SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)
(X) QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarter ended April 30, 1998

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

Commission File Number 0-22846

CMG INFORMATION SERVICES, INC.
---
(Exact name of registrant as specified in its charter)

| DELAWARE | 04-2921333 |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |

| 100 Brickstone Square, First Floor Andover, Massachusetts | 01810 (Zip Code) |
|---|---|
| (Address of principal executive offices) | |

(978) 684-3600
(Registrant's telephone number, including area code)

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 |
|---|---|---|
| --- | | --- |

Number of shares outstanding of the issuer's common stock, as of June 11, 1998

| Common Stock, par value $.01 per share | 22,890,120 |
|---|---|
| --- | --- |
| Class | Number of shares outstanding |

CMG INFORMATION SERVICES, INC.
FORM 10-Q

INDEX

CMG INFORMATION SERVICES, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

(in thousands, except share and per share amounts)

| | April 30, 1998 (Unaudited) | July 31, 1997 |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 48,670 | $ 59,762 |
| Available-for-sale securities | 1,200 | 5,945 |
| Accounts and license fees receivable, less allowance for doubtful accounts | 16,955 | 28,935 |
| Prepaid expenses | 2,821 | 6,174 |
| Other current assets | 9,039 | 5,875 |
| Total current assets | 78,685 | 106,691 |
| Property and equipment, net | 9,309 | 11,144 |
| Investments in affiliates | 34,775 | 9,160 |
| Cost in excess of net assets of subsidiaries acquired, net of accumulated amortization | 27,008 | 17,109 |
| Other assets | 2,849 | 4,250 |
| | $ 152,626 | $ 148,354 |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | |
| Current liabilities: | | |
| Notes payable | $ 23,200 | $ 22,494 |
| Current installments of long-term debt | 3,514 | 3,221 |
| Accounts payable | 8,585 | 9,959 |
| Accrued expenses | 13,834 | 18,341 |
| Deferred revenues | 3,851 | 13,680 |
| Other current liabilities | 3,946 | 442 |
| Total current liabilities | 56,930 | 68,137 |
| Long-term debt, less current installments | 6,880 | 9,550 |
| Long-term deferred revenues | -- | 5,100 |
| Deferred income taxes | 7,751 | 8,481 |
| Other long-term liabilities | 4,586 | 2,119 |
| Minority interest | 6,984 | 25,519 |
| Commitments and contingencies | | |
| Stockholders' equity: | | |
| Preferred stock, $.01 par value. Authorized 5,000,000 shares; none issued | -- | -- |
| Common stock, $.01 par value. Authorized 40,000,000 shares; issued and outstanding 22,688,114 shares at April 30, 1998 and 19,319,086 shares at July 31, 1997 | 227 | 193 |
| Additional paid-in capital | 74,565 | 16,783 |
| Deferred compensation | (2,073) | -- |
| Net unrealized gain on available-for-sale securities | -- | 852 |
| Retained earnings (deficit) | (3,224) | 11,620 |
| Total stockholders' equity | 69,495 | 29,448 |
| | $ 152,626 | $ 148,354 |

The accompanying notes are an integral part of the consolidated financial statements.

CMG INFORMATION SERVICES, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited)

(in thousands, except per share amounts)

| | Three months ended April 30, | | Nine months ended April 30, | |
|---|---|---|---|---|
| | 1998 | 1997 | 1998 | 1997 |
| Net revenues | $ 20,428 | $ 19,010 | $ 63,381 | $ 48,547 |
| Operating expenses: | | | | |
| Cost of revenues | 18,704 | 11,551 | 49,655 | 28,203 |
| Research and development | 3,968 | 6,466 | 14,781 | 18,163 |
| In-process research and development | 18,060 | -- | 18,935 | 1,312 |
| Selling | 6,771 | 8,373 | 23,496 | 26,693 |
| General and administrative | 5,332 | 4,376 | 14,624 | 13,190 |
| Total operating expenses | 52,835 | 30,766 | 121,491 | 87,561 |
| Operating loss | (32,407) | (11,756) | (58,110) | (39,014) |
| Other income (expense): | | | | |
| Interest income | 573 | 833 | 1,712 | 2,482 |
| Interest expense | (775) | (505) | (2,261) | (970) |
| Gain on sale of data warehouse product rights | -- | -- | 8,437 | -- |
| Gain on sale of Lycos, Inc. common stock | 26,092 | -- | 43,180 | -- |
| Gain on sale of Premiere Technologies, Inc. common stock | -- | -- | 4,174 | -- |
| Gain on sale of investment in TeleT Communications | -- | -- | -- | 3,616 |
| Gain on sale of NetCarta Corporation | -- | -- | -- | 15,111 |
| Gain on stock issuance by Lycos, Inc. | 4,082 | -- | 3,996 | -- |
| Equity in losses of affiliates | (3,908) | (1,924) | (8,424) | (4,013) |
| Minority interest | -- | 492 | (28) | 3,939 |
| | 26,064 | (1,104) | 50,786 | 20,165 |
| Loss before income taxes | (6,343) | (12,860) | (7,324) | (18,849) |
| Income tax expense (benefit) | 5,351 | (2,584) | 7,519 | (1,842) |
| Net loss | $ (11,694) | $ (10,276) | $ (14,843) | $ (17,007) |
| Net loss per share: | | | | |
| Basic | $ (0.55) | $ (0.53) | $ (0.73) | $ (0.91) |
| Diluted | $ (0.55) | $ (0.53) | $ (0.73) | $ (0.91) |
| Shares used in computing net loss per share: | | | | |
| Basic | 21,418 | 19,244 | 20,213 | 18,654 |
| Diluted | 21,418 | 19,244 | 20,213 | 18,654 |

The accompanying notes are an integral part of the consolidated financial statements.

CMG INFORMATION SERVICES, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited)

(in thousands)

| | Nine months ended April 30, | |
|---|---|---|
| | 1998 | 1997 |
| Cash flows from operating activities: | | |
| Net loss | $ (14,843) | $ (17,007) |
| Adjustments to reconcile net loss to net cash used for operating activities: | | |
| Depreciation and amortization | 4,679 | 3,757 |
| Deferred income taxes | (991) | (703) |
| Gain on sale of data warehouse product rights | (8,437) | -- |
| Gains on sales of CMG@Ventures investments | (47,354) | (18,727) |
| Gain on stock issuance by Lycos, Inc. | (3,996) | -- |
| Equity in losses of affiliates | 8,424 | 4,013 |
| Minority interest | 28 | (3,939) |
| In-process research and development | 18,935 | 1,312 |
| Changes in operating assets and liabilities, excluding effects from acquisitions and divestitures of subsidiaries: | | |
| Accounts and license fees receivable | (4,052) | (7,344) |
| Prepaid expenses and other current assets | (7,103) | (7,312) |
| Accounts payable and accrued expenses | 3,587 | 9,888 |
| Deferred revenues | 2,619 | 4,907 |
| Refundable and accrued income taxes, net | 8,539 | (2,523) |
| Other assets and liabilities | (235) | (168) |
| Net cash used for operating activities | (40,200) | (33,846) |
| Cash flows from investing activities: | | |
| Additions to property and equipment | (4,217) | (5,233) |
| Proceeds from sale of data warehouse product rights | 9,543 | -- |
| Proceeds from sales of CMG@Ventures investments | 53,899 | 19,018 |
| Investments in affiliates and acquisitions of subsidiaries | (13,913) | (18,782) |
| Proceeds from sales or maturities of available-for-sale securities | -- | 11,056 |
| Reduction in cash due to deconsolidation of Lycos, Inc. | (41,017) | -- |
| Other | 217 | (832) |
| Net cash provided by investing activities | 4,512 | 5,227 |
| Cash flows from financing activities: | | |
| Proceeds from issuance of notes payable, net of repayments | 706 | 12,600 |
| Proceeds from issuance of long-term debt | -- | 5,500 |
| Repayments of long-term debt | (2,377) | -- |
| Sale of common and treasury stock, net | 23,095 | 7,723 |
| Purchase of treasury stock | -- | (984) |
| Proceeds from issuance of stock by subsidiary | 477 | -- |
| Other | 2,695 | 2,135 |
| Net cash provided by financing activities | 24,596 | 26,974 |
| Net decrease in cash and cash equivalents | (11,092) | (1,645) |
| Cash and cash equivalents at beginning of period | 59,762 | 63,387 |
| Cash and cash equivalents at end of period | $ 48,670 | $ 61,742 |

The accompanying notes are an integral part of the consolidated financial statements.

CMG INFORMATION SERVICES, INC. AND SUBSIDIARIES
NOTES TO INTERIM CONSOLIDATED FINANCIAL STATEMENTS

A. Basis of Presentation

The accompanying unaudited consolidated financial statements have been prepared by CMG Information Services, Inc. ("CMG" or the "Company") in accordance with generally accepted accounting principles. In the opinion of management, these consolidated financial statements contain all adjustments, consisting only of those of a normal recurring nature, necessary for a fair presentation of the Company's financial position, results of operations and cash flows at the dates and for the periods indicated. While the Company believes that the disclosures presented are adequate to make the information not misleading, these consolidated financial statements should be read in conjunction with the audited financial statements and related notes for the year ended July 31, 1997 which are contained in the Company's Annual Report on Form 10-K. The results for the three and nine month periods ended April 30, 1998 are not necessarily indicative of the results to be expected for the full fiscal year. Certain prior year amounts in the consolidated financial statements have been reclassified in accordance with generally accepted accounting principles to conform with current year presentation.

B. Deconsolidation of Lycos, Inc.

During the second fiscal quarter ended January 31, 1998, the Company sold 340,000 shares of Lycos stock on the open market and distributed 216,034 Lycos shares to the profit members of CMG@Ventures I LLC (formerly CMG@Ventures L.P.). Through the sale and distribution of Lycos shares by CMG along with the impact of increased Lycos outstanding shares, the Company's ownership percentage in Lycos was reduced from just in excess of 50% at October 31, 1997, to below 50% beginning in November, 1997, and to 35% as of April 30, 1998. As such, starting in November 1997, the Company began accounting for its remaining investment in Lycos under the equity method of accounting, rather than the consolidation method. Prior to these events, the operating results of Lycos were consolidated within the operating results of the Company's investment and development segment, and the assets and liabilities of Lycos were consolidated with those of CMG's other majority owned subsidiaries in the Company's consolidated balance sheets. The Company's historical quarterly consolidated operating results for the fiscal year ended July 31, 1997 and the fiscal quarter ended October 31, 1997 included Lycos sales and operating losses as follows:

(in thousands)

| | Fiscal Quarter Ended | | | | |
|---|---|---|---|---|---|
| | Oct. 31, 1996 | Jan. 31, 1997 | Apr. 30, 1997 | Jul. 31, 1997 | Oct. 31, 1997 |
| Net revenues | $ 3,663 | $ 5,004 | $ 5,853 | $ 7,753 | $ 9,303 |
| Operating loss | $ (3,341) | $ (2,553) | $ (1,753) | $ (1,102) | $ (433) |

The Company's historical consolidated balance sheets as of July 31, 1997 and October 31, 1997 included Lycos current assets and liabilities and total assets and liabilities as follows:

| | Jul. 31, 1997 | Oct. 31, 1997 |
|---|---|---|
| Current assets | $ 60,745 | $ 63,935 |
| Total assets | $ 65,419 | $ 67,694 |
| Current liabilities | $ 22,615 | $ 25,822 |
| Total liabilities | $ 27,772 | $ 29,259 |

B. Deconsolidation of Lycos, Inc. (continued)

The following table contains the summarized financial information for Lycos subsequent to deconsolidation in November, 1997:

(in thousands)

Condensed Statement of Operations:

| | Quarter Ended January 31, 1998 | Quarter Ended April 30, 1998 |
|---|---|---|
| Net revenues | $ 12,603 | $ 15,129 |
| Operating loss | $ (263) | $ (92,046) |
| Net income | $ 301 | $ (91,522) |

Condensed Balance Sheet:

| | January 31, 1998 | April 30, 1998 |
|---|---|---|
| Current assets | $ 65,569 | $ 79,372 |
| Noncurrent assets | 6,132 | 45,247 |
| Total assets | $ 71,701 | $ 124,619 |
| Current liabilities | $ 26,609 | $ 40,145 |
| Noncurrent liabilities | 6,009 | 27,265 |
| Stockholders' equity | 39,083 | 57,209 |
| Total liabilities and stockholders' equity | $ 71,701 | $ 124,619 |

C. Sale of Engage Data Warehouse Products and Restructuring of Engage Technologies

From its inception in August, 1995, through July 31, 1997, the Company's wholly-owned subsidiary, Engage Technologies, Inc. (Engage) focused on providing traditional mailing list maintenance and database services (through its ListLab division), and on developing data mining, querying, analysis and targeting software products for use in large database applications. As such, the results of Engage's operations were classified in the Company's list and database services segment through July 31, 1997. During the first quarter of fiscal 1998, Engage sold certain rights to its Engage.Fusion(TM) and Engage.Discover(TM) data warehouse products to Red Brick Systems, Inc. (Red Brick) for $9.5 million and 238,160 shares of Red Brick common stock, and recorded a pretax gain of $8,437,000 on the sale. These highly advanced products had been developed to accelerate the design and creation of very large data warehouses and perform high-end data query and analysis. Engage retained the exclusive right to sell Engage.Fusion and Engage.Discover to interactive media markets as part of its Engage Product Suite. Additionally, during the first quarter of fiscal year 1998, Engage transferred its ListLab division to the Company's recently formed subsidiary, CMG Direct Corporation. With the sale of these rights and transfer of its ListLab division, Engage has narrowed its focus to the Internet software solutions market, where it seeks to help companies individually distinguish, understand and interact with anonymous prospects and customers in personalized marketing, sales, and service relationships via the Internet. As a result of this repositioning, beginning in fiscal year 1998, the operating results of Engage are now classified in the Company's investment and development segment.

The 238,160 shares of Red Brick common stock received from the sale of Engage's data warehouse products are subject to a one year restriction on transferability, and have been classified in available-for-sale securities, with a carrying value of $1,200,000, net of market value discount to reflect the holding period requirement. The estimated fair value of these shares approximates their carrying value as of April 30, 1998.

D. Two-For-One Common Stock Split

On May 11, 1998, the Company effected a two-for-one common stock split in the form of a stock dividend. Accordingly, the consolidated financial statements have been retroactively adjusted for all periods presented to reflect this event.

E. Sales and Distributions of Lycos and Premiere Technologies Stock

During the first nine months of fiscal 1998, CMG@Ventures I LLC (formerly CMG@Ventures L.P.) distributed 2,333,334 of its shares of Lycos, Inc. (Lycos) common stock to the Company, and 452,943 shares to CMG@Ventures I LLC's profit members. During fiscal 1998, the Company filed with the SEC on Form 144 its intent to sell 1,004,915 of its shares of Lycos stock on the open market. During the first quarter of fiscal 1998, the Company sold 219,915 of its Lycos shares for proceeds of $7,149,000 and recognized a pretax gain of $6,324,000 on the sales. The Company sold an additional 340,000 of its Lycos shares during the second quarter of fiscal 1998 for proceeds of $11,649,000 and recognized a pretax gain of $10,764,000 on the sales. During the third quarter of fiscal 1998, the Company sold 445,000 of its Lycos shares for proceeds of $27,546,000 and recognized a pretax gain of $26,092,000 on the sales. The gains on the Company's sales of Lycos shares are reported net of the associated interest attributed to CMG@Ventures I LLC's profit members.

During the first quarter of fiscal year 1998, CMG@Ventures I LLC distributed 224,795 of its shares of Premiere Technologies, Inc. (Premiere) common stock to the Company, and allocated 58,538 Premiere shares to CMG@Ventures I LLC's profit members. The Company sold its 224,795 shares during the first quarter for proceeds of $7,555,000, realizing a net gain of $4,174,000 on the sale.

F. Sale of CMG Common Stock

Pursuant to a stock purchase agreement entered into as of December 19, 1997, the Company sold 1,006,004 shares of its common stock to Intel Corporation (Intel) on December 19, 1997, representing 4.9% of CMG's total outstanding shares of common stock following the sale. The CMG shares sold to Intel were priced at $10.87 per share, with proceeds to CMG totaling $10,937,000. The CMG shares purchased by Intel are not registered under the Securities Act of 1933, as amended. Under the terms of the agreement, Intel is entitled to two demand registration rights as well as piggyback registration rights. Additionally, Intel is subject to "stand still" provisions, whereby it is prohibited for a period of three years, without the consent of CMG, (i) from increasing its ownership in CMG above ten percent of CMG's outstanding shares, (ii) from exercising any control or influence over CMG, and (iii) from entering into any voting agreement with respect to its CMG shares.

Pursuant to a stock purchase agreement entered into as of February 15, 1998, the Company sold 625,000 shares of its common stock to Sumitomo Corporation ("Sumitomo") on February 27, 1998. The CMG shares sold to Sumitomo were priced at $16.00 per share, with proceeds to CMG totaling $10,000,000. The CMG shares purchased by Sumitomo are not registered under the Securities Act of 1933, as amended, and carry a one year restriction on transfer or sale. Under the terms of the agreement and following the one-year period, Sumitomo is entitled to two demand registration rights as well as piggyback registration rights. Additionally, Sumitomo is subject to "stand still" provisions, whereby it is prohibited for a period of three years, without the consent of CMG, from (i) increasing its ownership in CMG above ten percent of CMG's outstanding shares, (ii) proposing or soliciting any person to propose a business combination with, or change of control of, CMG, (iii) making, proposing or soliciting any person to propose a tender offer for CMG stock, and (iv) entering into any voting agreement with respect to its CMG shares.

G. Acquisitions and Investments

During the first quarter of fiscal 1998, the Company, through its limited liability company subsidiaries, CMG@Ventures I LLC and CMG@Ventures II LLC (together CMG@Ventures), invested a total of $3,016,000 to acquire an initial 11% minority ownership interest in Chemdex Corporation (Chemdex), a developer of an online marketplace for life science products, an initial 22% interest in Speech Machines plc (Speech Machines), a developer of productivity-enhancing technologies using advanced speech recognition applications, and to participate in a follow on equity round of financing raised by GeoCities. During the first quarter of fiscal 1998, the Company's investment in Chemdex was carried at cost in CMG's financial statements. The Company's investment in Speech Machines is accounted for under the equity method. The GeoCities financing round included participation from outside investors, and afterwards, the Company's ownership in GeoCities remained unchanged at 41%. Also in the first quarter of fiscal year 1998, the Company, through CMG@Ventures, exercised 96,000 Lycos options for an investment of $192,000, and provided $500,000 of bridge loan financing to Parable LLC. CMG had initially purchased its 96,000 Lycos options in fiscal 1997 for $456,000.

In addition, the Company formed a new wholly owned subsidiary, THE PASSWORD Internet Publishing Corporation (THE PASSWORD), during the first quarter of fiscal 1998. THE PASSWORD uses the core ECHO (TM) technology developed by InfoMation Publishing Corporation, to provide an Internet service which packages content, commerce and community around highly specific, special interests. The results of operations of THE PASSWORD are included in the Company's investment and development segment.

During the second quarter of fiscal 1998, CMG @Ventures invested a total of $2,800,000 in additional equity rounds of Sage Enterprises, Inc. (Sage Enterprises), Speech Machines and Chemdex. As a result of these investments, the Company's ownership interests in Sage Enterprises, Speech Machines and Chemdex increased to 29%, 29% and just in excess of 20%, respectively. As a result of the Company's ownership interest in Chemdex increasing from 11% to just in excess of 20%, the Company began accounting for its investment in Chemdex on the equity method during the second quarter. CMG@Ventures also provided bridge loan financing totaling $1,071,000 to Parable LLC and Reel.com LLC during the second quarter of fiscal 1998. Also in the second quarter of fiscal 1998, GeoCities raised $25,000,000 in additional equity financing from SOFTBANK Holdings, Inc. As a result of the additional shares issued by GeoCities, CMG@Ventures' ownership interest in GeoCities decreased from 41% to 35%.

The acquisition accounting and valuation for the total of $1,800,000 invested in Speech Machines by the Company during the first and second quarters of fiscal 1998 resulted in a total of $875,000 being identified as in-process research and development, which has been expensed because technological feasibility had not been reached at the dates the investments were made.

During the third quarter of fiscal 1998, CMG@Ventures participated in follow-on rounds raised by KOZ and Sage Enterprises, investing a total of $2,164,000, which resulted in a net reduction of ownership in KOZ from 15% to 14%, and no change in CMG@Ventures' 29% ownership in Sage Enterprises. CMG@Ventures also invested a total of $2,117,000 in a new round raised by Parable, including the conversion of $1,222,000 of previously provided bridge loans, resulting in a net reduction in CMG@Ventures ownership in Parable from 46% to 42%. Also during the third quarter, CMG@Ventures invested $2 million to acquire an initial 14% ownership in Select Technologies, a traditional ticketing software company that is developing software for a distributed transaction network for purchasing tickets over the Internet, and invested $1 million to acquire an initial 7% ownership in Critical Path. Critical Path supplies carrier-class email hosting to ISPs, Web hosting companies, supersites, and corporate customers. CMG@Ventures also provided $447,000 in additional bridge loan financing to Reel.com during the third quarter.

G. Acquisitions and Investments (continued)

During April, 1998, the Company acquired Accipiter, Inc. (Accipiter), a company specializing in Internet advertising management solutions, in exchange for 1,263,692 shares of the Company's common stock. The shares issued by the Company in the acquisition of Accipiter are not registered under the Securities Act of 1933 and are subject to restrictions on transferability for periods ranging from six to twenty-four months. The total purchase price for Accipiter was valued at $30,178,000, including costs of acquisition of approximately $198,000. The value of the Company's shares included in the purchase price was recorded net of a 15% market value discount, based on an independent appraisal, to reflect the restrictions on transferability.

Approximately $2.2 million of deferred compensation was recorded at the time of acquisition relating to approximately 43,000 of the Company's common shares issued to employee stockholders of Accipiter which are being held in escrow. These shares are excluded from the purchase price because their ultimate issuance is contingent upon the retention of the employees and the achievement of certain performance criteria by Accipiter during the escrow period. Deferred compensation expense will be recognized over the two-year period of the escrow agreement.

The acquisition of Accipiter has been accounted for using the purchase method of accounting, and, accordingly, the purchase price has been allocated to the assets purchased and the liabilities assumed based upon their fair values at the date of acquisition. Of the purchase price, $11,093,000 was allocated to goodwill, which will be amortized on a straight line basis over five years and $18,010,000 was allocated to in-process research and development which has been charged to operations during the quarter ended April 30, 1998.

The net purchase price was allocated as follows:

| | |
|---|---|
| Working capital, including cash acquired | $ 811,000 |
| Property, plant and equipment | 262,000 |
| Other assets | 2,000 |
| In-process research and development | 18,010,000 |
| Goodwill | 11,093,000 |
| Purchase price | $ 30,178,000 |

H. Notes Payable

On January 20, 1998, the Company renewed its collateralized corporate borrowing for an additional term of one year and increased the outstanding principal amount under this facility from $10,000,000 to $20,000,000. This borrowing is secured by 1,255,789 of the Company's shares of Lycos common stock, with interest payable quarterly at a rate of LIBOR plus 1.75%. Under this agreement, the Company could become subject to additional collateral requirements under certain circumstances. The Company has entered into an interest rate swap arrangement that effectively fixed the interest rate on this $20 million debt at a rate of 7.40% beginning April 20, 1998 through January 20, 1999. At July 31, 1997, the Company's credit agreements included a $10 million corporate line of credit facility, which has subsequently lapsed, and the Company has not pursued renewal. Notes payable at April 30, 1998 also includes $3,200,000 owed by the Company's subsidiary, SalesLink Corporation, under its line of credit facility.

I. Loss Per Share

During the quarter ended January 31, 1998, the Company adopted Statement of Financial Accounting Standards (SFAS) No. 128, "Earnings per Share". SFAS No. 128 required the Company to change the method formerly used to compute earnings per share and to restate all prior periods presented. Basic earnings per share is computed based on the weighted average number of common shares outstanding during the period. Weighted average common equivalent shares outstanding during the period, using the "treasury stock method", are included in the calculation of diluted earnings per share only when the effect of their inclusion would be dilutive. Accordingly, since the Company reported a net loss for the three and nine month periods ended April 30, 1998 and April 30, 1997, common equivalent shares have not been included in the calculation of diluted earnings per share for these periods.

If a subsidiary has dilutive stock options or warrants outstanding, diluted earnings per share is computed by first deducting from net income (loss), the income attributable to the potential exercise of the dilutive stock options or warrants of the subsidiary. The effect of income attributable to dilutive.subsidiary stock equivalents was immaterial for the three and nine months ended April 30, 1998 and 1997.

The following table sets forth the reconciliation of the net income (loss) per share calculation per SFAS No. 128:

(in thousands, except per share amounts)

| | Three months ended April 30, | | Nine months ended April 30, | |
|---|---|---|---|---|
| | 1998 | 1997 | 1998 | 1997 |
| Basic and diluted net loss per share: | | | | |
| Net loss | $(11,694) | $(10,276) | $(14,843) | $(17,007) |
| Weighted average common shares outstanding | 21,418 | 19,244 | 20,213 | 18,654 |
| Shares used in computing per share amount | 21,418 | 19,244 | 20,213 | 18,654 |
| Basic and diluted net loss per share | $ (0.55) | $ (0.53) | $ (0.73) | $ (0.91) |

J. Consolidated Statements of Cash Flows Supplemental Information

| | Nine months ended April 30, | |
|---|---|---|
| | 1998 | 1997 |
| Cash paid during the period for: | | |
| Interest | $ 2,034 | $ 757 |
| Income taxes | $ 517 | $ 799 |

K. Segment Information

The Company's operations are classified in three primary business segments: (i) lists and database services, (ii) fulfillment services and (iii) investment and development. Summarized financial information by business segment is as follows:

| | Three months ended April 30, | | Nine months ended April 30, | |
|---|---|---|---|---|
| | 1998 | 1997 | 1998 | 1997 |
| Net revenues: | | | | |
| Investment and development | $ 2,208,000 | $ 6,015,000 | $ 14,539,000 | $ 15,454,000 |
| Fulfillment services | 15,937,000 | 10,587,000 | 41,431,000 | 24,746,000 |
| Lists and database services | 2,283,000 | 2,408,000 | 7,411,000 | 8,347,000 |
| | $ 20,428,000 | $ 19,010,000 | $ 63,381,000 | $ 48,547,000 |
| Operating income (loss): | | | | |
| Investment and development | $(33,704,000) | $ (9,481,000) | $(61,749,000) | $(34,827,000) |
| Fulfillment services | 1,547,000 | 1,160,000 | 3,757,000 | 3,257,000 |
| Lists and database services | (250,000) | (3,435,000) | (118,000) | (7,444,000) |
| | $(32,407,000) | $(11,756,000) | $(58,110,000) | $(39,014,000) |

L. Subsequent Events

In June, 1998, Lycos completed a secondary public offering of 2,250,000 shares of its common stock, consisting of 2,000,000 shares sold by Lycos and 250,000 shares sold by CMG. Total proceeds to Lycos and CMG, net of underwriting discounts and commissions, were $95,260,000 and $11,907,500, respectively. In addition to a significant gain on the sale of its Lycos shares in the offering, CMG expects to record a significant gain on the issuance of stock by Lycos in the offering during its fourth quarter ended July 31, 1998.

In May, 1998, CMG @Ventures invested a total of $4.6 million, including the conversion of $796,000 of bridge loans, to participate in a financing round raised by Reel.com and to acquire shares from other Reel.com shareholders. As a result of this investment, CMG@Ventures ownership in Reel.com increased from 31% to 36%. CMG@Ventures also invested an additional $3 million as part of a $16 million equity round raised by Silknet, which resulted in CMG@Ventures maintaining its 23% ownership interest in Silknet. Also, CMG@Ventures invested $1.9 million in an additional financing round raised by Chemdex. CMG@Ventures' ownership in Chemdex was reduced from just in excess of 20% to 16% and, as a result, beginning in the fourth quarter, the Company will no longer apply the equity method of accounting for its investment in Chemdex.

In June, 1998, CMG@Ventures invested $2 million for an initial 24% ownership interest in Mother Nature's General Store, Inc., a leading e-commerce company in the vitamin, natural supplement market.

On June 15, 1998, the Company announced that it had entered into a definitive agreement to acquire InSolutions Incorporated (InSolutions), a provider of turnkey services, which include supply chain management, inventory management, manufacturing assembly, CD-ROM duplication services and demonstration disks. The acquisition is preliminarily valued at $17 million. Upon completion of the acquisition, InSolutions will become a wholly-owned subsidiary of the Company and its operating results will be included in the Company's fulfillment services segment. The transaction will be accounted for as a purchase.

CMG INFORMATION SERVICES, INC. AND SUBSIDIARIES
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION
AND RESULTS OF OPERATIONS

The matters discussed in this report contain forward-looking statements that involve risks and uncertainties. The Company's actual results could differ materially from those discussed herein. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in this section and elsewhere in this report, and the risks discussed in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section included in the Company's Annual Report on Form 10-K for the year ended July 31, 1997.

Deconsolidation of Lycos, Inc, Beginning November, 1997

During the second fiscal quarter ended January 31, 1998, the Company sold 340,000 shares of Lycos stock on the open market and distributed 216,034 Lycos shares to the profit members of CMG@Ventures I LLC (formerly CMG@Ventures, L.P.). Through the sale and distribution of Lycos shares, the Company's ownership percentage in Lycos was reduced from just in excess of 50% at October 31, 1997, to below 50% beginning in November, 1997. As such, starting in November, 1997, the Company began accounting for its remaining investment in Lycos under the equity method of accounting, rather than the consolidation method. Prior to these events, the operating results of Lycos were consolidated within the operating results of the Company's investment and development segment, and the assets and liabilities of Lycos were consolidated with those of CMG's other majority owned subsidiaries in the Company's consolidated balance sheets. The Company's historical quarterly consolidated operating results for the fiscal year ended July 31, 1997 and the fiscal quarter ended October 31, 1997 included Lycos sales and operating losses as follows:

(in thousands)

| | Fiscal Quarter ended | | | | |
|---|---|---|---|---|---|
| | Oct. 31, 1996 | Jan. 31, 1997 | Apr. 30,1997 | Jul. 31, 1997 | Oct. 31, 1997 |
| Net revenues | $ 3,663 | $ 5,004 | $ 5,853 | $ 7,753 | $ 9,303 |
| Operating loss | $ (3,341) | $ (2,553) | $ (1,753) | $ (1,102) | $ (433) |

The Company's historical consolidated Balance Sheets as of July 31, 1997 and October 31, 1997 included Lycos current assets and liabilities and total assets and liabilities as follows:

| | Jul. 31, 1997 | Oct. 31, 1997 |
|---|---|---|
| Current assets | $ 60,745 | $ 63,935 |
| Total assets | $ 65,419 | $ 67,694 |
| Current liabilities | $ 22,615 | $ 25,822 |
| Total liabilities | $ 27,772 | $ 29,259 |

Sale of Engage Data Warehouse Products and Restructuring of Engage Technologies

From its inception in August, 1995, through July 31, 1997, the Company's wholly-owned subsidiary, Engage Technologies, Inc. (Engage) focused on providing traditional mailing list maintenance and database services (through its ListLab division), and on developing data mining, querying, analysis and targeting software products for use in large database applications. As such, the results of Engage's operations were classified in the Company's list and database services segment. During the first quarter of fiscal 1998, Engage sold certain rights to its Engage.Fusion(TM) and Engage.Discover(TM) data warehouse products to Red Brick Systems, Inc. (Red Brick) for $9.5 million and 238,160 shares of Red Brick common stock. These highly advanced products had been developed to accelerate the design and creation of very large data warehouses and perform high-end data query and analysis. Engage retained the exclusive right to sell Engage.Fusion and Engage.Discover to interactive media markets as part of its Engage Product Suite. Additionally, during the first quarter of fiscal year 1998, Engage transferred its ListLab division to the Company's recently formed subsidiary, CMG Direct Corporation. With the sale of these rights and transfer of its ListLab division, Engage narrowed its focus to the Internet software solutions market, where it seeks to help companies individually distinguish, understand and interact with anonymous prospects and customers in personalized marketing, sales, and service relationships via the Internet. As a result of this repositioning, beginning in fiscal year 1998, the operating results of Engage are now classified in the Company's investment and

development segment.

Three months ended April 30, 1998 compared to three months ended April 30, 1997

Net revenues for the Company's third fiscal quarter ended April 30, 1998 increased $1,418,000, or 7%, to $20,428,000 from $19,010,000 for the quarter ended April 30, 1997. The net increase reflects an increase of $5,350,000 for the Company's fulfillment services segment, partially offset by decreases of $3,807,000 and $125,000 in the Company's investment and development, and lists and database services segments, respectively. The increase in fulfillment services segment revenues primarily reflects the addition of new customers and additional turnkey business from existing customers. The investment and development segment decrease primarily reflects the impact of deconsolidating Lycos, which comprised $5,853,000 of prior year third quarter net revenues, offset by the impact of consolidating Vicinity's results beginning in the fourth quarter of fiscal year 1997, and the addition of early stage revenues from Engage, NaviSite, Planet Direct and ADSmart. Investment and development segment fiscal 1998 net revenues also include the addition of approximately one month's operating results for Accipiter, which was acquired April 9, 1998. Net revenues in the Company's lists and database services segment decreased by $125,000, primarily reflecting reduced sales from a significant customer. The Company believes that its portfolio of companies will continue to develop and introduce their products commercially, actively pursue increased revenues from new and existing customers, and look to expand into new market opportunities. Therefore, absent the impact of the change in accounting for Lycos, the Company expects to report future revenue growth.

Cost of revenues increased $7,153,000, or 62%, to $18,704,000 in the third quarter of fiscal 1998 from $11,551,000 for the corresponding period in fiscal 1997, reflecting increases of $4,319,000 and $3,129,000 in the fulfillment services and investment and development segments, respectively, offset by a $295,000 decrease in the lists and database services segment. In the fulfillment services segment, cost of revenues increased as a result of revenue increases, and increased as a percentage of net revenues to 77% in the third quarter of fiscal 1998 from 76% in the third quarter of fiscal 1997, due to a shift in mix of services from literature fulfillment towards lower margin turnkey business. The increase in the investment and development segment primarily resulted from the commencement of operations at the Company's NaviSite, Engage, Planet Direct and ADSmart subsidiaries, and the impact of consolidating Vicinity beginning in fourth quarter fiscal 1997, offset by the impact of deconsolidating Lycos. Lycos comprised $1,219,000 of prior year third quarter cost of revenues. The start up of Internet operations at NaviSite, Engage, Planet Direct and ADSmart, with minimal revenues during early stages, is the primary reason cost of revenues as a percentage of revenues in the investment and development segment increased from 29% in the third quarter of fiscal 1997 to 220% in the third quarter of fiscal 1998. Compared with the third quarter of fiscal year 1997, cost of revenues in the lists and database services segment decreased as result of the combined impact of sales decreases and operating cost reductions. Operating cost savings in the lists and database services segment resulted in a reduction of cost of revenues as a percentage of net revenues to 66% from 75% in last year's third quarter.

Research and development expenses decreased $2,498,000, or 39%, to $3,968,000 in the quarter ended April 30, 1998 from $6,466,000 in the prior year's third quarter, reflecting decreases of $1,903,000 and $595,000 in the lists and database services and investment and development segments, respectively. The lists and database services segment decrease primarily reflects the removal of Engage from the segment. Investment and development segment results include a $1,167,000 reduction from deconsolidating Lycos and reduced development costs associated with the progression of Planet Direct from initial development stages towards commercial operations. Partially offsetting such reductions, investment and development segment results include increases associated with the inclusion of Engage, expenditures for the development of NaviSite's NaviNet technology platform, and the impact of consolidating Vicinity's results beginning in the fourth quarter of fiscal year 1997. In addition, the Company recorded $18,060,000 of in-process research and development expense during the third quarter of fiscal 1998, principally related to its acquisition of Accipiter on April 9, 1998. The Company anticipates it will continue to devote substantial resources to product development and that, absent the impact of the Company's change in accounting for Lycos, these costs may substantially increase in future periods.

Selling expenses decreased $1,602,000, or 19% to $6,771,000 in the third quarter ended April 30, 1998 from $8,373,000 for the corresponding period in fiscal 1997, primarily reflecting decreases of $1,379,000 and $457,000 in the investment and development and lists and database services segments, respectively. Investment and development segment results include a $4,540,000 reduction from deconsolidating Lycos and reduced marketing expenses at Blaxxun. These decreases were partially offset by increased sales and marketing expenses related to several product launches, continued growth of sales and marketing infrastructures, and the addition of Engage to this segment. The lists and database services segment decrease primarily reflects the removal of Engage from the segment. Selling expenses decreased as a percentage of net revenues to 33% in the third quarter of fiscal 1998 from 44% for the corresponding period in fiscal 1997, primarily reflecting the impacts of the deconsolidation of Lycos and of increased revenues in the Company's fulfillment services segment. As the Company's subsidiaries continue to introduce new products and expand sales, the Company expects to incur significant promotional expenses, as well as expenses related to the hiring of additional sales and marketing personnel and increased advertising expenses, and anticipates that, absent the impact of the Company's change in accounting for Lycos, these costs will substantially increase in future periods.

General and administrative expenses increased $956,000, or 22%, to $5,332,000 in the third quarter of fiscal 1998 from $4,376,000 for the corresponding period in fiscal 1997. The investment and development segment experienced a net increase of $1,201,000, reflecting increases due to the building of management infrastructures in several of the Company's Internet investments and the additions of Engage and Accipiter to this segment, offset by a $682,000 reduction from deconsolidating Lycos. General and administrative expenses in the fulfillment services segment increased by $410,000 in comparison with last year's third quarter, reflecting the addition of management and infrastructure in support of growth in the segment. General and administrative expenses in the lists and database services segment decreased by $655,000 versus the third quarter of fiscal 1997, reflecting the removal of Engage from this segment. General and administrative expenses increased slightly as a percentage of net sales to 26% in the third quarter of fiscal 1998 from 23% in the third quarter of fiscal 1997. Absent the impact of the Company's change in accounting for its investment in Lycos, the Company anticipates that its general and administrative expenses will continue to increase significantly as the Company's subsidiaries, particularly in the investment and development segment, continue to grow and expand their administrative staffs and infrastructures.

Gain on sale of Lycos, Inc. common stock reflects the Company's net gain realized on the sale of 445,000 shares of Lycos stock. Gain on stock issuance by Lycos, Inc. resulted primarily from the issuance of stock by Lycos for the acquisitions of Tripod and Wise Wire. Interest income decreased $260,000 compared with the third quarter of fiscal 1997, reflecting a $479,000 decrease from the deconsolidation of Lycos, partially offset by increased income associated with higher average corporate cash equivalent balances during the quarter. Interest expense increased $270,000 compared with the third quarter of fiscal 1997, primarily due to higher average corporate borrowings related to the Company's $10 million collateralized corporate note payable which was issued in January, 1997 and increased to $20 million in January, 1998.

Equity in losses of affiliates resulted from the Company's ownership in certain investments that are accounted for under the equity method. Under the equity method of accounting, the Company's proportionate share of each affiliate's operating losses and amortization of the Company's net excess investment over its equity in each affiliate's net assets is included in equity in losses of affiliates. Equity in losses of affiliates for the quarter ended April 30, 1998 include the results from the Company's minority ownership in Parable, Silknet, GeoCities, Reel.com, Speech Machines, Lycos, Chemdex, and Sage Enterprises. Equity in losses of affiliates for the quarter ended April 30, 1997 included the results from the Company's minority ownership in Vicinity Corporation, Ikonic Interactive, Inc., Parable, Silknet, and GeoCities. The Company expects its portfolio companies to continue to invest in development of their products and services, and to recognize operating losses, which will result in future charges recorded by the Company to reflect its proportionate share of such losses.

Minority interest decreased to zero in the third quarter of fiscal 1998 from $492,000 in the corresponding period of fiscal 1997, primarily reflecting the deconsolidation of Lycos results beginning in the second quarter of fiscal year 1998.

Income tax expense in the third quarter of fiscal 1998 was $5,351,000. Exclusive of taxes provided for significant, unusual or extraordinary items that will be reported separately, the Company provides for income taxes on a year to date basis at an effective rate based upon its estimate of full year earnings. In determining the Company's effective rate for the third quarter of fiscal 1998, in-process research and development, gain on sale of Lycos, Inc. common stock and gain on stock issuance by Lycos, Inc. were excluded. The Company's effective tax rate differs materially from the federal statutory rate primarily due to valuation allowances provided on certain deferred tax assets, the provision for state income taxes, and non-deductible goodwill amortization and in-process research and development charges.

Nine months ended April 30, 1998 compared to nine months ended April 30, 1997

Net revenues increased $14,834,000, or 31%, to $63,381,000 for the nine months ended April 30, 1998 from $48,547,000 for the corresponding period in fiscal 1997. The net increase reflects an increase of $16,685,000 in the Company's fulfillment services segment, partially offset by decreases of $915,000 and $936,000 for the Company's investment and development and lists and database services segments, respectively. The increase in fulfillment services segment revenues reflects the acquisition of Pacific Link on October 24, 1996 and the subsequent addition of new customers and new turnkey business from existing customers. The investment and development segment results include $5,197,000 less consolidated revenues from the three months Lycos was consolidated in fiscal 1998 compared with the nine months for which Lycos revenues were included in prior year. Largely offsetting such decreases was the impact of consolidating Vicinity's results beginning in the fourth quarter of fiscal year 1997, and commencement of operations at the Company's NaviSite, Engage, Planet Direct and ADSmart subsidiaries. The net revenue decrease in the Company's lists and database services segment primarily reflects reduced sales from a significant customer. The Company believes that its portfolio of companies will continue to develop and introduce their products commercially, actively pursue increased revenues from new and existing customers, and look to expand into new market opportunities. Therefore, absent the impact of the change in accounting for Lycos, the Company expects to report future revenue growth.

Cost of revenues increased $21,452,000, or 76%, to $49,655,000 for the nine months ended April 30, 1998 from $28,203,000 for the corresponding period in fiscal 1997, reflecting increases of $14,070,000 and $8,180,000 in the fulfillment services and investment and development segments, respectively, offset by a $798,000 decrease in the lists and database services segment. In the fulfillment services segment, cost of revenues increased as a result of revenue increases, and increased as a percentage of net revenues to 77% in the first nine months of fiscal 1998 from 72% in the corresponding period in fiscal 1997, due to a shift in mix of services from literature fulfillment towards lower margin turnkey business. The increase in the investment and development segment primarily resulted from the commencement of operations at the Company's NaviSite, Engage, Planet Direct and ADSmart subsidiaries, and the impact of consolidating Vicinity beginning in fourth quarter fiscal 1997, partially offset by $1,258,000 lower cost of sales resulting from deconsolidating Lycos beginning in the second quarter of fiscal year 1998. The start up of Internet operations at NaviSite, Engage, Planet Direct and ADSmart, with minimal revenues during early stages, is the primary reason cost of revenues as a percentage of revenues in the investment and development segment increased from 33% in the first nine months of fiscal 1997 to 91% in the first nine months of fiscal 1998. Lists and database services segment cost of revenues decreased $798,000 as result of the combined impact of sales decreases and operating cost reductions.

Research and development expenses decreased $3,382,000, or 19%, to $14,781,000 in the nine months ended April 30, 1998 from $18,163,000 for the corresponding fiscal 1997 period, primarily reflecting a decrease of $4,630,000 in the Company's lists and database services segment, partially offset by an increase of $1,280,000 in the investment and development segment. The lists and database services segment decrease primarily reflects the removal of Engage from the segment. Investment and development segment results include increases associated with the inclusion of Engage,

expenditures for the development of NaviSite's NaviNet technology platform, the impact of consolidating Vicinity's results beginning in the fourth quarter of fiscal year 1997, and increased development costs for InfoMation and The Password. Partially offsetting such increases, investment and development segment results include a $1,675,000 reduction from deconsolidating Lycos, reduced development costs associated with the progression of Planet Direct, ADSmart and Blaxxun from initial development stages towards commercial operations, and reductions associated with NetCarta Corporation, whose results were included during the first half of fiscal year 1997, but have been excluded since the sale of NetCarta to Microsoft in January, 1997. In addition, the Company recorded $18,935,000 of in-process research and development expense during the first nine months of fiscal 1998 related to the Company's acquisition of Accipiter and investments in Speech Machines, Chemdex and Sage Enterprises compared to $1,312,000 in the first nine months of fiscal 1997 related to investments in Parable and Silknet. The Company anticipates it will continue to devote substantial resources to product development and that, absent the impact of the Company's change in accounting for Lycos, these costs may substantially increase in future periods.

Selling expenses decreased $3,197,000, or 12% to $23,496,000 for the nine months ended April 30, 1998 from $26,693,000 for the corresponding period in fiscal 1997. The net decrease reflects decreases of $2,676,000 and $1,250,000 in the Company's investment and development, and lists and database services segments, respectively, partially offset by an increase of $729,000 for the Company's fulfillment services segment. Investment and development segment results include a $8,433,000 reduction from deconsolidating Lycos, reduced marketing expenses at Blaxxun, and reductions associated with NetCarta Corporation, FreeMark, and GeoCities, whose results were included during part of fiscal year 1997, but have not been included in fiscal 1998. These decreases were partially offset by increased sales and marketing expenses related to several product launches, continued growth of sales and marketing infrastructures, the addition of Engage to this segment, and the impact of consolidating Vicinity's results beginning in the fourth quarter of fiscal year 1997. The lists and database services segment decrease primarily reflects the removal of Engage from the segment, and the fulfillment services segment increase primarily reflects the acquisition of Pacific Link on October 24, 1996. Selling expenses decreased as a percentage of net revenues to 37% in the first nine months of fiscal 1998 from 55% for the corresponding period in fiscal 1997, primarily reflecting the impacts of the deconsolidation of Lycos and of increased revenues in the Company's fulfillment services segment. As the Company's subsidiaries continue to introduce new products and expand sales, the Company expects to incur significant promotional expenses, as well as expenses related to the hiring of additional sales and marketing personnel and increased advertising expenses, and anticipates that, absent the impact of the Company's change in accounting for Lycos, these costs will substantially increase in future periods.

General and administrative expenses increased $1,434,000, or 11% to $14,624,000 for nine months ended April 30, 1998 from $13,190,000 for the corresponding period in fiscal 1997. The net increase reflects increases of $1,600,000 and $1,418,000 in the Company's investment and development, and fulfillment services segments, respectively, partially offset by a decrease of $1,584,000 for the Company's lists and database services segment. Investment and development segment results include increases due to the building of management infrastructures in several of the Company's Internet investments, the addition of Engage and Accipiter to this segment, and the impact of consolidating Vicinity's results beginning in the fourth quarter of fiscal year 1997. Such increases were partially offset by a $1,056,000 reduction from deconsolidating Lycos, cost reductions at Blaxxun, and reductions associated with NetCarta Corporation, FreeMark, and GeoCities, whose results were included during part of fiscal year 1997, but have not been included in fiscal 1998. The fulfillment services segment increase reflects the acquisition of Pacific Link on October 24, 1996 and the addition of management and infrastructure in support of growth in the segment. The lists and database services segment decrease primarily reflects the removal of Engage from the segment. General and administrative expenses decreased as a percentage of net revenues to 23% in the first nine months of fiscal 1998 from 27% for the corresponding period in fiscal 1997, primarily reflecting the impact of increased revenues in the Company's fulfillment services segment. Absent the impact of the Company's change in accounting for Lycos, the Company anticipates that its general and administrative expenses will continue to increase significantly as the Company's subsidiaries, particularly in the investment and development segment, continue to grow and expand their administrative staffs and infrastructures.

Gain on sale of data warehouse product rights occurred when the Company's subsidiary, Engage, sold certain rights to its Engage.Fusion(TM) and Engage.Discover(TM) data warehouse products to Red Brick for $9.5 million and 238,160 shares of Red Brick common stock. Gain on sale of Lycos, Inc. common stock reflects the Company's net gain realized on the sale of 1,004,900 shares of Lycos stock. Gain on sale of Premiere Technologies, Inc. common stock reflects the Company's net gain realized on the sale of 224,795 shares of Premiere Technologies, Inc. stock. Gain on stock issuance by Lycos, Inc. resulted primarily from the issuance of stock by Lycos for the acquisitions of Tripod and Wise Wire. Gain on sale of NetCarta Corporation in fiscal year 1997 reflects the Company's pretax gain on sale of CMG @Ventures' NetCarta subsidiary on January 31, 1997. Gain on sale of investment in TeleT Communications in fiscal 1997 resulted when the Company sold its equity interest in TeleT to Premiere in exchange for $550,000 and 320,833 shares of Premiere stock in September 1996. Interest income decreased $770,000 compared with the first nine months of fiscal 1997, reflecting a $1,063,000 decrease from the deconsolidation of Lycos, partially offset by increased income associated with higher average corporate cash equivalent balances compared with prior year. Interest expense increased $1,291,000 compared with the first nine months of fiscal 1997, primarily due to borrowings incurred to finance the Company's acquisition of Pacific Link on October 24, 1996, and the impact of higher average corporate borrowings related to the Company's $10 million collateralized corporate note payable which was issued in January, 1997 and increased to $20 million in January, 1998.

Equity in losses of affiliates resulted from the Company's ownership in certain investments that are accounted for under the equity method. Under the equity method of accounting, the Company's proportionate share of each affiliate's operating losses and amortization of the Company's net excess investment over its equity in each affiliate's net assets is included in equity in losses of affiliates. Equity in losses of affiliates for the nine months ended April 30, 1998 include the results from the Company's minority ownership in Ikonic Interactive, Inc., Parable, Silknet, GeoCities, Reel.com, Speech Machines, Chemdex, and Sage Enterprises, and the results from Lycos beginning in November, 1997. Equity in losses of affiliates for the nine months ended April 30, 1997 included the results from the Company's minority ownership in TeleT, Vicinity Corporation, Ikonic Interactive, Inc., Parable, Silknet, and GeoCities. The Company expects its portfolio companies to continue to invest in development of their products and services, and to recognize operating losses, which will result in future charges recorded by the Company to reflect its proportionate share of such losses.

Minority interest decreased to ($28,000) in the first nine months of fiscal 1998 from $3,939,000 in the corresponding period of fiscal 1997, primarily reflecting the deconsolidation of Lycos results beginning in the second quarter of fiscal year 1998, and the impact associated with FreeMark and GeoCities, whose results were included within the Company's consolidated statements of operations during a portion of the first nine months of fiscal year 1997, but excluded in fiscal year 1998.

Income tax expense in the first nine months of fiscal 1998 was $7,519,000. Exclusive of taxes provided for significant, unusual or extraordinary items that will be reported separately, the Company provides for income taxes on a year to date basis at an effective rate based upon its estimate of full year earnings. In determining the Company's effective rate for the first nine months of fiscal 1998, in-process research and development, gain on sale of data warehouse product rights, gain on sale of Lycos, Inc. common stock, gain on stock issuance by Lycos, Inc., and gain on sale of Premiere Technologies, Inc. common stock were excluded. The Company's effective tax rate differs materially from the federal statutory rate primarily due to valuation allowances provided on certain deferred tax assets, the provision for state income taxes, and non-deductible goodwill amortization and in-process research and development charges.

Liquidity and Capital Resources

Working capital at April 30, 1998 decreased to $21.8 million compared to $38.6 million at July 31, 1997, predominately as a result of deconsolidating Lycos. The Company's July 31, 1997 and October 31, 1997 consolidated working capital included Lycos working capital of $38.1 million at each date. The Company's principal sources of capital during the first nine months of fiscal 1998 were $46,344,000 received from the sale of 1,004,900 shares of Lycos stock, $10,937,000 received from the sale of 1,006,004 CMG common shares to Intel Corporation, $10 million received from the sale of 625,000 CMG common shares to Sumitomo Corporation, $9,543,000 from the sale of Engage's data warehouse product rights, and $7,555,000 received from the sale of 224,795 shares of Premiere stock. The Company's principal use of capital during the first nine months of fiscal 1998 were $40,200,000 for funding of operations, primarily those of start-up activities in the Company's investment and development segment. Additionally, $13,913,000 was used for investments in affiliates and acquisitions of subsidiary, including Chemdex, Speech Machines, GeoCities, Parable, Reel.com, Sage Enterprises, KOZ, Select Technologies, Critical Path and Accipiter. During the first nine months of fiscal 1998, $4,217,000 was also expended for purchases of property and equipment, and $2,377,000 was expended for net repayments of long-term debt. Additionally, at April 30, 1998, the Company had approximately $66 million of remaining future noncancelable minimum payments under operating leases for its facilities and certain other equipment.

During April, 1998, the Company completed the acquisition of Accipiter in exchange for 1,263,692 shares of the Company's common stock. The shares issued by the Company are not registered under the Securities Act of 1933 and are subject to restrictions on transferability for periods ranging from six to twenty-four months. The purchase price was valued at approximately $30.1 million, including acquisition costs, of which approximately $11.1 million was allocated to goodwill, which will be amortized on a straight-line basis over five years. Approximately $18.0 million of the purchase price was allocated to in-process research and development which was charged to operations in the quarter ended April 30, 1998. The Company anticipates that Accipiter technology products will be integrated with other preexisting and newly developed CMG products (principally the solutions developed by Engage Technologies), creating a single source approach focused on developing high value Web advertising and marketing solutions.

At July 31, 1997, the Company's credit agreements included a $10 million corporate line of credit facility, which has subsequently lapsed, and the Company has not pursued renewal. The Company's subsidiary, SalesLink, has a $4.5 million line of credit agreement, which expires on October 1, 1998. SalesLink's line of credit had an outstanding balance of $3,200,000 at April 30, 1998 and an additional $800,000 reserved in support of outstanding letters of credit for operating leases.

The Company intends to continue to fund existing and future Internet and interactive media investment and development efforts, and to actively seek new CMG@Ventures investment opportunities. The Company believes that existing working capital and cash proceeds available from the future sale of additional Lycos stock will be sufficient to fund its operations, investments and capital expenditures for the foreseeable future. Should additional capital be needed to fund future investment and acquisition activity, the Company may seek to raise additional capital through public or private offerings of the Company's or its subsidiaries' stock, or through debt financings.

Management has reviewed the Company's systems relating to the year 2000 concerns and believes that the costs for compliance will not be material to the Company.

## PART II: OTHER INFORMATION

### Item 2. Changes in Securities

On December 19, 1997, the Company sold 1,006,004 shares of its common stock to Intel Corporation. The shares were priced at $10.871875 with proceeds to the Company totaling $10,937,150. The shares purchased by Intel Corporation are not registered under the Securities Act of 1933, as amended.

On February 27, 1998, the Company sold 625,000 shares of its common stock to Sumitomo Corporation. The shares were priced at $16.00 per share, with proceeds to CMG totaling $10,000,000. The shares purchased by Sumitomo Corporation are not registered under the Securities Act of 1933, as amended, and carry a one year restriction on transfer or sale.

On April 9, 1998, the Company issued 1,263,692 shares of its common stock to shareholders of Accipiter, Inc. in consideration for the acquisition of all of the issued and outstanding shares of capital stock of Accipiter, Inc. The shares issued by the Company are not registered under the Securities Act of 1933, as amended and carry restrictions on transfer or sale for periods ranging from six to twenty-four months.

The shares issued in the above mentioned transactions were issued in private placements in reliance upon the exemption provided by section 4 (2) of the Securities Act of 1933.

### Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits

The following exhibits are filed herewith or incorporated by reference pursuant to Rule 12b-32 promulgated under the Securities Exchange Act of 1934, as amended:

| Exhibit No. | Title | Method of Filing |
|---|---|---|
| 3 (i) (1) | Amendment to the Restated Certificate of Incorporation | Incorporated by reference to Exhibit 3 (i) (1) to the Registrant's quarterly report on Form 10-Q for the quarter ended April 30, 1996. |
| 3 (i) (2) | Restated Certificate of Incorporation | Incorporated by reference from Registration Statement on Form S-1, as amended, filed on November 10, 1993 (Registration No. 33-71518). |
| 3 (ii) | Restated By-Laws | Incorporated by reference from Registration Statement on Form S-1, as amended, filed on November 10, 1993 (Registration No. 33-71518). |
| 4 | Specimen stock certificate representing the common stock | Incorporated by reference from Registration Statement on Form S-1, as amended, filed on November 10, 1993 (Registration No. 33-71518). |
| 10.1 | CMG @Ventures I, LLC Limited Liability Company Agreement, dated December 18, 1997. | Filed herewith. |
| 10.2 | Lease, dated January 6, 1998, between the 425 Medford Nominee Trust and SalesLink Corporation for premises at 425 Medford Street, Boston, Massachusetts. | Filed herewith. |

Item 6. Exhibits and Reports on Form 8-K (continued)

(b) Exhibits (continued)

| Exhibit No. | Title | Method of Filing |
|---|---|---|
| 10.3 | CMG Information Services, Inc. Guaranty of SalesLink Corporation Lease for 425 Medford Street, Boston, Massachusetts. | Filed herewith. |
| 10.4 | Supplement No. 2 to the Registrant's Lease for 100 Brickstone Square, Andover, Massachusetts. | Filed herewith. |
| 10.5 | Supplement No. 3 to the Registrant's Lease for 100 Brickstone Square, Andover, Massachusetts. | Filed herewith. |
| 27.1 | Financial Data Schedule for the nine months ended April 30, 1998 | Filed herewith. |
| 27.2 | Restated Financial Data Schedule for the nine months ended April 30, 1997 | Filed herewith. |

(b) Reports on Form 8-K.

On March 19, 1998, the Company filed a report on Form 8-K dated February 27, 1998 in conjunction with the sale by the Company of 625,000 shares of its common stock to Sumitomo Corporation.

On April 23, 1998, the Company filed a report on Form 8-K dated April 8, 1998 in conjunction with the acquisition of all the issued and outstanding shares of capital stock of Accipiter, Inc. in exchange for approximately 1,264,000 shares of the Company's common stock.

SIGNATURE

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

CMG Information Services, Inc.

By: /s/ Andrew J. Hajducky III
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Andrew J. Hajducky III, CPA
Chief Financial Officer

Date: June 15, 1998

EXHIBIT 10.1

CMG@VENTURES I, LLC

LIMITED LIABILITY COMPANY AGREEMENT

CMG@VENTURES I, LLC

LIMITED LIABILITY COMPANY AGREEMENT

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CMG@VENTURES I, LLC

LIMITED LIABILITY COMPANY AGREEMENT

THIS LIMITED LIABILITY COMPANY AGREEMENT is dated and is effective as of the 18th day of December, 1997 (the "Agreement"), by and among (i) the undersigned Managing Member, CMG@VENTURES, INC., a Delaware corporation whose address is set forth on Exhibit A attached hereto (together with any successor or additional Managing Member who may hereafter be admitted to the Company as a Managing Member and whose name, address, and signature, upon admittance, shall be set forth on Exhibit A, hereinafter referred to as the "Managing Member" and sometimes as a "Capital Member"), and (ii) the undersigned Capital Investment Member, CMG@VENTURES CAPITAL CORP., a Delaware corporation whose address is set forth on Exhibit A attached hereto (together with any successor or additional Capital Investment Member who may hereafter be admitted to the Company as a Capital Investment Member and whose name, address and signature, upon admittance, shall be set forth on Exhibit A, hereinafter referred to as the "Capital Investment Member" and sometimes as a "Capital Member"), and (iii) such individuals as may now or hereafter be admitted to the Company as Profit Members and whose names, addresses, and signatures are set forth on Exhibit A attached hereto (together with any successor or additional Profit Member who may hereafter be admitted to the Company (and whose name, address, and signature, upon admittance, shall be set forth on Exhibit A), hereinafter referred to as the "Profit Members"). The Managing Member and the Capital Investment Member are also sometimes collectively referred to herein as the "Capital Members" and individually as a "Capital Member." The Managing Member and the Capital Investment Member and the Profit Members are sometimes collectively referred to herein as the "Members" and individually as a "Member."

W I T N E S S E T H :

WHEREAS, the parties hereto desire to join together to form a limited liability company known as "CMG@Ventures I, LLC" (the "Company") under and pursuant to the Delaware Limited Liability Company Act, 6 Del C. Section 18.101 et seq., (as amended from time to time, the "Delaware Act");

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

## ARTICLE 1.

## FORMATION, ETC.

### Section 1.1 Formation.

The undersigned parties hereby acknowledge that the term of the Company shall commence on the date on which a Certificate of Formation is duly filed pursuant to the Delaware Act which date is acknowledged to be October 23, 1997, and shall continue until terminated in accordance with ARTICLE X.

### Section 1.2 Filings.

The Managing Member shall file the Certificate of Formation and shall file all amendments thereto in the office of the Secretary of State of the State of Delaware and, so long as the Company shall exist as a Delaware limited liability company, shall do all other acts and things requisite for the continuation of the Company as a limited liability company pursuant to the Delaware Act.

### Section 1.3 Name; Ownership of Property.

The name of the Company is "CMG@Ventures I, LLC" All business of the Company shall be conducted under such name, and title to all property, real, personal, or mixed, owned by or leased to the Company, shall be held in such name; except that certain Portfolio Securities may be owned by the Managing Member in accordance with the terms and conditions of one or more agreements between the Managing Member and the Company with respect to those Portfolio Securities. The Company's business may also be conducted under any other name or names deemed advisable by the Managing Member including, without limitation, the name "@Ventures." The words "LLC" or "Limited Liability Company" or such other designation as the Managing Member shall deem appropriate shall be included in the name where necessary to comply with the applicable laws of any jurisdiction. The Managing Member shall give prompt notice of any name change to each Member.

### Section 1.4 Offices.

The principal office of the Managing Member shall be maintained at 100 Brickstone Square, 1st Floor, Andover, Massachusetts 01810, or at such other location or locations as may from time to time be designated by the Managing Member with prompt notice to each Member.

Section 1.5 Duration.

The term of the Company's existence shall continue through and terminate on April 13, 2010, subject to earlier or later termination pursuant to the provisions of ARTICLE X hereof. The term of the Company's existence may be extended at the sole discretion of the Managing Member for one or more periods of not less than three nor more than ten years each, depending on the maturity of the Company's Investments and the amount of capital or capital calls remaining to be invested or reinvested and the opportunities for investing or reinvesting such capital or capital calls.

Section 1.6 Registered Agent.

The Company shall maintain a registered agent and registered office in the State of Delaware. The name and address of the registered agent of the Company in the State of Delaware upon whom process may be served, and the address of the registered office of the Company in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. The Managing Member may change the designated registered office or registered agent and upon any such change shall give prompt notice to each Member of any change in the registered office or agent of the Company.

Section 1.7 Purposes; Restructuring of Investments.

(a) The Company is formed for the following purposes:

(i) to afford the Members the possibility of realizing income and gains (A) from equity appreciation and other income, principally by means of the Company's purchase, directly or through holding companies ("Holding Companies"), of equity and equity-related securities, notes, debentures, limited partnership interests, limited liability company interests, or other equity or debt instruments or other interests or investments of any nature whatsoever, including, without limitation, notes, debentures, and common or preferred stock, (whether or not convertible or exchangeable), and rights, options and warrants to purchase notes, debentures, and common or preferred stock or other securities or debt instruments, or direct or indirect interests in tangible or intangible assets of any kind whatsoever (all of the foregoing being hereinafter referred to as "Investments" or as "Securities"), in privately or publicly held or solely owned operating or investment businesses or other entities or parts thereof or assets (together with Holding Companies, the "Portfolio Companies") and (B) from the management, ownership, supervision and disposition of such Portfolio Companies;

(ii) pending utilization or disbursement of funds to purchase securities of Portfolio Companies, to invest such funds in Temporary Investments; and

(iii) to engage in any activities or transactions necessary or desirable to accomplish the foregoing purposes and to do any other act or thing, in the sole discretion of the Managing Member, incidental or ancillary thereto.

(b) Except with the approval of seventy-five percent (75%) in interest of the Capital Investment Members and seventy-five percent (75%) in interest of the Profit Members:

(i) Unless the Managing Member determines it would otherwise be in the best interests of the Company, the Company shall not alter or restructure the Company's Investment in a Portfolio Company during the term of the Company in a manner that the Managing Member determines may (or may not) result in a distribution of cash to the Capital Investment Members or to the Profit Members insufficient to pay any tax which those Capital Investment Members or Profit Members would reasonably be expected to be required to pay as a result of that alteration or restructuring;

(ii) The Company shall make no Investment in a Portfolio Company unless (A) the assets of the Company (excluding payment for such investment) are sufficient to pay or provide for all debts and liabilities of the Company (including all contingent liabilities but excluding debts and liabilities to which such payment is to be applied as specified in the applicable Call Notice) and (B) to the best of the Managing Member's knowledge, there are no other obligations against or liabilities of the Company which would divert any amount paid by a Capital Investment Member pursuant to the applicable Call Notice with respect to such Investment other than the making of the applicable proposed Investment in the Portfolio Company; and

(iii) The Company shall not acquire any shares of stock, stock purchase warrants, stock options, limited partnership interests, and/or other Securities if the acquisition and/or holding thereof would require registration of the Company under the Investment Company Act, unless a registration statement relating to the Company (or an exemption from such registration) shall have become effective under the Investment Company Act.

Section 1.8 Qualification in Other Jurisdictions.

The Managing Member shall cause the Company and/or the Managing Member to be qualified or registered under its own name or the Managing Member's name or under an assumed or fictitious name pursuant to foreign limited company statutes or similar laws in any jurisdiction in which the Company owns property or transacts business if such qualification or registration is necessary in order to protect the limited liability of the Members or to permit the Company lawfully to own property or transact business and shall cause the Company not to transact business in any such jurisdiction until it is so qualified or registered. The Managing Member shall execute, file and publish all such certificates, notices, statements or other

instruments necessary or desirable to permit the Company and the Managing Member to conduct business as and through a limited liability company in all jurisdictions where the Company elects to do business and to maintain the limited liability of the Members.

Section 1.9 Fiscal Year.

The fiscal year of the Company (the "Fiscal Year") for financial accounting and for Federal income tax purposes shall end on July 31 of each year.

Section 1.10 Reliance by Third Parties.

Persons and entities dealing with the Company are entitled to rely conclusively upon the power and authority of the Managing Member as herein set forth.

## ARTICLE 2.

## CAPITAL CONTRIBUTIONS; MEMBERS' ACCOUNTS; ALLOCATIONS

Section 2.1 Capital Commitments.

Subject to the provisions of Sections 2.9, 2.10 and 2.11, the Capital Members hereby agree to make cash contributions to the capital of the Company up to the total amount of twenty-two million dollars ($22,000,000) and in the proportionate amounts set forth opposite the names of each of the Capital Members on Exhibit A attached hereto for the purpose (and only for the purpose) of funding the Company's Investments in Portfolio Companies. The amount of each such commitment, less any portion of the commitment which is released or reduced pursuant to Sections 2.9, 2.10 or 2.11 and plus any portion assumed pursuant to Section 2.10, is referred to herein as a "Capital Commitment." Capital Commitments shall not be assets of the Company until capital is contributed, and then only to the extent of the aggregate capital so contributed. On any date when a Capital Investment Member makes a contribution to the capital of the Company, the Managing Member (or Managing Members if there be more than one) shall contribute to the capital of the Company cash in such amount as is sufficient to cause the Managing Member's Capital Contributions to equal 1% of the sum of the Capital Contributions of all of the Capital Members. Except as otherwise required by law or Section 10.3, the Managing Member shall not be obligated to restore or contribute to the capital of the Company, all or any portion of a negative balance in its Capital Account.

Each Capital Member shall have the option, but not the obligation, to reinvest any Recovered Capital and any Net Realized Capital Gains or other property distributed to such Capital Member, net of any taxes payable with respect thereto, in the Company or in another

limited liability company or partnership managed by the Managing Member by notifying the Managing Member in writing of the amount of such additional capital commitment whereupon such capital commitment shall be added to the existing capital commitment (if any) of such Capital Member in the Company or in the other company or partnership.

Section 2.2 Capital Contributions.

(a) The aggregate amount of capital contributed by a Capital Investment Member pursuant to its Capital Commitment, less Returns of Capital as defined below, is referred to herein as a "Capital Contribution." The Managing Member shall call for payment of each Capital Investment Member's Capital Commitment only as needed to fund the Company's prospective Investments in Portfolio Companies and for no other purpose. All such calls shall be made in writing to all Capital Investment Members pro rata in proportion to their respective Capital Commitments and shall be made by separate notices (unless waived) ("Call Notices") containing the information set forth in Section 2.2(b). The Managing Member shall use its best efforts to deliver Call Notices (unless waived) to the Capital Investment Members by telex, telecopier, cable or overnight courier not less than thirty (30) days in advance of the date on which the installment payable in response to such notice is due (the "Due Date"), and shall deliver such notice (unless waived) in no event less than ten (10) Business Days before the Due Date. All Capital Contributions shall be paid on or before their Due Date. No Capital Commitment may be called after expiration of the Commitment Period. Any Due Date in respect of which a Call Notice has been delivered may be postponed by the Managing Member one or more times for an aggregate of up to sixty (60) calendar days following the originally scheduled Due Date; provided that if the sixtieth day after such originally scheduled Due Date shall not be a Business Day, then such Due Date may be postponed until the next succeeding Business Day. The Managing Member shall give prompt notice (unless waived) to each Capital Investment Member, by telex, facsimile, telecopier, cable or overnight courier, of any such postponement, whereupon such rescheduled Due Date shall be the Due Date for purposes hereof. To the extent that the information contained in the original Call Notice has materially changed, such notice of postponement shall set forth such changes. All payments of the Capital Investment Members hereunder shall be made to the Company by transfer by wire or otherwise of federal funds or other immediately available funds (or by such other means as the Managing Member may designate or approve) by 11:00 a.m. Eastern time on the relevant Due Date to an account of the Company designated by the Managing Member for such purpose. So far as practicable, Capital Contributions shall be invested by the Managing Member in Temporary Investments pending the purchase of Portfolio Securities. Any amounts paid by a Capital Investment Member pursuant to a Call Notice for an Investment in Portfolio Securities that does not take place within sixty (60) days of the originally scheduled Due Date (or, if the sixtieth day after such Due Date is not a Business Day, the next succeeding Business Day), shall, together with any interest earned thereon, be refunded to such Capital Investment Member (a "Return of Capital") at its request and such Capital Investment Member's Capital Commitment remaining to be called shall be increased by the amount so refunded, excluding such interest.

(b) Each Call Notice shall state the scheduled Due Date and specify:

(i) The aggregate amount of payments to be made on the Due Date;

(ii) The required payment to be made by the Capital Investment Member to which the Call Notice is delivered;

(iii) The account to which such payment shall be paid; and

(iv) The anticipated nature and approximate timing of the Investment in the Portfolio Company and the type and approximate amount of Portfolio Securities to be acquired with such payment.

Within two Business Days after receiving any Call Notice, any Capital Investment Member may request such additional information from the Managing Member as is reasonably necessary to enable it (with the advice of its counsel) to determine whether the particular investment by the Capital Investment Member is prohibited as described in Section 2.11. Within two (2) Business Days following its receipt of such request, the Managing Member shall make available to such Capital Investment Member any such requested information that is in the possession of, or may be acquired without undue hardship by, the Managing Member.

(c) With respect to the Company's first acquisition of Portfolio Securities, the Due Date for Capital Contributions shall be the closing date of such acquisition.

(d) If a Capital Investment Member is excused from making a Capital Contribution pursuant to Section 2.11 or defaults in the payment of a Capital Contribution as contemplated in Section 2.10, the Managing Member shall forthwith deliver a new Call Notice to the remaining Capital Investment Members assessing them their pro rata portion of the amount of such Capital Contribution remaining unpaid, payable on the Due Date of such Capital Contribution, provided, however, that the Managing Member may in its discretion increase its own Capital Contribution to furnish the additional funds to purchase such Portfolio Securities that would have been purchased with such unpaid Capital Contribution, which funds shall be returned to the Managing Member upon payment of the Capital Contributions of the remaining Capital Investment Members to the Company as provided above.

Section 2.3 Capital Accounts.

(a) A capital account ("Capital Account") shall be established on the books of the Company for each Capital Member in which there shall be recorded each contribution of capital made by or for the account of such Capital Member as of the date such contribution is made. Each Capital Member's Capital Account shall be increased or decreased to reflect Capital Contributions, contributions of Investments in Portfolio Securities held by the Managing Member, Returns of Capital, allocations of Net Operating Profits, Net Operating Losses, Net

Realized Capital Gains and Net Realized Capital Losses and distributions of Cash Flow and Capital Proceeds and Capital, and shall be otherwise adjusted in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations provided that such adjustment does not materially decrease the amount or defer the timing of any distributions, including distributions upon liquidation, that the Capital Members would otherwise be entitled to receive pursuant to this Agreement. No Capital Member shall be required to reimburse the Company for any negative balance in such Capital Member's Capital Account; provided, that each Capital Member shall remain fully liable to make Capital Contributions to the extent of such Capital Member's Capital Commitment, except as such Capital Commitment may be reduced as provided herein.

(b) In the sole discretion of the Managing Member, the Company may revalue its Investments and other assets and adjust the Members' Capital Accounts in accordance with Section 4.8 and applicable generally accepted accounting principles in connection with (i) a write-off of any Investment, (ii) any acquisition of an interest or increase or decrease in an existing interest or interests in the Company with respect to any new or existing Member, (iii) any distribution by the Company to a Member of more than a de minimis amount of property as consideration for the redemption of an interest in the Company, (iv) the liquidation of the Company, (v) any contribution to the Company of an Investment in a Portfolio Company held by the Managing Member, and (vi) such other circumstances as are approved by the Managing Member and permitted by the Treasury Regulations. All Capital Account adjustments made to reflect revaluations of Investments pursuant to this Section 2.3(b), and all Capital Account adjustments made subsequent thereto, shall comply with Treasury Regulations Sections 1.704-1(b)(2)(iv)(f), 1.704-1(b)(2)(iv)(g) and 1.704-1(b)(4)(i), provided that such compliance shall not materially decrease the amount or defer the timing of any distributions, including distributions payable upon liquidation, that the Members would otherwise be entitled to pursuant to this Agreement. Such adjustments shall simulate the manner in which Net Realized Capital Gains or Net Realized Capital Losses, and Net Operating Profits or Net Operating Losses, as the case may be, would be allocated among the Members if the Company's Investments and other assets were then sold for their fair market values and the proceeds of such sales were distributed to the Members pursuant to ARTICLE IV.

Section 2.4 Capital Commitments Not Company Assets.

At no time shall any portion of a Member's Capital Commitment be held out by the Managing Member to any creditor of the Company or be reflected on any balance sheet as an asset of the Company.

Section 2.5 Net Operating Profits and Net Operating Losses-Allocation.

(a) Prior to the allocation of any Net Realized Capital Gains or Net Realized Capital Losses for each Fiscal Year as provided in Section 2.6 below, Net Operating Profits, if any, of the Company for each Fiscal Year shall be allocated to the Members as follows and in the

following order of priority as of the end of such Fiscal Year:

(i) First, so much of such Net Operating Profits for such Fiscal Year as shall not exceed the Managing Member Loss, if any, as of the end of the preceding Fiscal Year shall be allocated to the Managing Member to cover part or all of such Managing Member Loss.

(ii) Second, so much of any remaining Net Operating Profits for such Fiscal Year as shall not exceed the Capital Member Loss, if any, as of the end of the preceding Fiscal Year shall be allocated to all of the Capital Members in proportion to their Percentages in Interest as set forth in Exhibit A.

(iii) Third, so much of any remaining Net Operating Profits for such Fiscal Year as shall not exceed the Profit Member Loss, if any, as of the end of the preceding Fiscal Year shall be allocated to the Profit Members as a group to be further allocated pro rata according to such Profit Members' Carried Interests as defined in Section 3.2 hereof and added to their respective Capital Accounts to cover part or all of such Profit Member Loss.

(iv) Fourth, the balance of any remaining Net Operating Profits, if any, for such Fiscal Year shall be allocated as follows: (A) for Net Operating Profits relating to Investments made on or prior to July 31, 1996 (including Follow-On Investments made after July 31, 1996), twenty-two and one-half percent (22.5%) and for Net Operating Profits relating to Investments made after July 31, 1996, twenty percent (20%) (the "Profit Members Carried Interest Allocation") shall be allocated to the Profit Members as a group to be further allocated pro rata according to such Profit Members' Carried Interests as defined in Section 3.2 hereof and added to their respective Capital Accounts, and (B) a percentage equal to one hundred percent (100%) less the Profit Members Carried Interest Allocation (the "Capital Members' Allocation") shall be allocated to the Capital Members as a group to be further allocated pro rata according to such Capital Members' Percentages in Interest as set forth in Exhibit A, and added to their respective Capital Accounts.

(b) Prior to the allocation of any Net Realized Capital Gains or Net Realized Capital Losses for each Fiscal Year as provided in Section 2.6 below, Net Operating Losses, if any, of the Company for each Fiscal Year shall be allocated to the Members as follows and in the following order of priority as of the end of such Fiscal Year:

(i) First, such Net Operating Losses for such Fiscal Year shall be allocated as follows: (A) for Net Operating Losses relating to Investments made on or prior to July 31, 1996 (including Follow-On Investments made after July 31, 1996), twenty-two and one-half percent (22.5%) and for Net Operating Losses relating to Investments made after July 31, 1996, twenty percent (20%) (the "Profit Members' Carried Interest Allocation") of such Net Operating Losses (but not to exceed the Profit Members'

positive account balances, if any, existing in their Capital Accounts as of the end of the preceding Fiscal Year) shall be allocated to the Profit Members as a group as a Profit Member Loss to be further allocated according to such Profit Members' respective Carried Interests as defined in Section 3.2 hereof and debited pro rata to their respective Capital Accounts, and (B) a percentage equal to one hundred percent (100.0%) less the Profit Members Carried Interest Allocation (the "Capital Members' Allocation") of such Net Operating Losses (but not to exceed the excess of the Unrecovered Capital of the Capital Members over the Capital Member Loss, if any, as of the end of the preceding Fiscal Year) shall be allocated to all of the Capital Members as a Capital Member Loss in proportion to their respective Percentages in Interest as set forth in Exhibit A and debited to their respective Capital Accounts.

(ii) Second, the balance of such Net Operating Losses as shall exceed (A) the positive account balances, if any, existing in the Profit Members' Capital Accounts as of the end of the preceding Fiscal Year and (B) the excess of the Unrecovered Capital of the Capital Members over the Capital Member Loss, if any, as of the end of the preceding Fiscal Year, shall be allocated to the Managing Member as a Managing Member Loss.

Section 2.6 Capital Gains and Capital Losses with Respect to Portfolio Securities-Allocation.

(a) Following the allocation of any Net Operating Profits or Net Operating Losses for each Fiscal Year as provided in Section 2.5 above, Net Realized Capital Gains, if any, of the Company for each Fiscal Year shall be allocated to the Members as follows and in the following order of priority as of the end of such Fiscal Year:

(i) First, so much of such Net Realized Capital Gains for such Fiscal Year as shall not exceed the Managing Member Loss, if any, as of the end of the preceding Fiscal Year (as increased or decreased by the allocation of any Net Operating Losses or Net Operating Profits for the current Fiscal Year) shall be allocated to the Managing Member to cover part or all of such Managing Member Loss.

(ii) Second, so much of any remaining Net Realized Capital Gains for such Fiscal Year as shall not exceed the Capital Member Loss, if any, as of the end of the preceding Fiscal Year (as increased or decreased by the allocation of any Net Operating Losses or Net Operating Profits for the current Fiscal Year) shall be allocated to all of the Capital Members in proportion to their Percentages in Interest to cover part or all of such Capital Member Loss.

(iii) Third, so much of any remaining Net Realized Capital Gains for such Fiscal Year as shall not exceed the Profit Member Loss, if any, as of the end of the preceding Fiscal Year (as increased or decreased by the allocation of any Net Operating

Losses or Net Operating Profits for the current Fiscal Year) shall be allocated to the Profit Members as a group to be further allocated pro rata according to such Profit Members' Carried Interests as defined in Section 3.2 hereof and added to their respective Capital Accounts to cover part or all of such Profit Member Loss.

(iv) Fourth, the balance of such Net Realized Capital Gains, if any, for such Fiscal Year shall be allocated as follows: (A) for Net Realized Capital Gains relating to Investments made on or prior to July 31, 1996 (including Follow-On Investments made after July 31, 1996), twenty-two and one-half percent (22.5%) and for Net Realized Capital Gains relating to Investments made after July 31, 1996, twenty percent (20%) (the "Profit Members Carried Interest Allocation") shall be allocated to the Profit Members as a group to be further allocated pro rata according to such Profit Members' Carried Interests as defined in Section 3.2 hereof and added to their respective Capital Accounts, and (B) a percentage equal to one hundred percent (100.0%) less the Profit Members Carried Interest Allocation (the "Capital Members' Allocation") shall be allocated pro rata to the Capital Members as a group to be further allocated according to such Capital Members' Percentages in Interest as set forth in Exhibit A, and added to their respective Capital Accounts.

(b) Following the allocation of any Net Operating Profits or Net Operating Losses for each Fiscal Year as provided in Section 2.5 above, Net Realized Capital Losses, if any, of the Company for each Fiscal Year shall be allocated to the Members as follows and in the following order of priority as of the end of such Fiscal Year:

(i) First, such Net Realized Capital Losses for such Fiscal Year shall be allocated as follows: (A) for Net Realized Capital Losses relating to investments made on or prior to July 31, 1996 (including Follow-On Investments made after July 31, 1996), twenty-two and one-half percent (22.5%) and for Net Realized Capital Losses relating to Investments made after July 31, 1996, twenty percent (20%) (the "Profit Members Carried Interest Allocation") of such Net Realized Capital Losses (but not to exceed the Profit Members' positive account balances, if any, existing in their Capital Accounts as of the end of the preceding Fiscal Year as increased or decreased by the allocation of any Net Operating Losses or Net Operating Profits for the current Fiscal Year) shall be allocated to the Profit Members as a group as a Profit Member Loss to be further allocated according to such Profit Members' respective Carried Interests as defined in Section 3.2 hereof and debited pro rata to their respective Capital Accounts, and (B) a percentage equal to one hundred percent (100.0%) less the Profit Members Carried Interest Allocation (the "Capital Members' Allocation") of such Net Realized Capital Losses (but not to exceed the excess of the Unrecovered Capital of the Capital Members over the Capital Member Loss, if any, as of the end of the preceding Fiscal Year as increased or decreased by the allocation of any Net Operating Losses or Net Operating Profits for the current Fiscal Year) shall be allocated to all of the Capital Members as a Capital Member Loss in proportion to their respective Percentages in Interest as set forth in Exhibit A and debited to their respective Capital Accounts.

(ii) Second, the balance of such Net Realized Capital Losses as shall exceed (A) the positive account balances, if any, existing in the Profit Members' Capital Accounts as of the end of the preceding Fiscal Year and (B) the excess of the Unrecovered Capital of the Capital Members over the Capital Member Loss, if any, as of the end of the preceding Fiscal Year, shall be allocated to the Managing Member as a Managing Member Loss.

Section 2.7 Special Allocation Rules.

(a) Qualified Income Offset. In the event that any Member unexpectedly receives any adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4),(5) or (6) which causes it to have an Adjusted Capital Account Deficit, items of Company income and gain (including gross income) shall, before any other allocations are made pursuant to this ARTICLE II, be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, such Member's Adjusted Capital Account Deficit as quickly as possible, provided that an allocation pursuant to this Section 2.7 shall be made to a Member only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this ARTICLE II have been tentatively made as if this Section 2.7 were not in this Agreement. This Section 2.7 is intended to be a "qualified income offset" as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted and applied consistently therewith.

(b) Minimum Gain Chargebacks. The Managing Member shall make such allocations of items of income and gain as are necessary to comply with the "minimum gain chargeback" provisions of Section 1.704-2(f) of the Treasury Regulations or any successor provisions thereto.

(c) Member Non-Recourse Deductions. The Managing Member shall make such allocations of "partner non-recourse deductions" of the Company, as defined in Section 1.704-2(b)(4) of the Treasury Regulations or any successor provisions thereto, as are necessary to comply with Section 1.704-2(i) of the Treasury Regulations or any successor provisions thereto.

(d) Curative Allocations. The allocations set forth in Sections 2.7(a), 2.7(b) and 2.7(c) hereof (the "Regulatory Allocations") are intended to comply with certain requirements of Section 1.704-1(b) of the Treasury Regulations (and any successor provisions thereto). Notwithstanding any other provision of this ARTICLE II, the Regulatory Allocations shall be taken into account in allocating other profits, losses and items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other profits, losses and other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not been made.

(e) Special Fees. Special Fees shall constitute items of Company operating income.

(f) Maintenance Expenses; Organizational and Syndication Expenses. For purposes of this ARTICLE II and the provisions of ARTICLE X dealing with final allocations, all fees and expenses that the Managing Member must pay pursuant to Section 5.4(a) that are Maintenance Expenses or expenses of organizing and syndicating the Company under Section 709 of the Code and the Treasury Regulations thereunder shall be treated as expenses of the Managing Member and deducted from its Capital Account. For purposes of this ARTICLE II and the provisions of ARTICLE X dealing with final allocations, all allocations with respect to Maintenance Expenses and the expenses of organizing and syndicating the Company shall be made to the Capital Account of the Managing Member. All the forgoing amounts shall be treated as contributions by the Managing Member to the Company for its own Capital Account.

(g) Special Allocations. Notwithstanding the allocation provisions set forth in Section 2.5 and in Section 2.6, the Company may, with the approval of the Managing Member and with the approval of a Majority in Interest of the Profit Members, make a special allocation of any part or all of any Net Realized Capital Gains to one or more of the Members provided that (i) any special distribution with respect to such special allocation of Net Realized Capital Gains to a Profit Member shall not exceed the amount of such Profit Member's Vested Carried Interest at the time of such special allocation determined for purposes only of this special allocation pursuant to this Section 2.7(g) as if all the Portfolio Company Securities then held by the Company of the kind being sold to produce the Net Realized Capital Gains were valued at Fair Market Value determined as provided in Section 4.8 on the date of such special allocation and further provided that (ii) such special allocation (and any related special distribution) shall be carried on the books of the Company as a special allocation (and as a related special distribution) with respect to the Capital Account of each Member receiving such special allocation which shall (except for the calculation of the special allocation (and any related special distribution) set forth herein) eventually comply with and be in accordance with (A) the formula for allocating Net Realized Capital Gains as set forth in Sections 2.5 and 2.6 above, and (B) the terms and conditions with respect to the allocation, vesting and distribution of Net Realized Capital Gains in excess of Unrecovered Capital as set forth in Section 2.5 and Section 2.6 above and in ARTICLE III and in ARTICLE IV hereof. Likewise, upon the approval and at the direction of a Majority in Interest of the Profit Members, the Company shall sell Marketable Securities held by the Company to the extent of the Profit Members' Vested and Unvested Carried Interests therein, determined for purposes only of this special allocation pursuant to this Section 2.7(g) as if all the Portfolio Company Securities then held by the Company of the kind being sold to produce the Net Realized Capital Gains were valued at Fair Market Value determined as provided in Section 4.8 on the date of such special allocation, and with the Net Realized Capital Gains resulting from any such sale to be specially allocated to the accounts of certain Profit Members (and invested as determined by a Majority in Interest of the Profit Members) pending distribution upon vesting as provided herein, provided that any such special allocation shall be carried on the books of the Company as a special allocation with respect to the Capital Account of each Member receiving such special allocation which shall (except for the calculation of the special allocation set forth herein) eventually comply with and be in

accordance with (A) the formula for allocating Net Realized Capital Gains as set forth in Sections 2.5 and 2.6 above, and (B) the terms and conditions with respect to the allocation, vesting and distribution of Net Realized Capital Gains in excess of Unrecovered Capital as set forth in Section 2.5 and Section 2.6 above and in ARTICLE III and in ARTICLE IV hereof. Notwithstanding the forgoing, at the time of termination and liquidation of the Company as provided herein all allocations of Net Realized Capital Gains during the entire term of the Company must comply with the formula set forth in Section 2.5 and in Section 2.6 above.

Section 2.8 Tax Allocations; Income Tax Elections.

(a) For federal, state and local income tax purposes, the income, gains, losses and deductions of the Company shall, for each taxable period, be allocated among the Members in the same manner and in the same proportion that such items have been allocated to the Members as provided in this ARTICLE II; provided, that (i) any adjustments made pursuant to Section 743 or 734 of the Code shall be taken into account and (ii) items of income, gain, loss and deduction with respect to Company property reflected in the Capital Members' Capital Accounts and on the books of the Company at a value that differs from the Company's adjusted tax basis in such property shall be allocated, solely for tax purposes, among the Capital Members so as to take account of that difference in value in accordance with Code Section 704(c) and Treasury Regulations Sections 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(4)(i).

(b) Upon the written request of any Capital Investment Member that an election provided for in Section 754 of the Code be made, the Managing Member shall promptly give notice to all the other Capital Investment Members of such request. Unless the Managing Member has received written objections to the making of such election from a Majority in Interest of the Capital Investment Members within thirty (30) days of such notice, it shall, if then permitted by applicable law, make such election. All costs and expenses incurred by the Company in connection with the making of such an election shall be borne by the Capital Investment Member requesting the same or, if more than one Capital Investment Member shall have made such request, by each requesting Capital Investment Member in the proportion which its Capital Commitment bears to the Capital Commitments of all Capital Investment Members making such request.

Section 2.9 Modification of Capital Commitments.

Capital Commitments shall be subject to modification only as follows:

(a) If, in the opinion of counsel reasonably satisfactory to the Managing Member, there have occurred changes in laws or regulations after the date hereof that are likely materially and adversely to affect the Company's ability to achieve its investment objectives as set forth in Section 1.7 or otherwise to operate in substantially the manner as contemplated herein, the Managing Member (with the approval of the Advisory Committee) or two-thirds in interest of

the Capital Investment Members may shorten or cause an early termination of the Commitment Period.

(b) Capital Commitments may be increased in accordance with Sections 7.2 and 2.10(c) and decreased in accordance with Sections 2.11(b) and 2.11(c) without penalty pursuant to this Section 2.9 or any other provision of this Agreement.

Section 2.10 Default in Capital Commitment.

Except as provided in Section 2.9, if a Capital Investment Member fails to fund its Capital Commitment as required under Section 2.1 on the Due Date and such failure continues for seven (7) Business Days after receipt of written notice of such failure from the Managing Member (or for such longer period (not to exceed twenty (20) Business Days) as the Managing Member may in its sole discretion permit under extraordinary circumstances), then such Capital Investment Member which failed to make payment within such seven (7) Business Days, as the case may be, after receipt of such notice or assessment (in each case, the "Date of Default") shall be a "Defaulting Capital Investment Member," and the following provisions of this Section 2.10 shall apply:

(a) 25% Forfeiture. As of the Date of Default, the Defaulting Capital Investment Member shall forfeit 25% of such Member's Capital Account balance, if positive (the "Forfeiture Amount"). The Forfeiture Amount shall be reallocated among all Non-Defaulting Capital Investment Members as follows: any Non-Defaulting Capital Investment Member who purchases a portion of the Defaulting Capital Investment Member's remaining interest in accordance with Section 2.10(b) shall be allocated that percentage of the Forfeiture Amount equal to the percentage of the Defaulting Capital Investment Member's interest so purchased. The balance of the Forfeiture Amount, if any, shall be allocated among all Non-Defaulting Capital Investment Members in proportion to their respective Percentages in Interest as set forth in Exhibit A, determined without inclusion of any Defaulting Capital Investment Member's Capital Contribution and without giving effect to any purchase under Section 2.10(b). Any such adjustments shall not affect tax allocations that had previously been made in accordance with Section 2.8.

(b) 75% Sale. The Managing Member will give prompt written notice of such default to all Non-Defaulting Capital Investment Members, each of whom will then have thirty (30) days after receipt of such notice (which notice shall specify the purchase price of the Defaulting Capital Investment Member's remaining interest in the Company, as reduced in accordance with Section 2.10(a) above), within which to elect to purchase that percentage of such reduced interest equal to the purchasing Capital Investment Member's Percentage in Interest (determined without inclusion of any Defaulting Capital Investment Member's Capital Contribution). The aggregate purchase price of the Defaulting Capital Investment Member's interest in the Company shall be equal to the Defaulting Capital Investment Member's Capital Account (after forfeiture in accordance with Section 2.10(a)) plus (minus) the net unrealized capital gains (losses)

allocable to the Defaulting Capital Investment Member's Capital Account (as so reduced) on the last day of the quarter of the Fiscal Year in which the default occurs. For purposes of this Section 2.10(b) only, net unrealized capital gains shall be equal to eighty percent (80%) of the excess of the Fair Market Value of Portfolio Securities over the book value of such securities, and net unrealized capital losses shall be equal to the excess of the book value of Portfolio Securities over the Fair Market Value thereof, in each case disregarding any adjustment under Section 734 or 743 of the Code. All purchases pursuant to this Section 2.10(b) shall be made within thirty (30) days after notice from the Non-Defaulting Capital Investment Members of their election to purchase and shall be made in cash paid to the Defaulting Capital Investment Member. If fewer than all Non-Defaulting Capital Investment Members so elect, the Managing Member shall reoffer to each Non-Defaulting Capital Investment Member that did so elect the option of electing further to increase the portion of the interest of the Defaulting Capital Investment Member purchased by it in an amount equal to the total of the Defaulting Capital Investment Member's interest not so purchased multiplied by a fraction, the numerator of which is the amount which such Non-Defaulting Capital Investment Member elected to purchase and the denominator of which is equal to the aggregate amount which all Non-Defaulting Capital Investment Members elected to purchase. If after applying the foregoing procedure any portion of the Defaulting Capital Investment Member's interest remains unsold, the Managing Member shall reoffer each electing Non-Defaulting Capital Investment Member the option of electing further to increase the portion of the interest of the Defaulting Capital Investment Member which it purchases in an amount determined equitably by the Managing Member.

(c) Adjustment of Capital Accounts and Commitments. The Defaulting
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Capital Investment Member's Capital Account shall be decreased by 25% to reflect the forfeiture pursuant to Section 2.10(a). In addition, to reflect purchases of a Defaulting Capital Investment Member's interest pursuant to Section 2.10(b), the Capital Account of the Defaulting Capital Investment Member shall be decreased by the percentage of the Defaulting Capital Investment Member's interest being purchased (calculated after the forfeiture pursuant to Section 2.10(a)), and the Capital Account and Percentage of Contributed Capital of each purchasing Capital Investment Member shall correspondingly be increased. Each Member who purchases a portion of a Defaulting Capital Investment Member's interest under Section 2.10(b) shall by virtue of such action assume liability for that percentage of the Defaulting Capital Investment Member's unpaid Capital Commitment equal to the percentage of the interest so purchased, and shall have its Percentage in Interest as set forth in Exhibit A correspondingly increased.

(d) Loss of Voting Rights, Etc. To the extent that the Non-Defaulting
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Capital Investment Members do not purchase the entire interest of the Defaulting Capital Investment Member, the Defaulting Capital Investment Member shall remain a Capital Investment Member and shall not be released from that portion of such Capital Investment Member's unfunded Capital Commitment which is not assumed by Non-Defaulting Capital Investment Members upon purchase of the Defaulting Capital Investment Member's interest as provided in this Section 2.10; such Defaulting Capital Investment Member shall not be entitled to make further Capital Contributions to the Company except as requested and called in the discretion of the Managing Member. All subsequent allocations to such Defaulting Capital Investment Member

in accordance with ARTICLE IV shall be made on the basis of the Defaulting Capital Investment Member's Percentage of Contributed Capital following the reduction thereof in accordance with Sections 2.10(a) and (b). Whenever the vote, consent or decision of the Members is required or permitted pursuant to this Agreement, no Defaulting Capital Investment Member shall be entitled to participate in such vote (except for a vote pursuant to Section 17-801(3) of the Delaware Act), to offer or withhold its consent or to make such decision, and such vote, consent or decision shall be made as if such Defaulting Capital Investment Member were not a Member. Any such vote, consent or decision shall be binding upon such Defaulting Capital Investment Member.

(e) Applications of Reductions. All reductions in the Capital Account of a Defaulting Capital Investment Member pursuant to this Section 2.10 shall be applied equally to Capital Contributions and amounts allocated to such Capital Account but not yet distributed.

Section 2.11 Continuing Participation.

(a) The Managing Member may excuse any Capital Investment Member from continuing participation in an Investment in a Portfolio Company (such Capital Investment Member shall be an "Excused Member" with respect thereto and such Investment shall be an "Excused Investment") if the Managing Member determines that there is a substantial likelihood that such Capital Investment Member's continuing indirect Investment in such Portfolio Company might have a Material Adverse Effect (as defined in Section 2.11(d) below) on the Company or the Portfolio Company and the Managing Member shall have given 10 days' advance written notice to any such Capital Member specifying its reason for availing itself of the provisions of this Section 2.11(a) and shall have delivered to such Capital Investment Member an opinion of counsel to such effect. Such Capital Investment Member shall become an Excused Member with respect to such Excused Investment as soon as practicable. The Managing Member shall take commercially reasonable steps to cause the portion of the Excused Investment that would have been allocated to the Excused Member promptly to be sold by the Company for a cash price equivalent to the Fair Market Value of such portion of the Excused Investment, taking into account the factors set forth in Section 4.8(c). The proceeds of such sale shall be paid over to such Excused Member. All costs and expenses of the Company in respect of the determinations and other matters referred to in this Section 2.11 shall be allocated to the Capital Account of the Excused Member.

(b) If at any time the Managing Member determines in good faith that there is a substantial likelihood that the continuing participation in the Company by any Capital Investment Member might have a Material Adverse Effect on the Company, such Capital Investment Member will, at the request of the Managing Member, use its best efforts to dispose of its entire interest in the Company (or such portion of its interest in the Company that is sufficient to prevent or remedy such Material Adverse Effect) to any person at a price acceptable to such Capital Investment Member, in a transaction which complies with Section 7.3. If such Capital Investment Member has not disposed of such of its interest as is sufficient to prevent or remedy

such Material Adverse Effect within ninety (90) days of the Managing Member having notified such Capital Investment Member of the determination set forth in the preceding sentence (or within such fewer number of days as the Managing Member may determine, as supported by an opinion of counsel, is necessary to avoid a Material Adverse Effect), then the Managing Member shall have the right, upon at least 15 days' prior written notice to such Capital Investment Member, to take, in its sole discretion any or all of the following actions to prevent or remedy such Material Adverse Effect:

(i) prohibit such Capital Investment Member from making a Capital Contribution with respect to any and all future investments in Portfolio Companies and reduce its unused Capital Commitment to any amount (greater than or equal to zero);

(ii) offer to any person, including each other Member, the opportunity to purchase all or a portion of such Capital Investment Member's interest in the Company at its Fair Market Value (provided that if the Managing Member itself purchases such interest, the purchase price shall be determined by an appraiser mutually acceptable to such Capital Investment Member and the Managing Member, the cost of such appraiser to be divided equally between the Managing Member and such Capital Investment Member); or

(iii) liquidate all or any portion of such Capital Investment Member's interest, taking into account the factors set forth in Section 4.8 and making adjustments to the Capital Investment Members' Capital Account balances in accordance with Section 2.3(b), in the Company or make, subject to Section 4.4(b)(iii), a special distribution in respect of such interest to such Capital Investment Member where, with respect to such distribution, the Managing Member (x) shall reduce the Capital Account of such Capital Investment Member by the amount of the distribution, provided that in no event shall such Capital Investment Member's Capital Account (as it would exist upon the deemed sale of all Company assets) be reduced to an amount which is less than zero and (y) may choose to distribute cash, cash equivalents and securities or any combination of the foregoing, in an amount (or having a value) equal to the Fair Market Value of such interest.

(c) Any Capital Investment Member shall be excused from continuing participation in the Company or participation in future investments of the Company if the following conditions are met:

(i) such Capital Investment Member reasonably determines in good faith that its continuing investment in the Company or participation in future investments of the Company would have a Material Adverse Effect on such Capital Investment Member;

(ii) such Capital Investment Member shall have given the Managing Member twenty (20) days' advance written notice of its intention to avail itself of the provisions of this Section 2.11(c); and

(iii) within ten (10) days of the giving of notice pursuant to subparagraph (ii) above, such Capital Investment Member shall have delivered to the Managing Member an opinion of counsel reasonably satisfactory to the Managing Member to the effect that its continuing participation in the Company or participation in future investments of the Company would result in a Material Adverse Effect on such Capital Investment Member.

If the foregoing conditions are met, the Managing Member shall cause the Capital Investment Member's interest in the Company to be sold by the Company in accordance with Section 2.11(b)(ii) and to dispose of any portion thereof remaining unsold in accordance with Section 2.11(b)(iii), or, at the option of such Capital Investment Member, excuse such Capital Investment Member from participation in any future investments of the Company. All costs and expenses of the Company in respect of the determinations and other matters referred to in this Section 2.11(c) shall be allocated to the Capital Account of the Capital Investment Member excused from the Company.

(d) A contribution or investment or a purchase of all or any portion of an interest in the Company by any Capital Investment Member shall have a "Material Adverse Effect" if such contribution, investment or purchase is substantially likely, when taken by itself or together with the contributions, investments or purchases by any other Capital Investment Members, (i) to result in a violation of a statute, rule or regulation of a federal, state or foreign governmental authority which might have a material adverse effect on a Portfolio Company, the Company or any Member, as the case may be (including that a Capital Member classified as a tax-exempt organization pursuant to Section 501(c)(3) of the Code will lose its status as such), (ii) to subject a Portfolio Company, the Company or any Member, as the case may be, to any material tax or governmental charge (not including any loss or deferral of an interest deduction pursuant to Section 163(j) of the Code, as enacted by the Omnibus Budget Reconciliation Act of 1989, or any successor provisions thereto), or to any material filing or regulatory requirement (including the Investment Company Act) to which it would not otherwise be subject or materially increase such filing or requirement beyond what it would otherwise have been, or (iii) to result in any securities or other assets owned by the Company being deemed to be "plan assets" under ERISA. In addition, a Material Adverse Effect on such Capital Investment Member shall exist if any governmental authority or official having jurisdiction over the subject matter with respect to such Capital Investment Member has taken the position that contributions, investments, or participation in partnerships or limited liability companies similar to the Company would cause such Capital Investment Member to violate laws, regulations or judicial interpretations of the same to which it is subject.

Section 2.12 Consent to Remedies.

Each of the Members hereby consents to the application to it of the remedies provided in Sections 2.9, 2.10 and 2.11 in recognition of the risk and speculative damages its default or

failure to pay its capital commitment would cause the other Members and further agrees that no right, power or remedy available to the Managing Member in Section 2.9, 2.10 or 2.11 shall be exclusive and that each such right, power or remedy shall be cumulative and in addition to any other right, power or remedy available at law or in equity. No course of dealing between the Managing Member and any Defaulting Capital Investment Member, and no delay in exercising any right, power or remedy shall operate as a waiver or otherwise prejudice the exercise of such right, power or remedy.

Section 2.13 In Kind Distributions.

For purposes of allocating Net Realized Capital Gains and Net Realized Capital Losses and in maintaining Capital Accounts hereunder, all unrealized gain or loss on any property distributed in kind shall be deemed realized as gain or loss from the sale or exchange of such property and allocated as provided in this ARTICLE II as of the date of distribution.

Section 2.14 In Kind Contributions; Managing Member Investments.

For purposes of allocating invested capital and maintaining Capital Accounts hereunder, in the event that the Managing Member holds an Investment in Portfolio Securities after such Investment is made and then transfers such Investment in whole or in part to the Company, the total amount of such Investment shall be recorded on the books of the Company as a Capital Contribution for the respective accounts of the Capital Members which made such original Investment as if such Investment had been originally held by the Company. Any gain with respect to such Investment between the time of the Investment and the time of the transfer shall be treated as a realized gain or a realized loss from the sale or exchange of such property and allocated to the Capital Accounts of the Capital Members and to the Capital Accounts of the Profit Members (to the extent that such gain exceeds the total amount of the Investment) as of the date of transfer in accordance with this ARTICLE II, as if the Investment had been originally held by the Company. Any loss with respect to such Investment between the time of the Investment and the time of the transfer shall belong entirely to the Capital Members. Any loss with respect to such Investment which is not transferred to the Company shall belong entirely to the Capital Members; provided, however, that any Net Realized Capital Loss with respect to any such Investment shall be taken into account for all purposes of this Agreement as if the Investment had been made by the Company and not by the Managing Member.

## ARTICLE 3.

## PROFIT MEMBERS

Section 3.1 Profit Members; Rights Thereof.

Listed on Exhibit A hereto are the names and addresses of those persons (the "Profit Members") who have been admitted to the Company in the sole discretion of the Managing Member as Profit Members and not as Capital Members and who shall have a right (i) to participate in the Profit Members Carried Interest Allocation in accordance with the terms and conditions of this Limited Liability Company Agreement to the extent of their respective Carried Interests as hereinafter defined, and (ii) to participate in distributions with respect to the Profit Members Carried Interest Allocation to the extent of their respective Vested Units as hereinafter defined.

Section 3.2 Award and Vesting of Carried Interests.

(a) Each Profit Member shall be awarded participation units ("Units") by the Managing Member in the Profit Members Carried Interest Allocation in such amounts as the Managing Member may determine in its sole discretion (except as provided herein) and set forth in the appropriate table in Exhibit A with respect to each Investment made by the Company as described in Exhibit A. Units awarded to each Profit Member shall entitle such Member to a percentage (the "Carried Interest") of the Net Operating Profits and Net Operating Losses and Net Realized Capital Gains and Net Realized Capital Losses of the Company allocated to the Profit Members as determined pursuant to the provisions of this Agreement. Units awarded to each Profit Member hereunder shall vest with respect to that particular Profit Member (the "Vested Units") in forty (40) quarter-annual cumulative consecutive installments of three and three quarters percent (3.75%) each for the first five (5) years (the first twenty (20) installments) and one and one quarter percent (1.25%) each for the second five years (the next twenty (20) additional installments) with the first four installments vesting on the first anniversary of the date of hire of each respective Profit Member (which date of hire shall be set forth with respect to each respective Profit Member in Exhibit A) and with each subsequent installment vesting in arrears at the end of each consecutive quarter-annual period following the first anniversary of each respective Profit Member's date of hire and with all such Units to have vested by the tenth anniversary of such date of hire provided that on each such vesting date each such Profit Member must then be a full-time employee of the Company and must be in compliance with, and not in default of, all of his or her obligations hereunder in order for such vesting to occur. Units awarded to each Profit Member hereunder which have not yet vested shall be referred to herein as Unvested Units (the "Unvested Units") with respect to that particular Profit Member.

(b) The Carried Interest of each Profit Member (including Former Profit Members to the extent that they have not forfeited their Vested Units as hereinafter provided) with respect to the allocation of Net Operating Profits and Net Operating Losses or Net Realized Capital Gains and Net Realized Capital Losses of the Company as determined pursuant to the provisions of this Agreement shall be determined at any time or from time to time for each Investment by dividing the number of Units owned by that particular Profit Member by the total number of Units owned by all Profit Members (including Former Profit Members to the extent that they have not forfeited their Units as hereinafter provided) and then multiplying the result by the

Profit Members' Carried Interest Allocation for that particular Investment expressed as a decimal.

(c) That portion of the Profit Members Carried Interest Allocation with respect to Net Operating Profits and Net Operating Losses and Net Realized Capital Gains and Net Realized Capital Losses of the Company which is allocable to Unvested Units which have not been forfeited shall be added to the Capital Account maintained by the Company for each respective Profit Member but shall be held in suspense pending vesting of the Unvested Units for each respective Profit Member and shall not be distributed to such Profit Member except to the extent that such Unvested Units, with respect to which such portion of the Net Operating Profits and Net Operating Losses and Net Realized Capital Gains and Net Realized Capital Losses of the Company are being held in suspense, have vested. As of any distribution date, each Profit Member shall therefore be entitled to receive (subject to the terms and conditions of this Agreement) distributions from his or her Capital Account only to the extent of (i) his or her vested percentage (determined by dividing his or her Vested Units as of the distribution date by the total of his or her Vested and Unvested Units as of such date) of all amounts allocated to such Capital Account up to the distribution date less (ii) any prior distributions. Any Profit Member whose membership relationship with the Company is terminated as provided in Section 3.3 below (a "Former Profit Member"), shall forfeit all of his or her Units to the extent that such Units are unvested at the time of termination and shall forfeit that portion of his or her Capital Account, if any, which is at that time held in suspense pending vesting of such Unvested Units but shall retain that portion of his or her Capital Account, if any, which is at that time held with respect to Vested Units. Such Profit Member shall become a Former Profit Member and shall retain his or her Vested Units for the purpose of continuing to participate in the Profit Members Carried Interest Allocation subject to the terms and conditions of this Limited Liability Company Agreement. A Profit Member whose membership relationship with the Company is terminated for Cause as hereinafter defined, shall immediately forfeit all of his or her Vested and Unvested Units and shall forfeit that portion of his or her Capital Account, if any, which is at that time held in suspense pending vesting of such Unvested Units, but shall retain that portion of his or her Capital Account, if any, which is at that time held with respect to Vested Units.

(d) No portion of the Profit Members Carried Interest Allocation with respect to Net Operating Profits and Net Operating Losses and Net Realized Capital Gains and Net Realized Capital Losses of the Company shall be allocated to Vested or Unvested Units which have been forfeited as hereinafter provided, but any such previously allocated portion (to the extent not previously distributed) shall be reallocated pro rata among the Vested and Unvested Units then belonging to the Profit Members and among the Vested Units then belonging to the Former Profit Members.

(e) Any Units belonging to any Former Profit Member must only be Units which were Vested Units belonging to such Former Profit Member at the time of his or her termination. No Units shall vest whatsoever in a Profit Member after his or her membership relationship with the Company has terminated for any reason whatsoever.

(f) Additional Units may be awarded from time to time by the Managing Member to one or more Profit Members and to one or more additional Profit Members but only with the approval of a Majority in Interest of the Profit Members. Furthermore, the Managing Member may reallocate Units (both vested and unvested) among the Profit Members but only with the approval of a Majority in Interest of the Profit Members provided that no Profit Member shall give up any Units (either vested or unvested) without his or her consent, except as herein provided with respect to termination). The Managing Member may accelerate the vesting of any Units for any one or more of the Profit Members or by fulfillment of such conditions as the Managing Member shall approve or otherwise, but only with the approval of a Majority in Interest of the Profit Members. The Managing Member may also attach conditions or restrictions to the award or vesting of Units with respect to any Profit Member but only with the approval of a Majority in Interest of the Profit Members.

(g) Special Allocations. Notwithstanding the foregoing, the Company may make a special allocation of any part or all of any Net Realized Capital Gains to one or more of the Members as provided in Section 2.7(g) above.

(h) Discontinuance of Fund Activities; Vesting. Upon the discontinuance of the activities of the Company, or the discontinuance by the Parent or any of its affiliates, of activities related to the funding of additional companies after the Company has been fully invested, and with the approval of a majority of all the Directors of the Managing Member and the approval of a Majority in Interest of the Profit Members, the Unvested Units belonging to the Profit Members shall all become Vested Units, provided, however, that the provisions of Sections 3.2(e) and 3.3 shall nonetheless control in the case of Former Profit Members.

Section 3.3 Termination of Employment and Membership Status.

(a) In the event of termination of a Profit Member's employment and membership relationship with the Company (i) by the Profit Member voluntarily, or (ii) by the Managing Member with the concurrence of a Majority in Interest of the Profit Members but otherwise in its sole discretion for any reason or for no reason except for Cause as hereinafter defined, or (iii) by the death of the Profit Member, or (iv) by the Managing Member on account of the continuous disability of the Profit Member for a period of more than three (3) months (provided that the Managing Member determines in its sole discretion that such Profit Member cannot continue to fulfill his or her executive responsibilities to the Company on account of such disability and gives such Profit Member at least thirty (30) days notice of such determination), then in each such case such Profit Member's employment relationship with the Company and status as a Profit Member shall terminate forthwith and said Profit Member shall become a Former Profit Member and shall retain his or her Vested Units for purposes of determining his or her Vested Carried Interest at any time and from time to time with respect to the Profit Members Carried Interest Allocation, but said Former Profit Member shall forfeit all of his or her Units to the extent not vested at the time of termination. In the event of termination of the Profit Member's employment relationship and membership relationship with the Company by

the Managing Member in its sole discretion for Cause as hereinafter defined, then such Profit Member's employment relationship with the Company and status as a Profit Member shall terminate forthwith and said Profit Member shall not become a Former Profit Member but rather shall forfeit all of his or her Units both vested and unvested and shall forfeit in its entirety such Profit Member's Vested Carried Interest and any and all other interests he or she may have in the Company or in any Capital Account held for the benefit of such Profit Member pursuant hereto except that said Profit Member shall retain that portion of his or her Capital Account, if any, which is at that time held with respect to Vested Units and shall also retain the right to participate to the extent of his or her Vested Units at the time of his or her termination in the Profit Members Carried Interest Allocation but only to the extent of any Net Realized Capital Gains with respect to Portfolio Company Securities owned by the Company at the time of his or her Termination for Cause. The status of a Former Profit Member and his or her relationship as such with the Company may also be terminated by the Managing Member in its sole discretion at any time for Cause as hereinafter defined, in which event the Former Profit Member shall immediately forfeit all of his or her Vested Units and shall forfeit in its entirety such Former Profit Member's Vested Carried Interest and any and all other interests he or she may have in the Company or in any Capital Account held for the benefit of such Former Profit Member pursuant hereto except that said Profit Member shall retain that portion of his or her Capital Account, if any, which is at that time held with respect to Vested Units. The names and addresses of all Former Profit Members shall be listed on Exhibit A, together with their respective Vested Units. Said Former Profit Members shall be considered to be Profit Members for purposes of determining the allocation of net operating profits, net operating losses, capital gains and capital losses pursuant to Sections 2.5 and 2.6 and for no other purposes.

(b) Cause.
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For purposes of this Agreement, termination of a Profit Member's employment relationship with the Company and status as a Profit Member or status as a Former Profit Member for Cause shall be determined in each instance in the sole discretion of the Board of Directors of the Managing Member and shall mean:

(i) conviction for, or plea of nolo contendere to, (A) a felony, whether or not business related, which may injure the business or reputation of the Company, the Managing Member or an Affiliate of either of them, or (B) a crime of moral turpitude;

(ii) theft or embezzlement of assets of the Company, the Managing Member or an Affiliate of either of them;

(iii) a material breach of any agreement between the Profit Member and the Company, the Managing Member or an Affiliate of either of them including, without limitation, any violation of the non-competition covenant hereinafter set forth in Section 3.5 (the "Non-Competition Covenant");

(iv) the willful and continued failure by the Profit Member to substantially

perform his or her duties (other than as a result of incapacity due to physical or mental illness);

(v) gross neglect of duties or responsibilities as an employee of the Company or as a Member, or dishonesty or incompetence, or willful misconduct, which in any case seriously and adversely affects the business of the Company or of the Managing Member or of an Affiliate of either of them but only if there has been a good faith determination by the Board of Directors of the Managing Member that such neglect or misconduct or dishonesty or incompetence has occurred.

Termination for Cause can only be effected by the Board of Directors of the Managing Member by notice to the Member being terminated, which notice must be given within five (5) days following a hearing before the Board at which such Member will have an opportunity to answer the charges constituting Cause. The hearing before the Board can be held only after at least twenty (20) days' written notice to such Member (unless such Member agrees to a shorter period) of the date and time of the hearing and the nature of the charges constituting Cause. At the time of a notice of the hearing or any time thereafter but prior to the Board's decision following the hearing, the Board may immediately relieve such Member of his or her duties and responsibilities hereunder pending its decision.

Section 3.4 Change of Control.
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(a) Upon a Change of Control, as hereinafter defined, the Company shall repurchase all, and not less than all, of the Units of each of the Profit Members and each of the Former Profit Members, at the individual election (an "Initial Election") of each Profit Member and each Former Profit Member (such election to be exercised within two (2) months of the date of the Change of Control) for an aggregate purchase price per Unit (the "Change of Control Repurchase Price per Unit") equal to twenty-two and one-half percent (22.5%) of the fair market value of the assets of the Company (determined as if the Company were a publicly traded entity) in excess of the Capital Members' Unrecovered Capital (as calculated in accordance with Section 3.4(b), the "Fair Market Value of the Company"), divided by the total number of Units (both vested and unvested) owned by the Profit Members and Former Profit Members at the time of the Change of Control.

(b) For purposes of determining the Change of Control Repurchase Price per Unit, the Fair Market Value of the Company (determined as if the Company were a publicly traded entity) shall be determined by an independent firm of investment bankers of national reputation (the "Appraiser"), the selection of which by either the Profit Members or the Managing Member is acceptable to both (i) a majority of all the members of the Board of Directors of the Managing Member and (ii) a Majority in Interest of the Profit Members. The Appraiser must be selected within one (1) month of the date of the Change of Control. If a majority of all the members of the Board of Directors of the Managing Member and a Majority in Interest of the Profit

Members fail to select an Appraiser, then each shall select an independent firm of investment bankers of national reputation and those two firms shall select an Appraiser in no case more than two (2) months following the date of the Change of Control. The Fair Market Value of the Company shall be (i) the fair market value of the Company determined by the Appraiser as if the Company were a publicly traded entity at the time of the Change of Control (ii) less the Capital Members' Unrecovered Capital. In determining the Fair Market Value of the Company as if it were a publicly traded entity, the Appraiser shall give primary and substantial weight as a relevant frame of reference to the fair market value of the Company determined in accordance with the following methodology:

(i) The Appraiser shall first determine the consideration or value belonging or accruing to all the stockholders of the Parent as the ultimate owners of both (A) 100% of the Unrecovered Capital and the appropriate Capital Members' Allocation of the profits of the Company and (B) all the other assets of the Parent, at the time of the Change of Control, which consideration or value shall be deemed to be equal to the Common Stock Price, as hereinafter defined, multiplied by the number of shares of Common Stock of the Parent outstanding at the time of the Change of Control determined after giving effect to (X) the conversion of all convertible securities of the Parent and (Y) the exercise of all options, whether or not exercisable, outstanding at such time.

(ii) The Appraiser shall then deduct from that consideration or value (A) all cash, cash equivalents and the amount of any invested cash held directly or indirectly by the Parent (including, without limitation, all Unrecovered Capital of the Company as appearing on the books of the Company) and (B) the fair market value of the Parent's other core businesses (excluding the Company and its Investments, Portfolio Companies and other activities) comprised of companies, tangible assets and operating divisions to the extent owned by the Parent (determined as if these other core businesses were, in the aggregate, a separate publicly traded entity), the fair market value of which shall also be determined by the Appraiser as of the time of the Change of Control. The purpose of this calculation is to determine the value of the Company considered as if it were a publicly traded entity at the time of the Change of Control by determining that portion of the value of the Parent as measured by the Common Stock Price (less cash, cash equivalents and the amount of any invested cash including the Unrecovered Capital of the Company and the appraised value of the Parent's interest in other core businesses) which reflects the value of all the Company's Internet-related Investments, Portfolio Companies and activities which have been invested in by the Company determined as if the Company were a publicly traded entity owned by the stockholders of the Parent immediately prior to the time of the Change of Control with the remainder of the value of the Parent as measured by the Common Stock Price reflecting the value of the Parent's other core businesses (excluding the Company and its Investments, Portfolio Companies and other activities) determined as if those other core businesses were a separate publicly traded entity also owned by the stockholders of the Parent immediately prior to the time of the Change of Control.

The Appraiser must first determine the Fair Market Value of the Company determined as if it were a publicly traded entity by applying the methodology set forth above, since this is the best available evidence of the actual value of the Company as if it were a publicly traded entity at the time of the Change of Control to the extent that the Common Stock Price reflects the Fair Market Value of the Company. Thereafter, the Appraiser, in its discretion, may also (but need not) consider and take into account the following criteria in descending order of importance:

(x) The fair market value of other publicly traded entities dealing primarily in Internet-related investments and activities of a kind similar to those of the Company; and

(y) The Fair Market Value of the Company (determined as if the Company were a publicly traded entity) taken as a whole after taking into account the future earnings potential, business prospects of all its various Internet-related investments and activities taken as a whole, with particular emphasis on the Company's business plan and strategy for implementing that plan, taken as a whole, and the general market conditions in the venture capital industry for Internet-related investments and activities of the kind owned by the Company.

In determining the Fair Market Value of the Company, the Appraiser in no event shall determine the individual value of each of the Portfolio Company Securities or Investments of the Company and then add these values together because such a methodology would fail to take into account the overall business plan and strategy of the Company to build a business comprised of Internet-related investments and activities which complement and support each other as parts of an overall strategy for the development of an Internet business, but must in all events consider the Fair Market Value of the Company taken as a whole.

(c) Upon a Change of Control, as hereinafter defined, the Unvested Units belonging to the Profit Members shall all become Vested Units, provided, however, that the provisions of Sections 3.2(e) and 3.3 shall nonetheless control in the case of Former Profit Members.

(d) The Company, the Managing Member, and the Parent shall be jointly and severally liable to the Profit Members for the payment of the Change of Control Repurchase Price per Unit with respect to the Company's repurchase of the Vested Units pursuant to this Section 3.4.

(e) Upon the consummation of the repurchase by the Company of any of the Units of the Profit Members upon a Change of Control pursuant to the terms of this Section 3.4, the Managing Member may, in its sole discretion, and without the approval of the Profit Members (i) retire the repurchased Units or (ii) admit additional Profit Members in accordance with Section 7.3 hereof and award to the additional Profit Members any or all of the repurchased Units.

(f) For purposes of this Agreement, a "Change of Control" shall be deemed to have occurred when there has occurred a change of control of the Parent (i) which has not been approved by a majority of all the members of the Board of Directors of the Parent, or (ii) which has been approved by a majority of all the members of the Board of Directors of the Parent but which has not been approved by a Majority in Interest of the Profit Members and which is likely by its terms to have a material adverse effect upon the business and prospects of the Company as currently, or planned to be, conducted, and which change of control in either event is of a nature that would be required to be reported in response to Items 6(e) or 14(i), (iv), or (v) of Schedule 14A of Regulation 14A promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act") provided that, in the case of a Change of Control reportable under Item 6(e), such Change of Control involves the acquisition by any "person" (as such term is used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act, but expressly excluding David S. Wetherell of beneficial ownership, directly or indirectly, of securities or interests in the Parent which represent more than thirty percent (30%) of the combined voting power of the Parent's outstanding securities. For purposes of this Agreement, a "Change of Control" shall also be deemed to have occurred when there has occurred a change of control of the Managing Member (i) which has not been approved by a majority of all the members of the Board of Directors of the Parent, or (ii) which has been approved by a majority of all the members of the Board of Directors of the Parent but which has not been approved by a Majority in Interest of the Profit Members and which is likely by its terms to have a material adverse effect upon the business and prospects of the Company as currently, or planned to be, conducted, and which change of control in either event involves (i) the acquisition by any "person" (as such term is used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act) of beneficial ownership, directly or indirectly, of securities or interests in the Managing Member which represents more than fifty percent (50%) of the combined voting power of the Managing Member's outstanding securities, or (ii) a sale of all or substantially all of the assets of the Company or of the Managing Member, or (iii) either the merger or consolidation of the Company or the Managing Member with another entity which is the surviving entity of such merger or consolidation provided that such other entity, prior to such merger or consolidation, was not controlled directly or indirectly by the Parent.

(g) All fees and expenses associated with the appraisal process set forth above shall be paid by the Parent.

(h) Each Profit Member or Former Profit Member making an Initial Election to have his or her Units repurchased by the Company as provided in Section 3.4(a) above following a Change of Control shall have one (1) month following the determination of the Change of Control Repurchase Price per Unit as provided above to reconsider and withdraw such Initial Election. Any withdrawal of an Initial Election must be made by the Profit Member or Former Profit Member by written notice to the Company within said one (1) month period. In the event any such Initial Election is not withdrawn in a timely manner, then it shall become final and binding on the parties and the Company shall proceed to repurchase the Units owned by such Profit Member or Former Profit Member within two (2) months following the date of the determination of the Change of Control Repurchase Price per Unit as provided above. In the

event that any Profit Member or Former Profit Member fails to make a timely Initial Election (except for reasons beyond his or her control) to have his or her Units repurchased by the Company as provided in Section 3.4(a) above following a Change of Control, such right shall immediately become null and void and shall be of no further force or effect with respect to that Change of Control, but said Profit Member or Former Profit Member shall retain his or her rights hereunder with respect to any other or future Change of Control.

Section 3.5 No Recruitment or Solicitation.

Each Profit Member agrees that during his or her employment by the Company and while he or she is a Profit Member and for a period of three (3) years following termination of his or her employment and membership relationship with the Company (i) by the Profit Member voluntarily, or (ii) by the Managing Member for Cause, such Profit Member will not, directly or indirectly: (A) recruit, solicit or induce, or attempt to induce, any employee or consultant of the Parent or of the Managing Member or of the Company or of any Portfolio Company or of any Affiliate of any of them to terminate his or her employment with, or otherwise cease any relationship with, the Parent or the Managing Member or the Company or any Portfolio Company or any Affiliate of any of them; or (B) solicit, divert, take away, or attempt to divert or take away, any investment opportunity with respect to any Portfolio Company or any investment opportunity with respect to any prospective investment or prospective portfolio company which the Managing Member or the Company contacted or solicited during such Profit Member's employment relationship and status as a Profit Member with the Company. If any restriction set forth herein is found by any court to be unenforceable because it extends for too long a period of time, or over too great a range of activities, or over too broad a geographic area, the restriction shall be interpreted to extend only over the maximum period of time, range of activities, or geographic area which the court finds to be enforceable. Each Profit Member acknowledges and agrees that the restrictions contained in this Section 3.5 are necessary for the protection of the business and goodwill of the Parent and of the Managing Member and of the Company and of the Portfolio Companies and of the Affiliates of any of them and are considered by such Profit Member to be reasonable for such purpose and that his or her interest in the Company is being received partly in consideration for the foregoing non-competition covenant.

Section 3.6 Non-Disclosure and Invention Assignment Agreement.

Each Profit Member shall enter into a Non-Disclosure and Invention Assignment Agreement with the Company in the form of Exhibit B attached hereto.

Section 3.7 Capital Accounts.

A Capital Account shall be established on the books of the Company for each Profit Member. Each Profit Member's Capital Account shall be increased or decreased to reflect

allocations of Net Operating Profits, Net Operating Losses, Net Realized Capital Gains and Net Realized Capital Losses and distributions of Cash Flow and Capital Proceeds, as provided in ARTICLE II and ARTICLE IV hereof.

## ARTICLE 4.

## DISTRIBUTIONS; WITHHOLDING; VALUATION

### Section 4.1 Withdrawal of Capital.

Except as otherwise set forth in this Agreement, no Capital Member shall have the right to withdraw capital from the Company or to receive any distribution or return of its Capital Contribution.

### Section 4.2 Distributions of Cash Flow.

Subject to the terms and conditions of ARTICLE III and ARTICLE IV, Cash Flow for each Fiscal Year (excluding Cash Flow attributed to Unvested Carried Interests but including Cash Flow for prior Fiscal Years attributable to Carried Interests that have vested during the current Fiscal Year) shall be distributed to all of the Members in proportion to their respective allocations of Net Operating Profits and Net Realized Capital Gains as determined pursuant to ARTICLE II and ARTICLE III; provided, however, that Cash Flow may first be applied to the payment of expenses incurred by the Company in the sale or other disposition of Portfolio Securities or any other Maintenance Expenses with respect to which the Company does not receive sufficient cash to pay such expenses. In the event the Company is unable, for any reason, to pay any portion of such expenses, the amount not paid shall be carried forward, as a priority item, without interest, to be paid out of Cash Flow or on liquidation. Final distributions of Cash Flow for each Fiscal Year, determined in accordance with the provisions of this Section 4.2, shall be made as soon as practicable following such Fiscal Year. In the discretion of the Managing Member, interim distributions of Cash Flow for a Fiscal Year may also be made at any time during such Fiscal Year. The Managing Member shall in all events make available to the Profit Members by distribution or loan (with appropriate security) or otherwise sufficient cash to pay all taxes due and payable by the Profit Members with respect to the activities of the Company.

### Section 4.3 Distributions of Capital Proceeds.

Subject to the terms and conditions of ARTICLE III and ARTICLE IV, Capital Proceeds arising during a Fiscal Year shall be distributed in the same manner and subject to the same terms and conditions as provided in Section 4.2 above as soon as practicable and in no

event later than three (3) months after the close of such Fiscal Year, to all of the Members as determined pursuant to ARTICLE II and ARTICLE III.

Section 4.4 Additional Distribution Provisions.

(a) Distributions of Property. Except as provided in subparagraph (b) below, any property other than cash received with respect to any Portfolio Security shall be distributed to the Members as provided in Sections 4.2 and 4.3. Upon a distribution of such property, the property shall be valued in accordance with Section 4.8 and such property shall be deemed to have been sold at such value and the proceeds of such sale shall be deemed to have been distributed to the Members receiving such property for all purposes of this Agreement. The Managing Member shall provide ten (10) days' prior notice in writing to the Members of any distribution of property other than cash.

(b) Distribution of Securities and other Property in Kind.

(i) The Managing Member may in its discretion, and shall upon the affirmative vote of a Majority in Interest of the Profit Members, distribute to the Members (but only to the extent vested and only in accordance with Sections 2.5, 2.6, 2.7, 3.1, 3.2, 3.3, 4.2, 4.3 and 4.4), Portfolio Securities which are Marketable Securities and which are not subject to any restrictions on transferability (except as provided in Section 4.4(c) below), including restrictions pursuant to Rule 144 (except Rule 144(k)) under the Securities Act (with the exception of Portfolio Securities distributed in connection with a Final Distribution). Upon any distribution of securities, the securities distributed shall be valued in accordance with Section 4.8 and such securities shall be deemed to have been sold at such value and the proceeds of such sale shall be deemed to have been distributed to the Members receiving them for all purposes of this Agreement. An amount of the securities distributed no greater in value than the federal income tax basis of all securities included in the distribution (disregarding any adjustment under Section 734 or 743 of the Code) shall be distributed first to each Member as determined pursuant to Sections 2.5, 2.6, 2.7, 3.1, 3.2, 3.3, 4.2, 4.3 and 4.4 as of the date of distribution. The balance, if any, of the securities included in the distribution shall then be distributed to the Members also in accordance with Sections 2.5, 2.6, 2.7, 3.1, 3.2, 3.3, 4.2, 4.3 and 4.4.

(ii) In connection with any distribution of Portfolio Securities which are Marketable Securities and which are not subject to any restrictions on transferability (except as provided in Section 4.4(c) below) including restrictions pursuant to Rule 144 (except Rule 144(k)) under the Securities Act, the Managing Member shall offer to all Members the right to receive at their election all or any portion of such distribution in the form of the proceeds of the disposition of the securities that otherwise would have been distributed to such Members, and will use its best efforts so to dispose of such securities for the benefit of any electing Member. In such event, (a) such electing

Members shall be deemed to receive cash equal to the Fair Market Value of the Marketable Securities they otherwise would have received and (b) such electing Members will bear pro rata all the expenses (including, without limitation, underwriting costs) of such disposition.

(iii) If any Member would otherwise receive a distribution of an amount of any securities that is substantially likely to cause such Member to own or control in excess of the amount of such securities that it may lawfully own or control or which, by reason of any legal or contractual restriction, the Managing Member may not distribute to such Member, the Managing Member shall, at the written request of such Member and to the extent it is practicable to do so, dispose of all or any portion of such securities and distribute the proceeds of such disposition to such Member; provided that such Member (a) shall be deemed to receive cash equal to the Fair Market Value of the securities they otherwise would have received and (b) shall bear pro rata all of the expenses (including, without limitation, underwriting costs) of such disposition.

(c) Voting Agreement; Right of First Refusal. In connection with any distribution of Portfolio Securities by the Company or by the Managing Member, each Member receiving any such securities shall, prior to and as a condition to receiving any such distribution, enter into a Voting Agreement and Right of First Refusal Agreement with the Managing Member in form satisfactory to the Managing Member in all respects to the effect that each such Member shall receive title to any such distributed Portfolio Securities but that the Managing Member shall retain the right to vote such Portfolio Securities in its sole discretion in all instances and shall also retain a right of first refusal with respect to the disposition of such securities. If such Member shall thereafter die or seek to dispose of any part or all of such distributed Portfolio Securities for any reason whatsoever and whether by operation of law or otherwise the Managing Member shall have the right to exercise its right of first refusal as set forth in said Agreement with respect to the disposition of such distributed Portfolio Securities substantially exercisable as follows.

(i) If at any time such Member or transferee wishes to transfer (as hereinafter defined) any of such distributed shares of Portfolio Securities, other than as provided for in Section 4.5(c) of this Agreement, the Member or transferee shall first give written notice to the Managing Member, stating the nature of the proposed transfer, the name and address of the proposed transferee or transferees, the number of shares to be transferred (the "Offered Shares"), the price to be paid therefor and all the terms and conditions of the proposed transfer, and shall forthwith offer in writing to transfer such shares to the Managing Member for the same consideration and on the same terms and conditions and the Company shall have the irrevocable and exclusive first option ("Right of First Refusal"), but not the obligation, to acquire from the Member or transferee all or any portion of the Offered Shares on the same terms and conditions.

(ii) Within thirty (30) days following delivery of the Member's or transferee's notice, as specified above, the Managing Member shall give written notice to the Purchaser,

stating whether or not the Managing Member elects to exercise its Right of First Refusal as to all or any part of the Offered Shares. Failure by the Managing Member to give this notice within the 30 day period shall be deemed to be an election by it not to exercise its Right of First Refusal for the Offered Shares.

(iii) Within ten (10) days after the date of the Managing Member's notice of exercise of its Right of First Refusal as specified above, the Member or transferee, or his or her estate, shall tender to the Managing Member at its principal office the certificate or certificates representing that portion of the Offered Shares which the Managing Member has elected to acquire, duly endorsed in blank by the Member or transferee or with duly endorsed stock powers attached thereto, all in form suitable for the transfer of such Offered Shares to the Managing Member and the Managing Member shall pay to the Member or transferee the purchase price at the times and upon the terms and conditions proposed to be paid by the proposed third-party transferee, as set forth in the Member's or transferee's notice.

(iv) If the Member's or transferee's notice shall be duly given, and the Managing Member shall fail to purchase all of the Offered Shares by the exercise of its Right of First Refusal, then, but only then, the Member or transferee shall be free to transfer the Offered Shares, but only for the price and upon the terms and conditions set forth in the Member's or transferee's notice, and only to the transferee or transferees named therein, and only if said transfer is consummated within sixty (60) days after the date of the Member's or transferee's notice to the Managing Member. If the Offered Shares shall not be so transferred by the Member or transferee within the period specified above, then the transfer may not be made and the Offered Shares shall remain subject to the terms of the Voting Agreement and the Right of First Refusal Agreement in the same manner as if the Purchaser's or transferee's notice had not been given.

(v) If the proposed disposition is for no consideration or for a nominal consideration, then the Right of First Refusal shall be exercisable by the Managing Member as aforesaid except that the purchase price shall be Fair Market Value as determined pursuant to Section 4.8. If the proposed disposition is in a public market, then the Member's or transferee's notice may state that the proposed disposition will be made at prevailing market prices and may omit the name or names of the proposed transferee or transferees, and if the Managing Member elects to exercise its Right of First Refusal as to all or any part of the offered shares, then the purchase price shall be Fair Market Value as determined pursuant to Section 4.8 on the date the Managing Member shall give written notice to the Purchaser electing to exercise its Right of First Refusal as to all or any part of the offered shares. The rights of the Managing Member with respect to the Voting Agreement or the Right of First Refusal Agreement shall be assignable by the Managing Member in its sole discretion. Any certificate representing shares of Portfolio Securities subject to the Voting Agreement and/or the Right of First Refusal Agreement shall contain a legend satisfactory to the Managing Member in all respects.

(d) Compliance with Securities Laws. The Managing Member may cause certificates evidencing any securities to be distributed to be imprinted with legends as to such restrictions on transfers that it may deem necessary or appropriate, including legends as to applicable federal or state securities laws or other legal or contractual restrictions, and may require any Member to which securities are to be distributed to agree in writing that such securities will not be transferred except in compliance with (i) such restrictions and (ii) applicable law.

(e) Reserves; 125% of Contributed Capital Retained. The Managing Member shall have the right, in its sole discretion to establish reserves at any time or from time to time with respect to any anticipated losses with respect to any Investment in any Portfolio Company. Furthermore, no distributions shall be made hereunder (except for distributions to the Members for the sole purpose of enabling such Members to pay taxes) until the Managing Member has determined with respect to each distribution (other than the Final Distribution) that the Company shall retain, after any such proposed distribution, Investments and other assets valued on its books in excess of 125% of the Unrecovered Capital of its Capital Members.

(f) Borrowings. The Company shall not borrow to make distributions to the Members or for any other purpose.

(g) Maintenance Expenses. All Maintenance Expenses shall be paid by and shall be the responsibility of the Company which shall be reimbursed therefore by contributions for this purpose made by the Managing Member who shall receive a special allocation with respect to such contributions and with respect to the payment of such Maintenance Expenses. Maintenance Expenses shall not be paid out of the Net Operating Profits or Net Realized Capital Gains or Cash Flow or Capital Proceeds or Capital Contributions of the Company except as aforesaid.

(h) Distribution of Unrecovered Capital. The Managing Member shall have the right, in its sole discretion, and prior to a Final Distribution, to distribute all or any part of amounts in the Capital Accounts of Capital Members up to the amount of Capital Contributions less any Returns of Capital and less any distributions of Unrecovered Capital previously made to the Capital Members pursuant to this Section 4.4(h).

Section 4.5 Other Distributions.

Any distributions not included in Sections 4.2, 4.3, 4.4 or 10.3 shall be made in cash to the Members in accordance with Sections 2.5, 2.6, ARTICLE III and ARTICLE IV hereof.

Section 4.6 Withholding.

Each Member hereby authorizes the Company to withhold and to pay over, or otherwise

pay, any withholding or other taxes payable by the Company as a result of such Member's status as a Member hereunder. If and to the extent that the Company shall be required under applicable law to withhold or pay any such taxes with respect to any Member or as a result of any Member's participation in the Company, such Member shall be deemed for all purposes of this Agreement to have received a distribution from the Company in the amount of such tax on the last day of the taxable year for which the tax is withheld or paid or, if earlier, on the last day on which such Member owned its interest in the Company. The amount of any distribution to which such Member would otherwise be entitled shall be reduced by the amount of such deemed distribution. To the extent that the aggregate of such distributions to a Member for any month exceeds the distributions to which such Member is entitled for such period, the amount of such excess shall be repaid by such Member to the Company within 30 days of the end of such month. The withholdings referred to in this Section 4.6 shall be made at the maximum applicable statutory rate under the applicable tax law unless the Managing Member otherwise decides or unless the Managing Member shall have received an opinion of counsel, satisfactory to the Managing Member, to the effect that a lower rate is applicable, or that no withholding is applicable.

Section 4.7 No Restoration by the Managing Member.
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Except as provided by law or Sections 8.3 or 10.3, the Managing Member shall not be obliged at any time to repay or restore to the Company or any Member all or any part of any distributions made to the Managing Member by the Company.

Section 4.8 Valuation.
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For all purposes of this Agreement, the Fair Market Value of securities and other property of the Company shall be determined as follows:

(a) Marketable Securities shall (i) if traded on a national securities exchange, be valued at their last sales price on such exchange on which such Marketable Securities shall have traded on the last trading day on which such Marketable Securities were traded immediately preceding the date of determination, or (ii) if the trading of such Marketable Securities is reported through the National Association of Securities Dealers Automated Quotation System, such Marketable Securities shall be valued at the last sale price as shown by the National Association of Securities Dealers Automated Quotation System on the last trading day on which such Marketable Securities were traded immediately preceding the date of determination.

(b) All property other than Marketable Securities shall be valued by the Managing Member in good faith. Factors considered in valuing individual securities shall include, but need not be limited to, purchase price, estimates of liquidation value, the price at which Members receiving a distribution of securities will be able to sell them and the time at which such securities may be sold, the existence of restrictions on transferability, prices received in recent

significant private placements of securities of the same issuer, prices of securities of comparable public companies engaged in similar businesses and changes in the financial condition and prospects of the issuer.

(c) All Portfolio Securities shall be valued by the Managing Member at the time of any distribution pursuant to ARTICLE IV in order to determine whether the Fair Market Value of any Portfolio Security is less than 100% of the Capital Contributions allocable thereto for purposes of Section 4.4.

(d) Upon any valuation of securities or other property of the Company pursuant to Section 4.8, the Managing Member shall notify each member of the Advisory Committee in writing of the Fair Market Value of such securities or other property as determined by the Managing Member in accordance with the provisions of Section 4.8. The Advisory Committee shall, not more than ten Business Days after the receipt of such notice from the Managing Member, furnish notice in writing to the Managing Member stating whether or not the Advisory Committee has approved or has not approved the Managing Member's valuation. If the Advisory Committee approves such valuation (or shall have failed to provide the Managing Member with the aforementioned notice within such ten Business Days), such valuation shall constitute the Fair Market Value of such property for all purposes hereof. If the Advisory Committee does not approve such valuation, and if the Managing Member and the Advisory Committee cannot agree on a valuation within five Business Days (or such other period of time as the Managing Member and the Advisory Committee may determine) of the date on which the Committee advises the Managing Member that it has not approved such valuation, the Managing Member and the Advisory Committee shall jointly select an independent appraiser who shall be retained to determine, as promptly as practicable, the Fair Market Value of the property to be distributed. The Company shall pay the expenses of such appraiser.

(e) The Managing Member shall make no distribution to the Members pursuant to ARTICLE IV until the Fair Market Value of all property valued in connection with such distribution has been determined in accordance with this Section 4.8.

## ARTICLE 5.

## MANAGEMENT; PAYMENT OF EXPENSES

### Section 5.1 Description of Managing Member.

CMG@Ventures, Inc., a Delaware corporation, is the Managing Member of the Company.

### Section 5.2 Management by the Managing Member.

Subject in all instances to approval, disapproval, change, amendment or modification by the Board of Directors of the Managing Member, the management, policy and operation of the Company shall be vested in a Majority in Interest of the Profit Members, who shall perform all acts and enter into and perform all contracts and other undertakings which they deem necessary or advisable in their sole discretion to carry out any and all of the powers and purposes of the Company. Without limiting the foregoing general powers and duties, and except as is otherwise expressly set forth herein, a Majority in Interest of the Profit Members (subject to the power and authority of the Board of Directors of the Managing Member as aforesaid) is hereby authorized and empowered on behalf of the Company:

(a) to perform, or arrange for the performance of all management and administrative services necessary for the operations of the Company;

(b) to identify investment opportunities for the Company, negotiate and structure the terms of such Investments, and arrange additional financing needed to consummate such Investments and thereafter to deal with such Investments, and to restructure, amend, terminate, vote, or dispose of such Investments in all respect;

(c) except as otherwise provided in this Agreement, to invest the assets of the Company in the securities of any organization, domestic or foreign, without limitation as to kind and without limitation as to marketability of the securities, and pending such Investment and the disposition of the proceeds thereof, to invest the assets of the Company in Temporary Investments;

(d) to exercise all rights, powers, privileges and other incidents of ownership with respect to the Portfolio Securities, including, without limitation the voting of such Securities, the approval of a restructuring of an Investment, participation in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings, and other similar matters;

(e) to sell, transfer, liquidate or otherwise terminate Investments made by the Company or by the Managing Member;

(f) to employ or consult brokers, accountants, attorneys, or specialists in any field of endeavor whatsoever ("Consultants"), including Consultants who may be Members;

(g) to deposit any funds of the Company in any money market fund or in any bank or trust company having capital in excess of $100,000,000 and to entrust to such bank or trust company any of the securities, monies, documents and papers belonging to or relating to the Company; provided, however, that from time to time, in order to facilitate any transaction, any of the said securities, monies, documents and papers belonging to or relating to the Company may be deposited in and entrusted to any brokerage firm that is a member of the New York Stock Exchange and has capital in excess of $100,000,000;

(h) to determine, settle and pay all expenses of and claims against the Company and make Capital Calls for the Company, and sell and liquidate Investments or make withdrawals from reserves or take any other actions consistent with Section 5.4 for the payment of Maintenance Expenses as needed to do so with the understanding that all Maintenance Expenses are to be paid by the Company and reimbursed to the Company by the Managing Member and are not to be paid out of the Net Operating Profits or Net Realized Capital Gains or Cash Flow or Capital Proceeds or Capital Contributions of the Company, and, in general, to make all accounting, tax and financial determinations and decisions, including any election under federal and state tax laws and to act as the "tax matters partner" of the Company, as such term is defined in Section 6231(a)(7) of the Code, and to exercise any authority permitted the tax matters partner under the Code in accordance with Section 12.12;

(i) to provide bridge financing to Portfolio Companies;

(j) to admit an assignee of all or any portion of a Capital Investment Member's interest in the Company to be a Substitute Capital Investment Member in the Company pursuant to and subject to the terms of Section 7.4;

(k) to enter into, make and perform all contracts, agreements and other undertakings as may be determined by the Managing Member in its sole discretion to be necessary or advisable or incident to the carrying out of the foregoing objectives and purposes, the execution thereof by the Managing Member to be conclusive evidence of such determination;

(l) to execute all other instruments of any kind or character which the Managing Member, in its sole discretion determines to be necessary or appropriate in connection with the business of the Company and which are not inconsistent with any other provisions of this Agreement, the execution thereof by the Managing Member to be conclusive evidence of such determination; and

(m) to interpret and construe the terms, conditions and other provisions of this Limited Liability Company Agreement or any agreement entered into pursuant hereto, such construction or interpretation to be binding on all parties.

Section 5.3 Powers of Capital Investment Members.

(a) The Capital Investment Members shall not participate in the control of the Company and shall have no authority whatsoever with respect to the management of the Company and shall not act for or bind the Company in any respect.

(b) In addition to any other restrictions applicable to Capital Investment Members set forth in this Agreement and notwithstanding any other provisions thereof, no Capital Investment Member (and no officer, director or equivalent non-corporate official of a Capital Investment Member that is not an individual) shall vote on the removal of the Managing Member, except

to the extent permitted by Section 7.6, or vote on the admission of additional Managing Members, except to the extent permitted by Section 7.1.

Section 5.4 Fees and Expenses.

(a) The Managing Member shall pay all fees and expenses incurred with respect to the business of the Company ("Maintenance Expenses") (which payments shall all be specially allocated to the Capital Account of the Managing Member), including, without limitation:

(i) out-of-pocket expenses incurred and fees paid by the Company or the Managing Member in connection with the formation of the Company and the offering and distribution of interests therein to the Capital Investment Members and the Profit Members;

(ii) expenses which relate to office space, supplies and other facilities of its business, and salaries, fees and expenses of officers, employees, consultants, attorneys and accountants, investment bankers, and similar outside advisors of the Company or the Managing Member;

(iii) expenses of the Company associated with the acquisition (whether or not consummated) of Portfolio Securities, where such expenses are not paid by the applicable Portfolio Company;

(iv) out-of-pocket expenses incurred in connection with maintaining (a) qualification to do business of the Company or of the Managing Member in the Commonwealth of Massachusetts and elsewhere, (b) the specified office at which records which are required to be maintained under the Delaware Act are kept and (c) the registered agent in the State of Delaware;

(v) out-of-pocket costs of holding or selling Portfolio Securities or of acquiring or holding Temporary Investments (including all day-to-day operating expenses and overhead expenses of the Managing Member), including recordkeeping expenses and, with respect to Temporary Investments only, finders', placement, brokerage and other similar fees;

(vi) out-of-pocket costs of reporting obligations of the Members;

(vii) any taxes, fees or other governmental charges levied against the Company or on its income or assets or in connection with its business or operations;

(viii) all costs of litigation and the amount of any judgments or settlements paid in connection therewith (including damages or equitable remedies of Members with respect to remedies exercised by the Managing Member in good faith pursuant to

Sections 2.10 or 2.11) and matters that are the subject of indemnification pursuant to Section 8.2 and costs of winding-up and liquidating the Company;

(ix) the reasonable expenses of the Advisory Committee; and

(x) the expenses of any appraiser payable by the Company pursuant to Section 4.8(e).

(xi) all other expenses of the Company reasonably determined by the Managing Member to be reasonably related to the business and operation of the Company as set forth herein.

Maintenance Expenses shall be paid by the Company and such payments shall be reimbursed to the Company by the Managing Member. Contributions by the Managing Member to the Company for the purpose of paying Maintenance Expenses shall be specially allocated to the Capital Account of the Managing Member and all payments of Maintenance Expenses shall also be specially allocated to the Capital Account of the Managing Member. Under no circumstances shall Maintenance Expenses be paid out of the Net Operating Profits or Net Realized Capital Gains or Cash Flow or Capital Proceeds or Capital Contributions of the Company except as provided in the preceding two sentences.

(b) Break-Up Fees. Any Break-Up Fee shall be added to the income of the Company.

(c) Transaction Fees; Special Fees. Any transaction fee or Special Fee of any kind shall also be added to the income of the Company.

(d) Consulting Fees. Management or consulting fees or director fees received from Portfolio Companies shall also be added to the income of the Company.

Section 5.5 The Advisory Committee.

(a) Each year a Majority in Interest of the Profit Members shall select an Advisory Committee, which shall consist of not more than six (6) persons.

(b) The functions of the Advisory Committee will be (i) to advise the Managing Member on such matters, including investment advice, about which the Managing Member may from time to time, in its sole discretion, determine to consult the Advisory Committee, (ii) to review, in its discretion, valuations of Company assets in accordance with Section 4.8 or otherwise, (iii) to make recommendations on compensation issues, (iv) to advise the Managing Member concerning the creation of any reserves with respect to Investments in Portfolio Companies pursuant to Section 4.4(d), and (v) to review and consult with the Board of Directors of the Managing Member concerning any potential conflicts of interest of the Managing

Member, including: (A) any Portfolio Company in which the Company has an interest affecting a material financial transaction (other than pursuant to Section 6.2) with the Managing Member or any Affiliate thereof; (B) the Company investing in a Portfolio Company which is an Affiliate of the Managing Member; (C) the Managing Member or an Affiliate thereof directly purchasing any securities of any Portfolio Company in which the Company has invested, other than purchases pursuant to Section 6.2; (D) any other action which would give rise to a potential conflict of interest between the Company and the Managing Member or any Affiliate thereof. Neither the Advisory Committee nor any member thereof shall have the power to bind or act for or on behalf of the Company in any manner and in no event shall a member of the Advisory Committee be considered a Managing Member of the Company by agreement, estoppel or otherwise as a result of the performance of his or her duties hereunder or otherwise. The reasonable expenses of the Advisory Committee shall be paid by the Company as Maintenance Expenses. In addition, the Company shall indemnify the members of the Advisory Committee to the extent provided in Section 8.2 hereof. No member of the Advisory Committee shall be entitled to any fee or honorarium in connection with his or her service thereon.

(c) The Advisory Committee shall act by the vote of a Majority in Interest of the Profit Members who are members of the Committee. Except as expressly provided herein, the recommendations of the Advisory Committee shall be advisory only and shall not obligate the Managing Member to act in accordance therewith. Any member of the Advisory Committee may resign by giving to the Managing Member and the other members of the Advisory Committee thirty (30) days' prior written notice. Any vacancy in the Advisory Committee, whether created by such a resignation or by the death of any member, shall promptly be filled as provided in Section 5.5(a).

(d) The Managing Member shall supply the Advisory Committee with all such information and data as it shall request to enable the Advisory Committee to reach an informed judgment.

Section 5.6 Conflicts of Interest.
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No contract or transaction between the Managing Member or the Company and one or more of its Members or Affiliates, or between the Managing Member or the Company and any other limited liability company, corporation, partnership, association or other organization in which one or more of its Members or affiliates are directors, officers, members or partners or have a financial interest, shall be void or voidable solely for this reason, or solely because the Member or affiliate is present at or participates in any meeting of directors, members, managers or partners which authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if:

(a) the material facts as to his, her or their interest and as to the contract or transaction are disclosed or are known to the directors, the managers, the members or the partners and the directors, the managers, the members or the partners authorize in good faith

the contract or transaction by a vote sufficient for such purpose without counting the vote of the interested director, managers, members or partner even though the disinterested directors, managers, members or partners be less than a quorum; or

(b) the material facts as to his, her or their interest and as to the contract or transaction are disclosed or are known to the partners, the managers, the members or directors entitled to vote thereon, and the contract or transaction is specifically approved in good faith by a vote of the partners, the managers, the members or the directors; or

(c) the contract or transaction is fair to the Managing Member or the Company or its or their Affiliates as of the time it is authorized, approved or ratified by the directors, the managers, the members or the partners.

Interested directors, managers, members or partners shall be counted in determining the presence of a quorum at a meeting of the partners, managers, members or directors which authorizes such contract or transaction. No director, member, manager, partner or officer shall be liable to account to the Managing Member or the Company for any profit realized by him or her from or through such contract or transaction solely by reason of the fact that he or she or any other limited liability company, corporation, partnership, association or other organization which he or she is a director, member, manager, partner or officer, or has a financial interest, was interested in such contract or transaction.

## ARTICLE 6.

## OTHER ACTIVITIES OF MEMBERS

### Section 6.1 Commitment of Managing Member.

The Managing Member hereby agrees to use its best efforts in connection with the purposes and objectives of the Company and to devote to such purposes and objectives such of its time and resources as shall be necessary for the management of the affairs of the Company. Subject to the other provisions of this Agreement, the Managing Member and any of its Affiliates may act as a director, officer, employee or advisor of any corporation, a trustee of any trust, a member or manager of a limited liability company or a partner of any partnership; may receive compensation for its services as an advisor with respect to, or participation in profits derived from, the investments of any such corporation, trust, limited liability company or partnership; and may acquire, invest in, hold and sell securities of any entity. Neither the Company nor any Member shall have by virtue of this Agreement, any right, title or interest in or to such other corporation, trust, partnership, limited liability company investment or security.

### Section 6.2 Agreements with Portfolio Companies.

The Managing Member, the Parent of the Managing Member and its or their Affiliates may enter into contracts, commitments and agreements with Portfolio Companies consistent with ARTICLE V for the benefit of said Managing Member, the Parent of the Managing Member and/or its or their Affiliates.

Section 6.3 Obligations and Opportunities for Members.

The Members shall be obligated to refer investment opportunities, consistent with the purposes and objectives of the Company, to the Company. Any determination as to the appropriateness of an investment opportunity for the Company or for an Affiliate of the Company or for the Parent of the Managing Member shall be made by the disinterested directors of the Managing Member.

## ARTICLE 7.

## ADMISSIONS; ASSIGNMENTS; REMOVAL AND WITHDRAWALS

Section 7.1 Admission of Additional Managing Member.

It is not contemplated that any additional Managing Members will be admitted to the Company. A person may be admitted to the Company as a Managing Member only with the written consent of each Member including the Managing Member. In the event of the addition of a Managing Member, the participation of such person in the management of the Company and the interest of such person in the Company's profits and losses must be approved by all the Members at the time of such person's or entity's admission.

Section 7.2 Admission of Additional Capital Investment Members; Increase in Capital Commitments.

(a) The Managing Member may admit one or more additional Capital Investment Members, subject only to satisfaction of the following conditions: (i) each such additional Capital Investment Member shall execute and deliver a Power of Attorney pursuant to which such additional Capital Investment Member agrees to be bound by the terms and provisions hereof, (ii) such admission would not result in a violation of any applicable law, including the federal or state securities laws, or any term or condition of this Agreement and, as a result of such admission, the Company would not be required to register as an investment company under the Investment Company Act, and (iii) each such additional Capital Investment Member shall pay to the Company on the date of its admission to the Company (or on such other date as may be determined by the Managing Member in its sole discretion) an amount equal to the percentage of its Capital Commitment which is equal to the percentage of the other Capital Investment

Members' Capital Commitments that shall have been payable at or prior to the admission of the additional Capital Investment Member. The name and business address of each Capital Investment Member admitted to the Company under this Section 7.2 and the amount of its Capital Commitment shall be added to Exhibit A, and each such Capital Investment Member shall be bound by all the provisions hereof. Each additional Capital Investment Member admitted pursuant to this Section 7.2 shall be deemed for purposes of all allocations pursuant to ARTICLE II to have been admitted on the date of admission. Admission of an additional Capital Investment Member in accordance with the terms hereof shall not be a cause of dissolution of the Company. Additional Capital Investment Members (other than Substitute Capital Investment Members admitted pursuant to Section 7.4) shall be admitted to the Company only with the written consent of, and on the terms approved by, the Managing Member and a Majority in Interest of the Capital Investment Members. Notwithstanding Section 12.3, the terms referred to in the preceding sentence may require the amendment of this Agreement in a manner that will treat adjustments to Members' Capital Account balances pursuant to Section 2.3(b) upon or as a result of admissions of additional Capital Investment Members as adjustments to their Capital Contributions for purposes of calculating their Percentages in Interest with respect to Capital from the times of such admissions.

(b) The Managing Member may permit any Capital Investment Member to increase its Capital Commitment within a reasonable time of its notification to the Managing Member of its desire to do so, provided that the conditions of Section 7.2(a) and all other provisions of Section 7.2(a) have been satisfied as though such Capital Investment Member were an additional Capital Investment Member with respect to such increase, except that Exhibit A shall be amended only to reflect such increase, and provided further that such increase would not cause the Company to violate any statute or regulation applicable to it or any covenant herein. The Managing Member shall notify the Members in a timely fashion of each additional Capital Investment Member admitted pursuant to Section 7.2(a) and of each Capital Investment Member that increases its percentage of the total Capital Commitments of the Company pursuant to this Section 7.2(b) beyond its percentage thereof upon its admission to the Company. Except in the case of an assignment or transfer of Capital Membership interests to Capital Investment Members in accordance with Section 7.4, a Capital Investment Member may increase its Capital Commitment only with the written consent of, and on the terms approved by, the Managing Member and a Majority in Interest of the Capital Investment Members. The terms referred to in the preceding sentence may require the amendment of this Agreement in a manner that will treat adjustments to Members' Capital Account balances pursuant to Section 2.3(b) upon or as a result of increases in Capital Members' Capital Commitments pursuant to this Section 7.2(b) as adjustments to Capital Contributions for purposes of calculating Percentages of Contributed Capital. Notwithstanding Section 12.3, any amendment referred to in the preceding sentence shall require the approval of a Majority in Interest of the Capital Investment Members.

Section 7.3 Admission of Additional Profit Members.
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The Managing Member may admit one or more additional Profit Members, subject only

to satisfaction of the following conditions: (i) each such additional Profit Member shall execute and deliver a Power of Attorney pursuant to which such additional Profit Member agrees to be bound by the terms and provisions hereof, and (ii) such admission would not result in a violation of any applicable law, including the federal or state securities laws, or any term or condition of this Agreement and, as a result of such admission, the Company would not be required to register as an investment company under the Investment Company Act. The name and business address of each Profit Member admitted to the Company under this Section 7.3 and the number of his or her Units awarded to such additional Profit Member and his or her date of hire shall be added to Exhibit A, and each such Profit Member shall be bound by all the provisions hereof. Each additional Profit Member admitted pursuant to this Section 7.3 shall be deemed for purposes of all allocations pursuant to ARTICLE II to have been admitted on the date of hire. Admission of an additional Profit Member in accordance with the terms hereof shall not be a cause of dissolution of the Company. Additional Profit Members shall be admitted to the Company only with the written consent of, and on the terms approved by, the Managing Member and a Majority in Interest of the Profit Members.

Section 7.4 Assignment of a Membership Interest.

(a) The Managing Member shall not assign or otherwise transfer its interest as the Managing Member of the Company. A Capital Investment Member may sell, assign or otherwise transfer all or any part of its interest in the Company only with the consent in writing of the Managing Member, which consent shall be given if the Managing Member is satisfied that the transaction (i) complies with and does not violate any federal or state securities law, (ii) will not cause the termination or dissolution of the Company, (iii) will not create a substantial risk that the Company would be classified other than as a partnership for federal income tax purposes, (iv) will not cause the Company to be required to register as an investment company under the Investment Company Act and (v) will not create a substantial risk that the Capital Investment Members and Profit Members would lose their limited liability as members under the Delaware Act.

(b) A purchaser, assignee or transferee of a Capital Investment Member's interest in the Company (an "Assignee") shall have the right to become a Substitute Capital Investment Member only if the following additional conditions are satisfied:

(i) a duly executed and acknowledged written instrument of assignment satisfactory to the Managing Member shall have been filed with the Company;

(ii) the Capital Investment Member and the Assignee shall have executed and acknowledged such other instruments and taken such other action as the Managing Member shall reasonably deem necessary or desirable to effect such substitution, including, without limitation, the execution by the Assignee of a Power of Attorney substantially similar to that referred to in Section 12.8 hereof;

(iii) the restrictions on transfer contained in Section 7.5 are inapplicable, and, if requested by the Managing Member, the Capital Investment Member or the Assignee shall have obtained an opinion of counsel reasonably satisfactory to the Managing Member as to the legal matters set forth in that Section;

(iv) the Capital Investment Member or the Assignee shall have paid to the Company such amount of money as is sufficient to cover all expenses incurred by or on behalf of the Company in connection with such substitution;

(v) the Managing Member shall have consented to such substitution, which consent shall not be unreasonably withheld.

The pledge or hypothecation to a bank or financial institution of the right to receive distributions with respect to a Capital Investment Member's interest in the Company shall not be deemed an assignment or transfer of a Capital Investment Member's interest in the Company, provided that such pledge or hypothecation shall nonetheless be subject to the restrictions set forth in Section 7.5. An Assignee who is not admitted to the Company as a Substitute Capital Investment Member shall have none of the rights of and no liability as a Capital Investment Member and the assignor in such case shall remain fully liable for the unpaid portion of its Capital Commitment.

(c) No Profit Member may sell, assign or otherwise transfer all or any part of its interest as a Profit Member of the Company in any respect whatsoever except that the interest of a Profit Member may be transferred by will or by the laws of descent and distribution to such Profit Member's estate or to his or her beneficiaries or heirs following the death of such Profit Member, provided that each and every such transferee agrees to be bound by all the terms and conditions of this Limited Liability Company Agreement applicable to Former Profit Members including, without limitation, those set forth in ARTICLE III and ARTICLE IV.

Section 7.5 Restrictions on Transfer.
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Notwithstanding any other provision of this Agreement, no Capital Investment Member may sell, assign or otherwise transfer all or any part of its interest in the Company, and no attempted or purported assignment or transfer of such interest shall be effective, unless (a) after giving effect thereto, the aggregate of all the assignments or transfers by the Members of interests in the Company within the 12 month period ending on the proposed date of such assignment or transfer would not equal or exceed 50% of the total interests of the Members in the capital or profits of the Company, and such assignment or transfer would not otherwise terminate the Company for the purposes of Section 708 of the Code, (b) such assignment or transfer would not result in a violation of applicable law, including the federal and state securities laws and provided that, if such assignment or transfer would cause the Managing Member to violate any covenant of this Agreement and the Managing Member has taken all reasonable steps to prevent such violation, the Managing Member shall not be liable to the

Company as a result thereof and the Managing Member shall be indemnified by such Capital Investment Member for any losses, damages or expenses incurred as a result of such violation, (c) such assignment or transfer would not cause the Company to lose its status as a partnership for federal income tax purposes or cause the Company to become subject to the Investment Company Act, (d) if requested by the Managing Member, such Capital Investment Member shall deliver a favorable opinion of counsel satisfactory to the Managing Member as to the matters referred to in the foregoing clauses (b) and (c), (e) if such assignment or transfer is to an employee benefit plan within the meaning of ERISA (a "Benefit Plan Investor"), the Managing Member shall have consented thereto, which consent may be granted or withheld at its sole discretion, and (f) such assignment or transfer is to an entity which is an Accredited Investor. Notwithstanding the foregoing, a Capital Investment Member which is a Benefit Plan Investor may sell, assign or transfer all or part of its interest to a successor fiduciary or trustee of the same plan or trust without the consent of the Managing Member, and in such case the successor fiduciary or trustee shall be substituted as a Capital Investment Member.

Section 7.6 Removal or Withdrawal of Managing Member.

(a) Except as otherwise provided in this Agreement, without the prior written approval of at least Eighty Percent in Interest of both the Capital Investment Members and the Profit Members, the Managing Member may not resign or withdraw as Managing Member of the Company or voluntarily terminate its existence as Managing Member of the Company. If the Managing Member resigns, withdraws or terminates its existence in violation of this Section 7.6, then the interest of the Managing Member shall be divided into two components: (i) 25% thereof shall be allocated proportionately to the Capital Investment Members, thereby increasing their respective Capital Accounts (and the Capital Contributions deemed to have been made by the Capital Investment Members shall be automatically adjusted to reflect such increase) and (ii) 75% thereof shall be distributed to the Managing Member as provided in paragraph (d) below.

(b) Upon the approval of at least a eighty percent in interest of the Capital Investment Members, the Capital Investment Members may remove the Managing Member without cause.

(c) Upon the approval of at least two-thirds in interest of the Capital Investment Members, the Capital Investment Members may remove the Managing Member if any act or omission of the Managing Member in connection with the Company constitutes willful misconduct or fraud or if the Managing Member is in material violation of its obligations hereunder. If the Managing Member is so removed, then the interest of the Managing Member shall be divided into two components: (i) 35% thereof shall be allocated proportionately to the Capital Investment Members, thereby increasing their respective Capital Accounts (and the Capital Contributions deemed to have been made by the Capital Investment Members shall be automatically adjusted to reflect such increase), and (ii) 65% thereof shall be distributed to the Managing Member as provided in paragraph (d) below.

(d) Upon the resignation, removal, withdrawal or voluntary termination of existence

of the original or any successor Managing Member, the Company shall not be dissolved if, within ninety (90) calendar days after such resignation, removal, withdrawal or voluntary termination of existence, a Majority in Interest of the remaining Capital Investment Members and a Majority in Interest of the remaining Profit Members shall have agreed in writing to continue the business of the Company and shall have selected, effective as of the date of such event, a successor Managing Member. In such event, except as provided in Sections 7.6(a) and 7.6(c), the former Managing Member shall be entitled to receive a distribution equal to any amounts it would have been entitled to receive had the Company dissolved in accordance with Section 10.3 hereof and distributed in kind all Company assets as of the date of the resignation, removal, withdrawal or voluntary termination of existence of the Managing Member. For purposes of determining allocations and distributions pursuant to the preceding sentence, securities and other property held by the Company shall be valued pursuant to the procedures set forth in Section 4.8. If the Managing Member shall have resigned, withdrawn or voluntarily terminated its existence or been removed pursuant to this Section 7.6, such distribution shall be made in kind, or with the approval of at least a Majority in Interest of the Capital Investment Members and a Majority in Interest of the Profit Members, in cash, within thirty (30) calendar days (or as soon thereafter as is practicable but no later than thirty calendar days) after such removal, resignation, withdrawal or voluntary termination of existence.

(e) Upon and as of the date of the resignation, removal, withdrawal or voluntary termination of existence of the original or any successor Managing Member (the "Permitted Managing Member"), such Permitted Managing Member will cause, to the extent it is legally possible, all its rights, obligations and interest as such Managing Member arising under this Agreement or any other contracts, agreements or documents entered into by it on behalf of the Company to be assigned to the successor Managing Member or to the Managing Member of the new limited liability company or partnership; such successor or new Managing Member will assume and agree to perform all of such Permitted Managing Member's duties and obligations arising under this Agreement and such other instruments and such Permitted Managing Member will, upon making a proper accounting to the successor or new Managing Member, be relieved of any further duties or obligations arising under this Agreement and such other instruments from and after the time such resignation, removal, withdrawal or voluntary termination of existence shall have become effective.

Section 7.7 Withdrawals of Capital Investment Members.
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No Capital Investment Member shall have the right to withdraw from the Company except in connection with an assignment under Section 7.4.

## ARTICLE 8.

## LIABILITY OF MEMBERS; INDEMNIFICATION

### Section 8.1 Liability of Members.

(a) No Member shall have any personal liability for any obligation of the Company in excess of his, her or its respective Capital Contribution; provided, however, that a Capital Member shall be liable to the Company to the extent of previous distributions only to the extent required by law and only to the extent provided in Section 18-607 of the Delaware Act.

(b) Subject to Section 8.2, and unless otherwise required by applicable law, the Managing Member and any Profit Member shall not be liable to the Company or any other Member for any action taken by any other Member, nor shall the Managing Member or any Profit Member (in the absence of negligence, misconduct, fraud or a willful violation of law by the Managing Member or any Profit Member) be liable to the Company or any other Member for any action of any employee, broker or agent of the Company provided that the Managing Member or any Profit Member shall have exercised appropriate care in the selection and supervision of such employee, broker or agent or unless the Managing Member or any Profit Member would otherwise be responsible under applicable law for the actions of such employee, broker or agent.

### Section 8.2 Indemnification.

(a) The Managing Member, each of the Profit Members, each of the members of the Advisory Committee, and the Affiliates of any of them (the "Indemnitees") shall not have any liability to the Company or to any Member for any loss suffered by the Company which arises out of any action or inaction of such Indemnitee if such Indemnitee in good faith determined that such course of conduct was in the best interests of the Company and such course of conduct did not constitute negligence or misconduct (including violations of law, breach of fiduciary duty and breach of this Agreement) of such Indemnitee. An Indemnitee shall be indemnified and held harmless by the Company against any losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained by it in connection with the Company provided that the same were not the result of negligence or misconduct (including violations of law, breach of fiduciary duty and breach of this Agreement) on the part of such Indemnitee.

(b) Notwithstanding the above, such Indemnitee shall not be indemnified for losses, liabilities or expenses arising from or out of an alleged violation of federal or state securities laws unless (1) there has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular Indemnitee; (2) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular Indemnitee; or (3) a court of competent jurisdiction approves a settlement of the claims against

a particular Indemnitee.

(c) In any claim for indemnification for federal or state securities law violations, the party seeking indemnification shall place before the court the position of the Securities and Exchange Commission and the Massachusetts Securities Division with respect to the issue of indemnification for securities law violations.

(d) The Company shall not incur the cost of the portion of any insurance, other than public liability insurance, which insures any party against any liability the indemnification of which is herein prohibited.

(e) Prior to entering into any compromise or settlement which would result in an obligation of the Company to indemnify such person, the Indemnitee shall obtain the written consent of the Managing Member (if such person is other than the Managing Member) or (if such person is the Managing Member) either (i) an opinion of counsel, such counsel to be chosen by a Majority in Interest of the Profit Members, to the effect that such compromise or settlement is not unreasonable, which opinion shall be furnished to all Members or (ii) the consent of a Majority in Interest of the Profit Members.

Section 8.3 Payment of Expenses.
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Expenses incurred by an Indemnitee in defense or settlement of any claim that may be subject to a right of indemnification hereunder may be advanced by the Company prior to the final disposition thereof provided that the following conditions are satisfied: (1) the claim relates to the performance of duties or services by the Indemnitee on behalf of the Company or the Advisory Committee, as the case may be, (2) the claim is initiated by a third party who is not a Capital Investment Member and (3) the Indemnitee undertakes to repay the advanced funds to the Company if it is ultimately determined that the Indemnitee is not entitled to be indemnified hereunder or under applicable law. The right of any Indemnitee to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which such Indemnitee may otherwise be entitled by contract or as a matter of law or equity and shall extend to such Indemnitee's successors, assigns and legal representatives. All judgments against the Company and the Managing Member, in respect of which such Managing Member is entitled to indemnification, must first be satisfied from Company assets before the Managing Member is responsible therefor. The obligations of Capital Investment Members under this ARTICLE VIII shall be satisfied only after any applicable insurance proceeds have been exhausted and then only out of Company assets and, only to the extent required by law, and only to the extent provided in Section 18-607 of the Delaware Act, out of distributions made by the Company to its Members, and Capital Investment Members shall have no personal liability to fund indemnification payments hereunder.

## ARTICLE 9.

## ACCOUNTING FOR THE COMPANY; REPORTS

### Section 9.1 Accounting for the Company.

The Company shall use such methods of accounting as the Managing Member determines to be consistent with federal income tax requirements and (to the extent possible) with generally accepted accounting principles.

### Section 9.2 Books and Records.

The Managing Member shall keep or cause to be kept complete and appropriate records and books of account. Except as otherwise expressly provided herein, such books and records shall be maintained on the basis used in preparing the Company's federal income tax returns. Such information as is necessary to reconcile such books and records with generally accepted accounting principles shall also be maintained. The books and records shall be maintained at the principal office of the Company, and shall be available for inspection and copying by any Member at its expense during ordinary business hours following reasonable notice for any purpose reasonably related to its interest as a Member of the Company. In addition, the Managing Member shall provide any Capital Investment Member or Profit Member with a list of all Capital Members and their respective Percentages of Interest or with a list of all Profit Members and Former Profit Members and their Vested and Unvested Carried Interests within 30 days of receipt by the Managing Member of a written request for the same.

### Section 9.3 Reports to Members.

Promptly after consummation of each Investment in a Portfolio Company, the Managing Member shall prepare and deliver to each Member a description of such Investment and the Portfolio Company in which it was made. The Managing Member will deliver to each Member the audited or unaudited balance sheet and income statement and/or other annual and quarterly financial statements of each Portfolio Company within a reasonable time of the receipt thereof by the Managing Member. After the end of each Fiscal Year, the Managing Member shall cause an audit of the Company to be made by an independent public accountant of nationally recognized status of the financial statements of the Company for that year. Such audit shall be certified and a copy thereof shall be delivered to each Member within 90 days after the end of each of the Company's Fiscal Years. Such certified financial statements shall also be accompanied by a report on the Company's activities during the year prepared by the Managing Member and (a) a list of all Capital Members and their respective percentages of contributed capital and a list of all Profit Members and Former Profit Members and their respective Vested and Unvested Carried Interests and Capital Accounts and (b) if the Capital Commitments of

Benefit Plan Investors exceeds 25% of total Capital Commitments, a certification to each Benefit Plan Investor that the Company is a Venture Capital Operating Company as defined in 39 C.F.R. (S)2510. Within 90 days after the end of each Fiscal Year, the Company will deliver to each Member the Managing Member's good faith estimate of the fair value of the Company's Investments as of the end of such year and a statement showing the balances in such Member's Capital Account (both vested and unvested) as of the end of such year. Within 60 days after the end of each Fiscal Year, the Managing Member will cause to be delivered to each Member a Form K-1 and such other information, if any, with respect to the Company as may be necessary for the preparation of such Member's federal income tax returns, including a statement showing each Member's share of income, gain or loss and credits for such Fiscal Year for federal income tax purposes.

## ARTICLE 10.

## DISSOLUTION AND WINDING UP

### Section 10.1 Dissolution.

The existence of the Company shall dissolve upon the first to occur of the following events:

(a) April 13, 2010; provided that the duration of the Company may be extended by the Managing Member in its sole discretion by notice in writing to each Member not later than thirty (30) days prior to any such extension for one or more additional periods from such date of not less than three years or more than ten years each, if the Managing Member determines, in each instance, taking into account the Company's Investments and the amount of capital calls remaining to be invested, that such extension is in the best interests of the Company;

(b) if (A) the Managing Member commences any case, proceeding or other action (y) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to the Company or the Managing Member, or seeking to adjudicate the Company or the Managing Member a bankrupt or insolvent, or seeking reorganization, winding-up, liquidation, dissolution, composition or other relief with respect to the Company or the Managing Member or the debts of either of them, or (z) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or if the Managing Member or the Company shall make a general assignment for the benefit of its creditors; or if (B) there shall be commenced against the Company or against the Managing Member any case, proceeding or other action of a nature referred to in clause (A) above which (y) results in the entry of an order for relief or any such adjudication or appointment or (z) remains undismissed, undischarged or unbonded for a period of ninety calendar days; or if (C) there shall be commenced against the Company or against the Managing Member any case, proceeding or other action seeking issuance of a warrant of

attachment, execution, distraint or similar process against all or any substantial part of its assets, which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within ninety calendar days from the entry thereof; of if (D) any other event not expressly provided for in this Agreement occurs which under the Delaware Act causes the Managing Member to cease to be a Managing Member of the Company; unless (i) at the time of such event there is at least one other Managing Member of the Company who is hereby authorized to, and does continue, the business of the Company; provided that a Majority in Interest of the Capital Investment Members and a Majority in Interest of the Profit Members agree to continue the business of the Company or (ii) if within 90 days of such removal, bankruptcy, dissolution or withdrawal, a Majority in Interest of the Capital Investment Members and a Majority in Interest of the Profit Members agree in writing to continue the business of the Company and to the appointment, effective upon the date of such event, of one or more additional Managing Members;

(c) the sale or other disposition of all or substantially all of the assets of the Company;

(d) the entry of a decree of judicial dissolution under the Delaware Act;

(e) the written consent of the Managing Member and a Majority in Interest of the Profit Members to terminate the Company;

(f) upon the determination of a Majority in Interest of the Capital Investment Members and a Majority in Interest of the Profit Members that there is a substantial risk that the Company would be taxed as a corporation under the Code and that, as a result, the objectives of the Company would be substantially impaired, provided that such Members furnish an opinion to such effect in form and substance reasonably satisfactory to the Managing Member and from counsel reasonably satisfactory to the Managing Member.

Section 10.2 Winding Up.
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Upon the occurrence of an event specified in Section 10.1, the affairs of the Company shall be wound up and its assets liquidated and distributed in accordance with this Agreement. The Managing Member or, if there is no Managing Member, a liquidator appointed by a Majority in Interest of the Capital Investment Members and a Majority in Interest of the Profit Members, shall proceed with the Dissolution Sale as promptly as practicable; provided that the Managing Member or such liquidator can continue such Dissolution Sale as long as it feels is reasonably necessary to obtain fair value for the Investments in Portfolio Companies and other assets of the Company. Assets that the Managing Member or the liquidator believes could be sold in the Dissolution Sale only at an undue loss to the Members or with great impracticality may be distributed to the Members in kind pro rata in accordance with Sections 2.5, 2.6, 2.7 3.1, 3.2, 3.3 and ARTICLE IV.

Section 10.3 Final Distribution and Allocation.

(a) In the final Fiscal Year of the Company, each item of Net Operating Profits and Net Operating Losses and Net Realized Capital Gains and Net Realized Capital Losses shall be allocated to the Members in such manner as would, to the extent possible, result in the Members' having zero balances in their respective Capital Accounts if all distributions by the Company for such Fiscal Year, including liquidating distributions, were made in accordance with ARTICLE IV. If the Fair Market Value of Company assets to be distributed in kind exceeds ("book gain") or is less than ("book loss") the book value of such assets, to the extent not otherwise recognized to the Company, such book gain or book loss shall be taken into account in computing Net Operating Profits or Net Operating Losses, Net Realized Capital Gains and Net Realized Capital Losses for such Fiscal Year for all purposes of crediting or charging the Capital Accounts of the Members pursuant to ARTICLE II and ARTICLE III as if such assets had been sold and the proceeds distributed pursuant to ARTICLE IV. Thereupon, all of the assets of the Company, or the proceeds therefrom, shall be distributed or used as follows and in the following order of priority:

(i) for the payment, or the reasonable provision for the payment, of the debts and liabilities of the Company, including amounts owed to any Members in their capacities as creditors of the Company, and the expenses of liquidation; to the setting up of any reserves which the Managing Member or the liquidator may deem reasonably necessary for any contingent liabilities or obligations of the Company; and

(ii) to the Members, in accordance with the positive balances in their Capital Accounts and Profit Accounts in compliance with Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations and the balance pro rata in accordance with Sections 2.5, 2.6, 2.7, 3.1, 3.2, 3.3 and ARTICLE IV.

(b) Upon the dissolution and liquidation of the Company, after all allocations of Net Operating Profits, Net Operating Losses, Net Realized Capital Gains and Net Realized Capital Losses have been made but before any Final Distribution has been made to the Members, and in any event before the later of the end of the Company's taxable year of liquidation or 90 days after the Company's liquidation, the Managing Member shall contribute to the capital of the Company an amount equal to the negative balance, if any, in its Capital Account.

Notwithstanding the foregoing, the Managing Member's obligation pursuant to this Section 10.3(b) shall not inure to the benefit of, or be invoked or enforced by or for the benefit of, any creditor who has otherwise contractually obligated itself to look solely to all or a part of the assets of the Company and not to the assets of any Member for satisfaction of any debt owed or owing to that creditor by the Company.

(c) When the Managing Member or the liquidator has complied with the foregoing liquidation plan, the Members shall execute, acknowledge and cause to be filed an instrument evidencing the cancellation of the Certificate of Formation of the Company pursuant to (S)18-203

of the Delaware Act.

Section 10.4 Merger of Company into Another Entity.

The merger of the Company into another entity, which may or may not be another limited liability company, shall occur upon the affirmative vote of the Managing Member and of a Majority in Interest of the Capital Investment Members and a Majority in Interest of the Profit Members, and in any case shall not be deemed a dissolution under this ARTICLE X.

## ARTICLE 11.

## DEFINITIONS

As used herein, the following terms have the following meanings:

Accredited Investor: An investor which qualifies as an "accredited investor" as defined in Regulation (S)230.501 of Regulation D promulgated under the Securities Act.

Adjusted Capital Account Deficit: A Capital Member's deficit Capital Account balance as determined by (i) crediting to such Member's Capital Account all amounts which such Member is obligated to restore to his Capital Account or is deemed to be obligated to restore to his Capital Account pursuant to either or both of the penultimate sentences of Sections 1.704-lT(b)(4)(iv)(f) and 1.704-lT(b)(4)(iv)(h)(5) of the Treasury Regulations and (ii) debiting to such Member's Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

Advisory Committee: As defined in Section 5.5.

Affiliate: Any person or entity that directly or indirectly controls, is controlled by, or is under common control with, the person or entity in question, provided however, that "Affiliate" for the purposes of ARTICLE VIII shall mean any person performing services on behalf of the Company who:

(1) directly or indirectly controls, is controlled by, or is under common control with the Managing Member; or

(2) who owns or controls 10% or more of the outstanding voting securities of the Managing Member; or

(3) is an officer, director, partner, member, manager or trustee of the Managing Member or of the Parent or of an Affiliate of the member, manager, or

(4) if the Managing Member is an officer, director, partner, member, manager or trustee, is any company for which the Managing Member acts in any such capacity.

Agreement: This Limited Liability Company Agreement.

Announcement Date: The date on which the Change of Control is publicly announced or the date on which information regarding the same is disseminated to the public generally, whichever occurs first.

Appraiser: As defined in Section 3.4(b).

Assignee: As defined in Section 7.4.

Benefit Plan Investor: As defined in Section 7.5.

Break-up Fee: Any fee, reimbursement or other form of compensation in the nature of a topping, no-go, commitment or break-up or other arrangement payable by a third party as a result of the failure to consummate a proposed investment in a Portfolio Security.

Business Day: Each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in Boston, Massachusetts, are authorized or obligated by law to close.

Call Notices: As defined in Section 2.2.

Capital Account: As defined in Section 2.3.

Capital Commitment: As defined in Section 2.1.

Capital Contribution: As defined in Section 2.2.

Capital Investment Members: As defined in the recitals and in Exhibit A.

Capital Member Loss: The amount of $4,000,000 plus Net Operating Losses and Net Realized Capital Losses allocated to the Capital Members' Capital Accounts as provided in Sections 2.5 and 2.6.

Capital Members: As defined in the recitals and in Exhibit A.

Capital Members' Allocation: That portion of the Net Operating Profits, Net Operating Losses, Net Realized Capital Gains and Net Realized Capital Losses allocated to the Capital Investment Members as provided in Sections 2.5 and 2.6.

Capital Proceeds: The net proceeds from sales or other dispositions of Portfolio

Securities, including liquidating and other like distributions on Portfolio Securities.

Carried Interest: As defined in Section 3.2.

Cash Flow: For any Fiscal Year, the aggregate cash receipts of the Company for such Fiscal Year (including receipts by, on behalf of or for the benefit of the Company or the Members) other than receipts of Capital Contributions from the Members, receipts arising from sales or other dispositions of Portfolio Securities and liquidating and other like distributions on Portfolio Securities.

Cause: As defined in Section 3.3(b).

Change of Control: As defined in Section 3.4(f).

Change of Control Repurchase Price Per Unit. As defined in Section 3.4(a).

Code: The Internal Revenue Code of 1986, as amended.

Commitment Period: The period from the date hereof up to and including April 13, 2010, unless extended by the Managing Member as provided in Section 1.5 and ARTICLE X or unless terminated earlier as provided therein and in Section 2.9.

Common Stock: The common stock, par value $.01, of the Parent.

Common Stock Price: The average of the twenty (20) highest last sale prices with respect to the Common Stock during the three-month period preceding the Announcement Date on the National Association of Securities Dealers, Inc. Automated Quotations (NASDAQ) System, or, if the Common Stock is not listed on NASDAQ, then the average of the twenty (20) highest last sale prices with respect to the Common Stock during the three-month period preceding the Announcement Date on the principal United States securities exchange registered under the Exchange Act on which the Common Stock is listed.

Company: As defined in the recitals.

Consultants: As defined in Section 5.2(f).

Date of Default: As defined in Section 2.10.

Defaulting Capital Investment Member: As defined in Section 2.10.

Delaware Act: The Delaware Limited Liability Company Act, as amended, 6 Del. C. (S)18-101, et seq. or any successor to such act.

Dissolution Sale: Sales and liquidations by or on behalf of the Company of all or

substantially all of its assets in connection with or in contemplation of the winding up of the Company.

Due Date: As defined in Section 2.2.

ERISA: The Employee Retirement Income Security Act of 1974, as amended.

Exchange Act: As defined in Section 3.4.

Excused Investment: As defined in Section 2.11.

Excused Member: As defined in Section 2.11.

Fair Market Value: The value of Company assets and, when the reference so requires, of Portfolio Securities, determined as provided in Section 4.8.

Fair Market Value of the Company. As defined in Section 3.4.

Final Distribution: The distribution described in Section 10.3(a).

Financial Institution: A bank, savings institution, trust company, insurance company, pension or profit sharing trust, or similar entity which is a member of any group of such persons, having assets of at least $100,000,000, or other entity (other than an individual) a substantial part of whose business consists of investing in, purchasing or selling the securities of others.

Fiscal Year: The fiscal year ending on the last day of July in any year. In the case of the first and last fiscal years, the fraction thereof commencing on the date on which the Company is formed or ending on the date on which the winding up of the Company is completed, as the case may be.

Follow-On Investments: An Investment in a Portfolio Company following a prior Investment in that company.

Former Profit Member: As defined in Section 3.2 and in Exhibit A.

Holding Companies: As defined in Section 1.7(a).

Indemnitees: As defined in Section 8.3.

Initial Election: As defined in Section 3.4(a).

Investments: As defined in Section 1.7.

Investment Company Act: The Investment Company Act of 1940, as amended.

Liabilities: As defined in Section 8.3.

Maintenance Expenses: As defined in Section 5.4(a).

Majority in Interest of the Capital Investment Members: At any time, those Capital Investment Members whose aggregate Percentages in Interest exceed 50%.

Majority in Interest of the Profit Members: At any time, those Profit Members whose aggregate Carried Interests exceed 50%.

Managing Member: As defined in the recitals and in Exhibit A.

Managing Member Loss: As of the end of any Fiscal Year, the excess of any Net Realized Capital Losses and/or Net Operating Losses allocated to the Managing Member pursuant to Section 2.5(b)(ii) and Section 2.6(b)(ii).

Marketable Securities: Securities that are traded on a national securities exchange, reported through the National Association of Securities Dealers Automated Quotation System or traded over-the-counter.

Material Adverse Effect: As defined in Section 2.11(d).

Members: As defined in the recitals.

Net Operating Losses: With respect to any period, shall mean the excess of aggregate expenses incurred during (or attributable to) such period by the Company and not by any Portfolio Company or Investment (other than expenses directly relating or attributable to the sale, purchase, exchange or distribution of Portfolio Securities) over the aggregate income earned during such period by the Company from all sources whatsoever (other than net gain from the sale, purchase, exchange or distribution of Portfolio Securities), such Net Operating Losses to be computed in accordance with applicable U.S. federal income tax accounting principles and (to the extent possible) with generally accepted accounting principles.

Net Operating Profits: With respect to any period, shall mean the excess of aggregate income earned during (or attributable to) such period by the Company (and not by any Portfolio Company or Investment) from all sources whatsoever (other than net gain from the sale, purchase, exchange or distribution of Portfolio Securities) over all expenses incurred during (or attributable to) such period by the Company (other than expenses directly relating or attributable to the sale, purchase, exchange or distribution of Portfolio Securities), such Net Operating Profits to be computed in accordance with applicable U.S. federal income tax accounting principles and (to the extent possible) with generally accepted accounting principles.

Net Realized Capital Gains: For any period shall mean the excess of gains, determined in accordance with U.S. federal income tax principles, on any sales or other dispositions of Portfolio Securities for such Fiscal Year over the losses, determined in accordance with federal income tax principles, on any sales or other dispositions of Portfolio Securities for such Fiscal Year. Notwithstanding the foregoing, for purposes of this definition, gains and losses with respect to Portfolio Securities reflected on the Company's books at values that differ from their adjusted tax bases as a result of the application of Section 2.3(b) shall be measured by the differences between the amounts realized upon sales or other dispositions of such Portfolio Securities and the book values of such Portfolio Securities.

Net Realized Capital Losses: For any period shall mean the excess of losses, determined in accordance with U.S. federal income tax principles, on any sales or other dispositions of Portfolio Securities for such Fiscal Year over the gains, determined in accordance with federal income tax principles, on any sales or other dispositions of Portfolio Securities for such Fiscal Year. Notwithstanding the foregoing, for purposes of this definition, gains and losses with respect to Portfolio Securities reflected on the Company's books at values that differ from their adjusted tax bases as a result of the application of Section 2.3(b) shall be measured by the differences between the amounts realized upon sales or other dispositions of such Portfolio Securities and the book values of such Portfolio Securities.

Non-Competition Covenant: As defined in Section 3.3(b)(iii) and as set forth in Section 3.5.

Non-Defaulting Capital Investment Members: As defined in Section 2.10.

Notice Members: As defined in Section 12.12.

Offered Shares: As defined in Section 4.5(c).

Parent: CMG Information Services, Inc., a Delaware corporation.

Percentage in Interest: In the case of each Capital Member, the Capital Contribution of such Member divided by the sum of the Capital Contributions of all Capital Members.

Plan Participant: As defined in Section 12.13.

Portfolio Companies: As defined in Section 1.7.

Prime Rate: The rate of interest announced by The First National Bank of Boston from time to time as its Prime Rate.

Profit Account: As defined in Section 3.7.

Profit Members: As defined in the recitals and in Section 3.1 and Exhibit A.

Profit Members Carried Interest Allocation: That portion of the Net Operating Profits, Net Operating Losses, Net Realized Capital Gains and Net Realized Capital Losses allocated to the Profit Members as provided in Sections 2.5 and 2.6.

Profit Member Loss: Net Operating Losses and Net Realized Capital Losses allocated to the Profit Members' Capital Accounts as provided in Sections 2.5 and 2.6.

Portfolio Securities: Securities of Portfolio Companies described in Section 1.7 owned by the Company or by the Managing Member.

Recovered Capital: Any distribution of capital to the Capital Members pursuant to Section 4.4(h).

Regulatory Allocations: As defined in Section 2.7(d).

Return of Capital: Any return of capital pursuant to Section 2.2.

Right of First Refusal: As defined in Section 4.5(c).

Securities: As defined in Section 1.7(a).

Securities Act: The Securities Act of 1933, as amended from time to time.

Special Fees: Transaction fees payable to the Company pursuant to Section 5.4(c) and any other fee or reimbursement payable to the Company as income for services or otherwise (including the fees referred to in Section 5.4).

Substitute Capital Investment Member: A purchaser, assignee or transferee of a Capital Member's interest in the Company that is admitted to the Company as a Capital Member pursuant to Section 7.4 and shown as a Capital Member on the books and records of the Company.

Tax Matters Partner: As defined in Section 12.12.

Temporary Investments:

(i) Investments in direct obligations of the United States of America, or obligations of any instrumentality or agency thereof, payment of principal and interest of which is unconditionally guaranteed by the United States of America, having a final maturity of not more than 180 days from the date of issue thereof;

(ii) Investments in certificates of deposit or repurchase agreements having a final maturity not more than 180 days from the date of acquisition thereof issued by any bank or trust company organized under the laws of the United States of America or any

state thereof having capital and surplus of at least $100,000,000;

(iii) investments in money market funds; and

(iv) commercial paper payable on demand or having a final maturity not more than 180 days from the date of acquisition thereof which has the highest credit rating of either Standard & Poor's Corporation or Moody's Investors Service, Inc.

Treasury Regulations: The Income Tax Regulations (final or temporary) promulgated under the Code. References to specific sections of the Treasury Regulations shall be to such sections as amended, supplemented or superseded by Treasury Regulations currently in effect.

Units: As defined in Section 3.2.

Unrecovered Capital: All amounts in the Capital Accounts of the Capital Members up to the amount of their Capital Contributions, less any Returns of Capital and less any distributions of Unrecovered Capital previously made to the Capital Members pursuant to Section 4.4(h).

Unvested Units: As defined in Section 3.2.

Vested Units: As defined in Section 3.2.

## ARTICLE 12.

## MISCELLANEOUS

### Section 12.1 Registration of Securities.

Stocks, bonds, securities and other property owned by the Company shall be registered in the Company name or a "street name." Any corporation or transfer agent called upon to transfer any stocks, bonds and securities to or from the name of the Company shall be entitled to rely on instructions or assignments signed or purporting to be signed by the Managing Member without inquiry as to the authority of the person signing or purporting to sign such instructions or assignments or as to the validity of any transfer to or from the name of the Company. At the time of transfer, the corporation or transfer agent is entitled to assume (i) that the Company is still in existence and (ii) that this Agreement is in full force and effect and has not been amended unless the corporation or transfer agent has received written notice to the contrary.

Section 12.2 Entire Agreement.

This Agreement and Exhibit A attached hereto set forth the full and complete agreement of the Members with respect to the subject matter hereof and supersede any prior agreement or undertaking among the parties.

Section 12.3 Amendments.

This Agreement may be modified from time to time by the Managing Member and a Majority in Interest of the Capital Investment Members and a Majority in Interest of the Profit Members; provided, however, that amendments which do not adversely affect the Capital Investment Members or the Profit Members or the Company may be made to this Agreement and the certificate of limited company for the Company, from time to time, by the Managing Member, without the approval of any of the Capital Investment Members or any of the Profit Members, (i) to add to the representations, duties or obligations of the Managing Member, or to surrender any right granted to the Managing Member herein, (ii) to cure any ambiguity, or to correct or supplement any immaterial provision herein or in the certificate of limited company for the Company which may be inconsistent with any other provision herein or therein, or correct any printing, stenographic or clerical errors or omissions which will not be inconsistent with the provisions of this Agreement or the status of the Company as a partnership for federal income tax purposes, or to clarify any tax or accounting treatment, and (iii) to make any amendment or change which is for the benefit of, or not adverse to the interests of, the Capital Investment Members or of the Profit Members. No amendment may be made to any provision of this Agreement which contemplates action by a vote or consent of greater than a Majority in Interest of the Capital Investment Members or of the Profit Members without a vote or consent of such greater majority as therein specified in each case. In addition, this Agreement may be amended by the Managing Member without the consent of any other Member in order to conform to any safe harbor provisions of the Code and Treasury Regulations which would preserve the substantial economic effect of the allocation of profits and losses set forth in ARTICLE II and ARTICLE III, provided that no such amendment shall materially decrease the amount or defer the timing of any distribution, including distributions payable upon liquidation, that the Capital Investment Members or Profit Members would otherwise be entitled to pursuant to this Agreement. Changes to Exhibit A to reflect the addition and deletion of Capital Investment Members or Profit Members and changes in the addresses of Capital Investment Members or Profit Members shall not be deemed amendments to this Agreement. The Managing Member shall promptly furnish the Capital Investment Members and the Profit Members with copies of each amendment to this Agreement.

Section 12.4 Severability.

If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement or the application of

such provision to other persons or circumstances shall not be affected thereby. Any default hereunder by a Capital Investment Member shall not excuse a default by any other Capital Investment Member.

Section 12.5 Notices.

All notices, requests, demands and other communications shall be in writing and shall be deemed to have been duly given if personally delivered or sent by United States mail, by facsimile if transmission is mechanically confirmed, or by telegram or telex confirmed by letter, if to the Members, at the addresses set forth on Exhibit A attached hereto, and if to the Company, to the Managing Member at its address set forth in Exhibit A, or to such other address as any Member shall have last designated by notice to the Company and the other Members, or as the Managing Member shall have last designated by notice to the Capital Investment Members and Profit Members, as the case may be. Any notice shall be deemed received, unless earlier received, (i) if sent by certified or registered mail, return receipt requested, when actually received, (ii) if sent by overnight mail, when actually received, (iii) if sent by telegram or telex or facsimile transmission, on the date sent provided confirmatory notice is sent by first-class mail, postage prepaid, and (iv) if delivered by hand, on the date of receipt.

Section 12.6 Heirs and Assigns; Execution.

This Agreement (a) shall be binding on the executors, administrators, estates, heirs, legal representatives, successors, and assigns of the Members and (b) may be executed in more than one counterpart with the same effect as if the parties executing the several counterparts had all executed one counterpart; provided, however, that each separate counterpart shall have been executed by the Managing Member and that the several counterparts, in the aggregate, shall have been signed by all of the Members.

Section 12.7 Waiver of Partition.

Except as may be otherwise provided by law in connection with the dissolution, winding-up, and liquidation of the Company, each Member hereby irrevocably waives any and all rights that it may have to maintain an action for partition of any of the Company's property.

Section 12.8 Power of Attorney.

Upon the request to the Managing Member, each Capital Investment Member shall execute a Power of Attorney in form satisfactory to the Managing Member granting the Managing Member authority to act on its behalf hereunder.

Section 12.9 Headings.

The Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 12.10 Further Actions.

Each Member shall execute and deliver such other certificates, agreements and documents, and take such other actions, as may reasonably be requested by the Managing Member in connection with the formation of the Company and the achievement of its purposes, including, without limitation, (a) any documents that the Managing Member deems necessary or appropriate to form, qualify, or continue the Company as a limited company in all jurisdictions in which the Company conducts or plans to conduct business and (b) all such agreements, certificates, tax statements and other documents as may be required to be filed in respect of the Company.

Section 12.11 Gender, Etc.

Whenever the context permits, the use of a particular gender shall include the masculine, feminine and neuter genders, and any reference to the singular or the plural shall be interchangeable with the other.

Section 12.12 Tax Matters Partner.

The Managing Member shall be designated as the "Tax Matters Partner" in accordance with Section 6231 of the Code and shall promptly notify the other Members if any tax return or report of the Company is audited or if any adjustments are proposed. In addition, the Managing Member shall promptly furnish to the Members all notices concerning administrative or judicial proceedings relating to federal income tax matters as required under the Code and shall supply such information to the Internal Revenue Service as may be necessary to identify the Members as "Notice Members" under Section 6231 of the Code. During the pendency of any administrative or judicial proceeding, the Managing Member shall furnish to the Members periodic reports concerning the status of any such proceeding. Without the consent of a Majority in Interest of the Members, the Managing Member shall not extend the statute of limitations, file a request for administrative adjustment or enter into any settlement agreement relating to any Company item of income, gain, loss, deduction or credit for any fiscal year of the Company.

Section 12.13 Certain ERISA Matters.

If this Agreement is executed and delivered on behalf of a Benefit Plan Investor, or on behalf of an entity whose assets include the assets of an employee benefit plan (such plan or entity to be referred to hereinafter as a "Plan Participant"), the Plan Participant shall be identified as such on Exhibit A hereto and shall represent and warrant, based upon the accuracy of the list of Capital Members to be provided by the Managing Member, that the acquisition of a Membership interest by such Plan Participant does not constitute a prohibited transaction within the meaning of Section 4975 of the Code. The Managing Member represents that: either (a), to the best knowledge of the Managing Member, after due inquiry, less than 25% of the value of any class of the equity interests in the Company is held by Benefit Plan Investors or (b) the Managing Member shall obtain an opinion of counsel reasonably satisfactory to such Plan Participant to the effect that the underlying assets of the Company are not "plan assets" (as that term is defined in 29 C.F.R. (S)510.3-101). Each Capital Member may rely upon said representation until the earliest to occur of: (i) its withdrawal from the Company, (ii) the dissolution of Company, (iii) the Managing Member's notifying the undersigned that such representation may no longer be relied upon or (iv) the Capital Member's obtaining actual knowledge that such representation is no longer accurate. The inaccuracy of such representation shall (without precluding the exercise of any other remedies available to such Capital Member) constitute a Material Adverse Effect for purposes of Section 2.11. The Managing Member will use its best efforts to discharge its responsibilities and to exercise its authority under the Limited Liability Company Agreement in such a manner that the assets of the Company will not be characterized as "plan assets." The Managing Member will notify the Capital Members as soon as practicable if 20% or more of the value of the equity interests in the Company is held by Benefit Plan Investors.

Section 12.14 Applicable Law.
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This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware as applied between residents of that state entering into contracts wholly to be performed in that state.

Section 12.15 Counterparts.
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This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties to this Agreement have executed the same as of the date first above set forth.

MANAGING MEMBER:

CMG@VENTURES, INC.

By:
---
John A. McMullen, Director

CAPITAL INVESTMENT MEMBER:

CMG@VENTURES CAPITAL CORP.

By:
---
John A. McMullen, Director

PROFIT MEMBERS:

---
David S. Wetherell

---
Guy M. Bradley

---
Peter H. Mills

---
Andrew J. Hajducky III

---
Jonathan Callaghan

Acknowledged and agreed to
with respect to Section 3.4:

CMG INFORMATION SERVICES, INC.

By:
---
John A. McMullen, Director

EXHIBIT A

| MANAGING MEMBER: | PERCENTAGE IN INTEREST: | CAPITAL COMMITMENT: |
|---|---|---|
| CMG@Ventures, Inc.<br>100 Brickstone Square<br>1st Floor<br>Andover, MA 01810 | 1% | $220,000 |
| **CAPITAL INVESTMENT MEMBER:** | | |
| CMG@Ventures Capital Corp.<br>100 Brickstone Square<br>1st Floor<br>Andover, MA 01810 | 99% | $21,780,000 |

| PROFIT MEMBERS: | DATE OF HIRE: | NO. OF UNITS(1): | NO. OF UNITS(2): |
|---|---|---|---|
| David S. Wetherell<br>30 Kittredge Road<br>North Andover, MA 01845 | 01/30/95 | 8,581 | 8,581 |
| Guy M. Bradley<br>10 White Pine Knoll Road<br>Wayland, MA 01778 | 01/30/95 | 3,000 | 3,000 |
| Peter H. Mills<br>2 Sierra Lane<br>Portola Valley, CA 94028 | 03/31/95 | 8,581 | 8,581 |
| Andrew J. Hajducky III<br>48 Edward Drive<br>Winchester, MA 01890 | 10/01/95 | 500 | 500 |
| Jonathan Callaghan<br>2222 Leavenworth<br>Apt. 602<br>San Francisco, CA 94133 | 05/02/97 | -- | 500 |

| FORMER PROFIT MEMBERS: | DATE OF HIRE: | NO. OF UNITS(1): | NO. OF UNITS(2): |
|---|---|---|---|
| Daniel J. Nova<br>114 Coachman's Lane<br>North Andover, MA 01845 | (3) | 900 | 900 |
| Jerry D. Colonna<br>Two Litchfield Drive<br>Port Washington, NY 11050 | (3) | 938 | 938 |

(1) Relates to all investments.

(2) Relates only to investments in Blaxxun Interactive, Ikonic Interactive, GeoCities, Vicinity and Parable.

(3) The number of units shown are fully vested without regard to date of hire.

EXHIBIT 10.2

# LEASE

This instrument is an indenture of lease by and between the 425 Medford Nominee Trust, c/o The Flatley Company, of 50 Braintree Hill Office Park, Braintree, Massachusetts 02184 ("Landlord") and Saleslink Corporation, of 25 Drydock Avenue, Boston, Massachusetts 02210 ("Tenant").

The parties to this instrument hereby agree with each other as follows:

## ARTICLE I
## SUMMARY OF BASIC LEASE PROVISIONS

### 1.1 INTRODUCTION

As further supplemented in the balance of this instrument and its Exhibits, the following sets forth the basic terms of this Lease, and, where appropriate, constitutes definitions of certain terms used in this Lease.

### 1.2 BASIC DATA

| | |
|---|---|
| Date: | January 6, 1998 |
| Landlord: | 425 Medford Nominee Trust |
| Present Mailing Address of Landlord: | 50 Braintree Hill Office Park, Braintree, Massachusetts 02185-0168 |
| Payment Address: | P.O. Box 850168, Braintree, Massachusetts 02185-0168 |
| Tenant: | Saleslink Corporation |
| Mailing Address of Tenant: | 25 Drydock Avenue<br>Boston, Massachusetts 02210 |
| with a copy to: | Clarkin, Sawyer & Phillips, P.C.<br>20 William Street<br>Wellesley, MA 02181<br>Attn: Pamela J. Anderson, Esq. |
| and | William Williams, II, Esq.<br>Palmer & Dodge<br>1 Beacon Street<br>Boston, MA 02108 |

Premises: Approximately 154,676 rentable square feet of space consisting of (i) approximately 78,605 rentable square feet located on the first (1st) floor and 49,151 rentable square feet located on the second (2nd) floor, of warehouse

space, and (ii) approximately 9,928 rentable square feet located on the first (1st) floor, 9,928 rentable square feet located on the second (2nd) floor and 7,064 rentable square feet located on the third (3rd) floor; of office space; all in the Building and as more particularly described in Exhibit A hereto. The Premises shall be expanded in accordance with the terms of Section 2.3 of this Lease.

Lease Term: Fifteen (15) years and one (1) month (plus the partial calendar month immediately following the Term Commencement Date (as defined below) if the Term Commencement Date does not fall on the first day of a month). The Lease Term may be extended by Tenant in accordance with the terms of Section 3.3.1 of this Lease.

Term Commencement Date: The Term Commencement Date shall occur, on the date Landlord has Substantially Completed the Landlord's Work (as defined in Exhibit B), provided, however, in no event shall the Term Commencement Date be earlier than May 1, 1998.

Base Rent: For the first five (5) Lease Years, at the rate of $855,358.28 per annum ($71,279.86 per month, i.e. $5.53 per rentable square foot); for the sixth through tenth Lease Years, at the rate of $962,084.72 per annum ($80,173.73 per month, i.e. $6.22 per rentable square foot); and for the eleventh through fifteenth Lease Years, at the rate of $1,081,185.24 per annum ($90,098.77 per month, i.e. $6.99 per rentable square foot).

Rent Commencement Date: The later of (i) the Term Commencement Date, or (ii) June 1, 1998.

Base Rent Commencement Date: Thirty (30) days after the Rent Commencement Date.

Security Deposit: Letter of Credit in the amount of $800,000.00 in form and substance satisfactory to Landlord.

Guarantor of Tenant's
Obligations: CMG Information Services, Inc.

Permitted Use: General office and warehouse uses and other uses permitted under applicable law and for no other purpose or purposes.

Tenant's Proportionate
Share: 100%.

Additional Rent: (i) Operating Expenses: All Operating Costs (as defined in Section 4.3) for the Building and Lot.

(ii) Real Estate Taxes: All Real Estate Real Estate Taxes (as defined in Section 4.2) for the Building and tax lot or lots on which the Building and other improvements are located ("Lot").

Tenant's Insurance

Requirements: Public Liability: ONE MILLION AND 00/100 ($1,000,000.00) Dollars for injury to one person, ONE MILLION AND 00/100 ($1,000,000.00) Dollars for injury to more than one person, per incident with umbrella liability coverage in an amount not less than FIVE MILLION AND 00/100 ($5,000,000.00) Dollars.

Property Damage: ONE MILLION AND 00/100 ($1,000,000.00) Dollars per incident.

Landlord's Insurance
Requirements: See Section 11.4.

1.3 ENUMERATION OF EXHIBITS

Exhibit A: Plan showing the Premises
Exhibit A-1: Site Plan
Exhibit B: Description of Landlord's Work
Exhibit B-1: Workletter
Exhibit B-2: Specifications for Landlord's Work
Exhibit B-3: Schedule for Work
Exhibit C: Term Commencement Date Agreement
Exhibit D: Form of Operating Costs Budget
Exhibit E: Form of Letter of Credit

## ARTICLE II
## DESCRIPTION OF PREMISES AND APPURTENANT RIGHTS

2.1 LOCATION OF PREMISES

The Landlord hereby leases to Tenant, and Tenant hereby accepts from Landlord, the Premises as described in Section 1.2 in Landlord's building (the "Building") located at 425 Medford Street, Boston, Massachusetts consisting of approximately 154,676 square feet of space as identified on Exhibit A. Nothing in Exhibit A shall be treated as a representation that the Premises or the Building shall be precisely of the area, dimensions, or shapes as shown, it being the intention of the parties only to show diagrammatically, rather than precisely, on Exhibit A the layout of the Premises and the Building.

Upon Tenant's prior written request within sixty (60) days of the Rent Commencement Date, Landlord shall cause the rentable square footage of the Premises to be measured by Landlord's architect in accordance with New York standard measurement standards and such rentable square footage as so determined shall be the rentable square footage of the Premises hereunder. If the rentable square footage of the Building is other than as initially stated

herein, the Tenant's Proportionate Share shall be retroactively adjusted to reflect the actual rentable square footage of the Premises, as determined in accordance with this paragraph for the period commencing on the Rent Commencement Date, and Landlord or Tenant, as the case may be, shall pay the other any difference due within thirty (30) days of the date the rentable square footage of the Premises is finally determined.

2.2 APPURTENANT RIGHTS AND RESERVATIONS

Tenant shall have, as appurtenant to the Premises, rights to use in common with others entitled thereto the common facilities included in the Building or the land on which the Building is located (the "Lot"), including common walkways, driveways, lobbies, hallways, ramps, stairways and elevators, necessary for access to said Premises and lavatories nearest thereto. Such rights shall always be subject to reasonable rules and regulations from time to time established by Landlord by suitable notice, and to the right of Landlord to designate and to change from time to time the areas and facilities so to be used, provided that such changes do not unreasonably interfere with the use of the Premises for the Permitted Use.

Not included in the Premises are the roof or ceiling, the floor and all perimeter walls of the space identified in Exhibit A, except the inner surfaces thereof and the perimeter doors and windows. The Landlord reserves the right to install, use, maintain, repair and replace in the Premises (but in such manner as not unreasonably to interfere with Tenant's use of the Premises) utility lines, shafts, pipes, and the like, in, over and upon the Premises, provided that the same are located above the dropped ceiling (or, if there is no dropped ceiling, then within three (3) feet of the roof deck), below the floor surfaces or tight against demising walls or columns. Landlord agrees to repair any damage to the Premises caused by the installation of any such items. Such utility lines, shafts, pipes and the like shall not be deemed part of the Premises under this Lease. The Landlord also reserves the right to alter or relocate any common facility and to change the lines of the Lot.

Landlord shall maintain not less than 175 parking spaces for Tenant's use from time to time on the Lot as shown on Exhibit A-1 attached hereto. Tenant shall have the right to designate visitor parking areas and overnight parking areas within the area designated for Tenant's parking as shown on Exhibit A-1 attached hereto. Landlord reserves the right to relocate the Tenant's parking area provided such relocated have reasonably comparable access to the Premises.

2.3 EXPANSION PREMISES

Provided that (i) Tenant has not assigned the Lease, and (ii) not more than 50% of the Premises are then subject to a sublease (whether the term of the sublease has commenced or is to be commenced thereafter), then Tenant shall lease the entirety of approximately 21,142 rentable square feet of space located on the third floor of the Building (collectively, "Expansion Space") upon the earlier to occur of (i) two (2) years following the Term Commencement Date (the "Outside Expansion Premises Commencement Date"), or (ii) the date on which the Expansion Space is substantially completed in accordance with subsection (A) below in the event Tenant provides written notice to Landlord that Tenant has elected to take the Expansion Premises prior to the Outside Expansion Premises Commencement Date (which notice shall include a designation of the portions of the Expansion Space to be used as office area and the portion to be used as warehouse/production space); on the terms and conditions as follows: (A) the Expansion Space shall be leased in the condition set forth in Exhibit B under the heading: "Expansion Space"; (B) except for the Base Rent and Additional Rent, the Expansion Space shall be leased on all the terms and conditions of this Lease then in effect with respect to the initial Premises, provided all terms of the Lease based upon the rentable square feet of the Premises shall be adjusted accordingly; (C) the term for the Expansion Space shall be the remaining Term of this Lease (including the Extension Period(s)); and (D) the Expansion Space shall be leased at an initial annual Base Rent equal to the total of (x) $8.00 per rentable square foot for any office space in the Expansion Space, plus (y) $6.00 per rentable square foot for any warehouse/production space in the Expansion Space; for the period until the end of the fifth Lease Year.

The Base Rent for the Expansion Space shall be increased thereafter as follows:

Lease Years: Annual Base Rent:

6-10 $9.00 per rentable square foot for any office space in the Expansion Space, plus (y) $6.75 per rentable square foot for any warehouse/production space in the Expansion Space; and

11-15 $10.12 per rentable square foot for any office space in the Expansion Space, plus (y) $7.60 per rentable square foot for any warehouse/production space in the Expansion Space.

At Landlord's option, the addition of the Expansion Space to the Premises shall be effective only if, on the date on which Landlord is to deliver the Expansion Space to Tenant, no uncured Event of Default shall then be outstanding. Time is of the essence.

## ARTICLE III
## TERM OF LEASE; CONDITION OF PREMISES

### 3.1 TERM OF LEASE

The term of this Lease shall be the period specified in Section 1.2 hereof as the "Lease Term" commencing upon the Rent Commencement Date specified in Section 1.2. Promptly upon the determination of the date constituting the Rent Commencement Date, the parties hereto shall enter into a term commencement date agreement substantially in the form of Exhibit C attached hereto and made a part hereof. Tenant shall have the right of access to enter the Premises for furnishing, fixturing, cabling and the like by the later of (i) May 1, 1998, or (ii) upon notice from Landlord that the Premises are suitable for Tenant to so enter. Landlord agrees to give Tenant not less than thirty (30) days prior written notice of the date of Tenant's early access and anticipated Term Commencement Date.

### 3.2 CONDITION OF PREMISES

(i) Landlord shall Substantially Complete the Premises and prepare same for occupancy by Tenant in accordance with Landlord's work as set forth in Exhibit "B" attached hereto. "Substantially Complete" shall mean that Landlord has completed the work set forth in Exhibit "B" to the extent that only minor details of construction (so-called "punch list" items) and minor mechanical adjustments remain to be done in the Premises. Landlord shall use its best efforts to Substantially Complete the Premises on or before the June 1, 1998, provided that no subsequent material changes are made to the scope of work and specifications set out in Exhibit "B". If Landlord is delayed in the performance of this work because of strikes, labor difficulties, inability to obtain materials, fire, governmental regulations, or any other circumstances beyond its control, then such schedule of completion, will be postponed for a period of time equal to the delay thus incurred, provided that if Landlord fails to Substantially Complete Landlord's Work in the Premises in accordance with the terms and conditions of the Lease by December 31, 1998 (the "Outside Delivery Date"), Tenant may, as its sole remedy (other than self-help as set forth in Section 8.2 hereof), terminate this Lease upon thirty (30) days prior written notice given any time before such delivery, provided however, if Landlord completes and delivers the Premises to Tenant in accordance with the terms and conditions of the Lease within such thirty (30) day period, Tenant's termination notice shall be null and void. Failure on the part of the Landlord to provide occupancy as herein described shall not constitute a breach or default on

the part of the Landlord under this Lease or give rise to any claims of damage or expenses of any kind against the Landlord by Tenant, either direct or consequential. In the event Tenant is unable to take possession of the Premises on the Term Commencement Date because of Landlord but not Tenant, the Rent Commencement Date, Term Commencement Date and the Term Expiration Date shall be adjusted to reflect the date of Tenant's later occupancy. The Rent Commencement Date, Term Commencement Date and Term Expiration Date shall not be adjusted in the event such delay of Landlord's Work is caused by Tenant.

Notwithstanding the foregoing, if Tenant's personnel shall occupy all or any part of the Premises for the conduct of its business (as opposed to installation and testing of furniture and equipment and performance of Tenant's Work) prior to the Rent Commencement Date, such date of occupancy shall, for all intents and purposes of this Lease, be the Rent Commencement Date.

3.3.1 EXTENSION PERIOD

Provided that (i) Tenant has not assigned the Lease, (ii) not more than 50% of the Premises are then subject to a sublease (whether the term of the sublease has commenced or is to be commenced thereafter), and (iii) Landlord has not exercised its right to terminate this Lease in accordance with Section 17.24 hereof, then Tenant has the right to extend the Term of the Lease for one (1) five (5) year period (the "Extension Period") at a Base Rent equal to the Market Rent, and otherwise on the same terms and conditions as this Lease, except that there shall be no further rights to extend the Term. The Market Rent shall be the rent set forth in a written notice from Landlord to Tenant given not less than eighteen (18) months prior to expiration of the Term based on the rent for comparable renewal leases (in terms of length of term, space and other relevant factors) for "as-is" space for comparable space in the Boston area, except as set forth in the following paragraphs of this Section. Tenant shall exercise the option for each Extension Period by written notice to Landlord not more than fifteen (15) months nor less than twelve (12) months before the then expiration of the Term. At Landlord's option, Tenant's exercise of the option shall be effective only if, at the time of the notice and upon the effective date of the Extension Period, no uncured Event of Default shall then be outstanding.

Tenant shall have twenty (20) business days after receipt of Landlord's notice of Market Rent to notify Landlord that (i) Tenant is contesting same, or (ii) Tenant is accepting Landlord's estimate of Market Rent. Tenant's failure to so notify Landlord within such twenty (20) business day period shall be deemed an acceptance of such

Market Rent. If Tenant timely contests Landlord's determination of Market Rent, then the parties shall have thirty (30) days after Landlord receives Tenant's notice of contest in accordance herewith in which to agree on the Market Rent for the Extension Period. If the Tenant exercises its option and the parties agree on the Market Rent during such thirty (30) day period, Landlord and Tenant shall execute an amendment to this Lease setting forth the Annual Fixed Rent for the Extension Period.

If the parties are unable to agree on the Market Rent within the thirty (30) day period, then, within ten (10) days after the expiration of that period, each party, at its cost and by giving written notice to the other party, shall appoint a qualified M.A.I. real estate appraiser with at least 5 years' full-time commercial appraisal experience in the Boston area to appraise and set the Market Rent for the Premises in accordance with the foregoing criteria. If a party does not appoint such an appraiser within ten (10) days after the other party has given notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and shall set the Market Rent for the Premises. The two appraisers appointed by the parties as stated in this paragraph shall meet promptly and attempt to establish the Market Rent for the Premises in accordance with the foregoing criteria. If they are unable to agree within thirty (30) days after the second appraiser has been appointed, they shall attempt to elect a third appraiser meeting the qualifications stated in this paragraph within ten (10) days after the last day the two appraisers are given to set the Market Rent. If they are unable to agree on the third appraiser, either of the parties to this Lease, by giving ten (10) days' notice to the other party, can appeal to the then president of the Greater Boston Real Estate Board, for the selection of a third appraiser who meets the qualifications stated in this paragraph. Each of the parties shall bear one-half (1/2) of the cost of appointing and paying the fee of the third appraiser. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for either party.

Within thirty (30) days after the selection of the third appraiser, the third appraiser shall set the Market Rent for the Premises which shall be binding on all parties.

## ARTICLE IV
## RENT

### 4.1 RENT PAYMENTS

The Base Rent (at the rates specified in Section 1.2 hereof) and the additional rent or other charges payable pursuant to this Lease (collectively the "Rent") shall be payable by Tenant to Landlord at the Payment Address or such

other place as Landlord may from time to time designate by notice to Tenant without any demand whatsoever except as otherwise specifically provided in this Lease and without any counterclaim, offset or deduction whatsoever.

(a) Commencing on the Rent Commencement Date, the monthly installments of Tenant's Proportionate Share of the Real Estate Taxes and Tenant's Proportionate Share of Operating Costs shall be payable in advance on the first day of each and every calendar month during the term of this Lease. Commencing on the Base Rent Commencement Date, monthly installments of Tenant's Proportionate Share of the Base Rent shall be payable in advance on the first day of each and every calendar month during the term of this Lease. Provided no Event of Default shall then be outstanding, no Base Rent shall be payable for the period from the Rent Commencement Date to the Base Rent Commencement Date. If the Rent Commencement Date falls on a day other than the first day of a calendar month, the first payment which Tenant shall make shall be made on the Rent Commencement Date and shall be equal to a proportionate part of such monthly Rent for the partial month from the Rent Commencement Date to the first day of the succeeding calendar month, and the monthly Rent for such succeeding calendar month. If the Base Rent Commencement Date falls on a day other than the first day of a calendar month, the first payment which Tenant shall make shall be made on the Base Rent Commencement Date and shall be equal to a proportionate part of such monthly Base Rent for the partial month from the Base Rent Commencement Date to the first day of the succeeding calendar month, and the monthly Base Rent for such succeeding calendar month. As used in this Lease, the term "lease year" shall mean any twelve (12) month period commencing on the Rent Commencement Date; provided, however, if the Rent Commencement Date does not fall on the first day of a month, then the term "lease year" shall mean any twelve month period commencing on the first day of the month immediately following the Rent Commencement Date, in which event the first lease year shall also include the partial month containing the Rent Commencement Date.

(b) Base Rent and the monthly installments of Tenant's Proportionate Share of Real Estate Taxes and Tenant's Proportionate Share of Operating Costs for any partial month shall be paid by Tenant to Landlord at such rate on a pro rata basis. Any other charges payable by Tenant on a monthly basis, as hereinafter provided, shall likewise be prorated.

(c) Rent not paid within ten (10) days of the date due shall bear interest at a rate (the "Lease Interest Rate") equal to the lesser of (i) the so-called base rate of interest charged from time to time by The First National Bank of Boston, N.A., plus three percent (3%) per annum or (ii) the maximum legally permissible rate, from the due date until paid.

(d) Rent for the first full month of the initial Term for which rent is due shall be paid by Tenant upon the execution of this Lease.

4.2 REAL ESTATE TAXES

(a) The term "Real Estate Taxes" shall mean all taxes and assessments (including without limitation, assessments for public improvements or benefits and water and sewer use charges), and other charges or fees in the nature of taxes for municipal services which at any time during or in respect of the Lease Term may be assessed, levied, confirmed or imposed on or in respect of, or be a lien upon, the Building and the Lot, or any part thereof, or any rent therefrom or any estate, right, or interest therein, or any occupancy, use, or possession of such property or any part thereof, and ad valorem taxes for any personal property used in connection with the Building or Lot. Landlord agrees that Tenant's share of any special assessment shall be determined (whether or not Landlord avails itself of the privilege so to do) as if Landlord had elected to pay the same in installments over the longest period of time permitted by applicable law and Tenant shall be responsible only for those installments (including interest accruing and payable thereon) or parts of installment that are attributable to periods within the Lease Term.

Should the Commonwealth of Massachusetts, or any political subdivision thereof, or any other governmental authority having jurisdiction over the Building, (1) impose a tax, assessment, charge or fee, which Landlord shall be required to pay, by way of substitution for such Real Estate Taxes, or (2) impose an income or franchise tax or a tax on rents in substitution for a tax levied against the Building or the Lot or any part thereof and/or the personal property used in connection with the Building or the Lot or any part thereof, all such taxes, assessments, fees or charges ("Substitute Real Estate Taxes") shall be deemed to constitute Real Estate Taxes hereunder. Real Estate Taxes shall also include, in the year paid, all reasonable fees and costs incurred by Landlord in obtaining a reduction of, or a limit on the increase in, any Real Estate Taxes, regardless of whether any reduction or limitation is obtained provided that Tenant has consented to seeking such a reduction or limitation. Except as hereinabove provided with regard to Substitute Real Estate Taxes, Real Estate Taxes shall not include any inheritance, estate, succession, transfer, gift, franchise, net income or capital stock tax.

(b) Tenant shall pay to Landlord, as additional rent, Tenant's Proportionate Share of the Real Estate Taxes assessed against the Building and Lot, as the same may change from time to time) during the Lease Term.

Commencing on the Rent Commencement Date, Tenant shall pay monthly, at the time when Rent payments are due hereunder, an amount equal to one-twelfth (1/12th) of the total of Tenant's Proportionate Share of the annual Real Estate Taxes (as reasonably estimated by Landlord) due from Tenant to Landlord pursuant to this Article 4.2(b). Promptly after the determination by any taxing authority of Real Estate Taxes upon the Building and Lot for each tax year, Landlord shall make a determination of the Tenant's Proportionate Share of the Real Estate Taxes, and if the aforesaid payments theretofore made for such tax year by Tenant exceed the Tenant's Proportionate Share of the Real Estate Taxes, such overpayment shall be credited against the payments thereafter to be made by Tenant pursuant to this paragraph, unless such overpayment is made during the last year of the Term, in which case such overpayment shall be paid to Tenant within twenty (20) days; and if the Tenant's Proportionate Share of the Real Estate Taxes for such tax year are greater than such payments theretofore made on account for such tax year, Tenant shall, within twenty (20) days of written notice from Landlord, make a suitable payment to Landlord. Copies of tax bills submitted by Landlord with any such statement shall be conclusive evidence of the amount of Real Estate Taxes. After the full assessment year, the initial monthly payment on account of the Tenant's Proportionate Share of the Real Estate Taxes shall be replaced each year by a payment which is one-twelfth (1/12th) of the Tenant's Proportionate Share of the Real Estate Taxes for the immediately preceding tax year.

(c) If any Real Estate Taxes, with respect to which Tenant shall have paid Tenant's Proportionate Share, shall be adjusted to take into account any abatement or refund, Landlord shall promptly pay to Tenant the amount of Tenant's Proportionate Share of such abatement or refund less Landlord's reasonable costs or expenses, including without limitation appraiser's and attorneys' fees, of securing such abatement or refund. Upon Tenant's prior written request, Landlord shall either seek a tax abatement, or authorize Tenant to seek such an abatement provided that if such abatement is initiated at Tenant's request, Tenant shall pay all costs and expenses in connection therewith. If Tenant prosecutes such abatement itself, Landlord shall cooperate in connection with such abatement proceeding and shall, upon request, furnish such information and documentation relating to the Property and execute such instruments as Tenant may reasonably request.

(d) Tenant shall pay or cause to be paid, prior to delinquency, any and all taxes and assessments levied upon all trade fixtures, inventories and other personal property placed in and upon the Premises by Tenant.

4.3 TENANT'S SHARE OF OPERATING COSTS

Tenant shall pay to Landlord, as additional rent, Tenant's Proportionate Share of the Operating Costs during the Lease Term.

Commencing on the Rent Commencement Date, Tenant shall pay monthly, at the time when Rent payments are due hereunder, an amount equal to one-twelfth (1/12th) of Tenant's Proportionate Share of the total annual Operating Costs (as reasonably estimated by Landlord) due from Tenant to Landlord pursuant to Article 4.3 of this Lease. Promptly after the end of each calendar year thereafter, Landlord shall make a determination of Tenant's Proportionate Share of such Operating Costs; and if the aforesaid payments theretofore made for such period by Tenant exceed Tenant's share, such overpayment shall be credited against the payments thereafter to be made by Tenant pursuant to this Paragraph (unless such overpayment is made during the last year of the Term, in which case such overpayment shall be paid to Tenant within twenty (20) days); and if Tenant's Proportionate Share is greater than such payments theretofore made on account for such period, Tenant shall within thirty (30) days of written notice from Landlord make a suitable payment to Landlord.

The initial monthly payment on account of Tenant's Proportionate Share of Operating Costs shall be adjusted after Landlord's determination of Tenant's Proportionate Share actually due for the preceding accounting period by a payment which is one-twelfth (1/12th) of Tenant's Proportionate Share of the actual Operating Costs for the immediately preceding period, with adjustments as appropriate where such preceding period is less than a full twelve-month period. Landlord shall have the same rights and remedies for non-payment by Tenant of any such amounts due on account of such Operating Costs as Landlord has hereunder for the failure of Tenant to pay Rent as provided for in Article 14 of this Lease.

As used in this Lease, the term "Operating Costs" shall mean all competitive, reasonable and customary costs and expenses incurred by Landlord in connection with the operation, insuring, repair, maintenance, replacement and management (collectively, "the Operation") of the Building, the Building heating, ventilating, electrical, plumbing, and other systems and the Lot (collectively, "the Property") calculated in accordance with generally accepted accounting principles, including, without limitation, the following:

(1) All expenses incurred by Landlord or Landlord's agents which shall be directly related to employment of personnel, including amounts incurred for wages, salaries and other compensation for services, payroll, social security, unemployment and similar taxes, worker's compensation insurance, disability benefits, pensions, hospitalization, retirement plans and group insurance, uniforms and working clothes and the cleaning thereof, and expenses imposed on Landlord or Landlord's agents pursuant to any collective bargaining agreement for the services of employees of Landlord or Landlord's agents in connection with the Operation of the Property, and its mechanical systems including, without limitation, day and night supervisors, property manager, accountants, bookkeepers, janitors, carpenters, engineers, mechanics, electricians and plumbers and personnel engaged in supervision of any of the persons mentioned above; provided that, if any such employee is also employed on other properties of Landlord such compensation shall be suitably prorated among the Property and such other properties;

(2) The cost of services, materials and supplies furnished or used in the Operation of the Property, including, without limitation, the cost to perform Landlord's obligations under Sections 8.2 and 9.1 of this Lease;

(3) The amounts paid to managing agents and for legal and other professional fees relating to the Operation of the Property, but excluding such fees paid in connection with (x) negotiations for or the enforcement of leases; and (y) seeking abatements of Real Estate Taxes; provided, however, that management fees shall not exceed 3.5% of the gross revenues of the Building;

(4) Insurance premiums;

(5) Costs for electricity, steam and other utilities required in the Operation of the Property, excluding electricity and gas (if any) supplied for use in the Premises by Tenant;

(6) Water and sewer use charges;

(7) The costs of snow-plowing and removal and landscaping;

(8) Amounts paid to independent contractors for services, materials and supplies furnished for the Operation of the Property;

(9) All other reasonable expenses incurred in connection with the Operation of the Property; and

(10) Any capital expenditure made by Landlord during the term of this Lease (other than capital expenditures in

connection with replacement of (x) mechanical systems under Section 8.2 of this Lease, or (y) the roof or structure, which shall not be included in Operating Costs), the total cost of which is not properly includable in Operating Costs for the operating year in which it was made, shall nevertheless be included in such Operating Costs for the operating year in which it was made, and Operating Costs for each succeeding operating year shall include the annual charge-off of such capital expenditure. Annual charge-off shall be determined by dividing the original capital expenditure plus an interest factor, reasonably determined by Landlord, as being the interest rate then being charged for long-term mortgages by institutional lenders on "like" properties within the locality in which the Building is located, by the number of years of useful life of the capital expenditure, and the useful life shall be determined reasonably by Landlord in accordance with generally accepted accounting principles and practices in effect at the time of making such expenditure.

The "Statement" shall mean a statement rendered to Tenant by Landlord within one hundred twenty (120) days after the end of each year, provided Landlord's failure to render such Statement within such period shall not limit Tenant's obligations to make any required payments when the Statement is issued. The Statement shall be in reasonable detail, certified by Landlord's representative, and show the Operating Costs for the Property and amounts already paid by Tenant for Tenant's Proportionate Share of Operating Costs, and the amount of Tenant's Proportionate Share of Operating Costs remaining due from or overpaid by Tenant for the year or fraction thereof covered by the Statement with appropriate prorations for fractional years. Landlord shall prepare the Statement in a form and with categories which are relatively consistent from year to year and consistent with the form of operating budget attached hereto as Exhibit D.

If Tenant shall so request within sixty (60) days after receipt of any Statement, at Tenant's expense (including reasonable administrative fees of Landlord related to Tenant's review) and during normal business hours, Tenant shall be able to review Landlord's books and records relating to Operating Costs which are chargeable to Tenant for the period in respect of which such Statement was prepared for the purpose of verifying any such Statement that Landlord has given hereunder. Any such request shall be accompanied by a letter setting forth, in reasonable detail, the particular aspects of such Statement which Tenant disputes or questions. In making such examination, Tenant agrees and shall request and use commercially reasonable efforts to cause its auditors, accountants and any other employees, agents or contractors having access to such information to agree, and to keep strictly confidential

(i) any and all information contained in such books and records, and (ii) the circumstances and details pertaining to such examination including, without limitation, the nature of any disputes with respect to Operating Costs, and the nature and details of any settlement thereof (subject, however, to disclosure in the event of litigation or the information otherwise becomes public); and Tenant shall confirm and shall request and use commercially reasonable efforts to cause its auditors, accountants, employees, agents and contractors to confirm such agreement in writing, if so requested by Landlord, prior to such examination. If Tenant shall not request any such review within the sixty (60) day period hereinabove referred to, then Landlord's accounting shall be binding and conclusive. During the pendency of such examination, Tenant shall make all payments claimed by Landlord to be due, such payment to be without prejudice to Tenant's position. In the event of a final determination that the amounts paid by Tenant on account of Operating Costs for the period in question exceeded amounts actually due from Tenant, then Landlord shall pay such excess to Tenant as provided in this Section 4.3. In the event of a final determination that the amounts paid by Tenant on account of Operating Costs Payment for the period in question were less than amounts actually due to Landlord, Tenant shall pay such deficiency to Landlord as provided in this Section 4.3.

## ARTICLE V
## USE OF PREMISES

### 5.1 PERMITTED USE

Tenant agrees that the Premises shall be used and occupied by Tenant only for the purposes specified as the Permitted Use thereof in Section 1.2 of this Lease, and for no other purpose or purposes.

Tenant shall comply and shall cause its employees, agents, and invitees to comply with such reasonable rules and regulations as Landlord shall from time to time establish for the proper regulation of the Building and the Lot, provided that Landlord gives Tenant reasonable advance notice thereof and that such additional reasonable rules and regulations shall be consistent with those for comparable buildings in the area, except where different circumstances justify different treatment.

### 5.2 COMPLIANCE WITH LAWS

Tenant agrees that no trade or occupation shall be conducted in the Premises or use made thereof which will be unlawful, improper, or contrary to any law, ordinance, by-law, code, rule, regulation or order applicable in the municipality in which the Premises are located. Tenant

shall obtain any and all approvals, permits, licenses, variances and the like from governmental or quasi-governmental authorities, including without limitation any Architectural Access Board and Board of Fire Underwriters (collectively, "Approvals") which are required for Tenant's use of the Premises, including, without limitation, any which may be required for any construction work and installations, alterations, or additions made by Tenant to, in, on, or about the Premises; provided, however, that Tenant shall not seek or apply for any Approvals without first having given Landlord a reasonable opportunity to review any applications for Approvals and all materials and plans to be submitted in connection therewith and obtaining Landlord's written consent, which consent shall not be unreasonably withheld or delayed. In any event, Tenant shall be responsible for all costs, expenses, and fees in connection with obtaining all Approvals, except that Landlord shall be solely responsible for obtaining any and all Approvals in connection with Landlord's initial construction in the Premises. Tenant's inability to obtain or delay in obtaining any such Approval shall in no event reduce, delay, or terminate Tenant's rental, payment, and performance obligations hereunder. Tenant shall, at its own cost and expense, (i) make all installations, repairs, alterations, additions, or improvements to the Premises required by any law, ordinance, by-law, code, rule, regulation or order of any governmental or quasi-governmental authority; (ii) keep the Premises equipped with all required safety equipment and appliances; and (iii) comply with all laws, ordinances, codes, rules, regulations, and orders and the requirements of Landlord's and Tenant's insurers applicable to the Premises, Building and Lot. Notwithstanding the foregoing, Tenant shall not be required to make any structural modifications to the Building unless required by Tenant's particular use of the Building as opposed to office/warehouse uses generally. Tenant shall not place a load upon any floor in the Premises exceeding 150 pounds per square foot of area.

Landlord warrants that the Premises and the Building and other common areas shall, on the Term Commencement Date, be in compliance with all existing health, safety, fire, zoning, building and environmental laws, rules and regulations, including, without limitation, the Federal Americans with Disabilities Act.
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42 USC (S)12101 et seq. (ADA).
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In the event the Approvals shall not have been obtained on or before March 1, 1998 (the "Approvals Date"), either party shall have the right to terminate this lease by giving notice to the other of its election to so terminate at any time after the Approvals Date (but prior to the date the Approvals may have been issued and obtained). Landlord and Tenant shall reasonably cooperate with each other in

connection with the Approvals. The Approvals shall not be considered as having been issued and obtained for purposes of this Section in the event any interested party still has the right to challenge or appeal any Approvals, or in the event such challenge or appeal has been taken and has not been resolved in Landlord's favor.

5.3 INSURANCE RISKS

Tenant shall not permit any use of the Premises which will make voidable or, unless Tenant pays the extra insurance premium attributable thereto as provided below, increase the premiums for any insurance on the Building or on the contents of said property or which shall be contrary to any law or regulation from time to time established by the New England Fire Insurance Rating Association (or any successor organization) or which shall require any alteration or addition to the Building. Tenant shall, within thirty (30) days after written demand therefor, reimburse Landlord for the costs of all extra insurance premiums caused by Tenant's use of the Premises. Any such amounts shall be deemed to be additional rent hereunder. Landlord acknowledges that Tenant's contemplated use of the Premises will not make voidable or cause the payment of extra insurance premiums or increase the premiums for any insurance on the Building or on the contents of said property or be contrary to any such law or regulation.

5.4 ELECTRICAL EQUIPMENT

The Tenant shall not, without Landlord's written consent in each instance, connect to the electrical distribution system any fixtures, appliances, or equipment which will operate individually or collectively at a wattage in excess of the capacity of the electrical system serving the Premises as set forth in Exhibit B and Landlord may audit Tenant's use of electric power to determine Tenant's compliance herewith.

5.5 TENANT'S OPERATIONAL COVENANTS

(a) Affirmative Covenants

In regard to the use and occupancy of the Premises, Tenant will at its expense: (1) keep the inside and outside of all glass in the doors and windows of the Premises reasonably clean; (2) replace promptly any cracked or broken glass of the Premises with glass of like kind and quality; (3) maintain the Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; (4) keep any garbage, trash, rubbish or other refuse in vermin-proof containers within the interior of the Premises until removed (and Tenant shall cause the Premises to be inspected and exterminated on a regular basis by a

reputable, licensed exterminator and shall provide Landlord, on request, with a copy of Tenant's contract for such services); (5) keep all mechanical apparatus free of vibration and loud noise which may be transmitted beyond the Premises; and (6) comply with and observe all rules and regulations reasonably established by Landlord from time to time.

(b) Negative Covenants

In regard to the use and occupancy of the Premises and common areas, Tenant will not: (7) place or maintain any trash, refuse or other articles in any vestibule or entry of the Premises, on the sidewalks or corridors adjacent thereto or elsewhere on the exterior of the Premises so as to obstruct any corridor, stairway, sidewalk or common area; (8) permit undue accumulations of or burn garbage, trash, rubbish or other refuse within or without the Premises; or (9) commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance or use or permit the use of any portion of the Premises for any unlawful purpose.

5.6 SIGNS, BLINDS and DRAPES

Tenant shall not place any signs on the exterior of the Building or on or in any window, public corridor or door visible from the exterior of the Premises. No drapes or blinds may be put on or in any window nor may any Building drapes or blinds be removed by Tenant. Landlord agrees to provide a 2' x 6' ground sign identifying Tenant at Landlord's sole cost and expense. Tenant shall be entitled, at Tenant's sole cost and expense, to such exterior signage on the Building as is determined by Tenant in compliance with all applicable codes, subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed.

5.7 HAZARDOUS MATERIALS

Tenant shall not use, handle, store or dispose of any oil, hazardous or toxic substances, materials or wastes (collectively "Hazardous Materials") in, under, on or about the Property except for such storage and use consented to by Landlord in advance which consent may be withheld in Landlord's sole and absolute discretion. Any Hazardous Materials in the Premises, and all containers therefor, shall be used, kept, stored and disposed of in conformity with all applicable laws, ordinances, codes, rules, regulations and orders of governmental authorities. If the transportation, storage, use or disposal of Hazardous Materials anywhere on the Property in connection with Tenant's use of the Premises results in (1) contamination of the soil or surface or ground water or (2) loss or damage to

person(s) or property, then Tenant agrees (i) to notify Landlord immediately of any contamination, claim of contamination, loss or damage, (ii) after consultation with and approval by Landlord, to clean up all contamination in full compliance with all applicable statutes, regulations and standards, and (iii) to indemnify, defend and hold Landlord harmless from and against any claims, suits, causes of action, costs and fees, including, without limitation, attorneys' fees, arising from or connected with any such contamination, claim of contamination, loss or damage. This provision shall survive the termination of this Lease. No consent or approval of Landlord shall in any way be construed as imposing upon Landlord any liability for the means, methods, or manner of removal, containment or other compliance with applicable law for and with respect to the foregoing. The terms of this Section 5.7 shall apply to any transportation, storage, use or disposal of Hazardous Materials irrespective of whether Tenant has obtained Landlord's consent therefor but nothing in this Lease shall limit or otherwise modify the requirement of obtaining Landlord's prior consent as set forth in the first sentence of this Section 5.7.

Landlord represents, warrants and covenants that it has no actual knowledge of the presence at the Building or Lot (including the Premises) of any Hazardous Materials (except as set forth in the environmental site report entitled:

Whole Site Response Action Outcome Statement Report, dated May 15, 1996 (2 Volumes) a copy of which has been provided to Tenant (the "Report") (including, but not limited to, asbestos, asbestos containing materials, fuel oil, gasoline, or tanks for storage of fuel oil or gasoline). Landlord shall be deemed only to have "actual knowledge" of only such Hazardous Materials at the Building or Lot of which Anthony Gentile is actually aware as of the date hereof and which Hazardous Materials are not referred to in the Report (the foregoing, however, shall not be deemed to construe any personal liability whatsoever on Thomas J. Flatley and/or Anthony Gentile). Landlord agrees that it will not, generate, store, use, dispose of or release any such substances in or onto the Building or Lot (including the Premises) during the Lease Term in violation of applicable environmental laws. Landlord agrees to remediate the contamination disclosed in the Report prior to the Term Commencement Date in accordance with applicable environmental laws. Except for only the representations, warranties and covenants set forth in Section 5.7 hereinabove, Landlord makes no representation, warranty or covenant whatsoever concerning the presence or absence of Hazardous Materials at, in, on or under the Building, Premises and/or Lot. Prior to the parties execution of this Lease, Landlord has furnished Tenant, and Tenant hereby acknowledges that it has received and read the Report.

## ARTICLE VI
## INSTALLATIONS, ALTERATIONS, AND ADDITIONS

### 6.1 INSTALLATIONS, ALTERATIONS, AND ADDITIONS

Tenant shall not make structural installations, alterations, or additions to the Premises, but may make non structural installations, alterations or additions provided that Landlord consents in advance and in writing to any non-structural installations, alterations or additions costing more than $25,000.00, which consent shall not be unreasonably withheld or delayed. In no event shall Landlord's approval of any proposed installations, alterations, or additions to the Premises, whether in connection with Tenant's initial leasehold improvements or otherwise, constitute a representation by Landlord that such work complies with the requirements of any applicable law or regulation, including without limitation the requirements of the ADA. Any installations, alterations, or additions made by Tenant shall be at Tenant's sole cost and expense and shall be done in a good and workmanlike manner using materials of a quality at least equivalent to that of the existing improvements and in compliance with the requirements of Section 5.2; and prior to Tenant's use of the Premises, after the performance of any such work, Tenant shall procure certificates of occupancy and any other required certificates. Tenant shall not suffer or permit any mechanics' or similar liens to be placed upon the Premises for labor or materials furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed at the direction of Tenant, and shall cause any such lien to be released of record forthwith without cost to Landlord. Any and all Tenant installations, alterations, and additions, in or to the Premises (but excluding all articles of Tenant's personal property and all Tenant's business fixtures, machinery, equipment, and furnishings owned or installed by Tenant ("Tenant's Personal Property")), shall become part of the real estate ("Permanent Tenant Improvements"), shall be fully paid for and free and clear of any and all chattel mortgages, conditional bills of sale, security interests, or any liens or encumbrances of any kind or nature. At all times when any material installation, alteration, or addition by Tenant is in progress, there shall be maintained, at Tenant's cost and expense, insurance meeting the requirements of Section 11.3 below and certificates of insurance evidencing such coverage shall be furnished to Landlord prior to the commencement of any such work. All Permanent Tenant Improvements shall become the property of Landlord at the termination or expiration of this Lease.

It is further agreed and understood that at the termination of this Lease or any extensions thereof, Tenant

shall have restored the Premises to good repair, order and condition in all respects, reasonable wear and tear and damage by casualty excepted, including but not limited to repair of all floor surfaces damaged by the removal of partitions, machinery and equipment, and shall leave the Premises broom-clean.

## ARTICLE VII
## ASSIGNMENT AND SUBLETTING

### 7.1 PROHIBITION

Notwithstanding any other provision of this Lease, Tenant shall not, directly or indirectly, assign, mortgage, pledge or otherwise transfer, voluntarily or involuntarily, this Lease or any interest herein or sublet (which term without limitation, shall include granting of concessions, licenses, and the like) or allow any other person or entity to occupy the whole or any part of the Premises, except for Permitted Transfers (as hereinafter defined) without, in each instance, having first received the express consent of Landlord, which consent shall not be unreasonably withheld or delayed provided that (i) the proposed subtenant shall have a business reputation and use which is a Permitted Use; (ii) the proposed subtenant has the financial ability to fulfill all of its obligations under the proposed assignment or sublease; and (iii) the proposed assignee or subtenant agrees in writing, in form acceptable to Landlord in the exercise of reasonable business judgment, that its assignment or sublease shall be subject to all of the terms and conditions of this Lease. Any request for consent under this Section 7.1 shall set forth, in detail reasonably satisfactory to Landlord, the identification of the proposed assignee or sublessee, its financial condition and the terms on which the proposed assignment or subletting is to be made, including, without limitation, the rent or any other consideration to be paid in respect thereto.

In any case where Landlord shall consent to any assignment or subletting, Tenant originally named herein shall remain fully liable for Tenant obligations hereunder, including, without limitation, the obligation to pay the rent and other amounts provided under this Lease and such liability shall not be affected in any way by any amendment, modification, or extension or by any further assignment, other transfer, or subleasing of this Lease provided that after an assignment, Tenant's obligations shall be limited to those in effect at the time of the assignment. Tenant agrees to pay to Landlord, within fifteen (15) days of billing therefor, all reasonable legal and other out-of-pocket expenses incurred by Landlord in connection with any request to assign or sublet. It shall be a condition of the validity of any permitted assignment or subletting that the assignee or sublessee agree directly with Landlord, in form

satisfactory to Landlord, to be bound by all Tenant obligations hereunder, including, without limitation, the obligation to pay all Rent and other amounts provided for under this Lease and the covenant against further assignment or other transfer or subletting.

In the event Tenant requests Landlord's consent to (i) assign this Lease; or (ii) sublet more than 30,000 rentable square feet of the Premises for each sublease transaction (other than Permitted Transfers), Landlord shall have the option, exercisable by notice to Tenant given within thirty (30) days after Landlord's receipt of such request, to terminate this Lease as of the date specified in such notice which shall be not less than thirty (30) nor more than sixty (60) days after the date of such notice for the entire Premises, in the case of an assignment or subletting of the whole, and for the portion of the Premises, in the case of a subletting of a portion. In the event of termination in respect of a portion of the Premises, the portion so eliminated shall be delivered to Landlord on the date specified in the manner provided in Section 8.1 at the end of the Lease Term and thereafter, to the extent necessary in Landlord's judgment, Landlord, at Tenant's sole cost and expense, may have access to and may make modification to the Premises so as to make such portion a self-contained rental unit with access to common areas, elevators and the like. Rent and Tenant's Proportionate Share shall be adjusted according to the extent of the Premises for which this Lease is terminated. Without limitation of the rights of Landlord hereunder in respect thereto, if there is any assignment of this Lease by Tenant for consideration or a subletting of the whole of the Premises by Tenant at a rent which exceeds the rent payable hereunder by Tenant, or if there is a subletting of a portion of the Premises by Tenant at a rent in excess of the subleased portion's pro rata share of the Rent payable hereunder by Tenant, then Tenant shall pay to Landlord, as additional rent, forthwith upon Tenant's receipt of the consideration (or the cash equivalent thereof) therefor, fifty percent (50%) of the amount of any such excess rent, after Tenant deducting therefrom the commercially reasonable legal, brokerage and fit-up costs paid by Tenant in connection with such transaction. The provisions of this paragraph shall apply to each and every assignment of this Lease and each and every subletting of more than 30,000 rentable square feet of the Premises, except as specifically set forth herein. For the purposes of this Section 7.1, the term "rent" shall mean all rent, additional rent or other payments and/or consideration payable by one party to another for the use and occupancy of all or a portion of the Premises.

Notwithstanding anything herein to the contrary, the immediately preceding paragraph shall not apply to, and Landlord's consent shall not be required for, (i) the sale

of all or substantially all of Tenant's stock or assets as a going concern, (ii) a public offering of stock, (iii) the transfer of stock to a subsidiary or Affiliate (as defined herein), or (iv) the assignment or sublet of the Premises to an Affiliate of Tenant (in each case, a "Permitted Transfer") (and it shall be a condition of the validity of any such assignment) that such Affiliate agree directly with Landlord to be bound by all of the obligations of Tenant hereunder, including, without limitation, the obligation to pay the rent and other amounts provided for under this Lease, the covenant to use the Premises only for the purposes specifically permitted under this Lease and the covenant against further assignment; but such assignment shall not relieve Tenant herein named of any of its obligations hereunder and Guarantor of its obligations under the Guaranty, and Tenant and Guarantor shall remain fully liable therefor. The term "Affiliate" for purposes of this Article shall mean (i) any corporation, partnership, trust, association or other business organization directly or indirectly (through other entities or otherwise) owning, controlling or holding, whether with or without power to vote, 51% or more of the entire beneficial interest in Tenant or any successor whether by merger, consolidation or acquisition of all or substantially all of the assets of Tenant, or any such entity which is under common control with Tenant, (ii) any corporation or trust with transferable shares, 51% or more of whose outstanding capital stock or shares of beneficial interest of any class is directly or indirectly (through other entities or otherwise) owned, controlled or held, whether with or without the power to vote, by Tenant or any successor whether by merger, consolidation or acquisition of all or substantially all of the assets of Tenant or any corporation affiliated with Tenant or such successor as defined in (i) above, and (iii) any partnership, association or other business organization, 51% or more of the beneficial interest in which, whether with or without the power to vote, is directly or indirectly (through other entities or otherwise) owned, controlled or held by Tenant or such successor or any corporation affiliated with Tenant or such successor as defined in (i) above.

In the event of a subsequent sale or transfer of the stock of an Affiliate (either individually or in the aggregate) resulting in Tenant owning less than 50% of the stock of such Affiliate shall be treated as if such sale or transfer were, for all purposes, an assignment of this Lease governed by the provisions of this Section 7.1.

7.2 ACCEPTANCE OF RENT FROM TRANSFEREE

The acceptance by Landlord of the payment of Rent, additional rent, or other charges following assignment, subletting, or other transfer prohibited by this Article VII

shall not be deemed to be a consent by Landlord to any such assignment, subletting, or other transfer, nor shall the same constitute a waiver of any right or remedy of Landlord.

## ARTICLE VIII
## REPAIRS AND MAINTENANCE

### 8.1 TENANT OBLIGATIONS

From and after the date that possession of the Premises is delivered to Tenant and until the end of the Lease Term, Tenant shall keep the Premises and every part thereof in good order, condition, and repair, reasonable wear and tear and damage by casualty, as a result of condemnation, or as a result of the failure of Landlord to provide services required to be provided hereunder only excepted; and shall return the Premises to Landlord at the expiration or earlier termination of the Lease Term in such condition. Notwithstanding the foregoing, Tenant shall only be required to provide routine day to day maintenance on the HVAC system, which shall include, without limitation, maintaining a commercially reasonable service contract therefor.

### 8.2 LANDLORD OBLIGATIONS

Except as may be provided in Articles XII and XIII, Landlord agrees to keep in good order, condition, and repair the structural components and the roof of the Building, replacement of the plumbing, electrical, sewer and HVAC systems and major components thereof, all exterior facilities on the Lot, including, without limitation, pipes, utility lines, loading areas, outdoor lighting, the paved surface of the parking areas serving the Building, landscaped areas and shall keep the parking areas serving the Building reasonably free from snow and ice, except that Tenant shall reimburse Landlord, as additional rent hereunder, for the costs of maintaining, repairing, or otherwise correcting any condition caused by an act, omission, neglect or default under this Lease of Tenant or any employee, agent, or contractor of Tenant or any other party for whose conduct Tenant is responsible. Without limitation, Landlord shall not be responsible to make any improvements or repairs other than as expressly provided in this Section 8.2, and Landlord shall not be liable for any failure to make such repairs unless Tenant has given notice to Landlord of the need to make such repairs and Landlord has failed to commence to make such repairs within a reasonable time thereafter. Landlord shall provide the warranty of the structural components of the Building and building systems as set forth in Exhibit B.

If Landlord shall be in default under this Lease, including, but not limited to Exhibit B hereof, which default shall continue for thirty (30) days after written

notice thereof from Tenant, then Tenant shall have the right, but not the obligation, to cure such default, in which event Landlord shall pay to Tenant upon demand, the reasonable cost thereof plus interest at the Lease Interest Rate; provided, however, if such default is not susceptible of being cured within a period of thirty (30) days then as long as Landlord shall commence the curing thereof within such thirty (30) day time period and is proceeding with due diligence to cure the same, Tenant shall not have the aforesaid right. If Landlord shall not reimburse Tenant as provided herein, Tenant shall have the right to deduct the same from any monthly installment of Base Rent until it has been fully reimbursed such costs and interest, provided that in no event shall any such deduction exceed Ten Thousand Dollars ($10,000.00) for any month during the Lease Term. If twelve months or less remain in the Lease Term and amounts due to Tenant would otherwise remain unpaid at the expiration of the Lease Term, any remaining amounts due hereunder may be deducted in equal monthly installments of the amount then remaining outstanding over the remaining months in the Lease Term. If in Tenant's reasonable judgment an emergency shall exist, the aforesaid thirty (30) day notice shall be shortened to such reduced period, following notice to Landlord, as shall be reasonable in the circumstances prior to Tenant having the right to cure such default. In such an emergency event, Tenant's notice may be given by telegram, fax transmission or other substitute means of writing.

## ARTICLE IX
## SERVICES TO BE FURNISHED BY LANDLORD; UTILITIES

9.1 LANDLORD'S SERVICES

Tenant shall be responsible for providing its own basic services, including, without limitation, cleaning, utilities, elevator service and security and Landlord shall have no obligations with respect thereto except as specifically set forth herein.

Landlord (or affiliate(s) of Landlord) shall provide, and Tenant's employees shall have the right to use, certain services generally available to tenants at certain property adjacent to the Lot and owned by a party affiliated with the Landlord known as The Schrafft Center, 29 Main Street, Boston ("Schrafft") which shall include and be limited to the health club and day care facilities, cafeteria and shuttle bus services (running directly to the Building) on the same basis as such facilities are available to tenants at Schrafft's employees.

If there is any material interruption, curtailment, stoppage, or suspension of Landlord's Services, (x) continuing after written notice thereof to Landlord (or in an emergency situation which threatens the health or safety of Tenant's employees, oral notice followed by written notice) (y) not caused by Tenant, and (z) such deficiency reasonably causes Tenant to vacate the Premises or parking areas or a part thereof (individually and collectively, "Landlord Deficiency"), then Tenant shall, if such Landlord Deficiency continues for more than ten (10) business days, be entitled to a proportional abatement of Base Rent and Additional Rent to the extent of Tenant's interference with its use of the Premises until the same is cured, provided that in no event shall such any such deduction exceed Ten Thousand Dollars ($10,000.00) for any month during the Lease Term. If twelve months or less remain in the Lease Term and amounts due to Tenant would otherwise remain unpaid at the expiration of the Lease Term, any remaining amounts due hereunder may be deducted in equal monthly installments of the amount then remaining outstanding over the remaining months in the Lease Term.

9.2 CAUSES BEYOND CONTROL OF THE LANDLORD

The Landlord shall in no event be liable for failure to perform any of its obligations under this Lease when prevented from doing so by causes beyond its reasonable control, including without limitation labor dispute, breakdown, accident, order or regulation of or by any governmental authority, or failure of supply, or inability by the exercise of reasonable diligence to obtain supplies, parts, or employees necessary to furnish services required under this Lease, or because of war or other emergency, or for any cause due to any act, neglect, or default of Tenant or Tenant's servants, contractors, agents, employees, licensees or any person claiming by, through or under Tenant, and in no event shall Landlord ever be liable to Tenant for any indirect, special or consequential damages under the provisions of this Section 9.2 or any other provision of this Lease. Tenant's rights of self-help set forth in Section 8.2 shall be applicable in the event of any such failure. In the event of any such occurrence, Landlord shall give Tenant written notice of the occurrence and cause of delay and further written notice upon the termination thereof. During any such occurrence, Landlord shall use commercially reasonable efforts to mitigate such delay.

9.3 SEPARATELY METERED UTILITIES

Tenant shall pay directly to the utility, as they become due, all bills for electricity and other utilities to the Premises, Building and Lot all of which shall be separately metered for Tenant's account. Tenant shall have the right to purchase electricity (and other utilities) from such sources as Tenant determines, provided Landlord incurs no costs in connection therewith.

## ARTICLE X
## INDEMNITY

10.1 MUTUAL INDEMNITY

The Tenant shall indemnify and save harmless Landlord, the directors, officers, agents, and employees of Landlord, against and from all claims, expenses, or liabilities of whatever nature (a) arising directly or indirectly from any default or breach by Tenant or Tenant's contractors, licensees, agents, servants, or employees under any of the terms or covenants of this Lease (including without limitation any violation of Landlord's Rules and Regulations and any failure to maintain or repair equipment or installations to be maintained or repaired by Tenant hereunder) or the failure of Tenant or such persons to comply with any rule, order, regulation, or lawful direction now or hereafter in force of any public authority, in each case to the extent the same are related, directly or indirectly, to the Premises or the Building, or Tenant's use thereof; or (b) arising directly or indirectly from any accident, injury, or damage, however caused, to any person or property, on or about the Premises; or (c) arising directly or indirectly from any accident, injury, or damage to any person or property occurring outside the Premises but within the Building or on the Lot, where such accident, injury, or damage results, or is claimed to have resulted, from any act, omission, or negligence on the part of Tenant, or Tenant's contractors, licensees, agents, servants, employees, or customers, or anyone claiming by or through Tenant: provided, however, that in no event shall Tenant be obligated under this clause (c) to indemnify Landlord, the directors, officers, agents, employees of Landlord, to the extent such claim, expense, or liability results from any omission, fault, negligence, or other misconduct of Landlord or the officers, agents, or employees of Landlord on or about the Premises or the Building or from breach of Landlord's obligations under this lease. This indemnity and hold harmless agreement shall include, without limitation, indemnity against all expenses, attorney's fees and liabilities incurred in connection with any such claim or proceeding brought thereon and the defense thereof with counsel reasonably acceptable to Landlord. At the request of Landlord, Tenant shall defend any such claim or proceeding directly on behalf and for the benefit of Landlord.

Landlord shall indemnify and save harmless Tenant, the directors, officers, agents, and employees of Tenant, against and from all claims, expenses, or liabilities of whatever nature (a) arising directly or indirectly from any default or breach by Landlord or Landlord's contractors, licensees, agents, servants, or employees under any of the

terms or covenants of this Lease; or (b) arising directly or indirectly from any accident, injury, or damage to any person or property, on or about the Lot but outside of the Premises and Building; or (c) arising directly or indirectly from any accident, injury, or damage to any person or property occurring in the Premises to the extent that such accident, injury, or damage results, or is claimed to have resulted, from any act, omission, or negligence on the part of Landlord, or Landlord's contractors, licensees, agents, servants, employees, or customers, or anyone claiming by or through Landlord; provided, however, that in no event shall Landlord be obligated under clauses (b) and (c) to indemnify Tenant, the directors, officers, agents, employees of Tenant, to the extent such claim, expense, or liability results from any omission, fault, negligence, or other misconduct of Tenant or the contractors, licensees, servants, officers, agents, or employees of Tenant on or about the Premises or the Building or from breach of Tenant's obligations under this lease. This indemnity and hold harmless agreement shall include, without limitation, indemnity against all expenses, reasonable attorney's fees and liabilities incurred in connection with any such claim or proceeding brought thereon and the defense thereof with counsel reasonably acceptable to Tenant. At the request of Tenant, Landlord shall defend any such claim or proceeding directly on behalf and for the benefit of Tenant.

10.2 THE TENANT'S RISK

The Tenant agrees to use and occupy the Premises and to use such other portions of the Building and the Lot as Tenant is herein given the right to use at Tenant's sole risk; and Landlord shall have no responsibility or liability for any loss or damage, however caused, to furnishings, fixtures, equipment, or other personal property of Tenant or of any persons claiming by, through, or under Tenant.

10.3 INJURY CAUSED BY THIRD PARTIES

The Tenant agrees that Landlord shall not be responsible or liable to Tenant, or to those claiming by, through, or under Tenant for any loss or damage from the breaking, bursting, crossing, stopping, or leaking of electric cables and wires, and water, gas, sewer, or steam pipes, or like matters.

10.4 SECURITY

Tenant agrees that, in all events, Tenant is responsible for providing security to the Premises and its own personnel. Landlord agrees that the security camera at Schrafft shall monitor the Lot on a 24 hour basis.

## ARTICLE XI
## INSURANCE

### 11.1 TENANT'S INSURANCE OBLIGATIONS

Tenant shall carry public liability insurance in a company or companies licensed to do business in the state in which the Premises are located and reasonably approved by Landlord. Said insurance shall be in minimum amounts reasonably required by Landlord from time to time by notice to Tenant and shall name Landlord as an additional insured, as its interests may appear, and Tenant shall provide Landlord with evidence, when requested, that such insurance is in full force and effect. Tenant shall carry property damage insurance for all of its equipment and for all leasehold improvements above the building standard which are made by Landlord or Tenant in and to the Premises, which policies shall name Landlord as an additional insured. If required by Landlord, receipts evidencing payment for said insurance shall be delivered to Landlord at least annually by Tenant and each policy shall contain an endorsement that will prohibit its cancellation or amendment prior to the expiration of thirty (30) days after notice of such proposed cancellation or amendment to Landlord. Tenant shall carry insurance in the initial amounts listed in the Basic Data and shall provide Landlord with certificates of such Tenant Insurance Requirements on or prior to the Commencement Date.

### 11.2 CONSTRUCTION PERIOD INSURANCE

At any time when demolition or construction work is being performed on or about the Premises or Building by or on behalf of Tenant, the Tenant shall keep in full force and effect the following insurance coverage in each instance with policies reasonably acceptable to Landlord, including, without limitation, the amount of any deductible thereunder:

(1) builder's risk completed value (non-reporting form) in such form and affording such protections as required by Landlord, naming Landlord and its mortgagees as additional insureds; and

(2) workers' compensation or similar insurance in form and amounts required by law.

Tenant shall cause a certificate or certificates of such insurance to be delivered to Landlord prior to the commencement of any work in or about the Building or the Premises, in default of which Landlord shall have the right, but not the obligation, to obtain any or all such insurance at the expense of Tenant, in addition to any other right or remedy of Landlord. The provisions of this (S)11.3 shall survive the expiration or earlier termination of this Lease.

11.3 WAIVER OF SUBROGATION

Tenant and Landlord each hereby release the other to the extent of their respective insurance coverage, from any and all liability for any loss or damage caused by fire or any of the extended coverage casualties or any other casualty insured against, even if such fire or other casualty shall be brought about by the fault or negligence of Tenant, Landlord or their agents. Tenant and Landlord agree that their respective policies covering such loss or damage shall contain a clause to the effect that this release shall not affect said policies or the right of Tenant or Landlord, as the case may be, to recover thereunder and otherwise acknowledging this mutual waiver of subrogation.

11.4 LANDLORD'S INSURANCE OBLIGATIONS

Throughout the Lease Term, Landlord shall maintain a full replacement value policy of insurance on all of the Building (including, without limitation the Premises and all of Landlord's Work therein) against damage by all risks of physical loss or damage to the extent customarily insured by owners of similar property.

## ARTICLE XII
## CASUALTY

12.1 DEFINITION OF "SUBSTANTIAL DAMAGE" AND "PARTIAL DAMAGE"

The term "substantial damage," as used herein, shall refer to damage which is of such a character that in Landlord's reasonable, good faith estimate the same cannot, in ordinary course, be expected to be repaired within 90 calendar days from the time that such repair work would commence. Any damage which is not "substantial damage" is "partial damage."

12.2 PARTIAL DAMAGE TO THE BUILDING

If during the Lease Term there shall be partial damage to the Building by fire or other casualty, Landlord shall promptly proceed to restore the Building to substantially the condition in which it was immediately prior to the occurrence of such damage.

12.3 SUBSTANTIAL DAMAGE TO THE BUILDING

If during the Lease Term there shall be substantial damage to the Building by fire or other casualty, Landlord shall promptly restore the Building to the extent reasonably necessary to enable Tenant's use of the Premises, unless Landlord, within thirty (30) days after the occurrence of such damage, shall give notice to Tenant of Landlord's election to terminate this Lease. The Landlord shall have

the right to make such election in the event of substantial damage to the Building whether or not such damage materially interferes with Tenant's use of the Premises. If Landlord shall give such notice, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof. If Landlord has not restored the Premises to the extent required under this Section 12.3 within 150 days after the date of such damage or destruction, such period to be subject to the terms of Section 9.2 of this Lease (not exceeding in any event an additional 60 days), or if the Premises shall be substantially damaged during the last two (2) years of the Lease Term then, in either such case, Tenant may elect to terminate this Lease by giving written notice of such election to Landlord within thirty (30) days after the end of such nine-month period and before the substantial completion of such restoration. If Tenant so elects to terminate this Lease, then this Lease and the term hereof shall cease and come to an end on the date that is thirty (30) days after the date that Landlord receives Tenant's termination notice, unless on or before such date Landlord has substantially completed such restoration.

12.4 ABATEMENT OF RENT

If during the Lease Term the Building shall be damaged by fire or casualty and if such damage shall interfere with Tenant's use of the Premises as contemplated by this Lease, a just proportion of the Base Rent and Additional Rent payable by Tenant hereunder shall abate proportionately for the period in which, by reason of such damage, there is such interference with Tenant's use of the Premises, having regard to the extent to which Tenant may be required to discontinue Tenant's use of the Premises, but such abatement or reduction shall end if and when Landlord shall have substantially restored the Premises or so much thereof as shall have been originally constructed by Landlord (exclusive of any of Tenant's fixtures, furnishings, equipment and the like or work performed therein by Tenant) to substantially the condition in which the Premises were prior to such damage.

## ARTICLE XIII
## EMINENT DOMAIN

13.1 RIGHTS OF TERMINATION FOR TAKING

If the Premises, or such portion thereof as to render the balance (if reconstructed to the maximum extent practicable in the circumstances) physically unsuitable for Tenant's purposes, shall be taken (including a temporary taking in excess of 180 days) by condemnation or right of eminent domain or sold in lieu of condemnation, Landlord or

Tenant may elect to terminate this Lease by giving notice to the other of such election not later than thirty (30) days after Tenant has been deprived of possession.

Further, if so much of the Building (which may include the Premises) or the Lot shall be so taken, condemned or sold or shall receive any direct or consequential damage by reason of anything done pursuant to public or quasi-public authority such that continued operation of the same would, in Tenant's reasonable opinion, be uneconomical, Landlord or Tenant may elect to terminate this Lease by giving notice to Tenant of such election not later than thirty (30) days after the effective date of such taking.

Should any part of the Premises be so taken or condemned or receive such damage and should this Lease be not terminated in accordance with the foregoing provisions, Landlord shall promptly after the determination of Landlord's award on account thereof, expend so much as may be necessary of the net amount which may be awarded to Landlord in such condemnation proceedings in restoring the Premises to an architectural unit that is reasonably suitable to the uses of Tenant permitted hereunder. Should the net amount so awarded to Landlord be insufficient to cover the cost of so restoring the Premises, in the reasonable estimate of Landlord, Landlord may, but shall have no obligation to, supply the amount of such insufficiency and restore the Premises to such an architectural unit, with all reasonable diligence, or Landlord may terminate this Lease by giving notice to Tenant within a reasonable time after Landlord has determined the estimated cost of such restoration.

13.2 PAYMENT OF AWARD

The Landlord shall have and hereby reserves and excepts, and Tenant hereby grants and assigns to Landlord, all rights to recover for damages to the Building and the Lot and the leasehold interest hereby created, and to compensation accrued or hereafter to accrue by reason of such taking or damage, as aforesaid. The Tenant covenants to deliver such further assignments and assurances thereof as Landlord may from time to time request. Nothing contained herein shall be construed to prevent Tenant from prosecuting in any condemnation proceedings a claim for the value of any of tenant improvements or trade fixtures installed in the Premises by Tenant at Tenant's expense and for relocation expenses, provided that such action shall not affect the amount of compensation otherwise recoverable hereunder by Landlord from the taking authority.

13.3 ABATEMENT OF RENT

In the event of any such taking of the Premises, the Base Rent and Additional Rent or a fair and just proportion thereof, according to the nature and extent of the damage sustained, shall be suspended or abated, as appropriate and equitable in the circumstances.

## ARTICLE XIV
## TENANT'S DEFAULT

14.1 TENANT'S DEFAULT

(a) Events of Default. The following shall be "Events of Default" under this Lease:

(i) If Tenant shall fail to pay any monthly installment of Rent when due, and such default shall continue for ten (10) days after written notice from Landlord; provided that no such notice shall be required if Tenant has received a similar notice within three hundred sixty-five (365) days prior to such violation or failure;

(ii) If Tenant shall fail to timely make any other payment required under this Lease and such default shall continue for ten (10) days after written notice from Landlord; provided that no such notice shall be required if Tenant has received a similar notice within three hundred sixty-five (365) days prior to such violation or failure;

(iii) If Tenant shall violate or fail to perform any of the other terms, conditions, covenants or agreements herein made by Tenant, if such violation or failure continues for a period of thirty (30) days after Landlord's written notice thereof to Tenant, unless such default cannot reasonably be corrected within such thirty (30) day period, in which event no Event of Default shall be deemed to have occurred so long as Tenant has commenced cure and is diligently prosecuting the same;

(iv) Tenant's becoming insolvent, as that term is defined in Title 11 of the United States Code, entitled Bankruptcy, 11 U.S.C. Section 101 et. seq. (the "Bankruptcy Code"), or under the insolvency laws of any State, District, Commonwealth or Territory of the United States (the "Insolvency Laws");

(v) the appointment of a receiver or custodian for all or a substantial portion of Tenant's property or assets, or the institution of a foreclosure action upon all or a substantial portion of Tenant's real or personal property;

(vi) the filing of a voluntary petition under the provisions of the Bankruptcy Code or Insolvency Laws;

(vii) the filing of an involuntary petition against Tenant as the subject debtor under the Bankruptcy Code or Insolvency Laws, which is either not dismissed within forty-five (45) days of filing, or results in the issuance of an order for relief against the debtor, whichever is earlier;

(viii) Tenant's making or consenting to an assignment for the benefit of creditors or a common law composition of creditors; or

(ix) Tenant's interest in this Lease being taken on execution in any action against the Tenant.

(b) Landlord's Remedies. Should an Event of Default occur under this Lease, Landlord may pursue any or all of the following remedies:

(i) Termination of Lease. Landlord may terminate this Lease by giving written notice of such termination to Tenant, whereupon within five (5) days of the deemed receipt of such notice of termination addressed to Tenant this Lease shall automatically cease and terminate and Tenant shall be immediately obligated to quit the Premises. Termination by notice as provided herein shall require no further action on the part of Landlord including, without limitation, resort to legal process under applicable law. Any other notice to quit is hereby expressly waived. If Landlord elects to terminate this Lease, everything contained in this Lease on the part of Landlord to be done and performed shall cease without prejudice, subject, however, to the right of Landlord to recover from Tenant all Annual Rent and Additional Rent and any other sums accrued up to the time of termination by Landlord.

(ii) Suit for Possession. Landlord may proceed to recover possession of the Premises under and by virtue of the provisions of the laws of the state in which the Premises are located or by such other proceedings, including lawful reentry and possession, as may be applicable.

(iii) Reletting of Premises. Should this Lease be terminated before the expiration of the Term of this Lease by reason of Tenant's default as hereinabove provided, Landlord shall use commercially reasonable efforts to relet the Premises and otherwise mitigate its losses and, if the full Annual Rent and Additional Rent reserved under this Lease (and any of the costs, expenses or damages indicated below) shall not be realized by Landlord, Tenant shall be liable for all damages sustained by Landlord, including, without limitation, deficiency in rent, reasonable attorneys' fees, brokerage fees and expenses of placing the Premises in good order and condition including without limitation any alterations and improvements. Landlord, in putting the Premises in good order or preparing the same for

re-rental may, at Landlord's option, make such alterations, repairs or replacements in the Premises as Landlord, in its sole judgment, considers advisable and necessary for the purpose of reletting the Premises, and the making of such alterations, repairs, or replacements shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Landlord shall in no event be liable in any way whatsoever for failure to relet the Premises, or in the event that the Premises are relet, for failure to collect the rent under such reletting, and in no event shall Tenant be entitled to receive the excess, if any, of such net rent collected over the sums payable by Tenant to Landlord hereunder.

(iv) Acceleration of Payment. If this Lease is terminated by Landlord following an Event of Default and Tenant shall fail to pay any monthly installment of Rent pursuant to the terms of this Lease, then Landlord may, by giving written notice to Tenant, elect to receive, in lieu of any other damages for loss of future rents after the date of termination (reserving to itself all rights as to past due Rent) an amount equal to the present worth (as of the date of such termination) of Rent which, but for the termination of this Lease, would have become due during the remainder of the Term, less the present worth of the fair rental value of the Premises, as determined by an independent real estate appraiser named by Landlord. Such damages shall be payable to Landlord in one lump sum within ten (10) days of such notice and shall bear interest at the Lease Interest Rate until paid. For purposes of this Clause (iv), "present worth" shall be computed by discounting such amount to present worth at a discount rate equal to the Lease Interest Rate.

(v) Monetary Damages. Any damage or loss of rent sustained by Landlord may be recovered by Landlord, at Landlord's option, at the time of the reletting, or in separate actions, from time to time, as said damage shall have been made more easily ascertainable by successive relettings, or at Landlord's option in a single proceeding deferred until the expiration of the Term of this Lease (in which event Tenant hereby agrees that the cause of action shall not be deemed to have accrued until the date of expiration of said Term) or in a single proceeding prior to either the time or reletting or the expiration of the Term of this Lease. In addition, should it be necessary for Landlord to employ legal counsel to enforce any of the provisions herein contained, Tenant agrees to pay all attorney's fees and court costs reasonably incurred.

(vi) Anticipatory Breach; Cumulative Remedies. Nothing contained herein shall prevent the enforcement of any claim Landlord may have against Tenant for anticipatory breach of the unexpired Term of this Lease. In the event of a breach

or anticipatory breach by Tenant of any of the covenants or provisions hereof, Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if reentry, summary proceedings and other remedies were not provided for herein. Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy, in law or in equity, whether or not mentioned herein. Landlord's election to pursue one or more remedies, whether as set forth herein or otherwise, shall not bar Landlord from seeking any other or additional remedies at any time and in no event shall Landlord ever be deemed to have elected one or more remedies to the exclusion of any other remedy or remedies. Any and all rights and remedies that Landlord may have under this Lease, and at law and in equity, shall be cumulative and shall not be deemed inconsistent with each other, and any two or more of all such rights and remedies may be exercised at the same time insofar as permitted by law. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease, or otherwise.

(c) Waiver. If, under the provisions hereof, Landlord shall institute proceedings against Tenant and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any other covenant, condition or agreement herein contained, nor of any of Landlord's rights hereunder. No waiver by Landlord of any breach of any covenant, condition or agreement herein contained shall operate as a waiver of such covenant, condition, or agreement itself, or of any subsequent breach thereof. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installments of rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or letter accompanying a check for payment of Rent or any other sum be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or any other sum or so pursue any other remedy provided in this Lease. No reentry by Landlord, and no acceptance by Landlord of keys from Tenant, shall be considered an acceptance of a surrender of the Lease or Premises.

(d) Right of Landlord to Cure Tenant's Default. If Tenant defaults in the making of any payment or in the doing of any act herein required to be made or done by Tenant, then Landlord may, but shall not be required to, make such payment or do such act, and charge the amount of the expense thereof, if made or done by Landlord, with interest thereon at the Lease Interest Rate. Such payment and interest shall

constitute Additional Rent hereunder due and payable with the next monthly installment of Rent; but the making of such payment or the taking of such action by Landlord shall not operate to cure such default or to stop Landlord from the pursuit of any remedy to which Landlord would otherwise be entitled.

(e) Late Payment. If Tenant fails to pay any installment of Rent on or before the first (1st) day of the calendar month when such installment becomes due and payable, Tenant shall pay to Landlord a late charge of three percent (3%) of the amount of such installment, and, in addition, such unpaid installment shall bear interest at the Lease Interest Rate. Such late charge and interest shall constitute Additional Rent hereunder due and payable with the next monthly installment of Rent due, or if payments have been accelerated pursuant to this Article 14, due and payable immediately.

(f) Lien on Personal Property. Landlord shall have a lien upon all the personal property of Tenant moved into the Premises, as and for security for the Rent and other obligations of Tenant herein provided. In order to perfect and enforce said lien, Landlord may, at any time after default by Tenant in the payment of Rent or default of other obligations to be performed or complied with by Tenant under this Lease, seize and take possession of any and all personal property belonging to Tenant that may be found in and upon the Premises. If Tenant fails to redeem the property so seized, by payment of whatever sum may be due Landlord under and by virtue of the provisions of this Lease, then and in that event, Landlord shall have the right, after twenty (20) days written notice to Tenant of its intention to do so, to sell such personal property so seized at public or private sale and upon such terms and conditions as to Landlord may appear advantageous, and after the payment of all proper charges incident to such sale, apply the proceeds thereof to the payment of any balance due to Landlord on account of Rent or other obligations of Tenant pursuant to this Lease. In the event there shall then remain in the hands of Landlord any balance realized from the sale of said personal property as aforesaid, the same shall be held by Landlord as additional Security Deposit. The exercise of the foregoing remedy by Landlord shall not relieve or discharge Tenant from any deficiency owed to Landlord which Landlord has the right to enforce pursuant to any other provisions of this Lease.

## ARTICLE XV
## THE LANDLORD'S ACCESS TO PREMISES

### 15.1 THE LANDLORD'S RIGHT OF ACCESS

The Landlord and its agents, contractors, and employees shall have the right to enter the Premises at all reasonable hours upon reasonable advance notice or any time in case of emergency, for the purpose of inspecting or of making repairs or alterations, to the Premises or the Building or additions to the Building, and Landlord shall also have the right to make access available at all reasonable hours to prospective or existing mortgagees or purchasers of any part of the Building.

For a period commencing six (6) months prior to the expiration of the Lease Term, Landlord may have reasonable access to the Premises at all reasonable hours upon prior notice for the purpose of exhibiting the same to prospective tenants, provided such access does not unreasonably interfere with Tenant's business operations.

## ARTICLE XVI
## LANDLORD'S MORTGAGES

### 16.1 SUBORDINATION

Upon the written request of Landlord, Tenant shall enter into a recordable agreement with the holder of any present or future mortgage of the Premises, Building or Lot which shall provide that (i) this Lease shall be subordinated to such mortgage, (ii) in the event of foreclosure of said mortgage or any other action thereunder by the mortgagee, the mortgagee (and its successors in interest) and Tenant shall be directly bound to each other to perform the respective undischarged obligations of Landlord and Tenant hereunder (in the case of Landlord accruing after such foreclosure or other action and in the case of Tenant whether accruing before or after such foreclosure or other action), (iii) this Lease shall continue in full force and effect, and (iv) Tenant's rights hereunder shall not be disturbed, except as in this Lease set forth provided the holder of any such mortgage executes an agreement which states that provided Tenant is not in default beyond the expiration of any applicable grace period of any of the terms and conditions of this Lease, Tenant shall remain in possession of the Premises under the terms of this Lease for the Term and that Landlord, or anyone claiming, by, through or under Landlord, shall not disturb the tenancy created by this Lease. The word "mortgage" as used herein includes mortgages, deeds of trust and all similar instruments, all modifications, extensions, renewals and replacements thereof, and any and all assignments of the Landlord's interest in this Lease given as collateral security for any obligation of Landlord.

16.2 MODIFICATIONS

In the event that any holder or prospective holder of any mortgage, as hereinbefore defined, which includes the Premises as part of the mortgaged Premises, shall request any modification of any of the provisions of this Lease, other than a provision which would otherwise increase Tenant's obligations or reduce Tenant's rights and benefits hereunder, Tenant agrees that Tenant will enter into a written agreement in recordable form with such holder or prospective holder which shall effect such modification and provide that such modification shall become effective and binding upon Tenant and shall have the same force and effect as an amendment to this Lease in the event of foreclosure or other similar action taken by such holder or prospective holder or by anyone claiming by, through or under such holder or prospective holder.

## ARTICLE XVII
## MISCELLANEOUS PROVISIONS

17.1 CAPTIONS

The captions throughout this Lease are for convenience or reference only and shall in no way be held or deemed to define, limit, explain, describe, modify, or add to the interpretation, construction, or meaning of any provision of this Lease.

17.2 NO WAIVER

The failure of Landlord or of Tenant to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Lease shall not be deemed to be a waiver of such violation or to prevent a subsequent act, which would originally have constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of Rent or additional rent with knowledge of the breach of any covenant of this Lease shall not be deemed to be a waiver of such breach by Landlord unless such waiver be in writing signed by Landlord. No consent or waiver, express or implied, by Landlord or Tenant to or of any breach of any agreement or duty shall be construed as a waiver or consent to or of any other breach of the same or any other agreement or duty.

17.3 NO ACCORD AND SATISFACTION

No acceptance by Landlord of a lesser sum than the minimum and additional rent then due shall be deemed to be other than on account of the earliest installment of such rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed to be an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy in this Lease or at law or in equity provided.

17.4 CUMULATIVE REMEDIES

The specific remedies to which Landlord may resort under the terms of this Lease are cumulative and not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any breach or threatened breach by Tenant of any provisions of this Lease. In addition to the other remedies provided in this Lease, Landlord shall be entitled to the restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of this Lease or to a decree compelling specific performance of any such covenants, conditions or provisions. Except as otherwise set forth herein, any obligations of Tenant as set forth herein (including, without limitation, rental and other monetary obligations, repair obligations and obligations to indemnify Landlord) shall survive the expiration or earlier termination of this Lease, and Tenant shall immediately reimburse Landlord for any reasonable expense incurred by Landlord in curing Tenant's failure to satisfy any such obligation (notwithstanding the fact that such cure might be effected by Landlord following the expiration or earlier termination of this Lease).

17.5 PARTIAL INVALIDITY

If any term or provision of this Lease or any portion thereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Lease and of such term or provision and the application of this Lease and of such term and provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

17.6 LANDLORD'S RIGHT TO CURE

If Tenant shall at any time default in the performance of any obligation under this Lease, Landlord shall have the right, but not the obligation, to enter upon the Premises and/or to perform such obligation, notwithstanding the fact that no specific provision for such substituted performance by Landlord is made in this Lease with respect to such default. In performing any such obligations, Landlord may make any payment of money or perform any other act. All sums so paid by Landlord (together with interest at the Lease Interest Rate) and all necessary incidental costs and expenses in connection with the performance of any such act by Landlord, shall be deemed to be additional rent under

this Lease and shall be payable to Landlord immediately on demand. Landlord may exercise the foregoing rights without waiving any other of its rights or releasing Tenant from any of its obligations under this Lease.

17.7 ESTOPPEL CERTIFICATES

Each party agrees on the Term Commencement Date and from time to time thereafter, upon not less than fifteen (15) days' prior written request by the other party, to execute, acknowledge and deliver to the other party a statement in writing, certifying that this Lease is unmodified and in full force and effect, that said party has no defenses, offsets or counterclaims against its obligations to pay rent and other charges required under this Lease and to perform its other covenants under this Lease and that there are no uncured defaults of either party under this Lease (or, if there have been any modifications, that this Lease is in full force and effect, as modified, and stating the modifications, and, if there are any defenses, offsets, counterclaims or defaults, setting them forth in reasonable detail), and the dates to which the Rent and other charges have been paid. Any such statement delivered pursuant to this Section 17.7 may be relied upon by any prospective purchaser or mortgagee of the Property or any prospective assignee of any such mortgagee or Tenant or any party acquiring, financing, merging with or taking an assignment from Tenant.

17.8 BROKERAGE

Other than Grubb & Ellis (the "Broker"), Landlord and Tenant each warrant that there are no claims for broker's commission or finder's fees relating to dealings by it in connection with its execution of this Lease or the tenancy hereby created and each party agrees to indemnify and save the other party harmless from any liability that may arise from such claim. Landlord agrees to pay the commission due to Broker in accordance with a separate agreement.

17.9 HOLDOVER

If Tenant remains in the Premises after the termination of this Lease, by its own terms or for any other reason, such holding over shall not be deemed to create any tenancy, but Tenant shall be a tenant at sufferance only, at a daily rate equal to one and one-half (1 1/2) times the Rent applicable immediately prior to such termination plus the then applicable additional rent and other charges under this Lease. Otherwise, such holding over shall be on the terms and conditions set forth in this Lease as far as applicable.

17.10 COUNTERPARTS

This Lease is executed in any number of counterparts, each copy of which is identical, and any one of which shall be deemed to be complete in itself and may be introduced in evidence or used for any purpose without the production of the other copies.

17.11 CONSTRUCTION AND GRAMMATICAL USAGE

This Lease shall be governed, construed and interpreted in accordance with the laws of The Commonwealth of Massachusetts, and Tenant and Landlord agree to submit to the personal jurisdiction of any court (federal or state) in said Commonwealth for any dispute, claim or proceeding arising out of or relating to this Lease. In construing this Lease, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so admits or requires. If there be more than one party tenant, the covenants of Tenant shall be the joint and several obligations of each such party and, if Tenant is a partnership, the covenants of Tenant shall be the joint and several obligations of each of the partners and the obligations of the firm.

17.12 SECURITY DEPOSIT

Tenant has deposited with Landlord the Security Deposit, a copy of which is attached hereto as Exhibit E, as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this Lease. It is agreed that in the event there exists an Event of Default by Tenant in respect of any of the terms, provisions and conditions of this Lease, Landlord may draw upon and use, apply or retain the whole or any part of the proceeds so drawn of the Security Deposit to the extent required for payment of any Rent or any other sum as to which there is an Event of Default by Tenant or for any sum which Landlord may expend or may be required to expend by reason of Tenant's Event of Default in respect of any of the terms, covenants and conditions of this Lease, including but not limited to any damage or deficiency accrued before or after summary proceedings or other reentry by Landlord, including the costs of such proceeding or reentry and further including, without limitation, reasonable attorney's fees. It is agreed that Landlord shall always have the right to draw upon and apply the Security Deposit, or any part thereof, as aforesaid, without notice and without prejudice to any other remedy or remedies which Landlord may have, or Landlord may pursue any other such remedy or remedies in lieu of drawing upon and applying the Security Deposit or any part thereof. If Landlord shall draw upon and use, apply or retain the Security Deposit in whole or in part, Tenant shall within ten (10) days after written notice from the Landlord make such further or other deposit of

monies or amended Letter of Credit in form and substance satisfactory to Landlord as may be necessary to bring the balance of the Security Deposit to a sum equal to the amount of the Security Deposit required to be maintained at such time. In the event that (i) there is no Event of Default by Tenant under this Lease, and (ii) the Guarantor has a net worth in excess of Forty Million Dollars ($40,000,000.00) determined in accordance with generally accepted accounting principles for the Guarantor's most recent twelve (12) month fiscal year and reasonably approved by Landlord, the amount of the Security Deposit shall be reduced by One Hundred Fifty Thousand Dollars ($150,000.00) at the end of each anniversary hereof for the first five (5) years following the date hereof. If the Letter of Credit is terminated at any one (1) year anniversary thereof, Landlord shall have the right to draw on such Letter of Credit if a substitute Letter of Credit meeting the requirements of this Section 17.12 is not provided not later than fifteen (15) days prior to the expiration of the then effective Letter of Credit. The holder of any mortgage upon the Building or Lot shall never be responsible to Tenant for the Security Deposit or its application or return unless the Security Deposit shall actually have been received in hand by such holder.

17.13 ENFORCEMENT EXPENSES

Unless prohibited by applicable law, each party agrees to pay to the other party the amount of all fees and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred by it arising out of or resulting from any act or omission by the other party with respect to this Lease or the Premises, including without limitation, any breach by the other party of its obligations hereunder, irrespective of whether it resorts to litigation as a result thereof, provided if there is litigation, the party seeking such reimbursement is the prevailing party.

17.14 NO SURRENDER

The delivery of keys to any employee of Landlord or to Landlord's agents or employees shall not operate as a termination of this Lease or a surrender of the Premises.

17.15 COVENANT OF QUIET ENJOYMENT

Subject to the terms and provisions of this Lease and on payment of the Rent, Additional Rent, and other sums due hereunder and compliance with all of the terms and provisions of this Lease, Tenant shall lawfully, peaceably, and quietly have, hold, occupy, and enjoy the Premises during the term hereof, without hindrance or ejection by Landlord or by any persons claiming under Landlord; the foregoing covenant of quiet enjoyment is in lieu of any other covenant, express or implied.

17.16 NO PERSONAL LIABILITY OF THE LANDLORD

It is specifically agreed that the obligations of Landlord under this Lease do not constitute personal obligations of Landlord and that Tenant shall not seek recourse against the personal assets of Landlord for satisfaction of any liability with respect to this Lease.

17.17 NOTICES

Any notice or consent required to be given by or on behalf of either party to the other shall be in writing and shall be given by mailing such notice or consent as set forth in Article 1.2 of this Lease, addressed, if to Landlord, at the address set forth in Article 1.2 of this Lease, and, if to Tenant, at the address as set forth in Article 1.2 of this Lease, or at such other address as may be specified from time to time in writing sent to the other party by like notice.

Whenever, by the terms of this Lease, notice shall or may be given either to Landlord or to Tenant, such notice shall be in writing and shall be delivered by hand or sent by registered or certified mail, postage prepaid or by so-called "express" mail (such as Federal Express or U.S. Postal Service Express Mail).

17.18 FINANCIAL INFORMATION

It is hereby understood and agreed that Tenant will supply to the Landlord, on an annual basis, a copy of Tenant's and Guarantor's audited financial statement within one hundred twenty (120) days following Tenant's and Guarantor's fiscal year ends. Any information obtained by Landlord pursuant to the provisions of this Paragraph shall be treated as confidential, except that Landlord may disclose such information to its lenders.

17.19 RULES AND REGULATIONS

The Tenant will observe and comply with the Rules and Regulations as attached hereto and made a part hereof, including revisions and additions as the Landlord may from time to time institute with prior notice to Tenant, provided that in cases of conflict with this Lease and such Rules and Regulations, the provisions of this Lease shall prevail.

17.20 RECORDING

Tenant agrees not to record this lease, but Landlord agrees to execute and record a recordable notice of lease complying with applicable laws contemporaneously with the execution of this lease. In no event shall such document

set forth the rental or other charges payable by Tenant under this lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this lease, and is not intended to vary the terms and conditions of this lease. Any recording costs associated with the short form of lease shall be paid by the party requesting recordation. Upon the expiration of this Lease in accordance with its terms, or in the event of an Event of Default giving rise to a termination of this Lease by Landlord, Landlord may, unilaterally and without Tenant's consent, record a termination of the short form of lease with the Suffolk County Registry of Deeds (the "Termination"). Landlord and Tenant agree that (i) the fact that the Termination has been recorded by Landlord shall not be deemed an admission by Tenant that it has agreed to a termination of this Lease or otherwise work as an estoppel by Tenant as to its rights under this Lease, (ii) in the event of a dispute between Landlord and Tenant, the relative rights and remedies of Landlord and Tenant with respect to the Premises shall be determined by a court of competent jurisdiction without reference to Landlord's recording of the Termination. Tenant agrees to re-execute and deliver a termination in recordable form to Landlord at any time and from time to time after the valid termination of this Lease in accordance with its terms, upon the prior written request of Landlord or its successors and assigns. The terms of this paragraph shall survive termination of the Lease.

17.21 WHEN LEASE BECOMES BINDING

Employees or agents of Landlord have no authority to make or agree to make a lease or any other agreement or undertaking in connection herewith. The submission of this Lease for examination and negotiation does not constitute an offer to lease, a reservation of, or option for the Premises and shall vest no right in any party. Tenant or anyone claiming under or through Tenant shall have the rights to the Premises as set forth herein and this Lease becomes effective as a Lease only upon execution, acknowledgment and delivery thereof by Landlord and Tenant, regardless of any written or verbal representation of any agent, manager or employee of Landlord to the contrary.

17.22 MISCELLANEOUS

Each party hereto has reviewed and revised (or requested revisions of) this Lease, and therefore any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Lease or any Exhibits hereto.

17.23 ENTIRE AGREEMENT

This Lease and the exhibits and any rider attached hereto, set forth all the covenants, promises, agreements conditions, representations and understandings between Landlord and Tenant concerning the Premises and there are no covenants, promises, agreements, conditions, representations or understandings, either oral or written between them other than those herein set forth and this Lease expressly supersedes any proposals or other written documents relating hereto. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord and Tenant unless reduced to writing and signed by them. Tenant agrees that Landlord and its agents have made no representations or promises with respect to the Premises, or the Building of which the Premises are a part, or the Lot, except as herein expressly set forth.

17.24 LANDLORD'S EARLY TERMINATION OPTION

Landlord shall have the right to terminate the Lease at any time after the tenth Lease Year provided that Landlord exercises the option to terminate by written notice delivered to Tenant not later than eighteen (18) months prior to the effective date of termination (i.e. at any time following 8 1/2 years from the Rent Commencement Date).

IN WITNESS WHEREOF, the parties hereto have executed this instrument under seal as of the date set forth in Section 1.2, above.

LANDLORD:
The 425 Medford Nominee Trust

_____
John J. Flatley, Trustee and Not Individually

_____
Gregory D. Stoyle, Trustee and Not Individually

TENANT:
Saleslink Corporation

BY:_____
Its:

RULES AND REGULATIONS

l. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors and halls shall not be obstructed or encumbered by any Tenant, nor shall they be used for any purpose other than ingress and egress to and from the Premises. Landlord shall keep the sidewalks and curbs directly in front of the Premises, clean and free from ice and snow.

2. No awnings or other projections shall be attached to the outside walls of the Building without the prior written consent of the Landlord. No curtains, blinds, shades or screens shall be attached to, hung in, or used in connection with, any window or door of the Premises, without the prior written consent of the Landlord. Any such awnings, projections, curtains, blinds, shades, screens or other fixtures used by Tenant (if given the prior written consent of the Landlord for such use), shall be of a quality, type, design and color, attached in a manner approved by the Landlord.

3. A building directory will be maintained in the main lobby of the Building at the expense of the Landlord and the number of such listings shall be at the sole discretion of the Landlord. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the Premises or building, without the prior written consent of the Landlord. In the event of violation of the foregoing by any Tenant, Landlord may remove same without any liability and may charge the expense incurred by such removal to any Tenants violating this rule.

4. The sashes, sash doors, skylights, windows and doors that reflect or admit light and air into the halls, passageways or other public places in the Building shall not be covered or obstructed by any Tenant, nor shall any bottles, parcels or other articles be placed on the windowsills.

5. No show cases or other articles shall be put in front of, or affixed to any part of the exterior of the Building, nor placed in the fire escapes, without the prior written consent of the Landlord.

6. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuses of the fixtures shall be borne by the Tenant who, or whose servants, employees, agents, visitors, or licensees, shall have caused same.

7. No bicycles, vehicles or animals of any kind shall be brought in or kept about the Premises. No tenant shall cause or permit any unusual or objectionable odors to be produced upon or permeate from the Premises.

8. Intentionally omitted.

9. No tenant shall make, or permit to be made, any unsettling or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises' or those having business with them, whether by the use of any musical instrument, radio, talking machine, unmusical noise, whistling, singing, or in any other way. No tenant shall throw anything out of doors, windows, skylights or down the passageways.

10. Except as permitted in the Lease, no tenant, nor any of tenant's servants, employees, agents, visitors or licensees, shall at any time bring or keep upon the Premises any flammable, combustible or explosive fluid, chemical and substance.

11. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any tenant unless Landlord is provided with copies of the keys, nor shall any changes be made in existing locks or the mechanism thereof. Each tenant must, upon the termination of his tenancy, return to the Landlord, all keys for stores, offices and toilet rooms, either furnished to, or otherwise procured by, such Tenant, and in the event of the loss of any keys so furnished, such Tenant shall pay the Landlord the cost thereof.

12. No tenant shall occupy or permit any portion of the Premises leased to him to be occupied for the possession, storage, manufacture or sale of liquor, narcotics or as a barber or manicure shop.

13. Tenant shall not use the name of the Building or its owner in any advertising without the express written consent of the Landlord.

14. The Premises shall not be used for lodging or sleeping or for any immoral or illegal purpose.

15. Canvassing, soliciting and peddling in the building is prohibited and each tenant shall cooperate to prevent the same by notifying the Landlord.

16. There shall not be used in any space or in the public halls of the Building, either by a tenant or by jobbers or others in the delivery of or receipt of merchandise, any hand trucks, except those equipped with rubber tires and side guards.

EXHIBIT A
Plan of Premises

EXHIBIT B
Construction Workletter

EXHIBIT B-1
Construction

Attached to and made part of Lease dated as of
Between
1970 Flatley Family Trust
and
Saleslink Corporation

A. SUBSTANTIAL COMPLETION. For the purposes hereof, the Landlord's Work shall be deemed to be substantially complete on the date that (i) Landlord's Work, as defined in Paragraph B hereof, has been completed except for items of work and adjustment of equipment and fixtures which can be completed after possession has been taken without causing substantial interference with the performance of Tenant's Work (i.e., so-called "punch list" items), which "punch list" items (a) shall be designated jointly by Tenant and Landlord, and (b) Landlord shall complete within thirty (30) business days (except for any long-lead items), and (ii) Tenant has received the project architect's certificate of substantial completion in the AIA form of the Premises in accordance with clause (i) of this Paragraph.

B. LANDLORD'S WORK. For the purposes of determining substantial completion, "LANDLORD'S WORK" shall be defined as all work shown on the Plans as defined in Paragraph D hereof and Section 3.2 of this Lease, but shall not include special work (i.e., long-lead items) and any items of work which are delayed by the performance of special work, or changes made by Tenant after the Plans have been approved by Landlord and Tenant.

The Plans shall include the following items of Landlord's Work:

I. Office Areas: built out per specifications attached hereto as Exhibit B-2 including:

(i) Painted;
(ii) Carpet;
(ii) New HVAC system;
(iv) Dropped ceiling;
(v) Lights;
(vi) Full sprinkler system and waterline (excluding any in-rack sprinklering);
(vii) Bathrooms as required by Code;
(viii) Reception/entry on first floor;
(ix) Elevators in good working order and condition;
(x) All fire alarm pull stations; and
(xi) 4,000 amp electric service.

II. Warehouse Areas:

(i) Warehouse lighting as required by Tenant;
(ii) Two (2) coats of paint throughout;
(iii) Sealing of warehouse floor; and
(iv) All dock doors to be replaced as needed and/or blocked up, if not necessary.

III. Production Area:

(i) 8' strip lighting as required, 80 candlepower;
(ii) Two (2) coats of paint throughout;
(iii) Sealed floor; and
(iv) Elevators for freight and passengers in good working condition.

Expansion Space:

The Expansion Space shall be completed to the same level of finish for all portions of office and warehouse space as set forth above for the initial Premises.

C. PAYMENT FOR WORK. Landlord shall pay for all costs of Landlord's Work (except as set forth below). If (A) Tenant makes any changes after the Plans have been approved by Landlord and Tenant, or (B) the scope of the Landlord's Work exceeds the scope of the Landlord's Work set forth above, and (C) the cost of Landlord's Work will be increased thereby (collectively, "Tenant Costs"), then Tenant shall pay to Landlord within ten (10) days of demand the net amount of any increase in the cost of Landlord's Work resulting from the applicable change. Tenant Costs shall include overhead and profit to the Landlord in an amount not exceeding 8% of such Tenant Costs.

D. PLAN PREPARATION AND APPROVAL.

1. Landlord shall provide Tenant with a full and complete set of the plans and specifications for Landlord's Work (the "Plans").

2. Response (i.e. approval or disapproval of the Plans) by Tenant): Tenant shall respond to the Plans on or before the tenth (10th) business day after Landlord submits to Tenant all of the Plans (or revised plans). Tenant's approval of the Plans shall not be unreasonably withheld or delayed. Any disapproval of the Plans shall include a detailed written statement of the grounds for such disapproval, and specific suggested changes. Failure to respond within ten (10) business days of submittal of the Plans shall be deemed approval on the part of Tenant.

E. PERFORMANCE OF WORK. Landlord agrees to use commercially reasonable efforts to substantially complete Landlord's Work on or before June 1, 1998 (the "Anticipated Completion Date"). If Tenant (i) fails or omits to supply additional information which may be requested, or fails to approve requests for change orders or in giving authorizations or materially interferes with the performance of Landlord's Work for any Phase in the exercise of its rights pursuant to Paragraph G hereof, or (ii) changes the scope of Landlord's Work for any Phase or requests change orders which because of the process for approval therefor or the additional time to perform the work or obtain the materials delay the performance of Landlord's Work for any Phase and Landlord gives Tenant written notice of such delay ((i) and (ii) collectively, "TENANT DELAYS"), then the Rent Commencement Date shall be deemed to have occurred as of the date the Rent Commencement Date would have occurred in accordance with the terms hereof, but for such Tenant Delays, even if Premises are not, in fact, actually ready for Tenant's occupancy. Landlord agrees to use reasonable efforts to accelerate construction or reschedule certain portions of the Landlord's Work to make up for lost time due to any delays, provided that Landlord shall not be required to incur additional costs as a result thereof and any overtime costs incurred by Landlord as a result of accelerating construction due to Tenant Delays shall be Tenant change orders. Attached hereto as Exhibit B-3 is a schedule of certain dates, including, without limitation, the dates of (i) delivery to Tenant of the Plans and portions thereof, (ii) approval by Tenant of the Plans and portions thereof, (iii) commencement of construction, (iv) anticipated dates of Substantial Completion of Landlord's Work and delivery to Tenant.

Landlord agrees to give Tenant notice of any anticipated Tenant Delays (or increased costs) as soon as reasonably practicable and shall give Tenant its good faith estimate of the estimated net increase in time and cost which would result from the change. Tenant shall have the right to withdraw the change order if it does not accept the impact of the delay or price increase, provided that Tenant shall nonetheless be responsible for any increase in time and cost which results from the request for such change.

F. LANDLORD'S CERTIFICATE. Landlord's architect's certificate of substantial completion, given in good faith, or of any other facts pertinent to this Exhibit B shall be deemed conclusive of the statements therein contained and binding upon Tenant.

G. TENANT'S WORK. Tenant shall contract with cabling and wiring contractors to install cable and wiring and other specialty trades, provided Tenant's contractors shall

cooperate and coordinate their work with the general contractor for Landlord's Work (which schedule shall be as set by said general contractor), and shall comply with reasonable, non-discriminatory rules and regulations, in an "open-shop" capacity. All Tenant contractors shall be subject to the supervision and authority of Landlord's job superintendent. Tenant will be responsible for its voice, data, security systems and other cabling requirements racking systems and in-rack sprinklering and Landlord's Work shall not include the same.

H. TENANT'S CONTRACTORS. In the event that Tenant engages any separate contractors in the initial construction of the Premises including, without limitation, for the purposes of performing the work described in Paragraph G above, Tenant and Tenant's contractors shall cooperate in all ways with Landlord's contractors to avoid any delay to the work being performed by Landlord's contractors or conflict in any other way with the performance of such work, or any damages which might occur to any work or materials to be installed by Landlord's Contractors in the Premises.

I. ACCEPTANCE OF WORK. Tenant shall be conclusively deemed to have agreed that Landlord has performed all of its obligations under this Exhibit B unless not later than thirty (30) days after the Rent Commencement Date, Tenant shall give Landlord written notice specifying the respects in which Landlord has not performed any such obligation and Landlord shall promptly remedy any physical defect in Landlord's Work within or affecting the Premises of which Tenant gives Landlord written notice within one (1) year of the date on which Landlord's Work is Substantially Complete or, if such Landlord's Work is subject to a warranty or guaranty with a longer term, within such term.

J. RIGHTS AND REMEDIES. Landlord shall have the same rights and remedies which Landlord has upon the nonpayment of Base Rent and Additional Rent due under this Lease for nonpayment of any amounts which Tenant is required to pay to Landlord or Landlord's contractor in connection with the construction and initial preparation of the Premises (including, without limitation, any amounts which Tenant is required to pay in accordance with this Exhibit B hereof) or in connection with any construction in the Premises performed for Tenant by Landlord, Landlord's contractor or any other person, firm or entity after the Term Commencement Date.

Exhibit B-2
Specifications for Office Space

Exhibit B-3
Construction Schedule

EXHIBIT C
Term Commencement Agreement
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Pursuant to that certain Lease by and between John J. Flatley and Gregory D. Stoyle, Trustees of 425 Medford Nominee Trust c/o The Flatley Company, of 50 Braintree Hill Office Park, Braintree, Massachusetts 02185-0168, as Landlord, and Saleslink Corporation, of 25 Drydock Avenue, Boston, Massachusetts 02210 as Tenant, dated September , 1997 (the "Lease"), the undersigned hereby establish and agree to the following:

1. The Term Commencement Date of the Lease is _____, 1998;

2. The Rent Commencement Date is _____, 1998;

3. The initial term of the Lease shall expire on the last day of _____, 201_, subject to Tenant's extension option under the Lease.

Capitalized terms used herein and not otherwise defined shall have the meaning as defined in the Lease.

Executed as an instrument under seal.

LANDLORD:
The 425 Medford Nominee Trust

_____
John J. Flatley, Trustee and Not Individually

_____
Gregory D. Stoyle, Trustee and Not Individually

TENANT:
Saleslink Corporation

BY:_____
Its:

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF NORFOLK

This __ day of , 199_, then personally appeared the above named John J. Flatley and Gregory D. Stoyle, trustees as aforesaid and acknowledged the foregoing instrument to be their free act and deed, as trustees, before me,

_____
Notary Public
My Commission Expires:_____

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK

This __ day of , 199_, then personally appeared the above named , of Saleslink Corporation, and acknowledged the foregoing instrument to be the free act and deed of Saleslink Corporation, before me,

_____
Notary Public
My Commission Expires:_____

EXHIBIT 10.3

# GUARANTY OF LEASE

FOR VALUE RECEIVED, and in consideration for and as an inducement to the 425 Medford Nominee Trust (the "Landlord"), to enter into a lease (the "Lease") of even date herewith with Saleslink Corporation (the "Tenant"), for premises at 425 Medford Street, Boston, Massachusetts, the undersigned, CMG Information Services, Inc. (the "Guarantor") hereby unconditionally, absolutely and irrevocably:

1. Guarantees to Landlord the payment and performance of all Tenant obligations under the Lease, including specifically, but without limitation, (i) Base Rent, Additional Rent and all other charges required to be paid by Tenant thereunder, and (ii) the payment of all costs, expenses and damages (including reasonable attorney's fees and expenses) which may arise as a result of any Tenant default under the Lease, or this Guaranty; and waives all notices or demands required or permitted under the Lease including specifically, but without limitation, notice of (i) any default under the Lease, (ii) any modification, extension or indulgence granted thereunder. Capitalized terms used herein and not otherwise defined herein, shall have the meaning as defined in the Lease.

2. Covenants and agrees:

A. That this Guaranty shall remain in full force and effect throughout the term of the Lease, as it may be extended or renewed and to any holdover term following any extension or renewal, and shall not be terminated, modified, affected or impaired by reason of (i) any extension, renewal, modification, adjustment or amendment of the Lease, (ii) any action which Landlord may take or fail to take against Tenant or against any other guarantor, if there be more than one, (iii) any waiver, indulgence or extension of time which Landlord may grant respecting the Lease or this Guaranty, (iv) any failure to enforce any of the terms, covenants or conditions of the Lease or this Guaranty, (v) any assignment by Tenant, voluntary or otherwise, of its interest under this Lease, or subletting, licensing or other arrangement concerning all or part of the premises leased thereunder, whether or not Landlord has consented to same.

B. That with regard to any rights which may accrue to Landlord under or in connection with the Lease or this Guaranty, Landlord may, at its option, proceed against Guarantor, or any one or more guarantors if there be more than one, without having commenced any action, or having obtained any judgment against Tenant or against the Guarantor or against any other guarantor if there be more than one; that Guarantor and any other guarantor shall be conclusively bound, in any jurisdiction, by the judgment

rendered in any action by Landlord against Tenant or against Guarantor or against any other guarantor if there be more than one, in connection with the Lease, wherever instituted, as if Guarantor and each other guarantor were a part to such action, even if not actually joined as a party; and Guarantor's and each other guarantor's liability with regard to the Lease shall be as a primary party, with the same force and effect as if Guarantor and each other guarantor had originally signed the Lease as a tenant.

C. The liability of the Guarantor hereunder shall in no way be effected by (a) the release or discharge of the Tenant in any creditors', receivership, bankruptcy or other proceedings, (b) the impairment, limitation or modification of the liability of the Tenant or the estate of the Tenant in bankruptcy, or of any remedy for the enforcement of the Tenant's said liability under the Lease, resulting from the operation of any present or future provision of the Federal Bankruptcy Act or other statute or from the decision in any court; (c) the rejection or disaffirmance of the Lease in any such proceedings; or (d) the assignment or transfer of the Lease by the Tenant. Without limiting the generality of the foregoing, the Guarantor hereby waives all suretyship defenses or defenses in the nature thereof.

D. That this instrument shall be governed by, and construed in accordance with, the laws of Massachusetts; that this instrument shall be binding upon Guarantor and each other guarantor and their respective heirs, successors, assigns, legal representatives and grantee; that this instrument shall inure to the benefit of Landlord and Landlord's heirs, successors, assigns, legal representatives and grantees; that if any provisions hereof shall prove to be invalid, void or unlawful, the remaining provisions hereof shall in no way be effected, impaired or invalidated and shall remain in full force and effect; that where the context requires or admits, words or one gender shall include another gender, and the singular shall include the plural and vice versa; and that if there be more than one guarantor hereunder, the guarantor shall be jointly and severally liable hereunder.

Notwithstanding anything herein to the contrary, this Guaranty shall terminate following the end of the tenth Lease Year of the Term (the "Guaranty Termination Date") provided that (i) there shall not then be an Event of Default under the Lease, and (ii) the Guarantor or Tenant shall provide a letter of credit to the Landlord in the amount of $750,000.00 in form and substance (including the issuing bank) reasonably satisfactory to Landlord (the "LC"), which letter of credit shall serve as additional security for the performance of Tenant's obligations under the Lease (in addition to the Security Deposit initially required under the Lease). In the event each of the

foregoing conditions are not satisfied within thirty (30) days of the Guaranty Termination Date, this Guaranty shall remain in full force and effect. If, as and when this Guaranty is terminated and the LC is provided to Landlord, provided that there is no Event of Default by Tenant under the Lease, the amount of the LC shall be reduced by One Hundred Fifty Thousand Dollars ($150,000.00) at the end of each anniversary thereof for the first five (5) years following the Guaranty Termination Date. If the LC is terminated at any one (1) year anniversary thereof, Landlord shall have the right to draw on the LC if a substitute letter of credit meeting the requirements of this Paragraph is not provided not later than fifteen (15) days prior to the expiration of the then effective LC.

In the event of a Permitted Transfer, Guarantor shall have the right to terminate this Guaranty at any time upon thirty (30) days prior written notice of such termination to Landlord accompanied by a letter of credit in favor of the Landlord in an amount equal to the full amount of the Base Rent from the effective date of termination of this Guaranty until the expiration of the initial Term of the Lease, in form and substance (including the issuing bank) reasonably satisfactory to Landlord, which letter of credit shall serve as additional security for the performance of Tenant's obligations under the Lease (in addition to the Security Deposit initially required under the Lease).

WITNESS the execution hereof as a sealed instrument this __ day of November, 1997.

Guarantor:
CMG Information Services, Inc.

By:/s/ Andrew Hajducky
---
,its_____, duly authorized

Attest:_____
(Corporate Seal)

Address:

EXHIBIT 10.4

# Supplement #2 to SubLease

This Supplement #2 to SubLease (this "Supplement") is made and entered into as of October 9, 1997, by and between FTP Software, Inc. ("SubLandlord") and CMG Information Services, Inc. ("SubTenant"), and amends and supplements that certain SubLease dated September 26, 1996 as previously amended and supplemented by Supplement #1 to SubLease ("Supplement #1") dated January 23, 1997 between such parties (as so previously amended and supplemented, the "SubLease"). Capitalized terms used but not defined herein shall have the meanings specified in the SubLease.

1. Amendments. The following provisions of the SubLease are hereby amended as set forth below.

a. PREMISES: The definition of Premises as used in the SubLease is hereby amended to include approximately 13,813 additional rentable square feet on the first floor of 100 Brickstone Square, Andover, Massachusetts as shown on Exhibit A hereto (the "New Space").

b. TERM COMMENCEMENT DATE: The term "Term Commencement Date" as used in the SubLease shall mean, as to the New Space only, the date the Landlord consents to this Supplement.

c. SUBLEASE TERMINATION DATE: The term "SubLease Termination Date" as used in the SubLease shall mean, as to the New Space only, the earliest to occur of the following: (i) July 31, 2002; (ii) the date of the termination of the SubLease by SubLandlord as the result of an Event of Default; (iii) the date of the termination of the SubLease under Article 16, Article 17 or Section 3.04 of the SubLease; (iv) the date of the termination of the Prime Lease; or (v) the date of the termination of this Supplement by SubTenant under Section 7 of this Supplement.

d. SUBLEASE TERM: The term "SubLease Term" as used in the SubLease shall mean, as to the New Space only, the period beginning on the Term Commencement Date as defined above and ending on the SubLease Termination Date as defined above.

e. FURNITURE: The term "Furniture" as used in the SubLease shall include the fixtures, furniture and equipment set forth in Exhibit B hereto (the "New Space Furniture"). SubLandlord warrants and represents that it has good and marketable title to the New Space Furniture. The New Space Furniture is leased in "as is" condition and SubLandlord makes no representations or warranties, express or implied, with respect to the condition thereof.

f. SUBTENANT'S PROPORTIONATE SHARE: The term "SubTenant's Proportionate Share" as used in the SubLease shall be increased to 100% effective as of the Term Commencement Date with respect to the New Space.

2. Rent Commencement Date. The term "Rent Commencement Date" as used in this Supplement means January 1, 1998.

3. Rent. The rent for the New Space, which shall be paid in accordance with terms of the SubLease, shall be as follows:

| | |
|---|---|
| From January 1, 1998 through December 31, 2000 | $18,992.87 per month |
| January 1, 2001 through July 31, 2002 | $19,913.74 per month |

Effective as of the Rent Commencement Date, the term Rent as used in the SubLease shall mean and include all rent payable under this Supplement #2 as well as all rent payable under Supplement #1.

4. Security Deposit. The security deposit for the New Space shall be $37,985.76, payable upon execution by SubTenant of this Supplement. The term "security deposit" as used in the SubLease shall include the security deposit payable under this Section 4.

5. Parking. In addition to the parking spaces provided for in the SubLease, SubTenant shall have the use of parking spots A-5, A-74, A-112 through A-114 and B-43 through B-47 as shown on Exhibit C hereto. All parking spaces that SubTenant has the right to use pursuant to the Sublease or this Supplement shall be subject to the provisions of Section 15.2 of the Prime Lease.

6. Condition. The New Space is to be leased in "as is" condition except as improved by SubLandlord as set forth in Exhibit D hereto. SubLandlord makes no representations or warranties, express or implied, with respect to the condition of the New Space. Except to construct the improvements set forth in Exhibit D, SubLandlord shall have no obligation whatsoever to make or pay the cost of any alterations, improvements or repairs to the New Space, including without limitation, any improvement or repair required to comply with any Legal Requirements (including the Americans with Disabilities Act of 1990).

7. Improvements by SubTenant. SubLandlord hereby consents to the construction by SubTenant of the Improvements set forth in the plans attached as Exhibit E hereto, subject to the written consent of the Landlord thereto. SubTenant acknowledges and agrees that such improvements shall be constructed in accordance with Section 7.01 of the SubLease and shall be subject to the provisions of such Section and of the other applicable terms of the SubLease and the applicable terms of the Prime Lease.

8. Assignment and Subletting. SubTenant shall not, voluntarily or involuntarily or by operation of law, sell, convey, mortgage, subject to a security interest, license, assign, sublet or otherwise transfer or encumber the whole or any part of the New Space or allow anyone other than SubTenant's employees to occupy the New Space without SubLandlord's and Landlord's prior written consent in each instance, which consent shall not be unreasonably withheld in the case of a subletting by SubLandlord of the whole of the New Space (subject, in the case of the Landlord, to the Landlord's written agreement to the provisions of this clause). SubTenant acknowledges that the provisions of the second, third, fourth, fifth and sixth sentences of Section 23.01 of the SubLease shall apply to any proposed transfer or encumbrance of the New Space by SubTenant.

If SubTenant desires to sublet the whole of the New Space and either SubLandlord or Landlord unreasonably withholds its consent thereto, SubTenant shall have the right to terminate this Supplement by delivery of 30 days prior written notice of termination to SubLandlord within 90 days following the receipt by SubLandlord of the applicable notice required to be delivered by SubTenant to SubLandlord pursuant to Section 23.01 of the SubLease. The provisions of Sections 9, 10, 12 and 13 hereof shall survive any such termination of this Supplement. Any such termination shall not operate to relieve either party hereto of any obligation or liability arising under this Supplement prior to such termination.

9. Brokerage Commission. SubLandlord agrees to pay a commission in connection with this Supplement to CRF Partners, Inc., who shall make a distribution to Lynch, Murphy, Walsh & Partners, Inc. SubTenant shall defend, indemnify and hold harmless SubLandlord and Landlord from any claim for a commission by Lynch, Murphy, Walsh & Partners, Inc. or any other agent, broker, salesman or finder as a consequence of said party's actions or dealings with such agent, broker, salesman or finder.

10. Right of First Refusal. SubTenant acknowledges and agrees that SubLandlord has complied with all obligations required to be complied with by it pursuant to Section 24.01 of the SubLease and accordingly SubTenant and SubLandlord agree that such Section is hereby deleted in its entirety.

11. Cooperation. SubTenant hereby agrees to negotiate in good faith and assist SubLandlord in good faith in connection with the negotiation between SubLandlord and Landlord regarding the release of SubLandlord from the Prime Lease and leasing the Premises directly from Landlord to SubTenant.

12. Address of SubLandlord for Notices, Etc. Effective October 4, 1997, the address of SubLandlord referred to in Section 21.01 of the SubLease shall be changed to the following address: 2 High Street, North Andover, MA 01845.

13. Status of SubLease. From and after the date hereof, the term "SubLease" as used in the SubLease shall mean the SubLease as supplemented and amended hereby. Except as expressly amended hereby, the terms of the Sublease as heretofore amended shall continue in full force and effect.

EXECUTED as a sealed instrument effective as of the date first above written.

| SUBLANDLORD: | SUBTENANT: |
|---|---|
| FTP SOFTWARE, INC. | CMG INFORMATION SERVICES, INC. |
| By: /s/ John F. Geraghty | By: /s/ Andrew J. Hajducky |
| It's Duly Authorized Officer | Its Duly Authorized Officer |
| Name: John F. Geraghty | Name: Andrew J. Hajducky III |
| Title: Vice President of Finance | Title: Chief Financial Officer |
| Date: October 14, 1997 | Date: October 10, 1997 |

EXHIBIT 10.5

# Supplement #3 to SubLease

This Supplement #3 to SubLease (this "Supplement") is made and entered into as of February 18, 1998 by and between FTP Software, Inc. ("SubLandlord") and CMG Information Services, Inc. ("SubTenant"), and amends and supplements that certain SubLease dated September 26, 1996 as previously amended and supplemented by Supplement #1 to SubLease ("Supplement #1") dated January 23, 1997 and Supplement #2 to Sublease ("Supplement #2") dated October 9, 1997, between such parties (as so previously amended and supplemented, the "SubLease"). Capitalized terms used but not defined herein shall have the meanings specified in the SubLease.

1. Amendments: The following provisions of the SubLease are hereby amended as set forth below.

a. PREMISES: The definition of Premises as used in the SubLease is hereby amended to include approximately 20,190 additional rentable square feet on the fifth floor of 100 Brickstone Square, Andover, Massachusetts as shown on Exhibit A hereto (the "Additional New Space").

b. TERM COMMENCEMENT DATE: The term "Term Commencement Date" as used in the SubLease shall mean, as to the Additional New Space only, the later of April 1, 1998 or the date the Landlord consents to this Supplement.

c. SUBLEASE TERMINATION DATE: The term "SubLease Termination Date" as used in the SubLease shall mean, as to the Additional New Space only, the earliest to occur of the following: (i) July 31, 2002; (ii) the date of the termination of the SubLease by SubLandlord as the result of an Event of Default; (iii) the date of the termination of the SubLease under Article 16, Article 17 of the SubLease; (iv) the date of the termination of the SubLease by SubTenant under Section 3.04 of the SubLease; or (v) the date of the termination of the Prime Lease.

d. SUBLEASE TERM: The term "SubLease Term" as used in the SubLease shall mean, as to the Additional New Space only, the period beginning on the Term Commencement Date as defined above and ending on the SubLease Termination Date as defined above.

e. FURNITURE: The term "Furniture" as used in the SubLease shall include the fixtures, furniture and equipment set forth in Exhibit B hereto (the "Additional New Space Furniture"). SubLandlord warrants and represents that it has good and marketable title to the Additional New Space Furniture. The Additional New Space Furniture is leased in "as is" condition and SubLandlord makes no representations or warranties, express or implied, with respect to the condition thereof. Without limiting the generality of the foregoing, it is agreed that the term "Furniture" as used in the last sentence of Section 9.08 of the SubLease shall include the Furniture listed on Exhibit D to the original SubLease, the Furniture listed on Exhibit B to Supplement #2 and the Additional New Space Furniture as listed on Exhibit B hereto.

f. SUBTENANT'S PROPORTIONATE SHARE: As used in the SubLease, the term "SubTenant's Proportionate Share" with respect to the Additional New Space, as such term relates to the fifth floor of the Building, shall be 30.46% effective as of the Term Commencement Date. SubTenant acknowledges that, as used in the SubLease, the term "SubTenant's Proportionate Share" with respect to the Premises subleased by SubTenant pursuant to the original SubLease and Supplements #1 and #2, as such term relates to the first floor of the Building, is 100%.

2. Rent Commencement Date. The term "Rent Commencement Date" as used in this Supplement means April 1, 1998.

3. Rent. The rent for the Additional New Space, which shall be paid in accordance with terms of the SubLease, shall be as follows:

| | |
|---|---|
| April 1, 1998 through June 30, 1998 | $15,482.50 per month |
| July 1, 1998 through March 31, 2000 | $27,761.25 per month |
| April 1, 2000 through July 31, 2002 | $29,107.25 per month |

Effective as of the Rent Commencement Date, the term Rent as used in the SubLease shall mean and include all rent payable under this Supplement #3 as well as all rent payable under Supplement #2 and Supplement #1.

4. Security Deposit. The security deposit for the Additional New Space shall be $55,522.50, payable upon execution by SubTenant of this Supplement. The term "security deposit" as used in the SubLease shall include the security deposit payable under this Section 4.

5. Parking. In addition to the parking spaces provided for in the SubLease, SubTenant shall have the use of parking spots B-48 through B-55 and A-6 through A-12 as shown on Exhibit C hereto. All parking spaces that SubTenant has the right to use pursuant to the Sublease or this Supplement shall be subject to the provisions of Section 15.2 of the Prime Lease.

6. Condition. The Additional New Space is to be leased in "as is" condition except as improved by SubLandlord as set forth in Exhibit D hereto. SubLandlord makes no representations or warranties, express or implied, with respect to the condition of the Additional New Space. Except to construct the improvements set forth in Exhibit D, SubLandlord shall have no obligation whatsoever to make or pay the cost of any alterations, improvements or repairs to the Additional New Space, including without limitation, any improvement or repair required to comply with any Legal Requirements (including the Americans with Disabilities Act of 1990).

7. Assignment and Subletting. SubTenant shall not, voluntarily or involuntarily or by operation of law, sell, convey, mortgage, subject to a security interest, license, assign, sublet or otherwise transfer or encumber the whole or any part of the Additional New Space or allow anyone other than SubTenant's employees to occupy the Additional New Space without SubLandlord's and Landlord's prior written consent in each instance, which consent shall not be unreasonably withheld in the case of a subletting by SubLandlord of the whole of the Additional New Space (subject, in the case of the Landlord, to the Landlord's written agreement to the provisions of this clause). SubTenant acknowledges that the provisions of the second, third, fourth, fifth and sixth sentences of Section 23.01 of the SubLease shall apply to any proposed transfer or encumbrance of the Additional New Space by SubTenant.

8. Early Termination. SubLandlord agrees that if it terminates the SubLease pursuant to Section 3.04 thereof, such termination shall not operate to terminate this Supplement except as otherwise agreed to in writing by SubLandlord and SubTenant and shall only operate to terminate the SubLease with respect to the Premises located on the first floor of the Building and subleased by SubTenant pursuant to the original SubLease and Supplements #1 and #2. If SubLandlord terminates the SubLease and SubLandlord and SubTenant do not agree in writing that such termination shall operate to terminate this Supplement as well, then this Supplement shall continue in full force and effect subject to all of the terms and conditions of the SubLease except that SubTenant shall only occupy the Additional New Space. Notwithstanding any such termination, and except to the extent that the same are expressly superceded by the terms of this Supplement, the terms of the SubLease shall be deemed to be incorporated by reference into and to be a part of this Supplement from and after the date of such termination.

9. Right of First Refusal. Subject to the terms of the Prime Lease, SubLandlord hereby grants to SubTenant, effective as of July 1, 1998, a right of first refusal to lease any portion of the fifth floor of the Building that SubLandlord has the right to occupy pursuant to the Prime Lease (the "Option Space"). If SubLandlord desires to lease any portion of the Option Space on or after July 1, 1998, SubLandlord shall first give SubTenant prior written notice of such intention (the "Offer Notice"). The Offer Notice shall list the portion of the Option Space being offered for rent and the rental price. For a period of thirty (30) days following the date of the Offer Notice, SubTenant shall have the option to lease said portion at the price and on the terms stated in the Offer Notice. SubTenant may exercise its option by written notice to SubLandlord given at any time within thirty (30) days following the date of the Offer Notice, with occupancy commencing within sixty (60) days of the date of the Offer Notice. If SubTenant does not timely exercise this option or fails to timely occupy such portion after timely exercise of this option, SubLandlord may lease all or any portion of the Option Space to any other party, upon any terms it desires, and SubTenant shall be deemed to have waived its right of first refusal with respect to both such portion of the Option Space and the remainder of the Option Space, in each case for the remainder of the SubLease Term. Any sublease pursuant to this Section 9 is subject to obtaining Landlord's prior written consent to the same. SubTenant acknowledges that it does not have any right of first refusal as a result of any lease or sublease of any portion of

the fifth floor of the Building entered into by Landlord or SubLandlord before July 1, 1998.

10. Brokerage Commission. SubLandlord agrees to pay a commission in connection with this Supplement to CRF Partners, Inc., who shall make a distribution to Lynch, Murphy, Walsh & Partners, Inc. SubTenant shall defend, indemnify and hold harmless SubLandlord and Landlord from any claim for a commission by Lynch, Murphy, Walsh & Partners, Inc. or any other agent, broker, salesman or finder as a consequence of said party's actions or dealings with such agent, broker, salesman or finder.

11. Status of SubLease. From and after the date hereof, the term "SubLease" as used in the SubLease shall mean the SubLease as supplemented and amended hereby. Except as expressly amended hereby, the terms of the SubLease as heretofore amended shall continue in full force and effect.

EXECUTED as a sealed instrument effective as of the date first above written.

| | |
|---|---|
| SUBLANDLORD: | SUBTENANT: |
| FTP SOFTWARE, INC. | CMG INFORMATION SERVICES, INC. |
| By: /s/ John F. Geraghty | By: /s/ Andrew J. Hajducky |
| It's Duly Authorized Officer | Its Duly Authorized Officer |
| Name: John F. Geraghty | Name: Andrew J. Hajducky III |
| Title: Vice President of Finance | Title: Chief Financial Officer |

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THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE APRIL 30, 1998 CONSOLIDATED FINANCIAL STATEMENTS IN THE FORM 10-Q OF CMG INFORMATION SERVICES, INC. FOR THE QUARTER ENDED APRIL 30, 1998 AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.

1,000

9-MOS
JUL-31-1998
AUG-01-1997
APR-30-1998
48,670
1,200
16,955
0
0
78,685
9,309
0
152,626
56,930
0
0
0
227
69,268
152,626
63,381
63,381
49,655
49,655
71,836
0
2,261
(7,324)
7,519
(14,843)
0
0
0
(14,843)
(0.73)
(0.73)

5

THIS RESTATED SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE APRIL 30, 1997 CONSOLIDATED FINANCIAL STATEMENTS OF CMG INFORMATION SERVICES, INC., AS SET FORTH IN ITS FORM 10-Q'S FOR THE QUARTERS ENDED APRIL 30, 1997 AND 1998.

1,000

| | |
|---|---|
| PERIOD-TYPE | 9-MOS |
| FISCAL-YEAR-END | JUL-31-1997 |
| PERIOD-START | AUG-01-1996 |
| PERIOD-END | APR-30-1997 |
| CASH | 61,742 |
| SECURITIES | 7,435 |
| RECEIVABLES | 17,842 |
| ALLOWANCES | 0 |
| INVENTORY | 0 |
| CURRENT-ASSETS | 104,435 |
| PP&E | 10,455 |
| DEPRECIATION | 0 |
| TOTAL-ASSETS | 141,495 |
| CURRENT-LIABILITIES | 49,426 |
| BONDS | 0 |
| PREFERRED-MANDATORY | 0 |
| PREFERRED | 0 |
| COMMON | 96 |
| OTHER-SE | 44,841 |
| TOTAL-LIABILITY-AND-EQUITY | 141,495 |
| SALES | 48,547 |
| TOTAL-REVENUES | 48,547 |
| CGS | 28,203 |
| TOTAL-COSTS | 28,203 |
| OTHER-EXPENSES | 59,358 |
| LOSS-PROVISION | 0 |
| INTEREST-EXPENSE | 970 |
| INCOME-PRETAX | (18,849) |
| INCOME-TAX | (1,842) |
| INCOME-CONTINUING | (17,007) |
| DISCONTINUED | 0 |
| EXTRAORDINARY | 0 |
| CHANGES | 0 |
| NET-INCOME | (17,007) |
| EPS-PRIMARY | (0.91) |
| EPS-DILUTED | (0.91) |

RESTATEMENT REFLECTED HEREIN IS THE RESULT OF RECLASSIFICATION TO PRIOR PERIOD'S FINANCIAL STATEMENTS TO CONFORM TO THE CURRENT PERIOD PRESENTATION.