities, unless such transfer is made in compliance with this Agreement. In the event of a stock dividend or distribution, or any change in the Common Stock by reason of any stock dividend, split-up, recapitalization, combination, exchange of stock or the like other than pursuant to the Merger, the term "Subject Securities" will be deemed to refer to and include the Common Stock as well as all such stock dividends and distributions and any stock into which or for which any or all of the Subject Securities may be changed or exchanged and appropriate adjustments shall be made to the terms and provisions of this Agreement.

5. Further Assurances. From time to time and without additional consideration, the Stockholder shall (at the Stockholder's sole expense) execute and deliver, or cause to be executed and delivered, such additional transfers, assignments, endorsements, proxies, consents and other instruments, and shall (at the Stockholder's sole expense) take such further actions, as Acquirer may request for the purpose of carrying out and furthering the intent of this Agreement.

6. Certain Definitions. For purposes of this Agreement,

(a) "**Company Common Stock**" means the common stock, par value $0.0001 per share, of the Company.

(b) The Stockholder shall be deemed to "**Own**" or to have acquired "**Ownership**" of a security if the Stockholder is the "beneficial owner" of such security within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**").

(c) "**Person**" means any (i) individual, (ii) corporation, limited liability company, partnership or other entity or (iii) Governmental Entity.

(d) "**Subject Securities**" means: (i) all securities of the Company (including all Company Common Stock and all options, warrants and other rights to acquire Company Common Stock) Owned by the Stockholder as of the date of this Agreement, whether vested or unvested; and

(ii) all additional securities of the Company (including all additional Company Common Stock and all additional options, warrants and other rights to acquire Company Common Stock), whether vested or unvested, of which the Stockholder acquires Ownership (regardless of the method by which Stockholders acquire Ownership) during the period from the date of this Agreement through the Termination Date.

(e) "**Termination Date**" means the earlier to occur of the date (i) the Merger shall become effective in accordance with the terms and provisions of the Merger Agreement or (ii) the Merger Agreement terminates in accordance with its terms.

(f) A Person shall be deemed to have effected a "**Transfer**" of a security if such Person directly or indirectly: (i) sells, pledges, assigns, encumbers, transfers or disposes of, or grants an option, contract or other arrangement or understanding with respect to such security or any interest in such security to any Person other than Acquirer; (ii) consents to or enters into an agreement or commitment contemplating the offer for sale or sale, pledge, assignment, encumbrance, transfer or disposition of, or grant of an option, contract or other arrangement or understanding with respect to, such security or any interest therein to any Person other than Acquirer or Merger Sub; (iii) reduces such Person's beneficial ownership of, interest in or risk relating to such security other than in connection with the Merger or (iv) offers to do any of the foregoing.

7. Miscellaneous.

(a) **Assignment; Binding Effect.** Except as provided herein, neither this Agreement nor any of the interests or obligations hereunder may be assigned or delegated by the Stockholder, and any attempted or purported assignment or delegation of any of such interests or obligations shall be void. Subject to the preceding sentence, this Agreement shall be binding upon the Stockholder and the Stockholder's heirs, estate, executors and personal representatives and the Stockholder's successors and assigns, and shall inure to the benefit of Acquirer and its successors and assigns. Without limiting any of the restrictions set forth in Section 3(a) or elsewhere in this Agreement, this Agreement shall be binding upon any Person to whom any Subject Securities are transferred. Nothing in this Agreement is intended to confer on any Person (other than Acquirer and its successors and assigns) any rights or remedies of any nature.

(b) **Specific Performance.** The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement or the Proxy were not performed in accordance with its specific terms or were otherwise breached and in the event of any breach or threatened breach by the Stockholder of any covenant or obligation contained in this Agreement or in the Proxy, Acquirer shall be entitled (in addition to any other remedy that may be available to it, including monetary damages) to seek (a) a decree or order of specific performance to enforce the observance and performance of such covenant or obligation, and (b) an injunction restraining such breach or threatened breach.

(c) **Waiver; Remedies Cumulative.** No failure on the part of Acquirer to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of Acquirer in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. Acquirer shall not be deemed to have waived any claim available to Acquirer arising out of this Agreement, or any power, right, privilege or remedy of Acquirer under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of Acquirer; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

All rights and remedies existing under this Agreement are cumulative to, and not exclusive to, and not exclusive of, any rights or remedies otherwise available.

(d) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware without giving effect to principles of conflicts or choice of law.

(e) **Counterparts.** This Agreement may be executed in two or more counterparts (including by facsimile), each of which shall be deemed an original and all of which together shall constitute one instrument.

(f) **Entire Agreement.** This Agreement and the Proxy constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements and understandings between the parties with respect thereto. No addition to or modification of any provision of this Agreement shall be binding upon any party unless made in writing and signed by the party against whom enforcement is sought.

(g) **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below, or as subsequently modified by written notice.

(h) **Severability.** In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other Persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties hereto further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

(i) **Waiver of Jury Trial.** EACH OF ACQUIRER, MERGER SUB AND THE STOCKHOLDER HEREBY IRREVOCABLY WAIVE AND COVENANT THAT THEY WILL NOT ASSERT THE RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENT OR ACTION RELATED HERETO OR THERETO.

(j) **Descriptive Heading.** The descriptive headings used herein are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

The parties have caused this Agreement to be duly executed on the date first above written.

ACQUIRER:

TRIMBLE NAVIGATION LIMITED

By: _____

Name: Irwin Kwatek
Title: Vice President

Address for notices:

_____

_____

_____

MERGER SUB:

ROADRUNNER ACQUISITION CORP.

By: _____

Name: Irwin Kwatek
Title: Vice President

Address for notices:

935 Stewart Drive
Sunnyvale, California 94085

[SIGNATURE PAGE TO VOTING AGREEMENT]

STOCKHOLDER:

By: _____

Name:
Title:

Address for notices:

_____

_____

_____

Company Common Stock Held of Record	Options and Other Rights	Additional Securities Beneficially Owned

EXHIBIT A

IRREVOCABLE PROXY

The undersigned stockholder (the "Stockholder") of @Road, Inc., a Delaware corporation (the "Company"), hereby irrevocably appoints each of Mark Harrington and Irwin Kwatek, as the sole and exclusive attorneys and proxies of the undersigned, with full power of substitution and resubstitution, to vote and exercise all voting and related rights expressly provided herein (to the full extent that the undersigned is entitled to do so) with respect to (i) the outstanding capital stock of the Company owned of record by the Stockholder as of the date of this Proxy, which shares are specified on the final page of this Proxy, and (ii) any and all other capital stock of the Company which the Stockholder may acquire on or after the date hereof. The capital stock of the Company referred to in clauses "(i)" and "(ii)" of the immediately preceding sentence are collectively referred to as the "Shares". Upon the undersigned's execution of this Proxy, any and all prior proxies given by the undersigned with respect to any of the Shares relating to the subject matter hereof are hereby revoked and the undersigned agrees not to grant any subsequent proxies with respect to the Shares.

This Proxy is irrevocable, is coupled with an interest and is granted pursuant to that certain Voting Agreement of even date herewith, by and among Trimble Navigation Limited, a California corporation ("Acquirer"), Roadrunner Acquisition Corp., a Delaware corporation ("Merger Sub") and the Stockholder, and is granted in consideration of Acquirer entering into that certain Agreement and Plan of Merger (the "Merger Agreement"), of even date herewith, by and among the Company, Acquirer, Merger Sub and the Stockholder. As used herein, the term "Termination Date" means the earlier to occur of the date (i) the Merger shall become effective in accordance with the terms and provisions of the Merger Agreement, or (ii) the Merger Agreement terminates in accordance with its terms. Unless otherwise provided, other capitalized terms used but not defined in this Agreement shall have the meaning given to such terms in the Merger Agreement.

Each of the attorneys and proxies named above is hereby authorized and empowered by the undersigned, at any time prior to the Termination Date, to act as the undersigned's attorney and proxy to vote the Shares, and to exercise all voting and other rights of the undersigned with respect to the Shares at every annual, special or adjourned meeting of the stockholders of the Company: (a) in favor of adoption of the Merger Proposals (as defined in the Voting Agreement), (b) against any proposal for any Acquisition Transaction, other than the Merger, between the Company and any Person (as defined in the Voting Agreement) other than Acquirer or Merger Sub, and (c) against any other action, agreement or proposal that could reasonably be expected to result in a breach of any covenant, representation or warranty or any other obligation or agreement of the Company under the Merger Agreement or the related transactions or which could reasonably be expected to result in any of the conditions to the consummation of the Merger under the Merger Agreement not being fulfilled or which could reasonably be expected to otherwise impede, interfere with, delay, postpone or materially adversely affect the Merger or the other transactions contemplated by the Merger Agreement.

This Proxy shall be binding upon the heirs, estate, executors, personal representatives, successors and assigns of the Stockholder (including any transferee of any of the Shares).

Dated: December 10, 2006

(Signature of Stockholder)

(Print Name of Stockholder)

Number of common stock of the Company owned of record as of the date of this Proxy:

EXHIBIT B

SPOUSAL CONSENT

The undersigned represents that the undersigned is the spouse of:

Name of Stockholder

and that the undersigned is familiar with the terms of the Voting Agreement (the "Agreement"), entered into as of December 10, 2006 by and among Trimble Navigation Limited, a California corporation, Roadrunner Acquisition Corp., a Delaware corporation, and the undersigned's spouse, . The undersigned hereby agrees that the interest of the undersigned's spouse in all property which is the subject of such Agreement shall be irrevocably bound by the terms of such Agreement and by any amendment, modification, waiver or termination signed by the undersigned's spouse. The undersigned further agrees that the undersigned's community property interest in all property which is the subject of such Agreement shall be irrevocably bound by the terms of such Agreement, and that such Agreement shall be binding on the executors, administrators, heirs and assigns of the undersigned. The undersigned further authorizes the undersigned's spouse to amend, modify or terminate such Agreement, or waive any rights thereunder, and that each such amendment, modification, waiver or termination signed by the undersigned's spouse shall be binding on the community property interest of undersigned in all property which is the subject of such Agreement and on the executors, administrators, heirs and assigns of the undersigned, each as fully as if the undersigned had signed such amendment, modification, waiver or termination.

Dated:

Name:

Annex C

December 10, 2006

The Board of Directors
@Road, Inc.
47071 Bayside Parkway
Fremont, CA 94538

Members of the Board of Directors:

You have requested our opinion as to the fairness, from a financial point of view, to the holders of common stock, par value $0.0001 per share (the "Company Common Stock"), of @Road, Inc. (the "Company") of the consideration to be received by such holders in the proposed merger (the "Merger") of the Company with a wholly-owned subsidiary (the "Merger Subsidiary") of Trimble Navigation Limited (the "Merger Partner"). Pursuant to the Agreement and Plan of Merger dated as of December 10, 2006 (the "Agreement"), among the Company, the Merger Partner and the Merger Subsidiary, the Company will become a wholly-owned subsidiary of the Merger Partner, and each outstanding share of Company Common Stock, other than shares of Company Common Stock held in treasury or owned by the Merger Partner and its affiliates and other than Dissenting Shares (as defined in the Agreement), will be converted into the right to receive consideration equal to (i) $5.00 per share in cash (the "Company Common Tranche One Consideration") and (ii) a mixture of cash and/or a fraction of a share of common stock, no par value, of the Merger Partner (the "Merger Partner Common Stock") having an aggregate value of $2.50 (the portion of the consideration to be paid in shares of Merger Partner Common Stock, if any, to be determined with reference to the average of the closing sales price for a share of Merger Partner Common Stock on the Nasdaq Global Market for the 5 consecutive trading days ending with, but including, the trading day that is 6 trading days prior to the Closing Date (as defined in the Agreement)), the proportions of which mixture of cash and/or Merger Partner Common Stock shall be determined in the sole discretion of the Merger Partner (the "Company Common Tranche Two Consideration", and, together with the Company Common Tranche One Consideration, the "Merger Consideration").

In arriving at our opinion, we have (i) reviewed a draft dated December 9, 2006 of the Agreement; (ii) reviewed certain publicly available business and financial information concerning the Company and the Merger Partner and the industries in which they operate; (iii) compared the proposed financial terms of the Merger with the publicly available financial terms of certain transactions involving companies we deemed relevant and the consideration received for such companies; (iv) compared the financial and operating performance of the Company with publicly available information concerning certain other companies we deemed relevant and reviewed the current and historical market prices of the Company Common Stock and the Merger Partner Common Stock and certain publicly traded securities of such other companies; (v) reviewed certain internal financial analyses and forecasts prepared by the management of the Company relating to its business; and (vi) performed such other financial studies and analyses and considered such other information as we deemed appropriate for the purposes of this opinion.

In addition, we have held discussions with certain members of the management of the Company with respect to certain aspects of the Merger, and the past and current business operations of the Company, the financial condition and future prospects and operations of the Company, and certain other matters we believed necessary or appropriate to our inquiry.

In giving our opinion, we have relied upon and assumed, without assuming responsibility or liability for independent verification, the accuracy and completeness of all information that was publicly available or was furnished to or discussed with us by the Company and the Merger Partner or

otherwise reviewed by or for us. We have not conducted or been provided with any valuation or appraisal of any assets or liabilities, nor have we evaluated the solvency of the Company or the Merger Partner under any state or federal laws relating to bankruptcy, insolvency or similar matters. In relying on financial analyses and forecasts provided to us, we have assumed that they have been reasonably prepared based on assumptions reflecting the best currently available estimates and judgments by management as to the expected future results of operations and financial condition of the Company to which such analyses or forecasts relate. We express no view as to such analyses or forecasts or the assumptions on which they were based. We have also assumed that the Merger and the other transactions contemplated by the Agreement will be consummated as described in the Agreement, and that the definitive Agreement will not differ in any material respects from the draft thereof furnished to us. We have also assumed that the representations and warranties made by the Company and the Merger Partner in the Agreement and the related agreements are and will be true and correct in all ways material to our analysis. We are not legal, regulatory or tax experts and have relied on the assessments made by advisors to the Company with respect to such issues. We have further assumed that all material governmental, regulatory or other consents and approvals necessary for the consummation of the Merger will be obtained without any adverse effect on the Company or the Merger Partner or on the contemplated benefits of the Merger.

Our opinion is necessarily based on economic, market and other conditions as in effect on, and the information made available to us as of, the date hereof. It should be understood that subsequent developments may affect this opinion and that we do not have any obligation to update, revise, or reaffirm this opinion. Our opinion is limited to the fairness, from a financial point of view, of the Merger Consideration to be received by the holders of the Company Common Stock in the proposed Merger and we express no opinion as to the fairness of the Merger to, or any consideration received in connection therewith by, the holders of any other class of securities, creditors or other constituencies of the Company or as to the underlying decision by the Company to engage in the Merger. We are expressing no opinion herein as to the price at which the Company Common Stock or the Merger Partner Common Stock will trade at any future time.

We have acted as financial advisor to the Company with respect to the proposed Merger and will receive a fee from the Company for our services, a substantial portion of which will become payable only if the proposed Merger is consummated. In addition, the Company has agreed to indemnify us for certain liabilities arising out of our engagement. Please be advised that we and our affiliates have no other financial advisory or other commercial or investment banking relationships with the Company. We and our affiliates have performed in the past, and may continue to perform, certain services for the Merger Partner and its affiliates, all for customary compensation. In the ordinary course of our businesses, we and our affiliates may actively trade the debt and equity securities of the Company or the Merger Partner for our own account or for the accounts of customers and, accordingly, we may at any time hold long or short positions in such securities.

On the basis of and subject to the foregoing, it is our opinion as of the date hereof that the Merger Consideration to be received by the holders of the Company Common Stock in the proposed Merger is fair, from a financial point of view, to such holders.

This letter is provided to the Board of Directors of the Company in connection with and for the purposes of its evaluation of the Merger. This opinion does not constitute a recommendation to any shareholder of the Company as to how such shareholder should vote with respect to the Merger or any other matter. This opinion may not be disclosed, referred to, or communicated (in whole or in part) to any third party for any purpose whatsoever except with our prior written approval. This opinion may be reproduced in full in any proxy or information statement mailed to shareholders of the Company but may not otherwise be disclosed publicly in any manner without our prior written approval.

Very truly yours,

J.P. MORGAN SECURITIES INC.

J.P. Morgan Securities Inc.

Annex D

Delaware General Corporation Law

§ 262 Appraisal rights.

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word "stockholder" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 257, § 258, § 263 or § 264 of this title:

(1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the agreement of merger or consolidation, were either (i) listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in subsection (f) of § 251 of this title.

(2) Notwithstanding paragraph (1) of this subsection, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a. and b. of this paragraph; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a., b. and c. of this paragraph.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 of this title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for such meeting with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) hereof that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section. Each stockholder electing to demand the appraisal of such stockholder's shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder's shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to § 228 or § 253 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within 10 days thereafter shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if

such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) hereof and who is otherwise entitled to appraisal rights, may file a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder shall have the right to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder's written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) hereof, whichever is later.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

(h) After determining the stockholders entitled to an appraisal, the Court shall appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take

into account all relevant factors. In determining the fair rate of interest, the Court may consider all relevant factors, including the rate of interest which the surviving or resulting corporation would have had to pay to borrow money during the pendency of the proceeding. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, permit discovery or other pretrial proceedings and may proceed to trial upon the appraisal prior to the final determination of the stockholder entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder's certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Interest may be simple or compound, as the Court may direct. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court's decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder's demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.
(8 Del. C. 1953, § 262; 56 Del. Laws, c. 50; 56 Del. Laws, c. 186, § 24; 57 Del. Laws, c. 148, §§ 27-29; 59 Del. Laws, c. 106, § 12; 60 Del. Laws, c. 371, §§ 3-12; 63 Del. Laws, c. 25, § 14; 63 Del. Laws, c. 152, §§ 1, 2; 64 Del. Laws, c. 112, §§ 46-54; 66 Del. Laws, c. 136, §§ 30-32; 66 Del. Laws, c. 352, § 9; 67 Del. Laws, c. 376, §§ 19, 20; 68 Del. Laws, c. 337, §§ 3, 4; 69 Del. Laws, c. 61, § 10; 69 Del. Laws, c. 262, §§ 1-9; 70 Del. Laws, c. 79, § 16; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 299, §§ 2, 3; 70 Del. Laws, c. 349, § 22; 71 Del. Laws, c. 120, § 15; 71 Del. Laws, c. 339, §§ 49-52; 73 Del. Laws, c. 82, § 21.)

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 20. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 317 of the California General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit indemnification, including reimbursement of expenses incurred, under certain circumstances for liabilities arising under the Securities Act. Trimble's bylaws provide that it will indemnify its directors and officers and may indemnify its employees and agents (other than officers and directors) against liabilities to the fullest extent permitted by California law. Trimble is also empowered under its bylaws to enter into indemnification agreements with its directors and officers and to purchase insurance on behalf of any person whom it is required or permitted to indemnify. Trimble has entered into indemnification agreements with each of its current directors and executive officers which provide for indemnification of, and advancement of expenses to, such persons to the greatest extent permitted by California law, including by reason of action or inaction occurring in the past and circumstances in which indemnification and advancement of expenses are discretionary under California law. In addition, Trimble maintains insurance on behalf of its directors and executive officers insuring them against any liability asserted against them in their capacities as directors or officers or arising out of this status.

ITEM 21. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)
Exhibits:

EXHIBIT NO.	DESCRIPTION
2.1	Agreement and Plan of Merger, by and among Trimble Navigation Limited, Roadrunner Acquisition Corp. and @Road, Inc., dated as of December 10, 2006[31]
2.2	Form of Voting Agreement, by and among Trimble Navigation Limited, Roadrunner Acquisition Corp. and certain stockholders of @Road, Inc., dated as of December 10, 2006[32]
3.1	Restated Articles of Incorporation of Trimble Navigation Limited filed June 25, 1986[5]
3.2	Certificate of Amendment of Articles of Incorporation of Trimble Navigation Limited filed October 6, 1988[6]
3.3	Certificate of Amendment of Articles of Incorporation of Trimble Navigation Limited filed July 18, 1990[7]
3.4	Certificate of Determination of Rights, Preferences, Privileges of Series A Participating Preferred Stock of Trimble Navigation Limited filed February 19, 1999[8]
3.5	Certificate of Amendment of Articles of Incorporation of Trimble Navigation Limited filed May 29, 2003[17]
3.6	Certificate of Amendment of Articles of Incorporation of Trimble Navigation Limited filed March 4, 2004[21]
3.7	Bylaws of Trimble Navigation Limited, as amended and restated through July 20, 2006[20]
4.1	Specimen copy of certificate for shares of Common Stock of Trimble Navigation Limited[1]
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4.3	Agreement of Substitution and Amendment of Preferred Shares Rights Agreement dated September 10, 2004[22]

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4.5	Form of Warrant to Purchase Shares of Common Stock dated January 14, 2002[14]
4.6	Form of Warrant dated April 12, 2002[15]
5.1	Opinion regarding legality by Skadden, Arps, Slate, Meagher & Flom LLP[28]
10.1	Form of Indemnification Agreement between Trimble Navigation Limited and its officers and directors[33]
10.2	1990 Director Stock Option Plan, as amended, and form of Outside Director Non-statutory Stock Option Agreement[3]
10.3	1992 Management Discount Stock Option and form of Non-statutory Stock Option Agreement[2]
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10.5	Employment Agreement between Trimble Navigation Limited and Steven W. Berglund dated March 17, 1999[9]
10.6	Trimble Navigation Limited Deferred Compensation Plan effective December 30, 2004, as amended May 19, 2005[10]
10.7	Australian Addendum to the Trimble Navigation 1988 Employee Stock Purchase Plan[12]
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10.17	Trimble Navigation 1988 Employee Stock Purchase Plan, as amended January 19, 2006, and approved by the stockholders on May 18, 2006[29]

10.18	Trimble Navigation Limited 2002 Stock Plan, as amended and restated January 19, 2006, and approved by the stockholders on May 18, 2006[30]
21.1	Subsidiaries of the Company[28]
23.1	Consent of Ernst & Young LLP, independent registered public accounting firm of Trimble Navigation Limited[28]
23.2	Consent of Deloitte & Touche LLP, independent registered public accounting firm of @Road, Inc.[28]
23.3	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibit 5.1)
24.1	Powers of attorney (included on signature pages to this Form S-4 Registration Statement)
99.1	Opinion of JPMorgan, regarding the fairness of the merger (included as Annex C to the proxy statement/prospectus forming a part of this Registration Statement)
99.2	Consent of JPMorgan[28]
99.3	Form of Proxy Card of @Road, Inc.[28]

(1)
Incorporated by reference to exhibit number 4.1 to Trimble's Registration Statement on Form S-1, as amended, which became effective July 19, 1990.

(2)
Incorporated by reference to exhibit number 10.46 to Trimble's Registration Statement on Form S-1, which was filed February 25, 1992.

(3)
Incorporated by reference to exhibit number 10.32 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 31, 1993.

(4)
Incorporated by reference to exhibit number 1 to Trimble's Registration Statement on Form 8-A, which was filed on February 18, 1999.

(5)
Incorporated by reference to exhibit number 3.1 to Trimble's Annual Report on Form 10-K for the fiscal year ended January 1, 1999.

(6)
Incorporated by reference to exhibit number 3.2 to Trimble's Annual Report on Form 10-K for the fiscal year ended January 1, 1999.

(7)
Incorporated by reference to exhibit number 3.3 to Trimble's Annual Report on Form 10-K for the fiscal year ended January 1, 1999.

(8)
Incorporated by reference to exhibit number 3.4 to Trimble's Annual Report on Form 10-K for the fiscal year ended January 1, 1999.

(9)
Incorporated by reference to exhibit number 10.67 to Trimble's Annual Report on Form 10-K for the fiscal year ended January 1, 1999.

(10)
Incorporated by reference to exhibit number 10.1 to Trimble's Current Report on Form 8-K filed on May 25, 2005.

(11)
Incorporated by reference to exhibit number 10.3 to Trimble's Quarterly Report on Form 10-Q for the quarter ended October 3, 2003.

(12)

Incorporated by reference to exhibit number 10.77 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 29, 2000.

(13)
Incorporated by reference to exhibit number 4.1 to Trimble's Current Report on Form 8-K filed on January 16, 2002.

(14)
Incorporated by reference to exhibit number 4.2 to Trimble's Current Report on Form 8-K filed on January 16, 2002.

(15)
Incorporated by reference to exhibit number 4.1 to Trimble's Registration Statement on Form S-3 filed on April 19, 2002.

(16)
Incorporated by reference to exhibit number 10 to Trimble's Quarterly Report on Form 10-Q for the quarter ended September 30, 2005.

(17)
Incorporated by reference to exhibit number 3.5 to Trimble's Quarterly Report on Form 10-Q for the quarter ended July 4, 2003.

(18)
Incorporated by reference to exhibit number 10.15 to Trimble's Annual Report on Form 10-K for fiscal year ended December 31, 2004.

(19)
Incorporated by reference to exhibit number 10.2 to Trimble's Current Report on Form 8-K filed on May 24, 2005.

(20)
Incorporated by reference to exhibit number 3 to Trimble's Current Report on Form 8-K filed on November 13, 2006.

(21)
Incorporated by reference to exhibit number 3.6 to Trimble's Quarterly Report on Form 10-Q for the quarter ended April 2, 2004.

(22)
Incorporated by reference to exhibit number 4.3 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 31, 2004.

(23)
Incorporated by reference to exhibit number 10.13 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 31, 2004.

(24)
Incorporated by reference to exhibit number 10.14 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 31, 2004.

(25)
Incorporated by reference to exhibit number 10.16 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 31, 2004.

(26)
Incorporated by reference to exhibit number 10.17 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 31, 2004.

(27)
Incorporated by reference to exhibit number 10.1 to Trimble's Current Report on Form 8-K filed on January 24, 2006.

(28)
Filed herein.

(29)
Incorporated by reference to exhibit number 10.1 to Trimble's Quarterly Report on Form 10-Q for the quarter ended June 30, 2006.

(30)
Incorporated by reference to exhibit number 10.2 to Trimble's Quarterly Report on Form 10-Q for the quarter ended June 30, 2006.

(31)
Incorporated by reference to exhibit number 2.1 to Trimble's Current Report on Form 8-K filed December 11, 2006.

(32)

Incorporated by reference to exhibit number 2.2 to Trimble's Current Report on From 8-K filed December 11, 2006.

(33)
Incorporated by reference to exhibit number 10.1 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 30, 2005.

(34)
Incorporated by reference to exhibit number 10.17 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 30, 2005.

ITEM 22. UNDERTAKINGS

The undersigned registrant hereby undertakes:

(a) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(b) (1) The undersigned registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

(2) The registrant undertakes that every prospectus (i) that is filed pursuant to paragraph (1) immediately preceding, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Act and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the undersigned registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(d) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b), 11 or 13 of this form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(e) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Sunnyvale, State of California on December 22, 2006.

TRIMBLE NAVIGATION LIMITED

By: /s/ STEVEN W. BERGLUND

Name: Steven W. Berglund
Title: *President and Chief Executive Officer*

POWER OF ATTORNEY

Each person whose signature appears below hereby constitutes and appoints Steven W. Berglund, Rajat Bahri and Irwin L. Kwatek, and each of them, his or her true and lawful attorneys-in-fact and agents with full power of substitution and resubstitution, for him and in his name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) and additions to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, and hereby grants to such attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ STEVEN W. BERGLUND Steven W. Berglund	President, Chief Executive Office & Director (Principal Executive Officer)	December 22, 2006
/s/ RAJAT BAHRI Rajat Bahri	Chief Financial Officer (Principal Financial Officer & Principal Accounting Officer)	December 22, 2006
/s/ ROBERT S. COOPER Robert S. Cooper	Director	December 22, 2006
/s/ JOHN B. GOODRICH John B. Goodrich	Director	December 22, 2006

/s/ WILLIAM HART William Hart	Director	December 22, 2006
/s/ ULF JOHANSSON Ulf Johansson	Director	December 22, 2006
/s/ BRADFORD W. PARKINSON Bradford W. Parkinson	Director	December 22, 2006
/s/ NICKOLAS W. VANDE STEEG Nickolas W. Vande Steeg	Director	December 22, 2006

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Incorporated by reference to exhibit number 4.1 to Trimble's Registration Statement on Form S-1, as amended, which became effective July 19, 1990.

(2)
Incorporated by reference to exhibit number 10.46 to Trimble's Registration Statement on Form S-1, which was filed February 25, 1992.

(3)
Incorporated by reference to exhibit number 10.32 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 31, 1993.

(4)
Incorporated by reference to exhibit number 1 to Trimble's Registration Statement on Form 8-A, which was filed on February 18, 1999.

(5)
Incorporated by reference to exhibit number 3.1 to Trimble's Annual Report on Form 10-K for the fiscal year ended January 1, 1999.

(6)
Incorporated by reference to exhibit number 3.2 to Trimble's Annual Report on Form 10-K for the fiscal year ended January 1, 1999.

(7)
Incorporated by reference to exhibit number 3.3 to Trimble's Annual Report on Form 10-K for the fiscal year ended January 1, 1999.

(8)
Incorporated by reference to exhibit number 3.4 to Trimble's Annual Report on Form 10-K for the fiscal year ended January 1, 1999.

(9)
Incorporated by reference to exhibit number 10.67 to Trimble's Annual Report on Form 10-K for the fiscal year ended January 1, 1999.

(10)
Incorporated by reference to exhibit number 10.1 to Trimble's Current Report on Form 8-K filed on May 25, 2005.

(11)
Incorporated by reference to exhibit number 10.3 to Trimble's Quarterly Report on Form 10-Q for the quarter ended October 3, 2003.

(12)
Incorporated by reference to exhibit number 10.77 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 29, 2000.

(13)
Incorporated by reference to exhibit number 4.1 to Trimble's Current Report on Form 8-K filed on January 16, 2002.

(14)
Incorporated by reference to exhibit number 4.2 to Trimble's Current Report on Form 8-K filed on January 16, 2002.

(15)
Incorporated by reference to exhibit number 4.1 to Trimble's Registration Statement on Form S-3 filed on April 19, 2002.

(16)
Incorporated by reference to exhibit number 10 to Trimble's Quarterly Report on Form 10-Q for the quarter ended September 30, 2005.

(17)
Incorporated by reference to exhibit number 3.5 to Trimble's Quarterly Report on Form 10-Q for the quarter ended July 4, 2003.

(18)
Incorporated by reference to exhibit number 10.15 to Trimble's Annual Report on Form 10-K for fiscal year ended December 31, 2004.

(19)
Incorporated by reference to exhibit number 10.2 to Trimble's Current Report on Form 8-K filed on May 24, 2005.

(20)
Incorporated by reference to exhibit number 3 to Trimble's Current Report on Form 8-K filed on November 13, 2006.

(21)

Incorporated by reference to exhibit number 3.6 to Trimble's Quarterly Report on Form 10-Q for the quarter ended April 2, 2004.

(22)
Incorporated by reference to exhibit number 4.3 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 31, 2004.

(23)
Incorporated by reference to exhibit number 10.13 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 31, 2004.

(24)
Incorporated by reference to exhibit number 10.14 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 31, 2004.

(25)
Incorporated by reference to exhibit number 10.16 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 31, 2004.

(26)
Incorporated by reference to exhibit number 10.17 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 31, 2004.

(27)
Incorporated by reference to exhibit number 10.1 to Trimble's Current Report on Form 8-K filed on January 24, 2006.

(28)
Filed herein.

(29)
Incorporated by reference to exhibit number 10.1 to Trimble's Quarterly Report on Form 10-Q for the quarter ended June 30, 2006.

(30)
Incorporated by reference to exhibit number 10.2 to Trimble's Quarterly Report on Form 10-Q for the quarter ended June 30, 2006.

(31)
Incorporated by reference to exhibit number 2.1 to Trimble's Current Report on Form 8-K filed December 11, 2006.

(32)
Incorporated by reference to exhibit number 2.2 to Trimble's Current Report on From 8-K filed December 11, 2006.

(33)
Incorporated by reference to exhibit number 10.1 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 30, 2005.

(34)
Incorporated by reference to exhibit number 10.17 to Trimble's Annual Report on Form 10-K for the fiscal year ended December 30, 2005.

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