AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON MAY 2, 1997.

REGISTRATION NO. 333-

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

MICROSOFT CORPORATION
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

WASHINGTON	7373	91-1144442
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(PRIMARY STANDARD INDUSTRIAL CLASSIFICATION CODE NUMBER)	(IRS EMPLOYER IDENTIFICATION NO.)

ONE MICROSOFT WAY REDMOND, WASHINGTON 98052-6399 (425) 882-8080 (ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER,INCLUDING AREA CODE, OF REGISTRANT'S PRINCIPAL EXECUTIVE OFFICES)	ROBERT A. ESHELMAN, ESQ. ONE MICROSOFT WAY REDMOND, WASHINGTON 98052-6399 (425) 882-8080 (NAME, ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER,INCLUDING AREA CODE, OF AGENT FOR SERVICE)

WEBTV NETWORKS, INC.
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

CALIFORNIA	5065	77-0406905
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(PRIMARY STANDARD INDUSTRIAL CLASSIFICATION CODE NUMBER)	(IRS EMPLOYER IDENTIFICATION NO.)

305 LYTTON AVENUE PALO ALTO, CALIFORNIA 94301 (415) 326-3240 (ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER,INCLUDING AREA CODE, OF REGISTRANT'S PRINCIPAL EXECUTIVE OFFICES)	ALBERT A. PIMENTEL CHIEF FINANCIAL OFFICER WEBTV NETWORKS, INC. 305 LYTTON AVENUE PALO ALTO, CALIFORNIA 94301 (415) 326-3240 (ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER,INCLUDING AREA CODE, OF AGENT FOR SERVICE)

COPIES OF ALL COMMUNICATIONS TO:

JOSHUA PICKUS, ESQ. STEVEN J. TONSFELDT, ESQ. VENTURE LAW GROUP A PROFESSIONAL CORPORATION 2800 SAND HILL ROAD MENLO PARK, CALIFORNIA 94025	RICHARD B. DODD, ESQ. RICHARD A. MONTFORT, ESQ. PRESTON GATES & ELLIS LLP 5000 COLUMBIA CENTER 701 FIFTH AVENUE SEATTLE, WASHINGTON 98104-7078

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE OF THE SECURITIES TO THE PUBLIC: At the effective time of the recapitalization of WebTV Networks, Inc., which shall occur as soon as practicable after the effective date of this registration statement and the satisfaction of the conditions to the recapitalization.

If any of the securities to be registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 of the Securities Act of 1933, check the following box. [X]

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. [_]

CALCULATION OF REGISTRATION FEE

TITLE OF EACH CLASS OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED(1)	AMOUNT OF REGISTRATION FEE

Class A Common Shares of WebTV Networks, Inc.	$4,000,000	$1,213
Common Shares of Microsoft Corporation(2).....	N/A	N/A

(1) Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(f)(2) under the Securities Act of 1933 on the basis of the book value at December 31, 1996 of the estimated maximum number of Common Shares of WebTV Networks, Inc. ("WNI") to be cancelled in the recapitalization of WNI in exchange for newly issued Class A Common Shares of WNI (the "Class A Shares").

(2) Also being registered are such indeterminate number of Common Shares of Microsoft Corporation (the "Microsoft Common Shares") as may be issuable upon or in connection with the exchange of the Class A Shares being registered. No additional consideration will be received upon the issuance of the Microsoft Common Shares and, therefore, no registration fee payment is required pursuant to Rule 457(i).

THE REGISTRANTS HEREBY AMEND THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANTS SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

WEBTV NETWORKS, INC.
305 LYTTON AVENUE
PALO ALTO, CALIFORNIA 94301
(415) 326-3240
, 1997

Dear WNI Shareholder:

A Special Meeting of Shareholders (the "Special Meeting") of WebTV Networks, Inc., a California corporation ("WNI"), will be held at the principal executive offices of WNI, 305 Lytton Avenue, Palo Alto, California, on , 1997 at local time. At the Special Meeting you will be asked to consider and vote upon the following proposals:

1. To approve an Agreement and Plan of Recapitalization dated as of April 5, 1997 (the "Recapitalization Agreement"), among WNI, Microsoft Corporation, a Washington corporation ("Microsoft"), and certain WNI shareholders, pursuant to which WNI will undergo a reorganization of its capital (the "Recapitalization"). The details of the Recapitalization are set forth in the accompanying Notice and Proxy Statement/Prospectus. In summary, if the Recapitalization is approved, the following will occur:

- Holders of vested WNI Common Shares may elect to receive $12.841 per share in cash directly from Microsoft or receive in the Recapitalization the equivalent value per share in new WNI Class A Common Shares which will be exchangeable for Microsoft Common Shares initially on a one-to-one basis;

- Holders of unvested WNI Common Shares will receive in the Recapitalization $12.841 per share in value in new WNI Class A Common Shares which will be exchangeable for Microsoft Common Shares initially on a one-to-one basis, in each case with vesting terms equivalent to the vesting terms of their existing WNI Common Shares;

- Holders of options to purchase WNI Common Shares will receive replacement nonqualified options for Microsoft Common Shares on terms and conditions described in the Proxy Statement/Prospectus;

- Holders of WNI Preferred Shares may elect to receive $13.686 per share in cash directly from Microsoft or alternatively receive $13.686 per share in cash from WNI in the Recapitalization;

- Holders of WNI Common Shares or WNI Preferred Shares may exercise dissenters' rights by not voting in favor of the Recapitalization and strictly following the statutory procedures summarized in the Proxy Statement/Prospectus and set forth in full in Appendix C to the Proxy Statement/Prospectus; and

- Holders of WNI Warrants may elect to receive $13.686 per share in cash less any applicable exercise price (whether in cash or through a net exercise) directly from Microsoft or alternatively receive the same cash payment from WNI in the Recapitalization.

Although holders of WNI Preferred Shares and WNI Warrants will receive the same cash consideration whether they elect to sell to Microsoft or have such shares or warrants converted into the right to receive cash from WNI, there may be income tax advantages either to such holders or to other WNI shareholders if they elect to sell such shares or warrants to Microsoft. Such holders should consult their own tax advisors with respect to such election.

Also as part of the Recapitalization, Microsoft will receive, in exchange for the contribution of certain assets to WNI, all of the newly created Class B Common Shares of WNI which will represent not less than 80% of the voting power of WNI. Microsoft has also agreed that after the Recapitalization is consummated additional options to purchase Microsoft Common Shares will be granted to certain WNI employees and consultants. The vesting and other terms and conditions of these new Microsoft options are described in the Proxy Statement/Prospectus.

2. To approve certain employee and consultant compensation matters as more fully described herein under the heading "Proposal II--Option Grants, Option Acceleration and Other Compensatory Matters," including specifically:

- Approval of various option grants previously made by WNI and grants to be made by Microsoft on a discounted basis in connection with the Recapitalization;

- Approval of rights previously granted to certain employees to additional vesting of WNI options upon termination of employment without cause following a change of majority ownership or control of WNI; and

- For certain other WNI shareholders and advisors, approval of various option grants and payments to be made to such individuals and entities in connection with the Recapitalization.

The Recapitalization Agreement provides that at the time of the closing of the Recapitalization an aggregate of $50,000,000 will be deposited in an escrow account to be held for a period of 18 months. This $50,000,000 amount will be funded by withholding approximately ten percent (10%) of the cash or Class A Common Share consideration to be received by each WNI shareholder and warrant holder in the Recapitalization. This escrow fund will be used to satisfy claims that Microsoft may have following the closing with respect to potential inaccuracies or misrepresentations made by WNI or its Principal Shareholders (as defined below) in the Recapitalization. Approval of the Recapitalization by the WNI shareholders will result in these escrow arrangements being deemed applicable to all shareholders.

Following completion of the Recapitalization, WNI will be a controlled subsidiary of Microsoft. At that time, the operations and management of WNI will be under the direction of Microsoft.

Deutsche Morgan Grenfell Inc. ("DMG"), the investment banking firm retained by the WNI Board of Directors to perform certain financial advisory services in connection with the Recapitalization, has rendered its opinion that, as of April 5, 1997, the consideration to be received by the holders of WNI Common Shares and WNI Preferred Shares was fair from a financial point of view to the holders of WNI Common Shares and WNI Preferred Shares, respectively.

THE WNI BOARD OF DIRECTORS HAS UNANIMOUSLY APPROVED THE RECAPITALIZATION AND THE TRANSACTIONS RELATED THERETO AND HAS UNANIMOUSLY DETERMINED THAT THEY ARE FAIR TO AND IN THE BEST INTERESTS OF WNI AND ITS SHAREHOLDERS. AFTER CAREFUL CONSIDERATION, THE WNI BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT SHAREHOLDERS VOTE FOR THE WNI RECAPITALIZATION AND FOR THE APPROVAL OF THE EMPLOYEE AND CONSULTANT COMPENSATION MATTERS DESCRIBED ABOVE.

In the materials accompanying this letter, you will find a Notice of Special Meeting of Shareholders, a Proxy Statement/Prospectus relating to the actions to be taken by WNI shareholders at the Special Meeting, a proxy card and a Letter of Transmittal and the Escrow Agreement Signature Page. The Proxy Statement/Prospectus more fully describes the Recapitalization and the employee and consultant compensation matters described above and includes information about WNI and Microsoft.

Holders of WNI Preferred Shares, WNI Warrants and vested WNI Common Shares who elect to have their securities acquired for cash by Microsoft must complete and return in the enclosed beige envelope the Letter of Transmittal (green form), the Escrow Agreement Signature Page (yellow form) and their stock certificates prior to the Closing Date provided for in Recapitalization Agreement. The Closing and the acceptance of the securities to be acquired by Microsoft are subject to the satisfaction or waiver of all of the conditions in the Recapitalization Agreement. The Closing could occur as early as the date of the Special Meeting. Holders of vested and unvested WNI Common Shares who elect to receive Class A Common Shares in the Recapitalization must complete and return in the enclosed beige envelope the Letter of Transmittal and Election Form (green form), the Escrow Agreement Signature Page (yellow form) and their stock certificates as soon as possible. All certificates and documents will be returned if the Recapitalization is not approved by the WNI shareholders or if other conditions to the Recapitalization are not satisfied or waived.

ALL SHAREHOLDERS ARE INVITED TO ATTEND THE SPECIAL MEETING IN PERSON. WHETHER OR NOT YOU EXPECT TO ATTEND THE SPECIAL MEETING IN PERSON, PLEASE COMPLETE, DATE AND SIGN THE ENCLOSED PROXY AND RETURN IT WITHOUT DELAY IN THE ENCLOSED BLUE ENVELOPE, WHICH REQUIRES NO ADDITIONAL POSTAGE IF MAILED IN THE UNITED STATES. IF YOU ATTEND THE SPECIAL MEETING, YOU MAY THEN WITHDRAW YOUR PROXY AND VOTE IN PERSON. IT IS IMPORTANT THAT YOUR SHARES BE REPRESENTED AND VOTED AT THE SPECIAL MEETING.

Sincerely,

_____

Stephen G. Perlman
President and Chief Executive Officer

WEBTV NETWORKS, INC.
305 LYTTON AVENUE
PALO ALTO, CALIFORNIA 94301
(415) 326-3240

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS TO BE HELD ON , 1997

Notice is hereby given that a Special Meeting of Shareholders (the "Special Meeting") of WebTV Networks, Inc., a California corporation ("WNI"), will be held at the principal executive offices of WNI, 305 Lytton Avenue, Palo Alto, California, on , 1997 at local time. At the Special Meeting you will be asked to consider and vote upon the following proposals:

1. To approve an Agreement and Plan of Recapitalization dated as of April 5, 1997 (the "Recapitalization Agreement"), among WNI, Microsoft Corporation, a Washington corporation ("Microsoft"), and certain WNI shareholders, pursuant to which WNI will undergo a reorganization of its capital (the "Recapitalization") whereby (i) each WNI Common Share, other than WNI Common Shares of holders who have perfected their dissenters' rights or have elected to have their shares purchased by Microsoft in the manner contemplated by item (iii) below, shall be converted into a number of Class A Common Shares of WNI pursuant to an exchange ratio calculated by dividing $12.841 by the Microsoft Closing Price (as defined in the Recapitalization Agreement), which shares are exchangeable for Microsoft Common Shares, as further described herein; (ii) each WNI Common Share subject to repurchase by WNI (i.e., "unvested shares") pursuant to existing agreements in effect as of the effective time of the Recapitalization shall be converted into Class A Common Shares of WNI pursuant to such exchange ratio; (iii) each vested WNI Common Share of holders who have returned a completed letter of transmittal electing to receive cash in lieu of Class A Common Shares shall be purchased by Microsoft for $12.841; (iv) each WNI Preferred Share and WNI Warrant of holders who have returned a completed letter of transmittal electing to have their share or warrant purchased by Microsoft shall be purchased by Microsoft for $13.686 in cash less any applicable exercise price (whether in cash or through a net exercise) in the case of a WNI Warrant; (v) each WNI Preferred Share, other than shares of holders who have perfected their dissenters' rights or have elected to have their shares purchased by Microsoft, shall be converted into the right to receive $13.686 in cash from WNI; (vi) each WNI Warrant, other than warrants of holders who have elected to have their warrants purchased by Microsoft, shall be converted into the right to receive $13.686 per share in cash from WNI, less any applicable exercise price (whether in cash or through a net exercise); (vii) each option to purchase WNI Common Shares shall be replaced by one or more nonqualified Microsoft stock options to purchase Microsoft Common Shares on the terms and conditions described in the accompanying Proxy Statement/Prospectus; and (viii) Microsoft shall be entitled to receive all of the newly created Class B Common Shares of WNI which will represent not less than 80% of the voting power of WNI, in exchange for the consideration described in the Proxy Statement/Prospectus;

2. To approve certain employee and consultant compensation matters as more fully described herein under the heading "Proposal II--Option Grants, Option Acceleration and Other Compensatory Matters," including specifically: (i) approval of various option grants previously made by WNI and grants to be made by Microsoft on a discounted basis in connection with the Recapitalization; (ii) approval of rights of certain employees to additional vesting of WNI options upon termination of employment without cause following a change of majority ownership or control of WNI; and (iii) for certain other WNI shareholders and advisors, approval of various option grants and payments to be made to such individuals and entities in connection with the Recapitalization; and

3. To transact such other business that may properly come before the Special Meeting or any postponements or adjournments thereof.

Each new WNI Class A Common Share initially will be exchangeable, at the election of the holder and subject to certain restrictions and limitations described in the Proxy Statement/Prospectus, for one Microsoft Common Share or cash. Microsoft has a call right which will entitle it to directly acquire WNI Class A Common Shares which have been tendered for exchange by delivering either Microsoft Common Shares or the cash equivalent value thereof.

THE WNI BOARD OF DIRECTORS HAS UNANIMOUSLY APPROVED THE RECAPITALIZATION AND THE TRANSACTIONS RELATED THERETO AND HAS UNANIMOUSLY DETERMINED THAT THEY ARE FAIR TO AND IN THE BEST INTERESTS OF WNI AND ITS SHAREHOLDERS. AFTER CAREFUL CONSIDERATION, YOUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT SHAREHOLDERS VOTE FOR THE RECAPITALIZATION AND FOR THE APPROVAL OF THE EMPLOYEE AND CONSULTANT COMPENSATION MATTERS DESCRIBED ABOVE.

Only shareholders of record at the close of business on , 1997 are entitled to notice of and to vote at the Special Meeting, or at any postponements or adjournments thereof. The Recapitalization must be approved by a majority of the WNI Common Shares and the WNI Preferred Shares voting together as a single class, of which the Principal Shareholders (as defined below) own approximately 45%, a majority of the WNI Common Shares and a majority of the WNI Preferred Shares each voting as a single class, and a majority of the Series A, Series B and Series D Preferred Shares voting together as a single class. The employee and consultant compensation matters described above must be approved by holders of more than 75% of the eligible WNI Common Shares and WNI Preferred Shares voting together as a single class. The determination of whether such 75% approval requirement is met with respect to a payment shall be made disregarding WNI Common Shares and WNI Preferred Shares owned (actually or constructively) by a recipient of such payment. Such shareholder vote on employee and consultant compensation matters must, in each case, determine the right of the recipient to receive (or in the case of a payment previously made, retain) such payment. Officers and directors as a group are deemed to beneficially own 83.87% and 49.17% of WNI Common Shares and WNI Preferred Shares, respectively, and 69.71% of such shares treated as a single class. Stephen G. Perlman, Bruce A. Leak, and Phillip Y. Goldman, WNI's President and Chief Executive Officer, Chief Operating Officer, and Senior Vice President, respectively (collectively, the "Principal Shareholders"), the holders of an aggregate of 15,000,000 WNI Common Shares have agreed to vote their shares in favor of the Recapitalization, and against approval of any proposal made in opposition to or in competition with consummation of the Recapitalization.

Under the California General Corporation Law (the "CGCL"), a shareholder who objects to the Recapitalization may assert statutory dissenters' rights to dissent from and obtain payment of the fair value of his or her WNI Common Shares and WNI Preferred Shares by strict compliance with the requirements of the CGCL. See "The WNI Special Meeting of Shareholders--Dissenters' Rights" in the Proxy Statement/Prospectus for a more detailed description of dissenters' rights with respect to the Recapitalization.

A complete list of shareholders entitled to vote at the Special Meeting will be available for examination at WNI's principal executive offices, for any purposes germane to the Special Meeting, during ordinary business hours, for a period of at least ten days prior to the Special Meeting.

IMPORTANT

ALL SHAREHOLDERS ARE INVITED TO ATTEND THE SPECIAL MEETING IN PERSON. WHETHER OR NOT YOU EXPECT TO ATTEND THE SPECIAL MEETING IN PERSON, PLEASE COMPLETE, DATE AND SIGN THE ENCLOSED PROXY AND RETURN IT WITHOUT DELAY IN THE ENCLOSED BLUE ENVELOPE, WHICH REQUIRES NO ADDITIONAL POSTAGE IF MAILED IN THE UNITED STATES. IF YOU ATTEND THE SPECIAL MEETING, YOU MAY THEN WITHDRAW YOUR PROXY AND VOTE IN PERSON. IT IS IMPORTANT THAT YOUR SHARES BE REPRESENTED AND VOTED AT THE SPECIAL MEETING.

By Order of the Board of Directors,

_____

Bruce A. Leak, Secretary

Palo Alto, California
, 1997

MICROSOFT CORPORATION
WEBTV NETWORKS, INC.
PROSPECTUS

PROXY STATEMENT
FOR
SPECIAL MEETING OF SHAREHOLDERS OF
WEBTV NETWORKS, INC.

TO BE HELD , 1997

This Proxy Statement/Prospectus constitutes the proxy statement of WebTV Networks, Inc., a California corporation ("WNI"), relating to the solicitation by WNI of proxies for use at the Special Meeting of Shareholders of WNI (the "Special Meeting") scheduled to be held at a.m. on , 1997, and the prospectus of WNI relating to WNI Class A Common Stock, par value $.001 per share (the "Class A Shares" or "Exchangeable Shares"), that will be issued in connection with the recapitalization (the "Recapitalization") of WNI, pursuant to which, among other things, Microsoft Corporation, a Washington corporation ("Microsoft"), will acquire WNI Class B Common Stock, par value $.001 per share (the "Class B Shares"), and WNI will become a controlled subsidiary of Microsoft. This Proxy Statement/Prospectus also serves as a prospectus for the Microsoft Common Shares, par value $.000025 ("Microsoft Common Shares"), that may be issued upon exchange of the Exchangeable Shares. The Exchangeable Shares and the Microsoft Common Shares are sometimes referred to collectively as the "Securities." The Recapitalization will be effected pursuant to an Agreement and Plan of Recapitalization (the "Recapitalization Agreement") dated as of April 5, 1997, by and among Microsoft, WNI and certain shareholders of WNI. A copy of the Recapitalization Agreement is attached to this Proxy Statement/Prospectus as Appendix A and incorporated herein by reference. WNI and Microsoft have filed a joint registration statement with the Securities and Exchange Commission (the "Commission") with respect to the issuance of the Exchangeable Shares by WNI and the Microsoft Common Shares issuable upon the exchange of Exchangeable Shares.

No person has been authorized to give any information or to make any representation other than those contained in this Proxy Statement/Prospectus in connection with the solicitations of proxies or the offering of securities made by this Proxy Statement/Prospectus and, if given or made, such information or representations must not be relied upon as having been authorized by WNI or Microsoft. Neither the delivery of this Proxy Statement/Prospectus nor any distribution of securities made hereunder shall under any circumstances create any implication that there has been no change in the information set forth herein since the date of this Proxy Statement/Prospectus. This Proxy Statement/Prospectus does not constitute an offer to sell, or a solicitation of an offer to buy, any securities, or the solicitation of a proxy, by anyone in any jurisdiction in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make such offer or solicitation.

SEE "RISK FACTORS" FOR A DISCUSSION OF CERTAIN FACTORS THAT SHOULD BE EVALUATED BY WNI SHAREHOLDERS IN CONNECTION WITH THEIR CONSIDERATION OF THE RECAPITALIZATION. THIS DISCUSSION BEGINS AT PAGE 18.

NEITHER THE RECAPITALIZATION NOR THESE SECURITIES HAVE BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROXY STATEMENT/PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Capitalized terms that are not otherwise defined in this Proxy Statement/Prospectus are defined in the Recapitalization Agreement attached hereto as Appendix A. Page 6 of this Proxy Statement/Prospectus sets forth an index of significant defined terms that are used herein.

The approximate date on which this Proxy Statement/Prospectus and the accompanying proxy card will first be mailed to WNI shareholders is , 1997.

The date of this Proxy Statement/Prospectus is , 1997.

AVAILABLE INFORMATION

Microsoft is subject to the information requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and files reports and other information with the Commission in accordance therewith. Such reports, proxy statements and other information filed by Microsoft are available for inspection and copying at the public reference facilities of the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549, and at the Commission's Regional Offices at 7 World Trade Center, Suite 1300, New York, New York 10048, and at Citicorp Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661-2511. Copies of such material may be obtained by mail from the Public Reference Section of the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549, at prescribed rates. The Commission maintains a World Wide Web site on the Internet at http://www.sec.gov that contains reports, proxy and information statements and other information regarding registrants that file electronically with the Commission. The Microsoft Common Shares are traded as a "National Market Security" on The Nasdaq Stock Market. Material filed by Microsoft can be inspected at the offices of the National Association of Securities Dealers, Inc., Reports Section, 1735 K Street, N.W., Washington, D.C. 20006.

This Proxy Statement/Prospectus constitutes a part of a Registration Statement on Form S-4 (together with amendments and exhibits thereto, the "Registration Statement") filed with the Commission under the Securities Act of 1933, as amended (the "Securities Act"), with respect to the Exchangeable Shares of WNI and the Microsoft Common Shares issuable upon the exchange of such Exchangeable Shares. This Proxy Statement/Prospectus does not contain all of the information set forth in such Registration Statement, certain parts of which are omitted in accordance with the rules and regulations of the Commission. Reference is made to the Registration Statement and to the exhibits relating thereto for further information with respect to WNI, Microsoft and the Securities offered hereby. Any statements contained herein concerning the provisions of any document filed as an exhibit to the Registration Statement or otherwise filed with the Commission or incorporated by reference herein are not necessarily complete, and, in each instance, reference is made to the copy of such document so filed for a more complete description of the matter involved. Each such statement is qualified in its entirety by such reference.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed with the Commission by Microsoft (File No. 0-14278) are incorporated by reference in this Proxy Statement/Prospectus:

1. Microsoft's Annual Report on Form 10-K for the year ended June 30, 1996;

2. Microsoft's Proxy Statement dated September 27, 1996 for Microsoft's annual meeting of shareholders on November 12, 1996;

3. Microsoft's Quarterly Report on Form 10-Q for the quarter ended September 30, 1996;

4. Microsoft's Quarterly Report on Form 10-Q for the quarter ended December 31, 1996; and

5. The description of the capital shares of Microsoft which is contained in the Registration Statement on Form S-3 of Microsoft filed pursuant to the Securities Act under Commission file number 333-17143, which is incorporated by reference in Form 8-A filed pursuant to the Exchange Act under Commission file number 0-14278.

All documents filed by Microsoft pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act subsequent to the date of this Proxy Statement/Prospectus and prior to the termination of the offering of the Securities offered hereby shall be deemed to be incorporated by reference into this Proxy Statement/Prospectus and to be a part hereof from the date of filing of such document. Any statement contained herein or in a document all or a portion of which is incorporated or deemed incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Proxy Statement/Prospectus to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference

herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Proxy Statement/Prospectus.

Microsoft hereby undertakes to provide without charge to each person to whom this Proxy Statement/Prospectus has been delivered, upon the written or oral request of any such person, a copy of any and all of the foregoing documents incorporated herein by reference (other than exhibits to such documents which are not specifically incorporated by reference into the information that this Proxy Statement/Prospectus incorporates). Written or telephone requests should be directed to Investor Relations Department, Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052-6399, telephone number (800) 285-7772 or by electronic mail at msft@microsoft.com. Microsoft also has posted on its website (www.microsoft.com/msft/) the Annual Report (Form 10-K), Proxy Statement and Quarterly Reports (Form 10-Q) incorporated by reference in this Proxy Statement/Prospectus. In order to ensure timely delivery of the documents, any request should be made by [date 5 business days prior to date of final investment decision].

TABLE OF CONTENTS

INDEX OF SIGNIFICANT DEFINED TERMS

SUMMARY OF PROXY STATEMENT/PROSPECTUS

The following is a summary of certain information contained elsewhere in this Proxy Statement/Prospectus. This summary is not, and is not intended to be, complete in itself. Reference is made to, and this summary is qualified in its entirety by, the more detailed information contained in this Proxy Statement/Prospectus and the attached Appendices, which shareholders of WNI are encouraged to review. Unless otherwise defined in this summary, capitalized terms used in this summary are defined elsewhere in this Proxy Statement/Prospectus.

INTRODUCTION

This Proxy Statement/Prospectus relates to the consideration of a recapitalization of WNI, following which WNI will become a controlled subsidiary of Microsoft, and the consideration of certain employee and consultant compensation matters.

THE COMPANIES

Microsoft

Microsoft develops, manufactures, licenses, sells and supports a wide range of software products, including operating systems for personal computers and servers, server applications for client/server environments, business and consumer productivity applications, software development tools, and Internet and intranet software and technologies. Microsoft's principal executive offices are located at One Microsoft Way, Redmond, Washington 98052-6399, and its telephone number is (425) 882-8080. See "--Information About Microsoft."

WNI

WNI operates an on-line service that enables consumers to experience the Internet through their televisions via set-top terminals based on WNI's proprietary technologies. WNI's principal executive offices are located at 305 Lytton Avenue, Palo Alto, California 94301, and its telephone number is (415) 326-3240. See "WNI's Business."

THE WNI SPECIAL MEETING OF SHAREHOLDERS

Purpose of Meeting

A Special Meeting of shareholders of WNI will be held at the principal executive offices of WNI, 305 Lytton Avenue, Palo Alto, California, on , 1997 at local time. Only shareholders of record at the close of business on , 1997 are entitled to notice of and to vote at the Special Meeting, or at any postponements or adjournments thereof. At the Special Meeting, WNI shareholders will be asked to consider and vote upon the following proposals: (i) to approve the Recapitalization Agreement, pursuant to which WNI will undergo the Recapitalization, as further described herein; (ii) to approve certain employee and consultant compensation matters as more fully described herein; and (iii) to transact such other business that may properly come before the Special Meeting or any postponements or adjournments thereof. See "The WNI Special Meeting of Shareholders."

Vote Required

Approval of the Recapitalization requires the affirmative vote of the holders of a majority of the outstanding WNI Common Shares and WNI Preferred Shares, voting together as a single class, the approval of a majority of the WNI Common Shares and a majority of the WNI Preferred Shares, each voting as a single class, and the approval of the holders of a majority of the outstanding Series A Shares, Series B Shares and Series D Shares, voting together as a single class. Approval of each of the employee and consultant compensation matters described

elsewhere in this Proxy Statement/Prospectus requires the affirmative vote of the holders of more than 75% of the outstanding WNI Common Shares and WNI Preferred Shares, voting together as a class on an as-converted basis, of those shareholders eligible to vote on such matters (excluding in each case shares owned, actually or constructively, by the person who would receive the payment subject to such approval). See "The WNI Special Meeting of Shareholders--Vote Required and Voting Intentions of Certain Shareholders."

BACKGROUND AND REASONS FOR THE RECAPITALIZATION; RECOMMENDATION OF BOARD OF DIRECTORS OF WNI

The Board of Directors of WNI has unanimously approved the Recapitalization Agreement and unanimously recommends that the shareholders of WNI vote for approval and adoption of the Recapitalization Agreement. The primary factors considered and relied upon by the WNI Board of Directors in reaching its recommendations are referred to in "Proposal I--The Recapitalization and the Related Transactions--WNI's Reasons for the Recapitalization."

INTERESTS OF CERTAIN PERSONS IN THE RECAPITALIZATION

In considering the recommendation of the Board of Directors of WNI with respect to the Recapitalization, and the employee and consultant compensation matters described elsewhere in this Proxy Statement/Prospectus, shareholders should be aware that certain officers and directors of WNI have interests in connection with the Recapitalization. If the Recapitalization is consummated, Microsoft intends to appoint Stephen G. Perlman, the President and Chief Executive Officer of WNI, a Vice President of Microsoft. As a result of the Recapitalization, certain officers of WNI will receive employment agreements, acceleration of existing options to the extent their employment with WNI is terminated following the Recapitalization, grants of new options and other consideration. See "Proposal I--The Recapitalization and Related Transactions--Related Agreements--Employment and Noncompetition Agreements" and "Proposal II--Option Grants, Option Acceleration and Other Compensatory Matters." In addition, in the event that the Recapitalization is consummated, Microsoft has agreed to provide certain indemnification rights to WNI's officers and directors. Paul Allen, a director of Microsoft, is the beneficial owner of all of the outstanding capital shares of Vulcan Ventures Inc., which is the record owner of 3,220,582 WNI Preferred Shares. Accordingly, Vulcan Ventures will receive $44,076,885 if the Recapitalization is consummated. See "Proposal I--The Recapitalization and Related Transactions--Interests of Certain Persons in the Recapitalization."

OPINION OF FINANCIAL ADVISOR

Deutsche Morgan Grenfell Inc. ("DMG"), the investment banking firm retained by the WNI Board of Directors to perform certain financial advisory services in connection with the Recapitalization, has rendered its opinion that, as of April 5, 1997, the consideration to be received by the holders of WNI Common Shares and WNI Preferred Shares was fair from a financial point of view to the holders of WNI Common Shares and WNI Preferred Shares, respectively. The full text of the written opinion of DMG, which sets forth the assumptions made, matters considered and limitations on the review undertaken in connection with such opinion, is attached hereto as Appendix B and is incorporated herein by reference. Holders of WNI capital shares are urged to, and should, read such opinion in its entirety. See "Proposal I--The Recapitalization and Related Transactions--Opinion of Financial Advisor."

THE RECAPITALIZATION

Approval of the Recapitalization by the WNI shareholders will provide holders of WNI securities with certain elections and/or result in the conversion of all outstanding WNI securities as follows:

Conversion of WNI Common Shares

WNI Common Shares, other than WNI Common Shares of holders who exercise their dissenters' rights or who elect to have their shares acquired by Microsoft for cash, shall be converted into, and WNI shall issue to

holders of WNI Common Shares, a number of Exchangeable Shares pursuant to an exchange ratio determined by dividing $12.841 by the Microsoft Closing Price (the "Exchange Ratio"). The "Microsoft Closing Price" shall be the average closing price of Microsoft Common Shares as publicly reported by The Nasdaq Stock Market over the twenty (20) consecutive trading days ending two (2) days prior to the Closing. For example, if the Microsoft Closing Price was calculated to be $100 per share, the Exchange Ratio would be .12841 ($12.841 divided by $100) and a holder would receive .12841 Exchangeable Shares for each WNI Common Share held at the time of the Recapitalization. Thus, if a holder has 1,000 WNI Common Shares at the time of the Recapitalization, such holder would receive a total of 128 Exchangeable Shares. See "Proposal I--The Recapitalization and Related Transactions--The Recapitalization--Conversion of WNI Common Shares."

Election by Holders of Vested WNI Common Shares

Any holder of vested WNI Common Shares may elect to receive $12.841 per share in cash from Microsoft at the effective time of the Recapitalization in lieu of receiving Exchangeable Shares by properly completing the Letter of Transmittal, marking the election to have such shares purchased by Microsoft for cash, and returning the Letter of Transmittal, Escrow Agreement Signature Page and the certificates for such shares to WNI prior to the Closing. If no Letter of Transmittal indicating an election for cash is received by WNI from an eligible holder prior to the Closing, such holder will be deemed to have elected to receive Exchangeable Shares. See "Proposal I--The Reorganization and Related Transactions--The Recapitalization--Election by Holders of Vested WNI Common Shares."

Conversion of Unvested WNI Common Shares

Certain WNI Common Shares are subject to a vesting schedule and may be repurchased by WNI in the event a holder thereof ceases to be employed by WNI. Unvested WNI Common Shares shall be converted into Exchangeable Shares on the same basis as other WNI Common Shares and will be registered in each holder's name. Such unvested Exchangeable Shares will be held by WNI following the Recapitalization pursuant to existing agreements governing such shares. See "The Recapitalization and Related Transactions--The Recapitalization--Conversion of WNI Unvested Shares."

Election by Holders of WNI Preferred Shares and Warrants

Any holder of WNI Preferred Shares or WNI Warrants may elect to have such securities acquired for cash by Microsoft at the effective time of the Recapitalization by properly completing the Letter of Transmittal marking the election to have such shares acquired by Microsoft for cash and returning the Letter of Transmittal, Escrow Agreement Signature Page and the certificates for such shares to WNI prior to the Closing. See "Proposal I--The Recapitalization and Related Transactions--The Recapitalization--Election by Holders of WNI Preferred Shares and Warrants."

Conversion of WNI Preferred Shares and WNI Warrants

Each of the WNI Preferred Shares, other than shares held by holders who have exercised their dissenters' rights or elected to have their shares acquired by Microsoft for cash, will be converted, without any action on the part of the holders, into the right to receive $13.686 (determined on an as-if-converted to WNI Common Shares basis) in cash. Subject to each of their terms, each WNI Warrant, other than warrants held by holders who have elected to have their warrants acquired by Microsoft for cash, shall be converted, without any action of the part of the holders thereof, into the right to receive $13.686 (determined on an as-if-exercised and converted to WNI Common Shares basis) in cash, less any applicable exercise price (whether in cash or through a net exercise). In each case, the cash payment contemplated by this paragraph will be made by WNI following the Closing. See "Proposal I--The Recapitalization and Related Transactions--The Recapitalization--Conversion of WNI Preferred Shares and WNI Warrants."

Rights and Preferences of Exchangeable Shares

The form of Amended and Restated Articles of Incorporation to be adopted by WNI in connection with the Recapitalization is attached to this Proxy Statement/Prospectus as Appendix E and is incorporated herein by reference. The terms of such Articles are summarized below.

Voting, Dividend and Liquidation Rights of Holders of Exchangeable Shares

Each holder of Exchangeable Shares shall be entitled to vote for directors and such other matters as may be submitted to the shareholders. Except to the extent required by applicable law, each Exchangeable Share shall have one (1) vote. Each holder of Exchangeable Shares shall be entitled to receive notice of, and to attend, any meetings of shareholders of WNI.

The WNI Board of Directors may declare dividends in its discretion from time to time, and WNI shall pay dividends out of its assets properly available for the payment of dividends, provided that any such dividend declared with respect to each Exchangeable Share and Class B Share shall be identical in amount and character. Such dividends shall have record and payment dates as may be determined in the discretion of the WNI Board of Directors.

In the event of a liquidation, dissolution or winding-up of WNI or other distribution of assets, including the filing of a petition for involuntary liquidation or other proceeding in bankruptcy, of WNI (collectively, a "Liquidation"), WNI shall pay to the holders of the Exchangeable Shares from the assets of WNI available for distribution an amount that is identical in amount and character with respect to each share of Exchangeable Share and Class B Share. See "Proposal I--The Recapitalization and Related Transactions--The Recapitalization--Rights and Preferences of Exchangeable Shares--Voting, Dividend and Liquidation Rights of Holders of Exchangeable Shares."

Exchange Rights

Subject to the call rights of Microsoft described below, holders of Exchangeable Shares shall have the right to exchange each Exchangeable Share held for Microsoft Common Shares at any time prior to the end of fifty-one (51) months after the effective date of the Recapitalization. Each Exchangeable Share shall be exchanged, for (i) such number of Microsoft Common Shares as are equal to the product obtained by multiplying the Class A Exchange Rate in effect at the time the exchange procedure is initiated by the number of Exchangeable Shares being exchanged; or (ii) an amount in immediately available funds equal to the Current Market Value of the Microsoft Common Shares otherwise issuable upon exchange of the Exchangeable Shares ("Cash"). The determination as to whether holders of Exchangeable Shares will receive Microsoft Common Shares or Cash upon the exchange will be made by WNI. The "Class A Exchange Rate" shall initially be 1.0 Microsoft Common Shares for each Exchangeable Share, subject to adjustment based on certain capital changes in Microsoft Common Shares following the Recapitalization. In the event Microsoft does not exercise its call rights, WNI is obligated to exchange such Exchangeable Shares for either Microsoft Common Shares or Cash. The "Current Market Value" of the Microsoft Common Shares shall be the closing price as publicly reported by The Nasdaq Stock Market at 4:00 p.m. (Eastern time) as of the date on which a holder of Exchangeable Shares delivers his or her certificates and an "Exchange Notice" to the Secretary of WNI, or a person designated by the Secretary. See "Proposal I--The Recapitalization and Related Transaction--The Recapitalization--Rights and Preferences of Exchangeable Shares--Exchange Rights."

Microsoft Call Rights

WNI shall immediately notify Microsoft of any exchange request. Microsoft shall thereafter have one (1) day in which to exercise its right (the "Call Right") to deliver to such holder, at Microsoft's election, (i) such number of Microsoft Common Shares as are equal to the product obtained by multiplying the Class A Exchange

Rate in effect at the time the exchange procedure is initiated by the number of Exchangeable Shares being exchanged; or (ii) Cash. In addition, Microsoft shall have the right to acquire all, but not less than all, of the outstanding Exchangeable Shares ("Class Call Right") solely for a number of Microsoft Common Shares as determined under clause (i) above (except that the Class A Exchange Rate used will be the Class A Exchange Rate in effect at the time Microsoft shall exercise its Class Call Right, upon delivery of an irrevocable written notice by Microsoft to WNI at any time during the period commencing five years and six months after the effective date of the Recapitalization and ending six years after the effective date of the Recapitalization. In the event Microsoft exercises its Class Call Right, Microsoft shall provide each holder of Exchangeable Shares written notice specifying a closing date for such proposed action not more than sixty (60) and not less than fifteen (15) days prior to taking such action. See "Proposal I--The Recapitalization and Related Transactions--The Recapitalization--Rights and Preferences of Exchangeable Shares--Microsoft Call Rights."

Adjustments to Class A Exchange Ratio Upon Certain Events

Upon the happening of certain share issuances, subdivisions, splits or combinations after the effective date of the Recapitalization, the Class A Exchange Rate shall, simultaneously with the happening of such event, be adjusted by multiplying the then effective Class A Exchange Rate by a fraction, the numerator of which shall be the number of Microsoft Common Shares outstanding immediately after such event and the denominator of which shall be the number of Microsoft Common Shares outstanding immediately prior to such event, and the product so obtained shall thereafter be the Class A Exchange Rate. The Class A Exchange Rate, as so adjusted, shall be readjusted in the same manner upon the happening of any successive event or events. See "Proposal I--The Recapitalization and Related Transactions--The Recapitalization--Rights and Preferences of Exchangeable Shares--Adjustments to Class A Exchange Rate Upon Special Event."

WNI Stock Options

At the effective time of the Recapitalization, Microsoft shall replace the outstanding WNI Options with options to purchase Microsoft Common Shares ("Microsoft Options") subject to terms and conditions as follows: (i) each new Microsoft Option will be exercisable for a number of whole Microsoft Common Shares equal to the number of WNI Common Shares subject to the WNI Option being replaced immediately prior to such effective time multiplied by the Exchange Ratio, rounded to the nearest whole Microsoft Common Share; (ii) the exercise price per Microsoft Common Share shall be the exercise price of the WNI Option being replaced immediately prior to such effective time divided by the Exchange Ratio; and (iii) such replacement options will be nonqualified options even if the WNI Options being replaced were incentive stock options (within the meaning of Section 422 of the Code) before such replacement. For example, if a holder has options for 1,000 WNI Common Shares priced at $1.00 per share and the Microsoft Closing Price is $100, the Exchange Ratio is .12841 ($12.841 divided by $100) and such holder's new options would cover 128 Microsoft Common Shares and would be priced at approximately $7.79 per share ($1.00 divided by .12841). See "Proposal I--The Recapitalization and Related Transactions--The Recapitalization--WNI Stock Options."

In addition to the Microsoft Options issued in replacement of WNI Options, Microsoft shall grant additional Microsoft Options to certain employees of WNI with a discounted exercise price (but subject to vesting), with an aggregate discount of $31,774,000. See "Proposal II--Option Grants, Option Acceleration and Other Compensatory Matters."

Effective Time

It is anticipated that the Recapitalization will become effective as promptly as practicable after the requisite WNI shareholder approval has been obtained and all other conditions to the Recapitalization have been satisfied or waived (the "Effective Time"). See "Proposal I--The Recapitalization and Related Transactions--The Recapitalization--Effective Time."

Exchange Procedure

Accompanying this Proxy Statement/Prospectus is a Letter of Transmittal and Election Form ("Letter of Transmittal"), which when properly completed and returned together with certificate(s) that represent the shareholder's WNI shares and an executed Escrow Agreement Signature Page, will enable the holder to exchange such certificate(s) for the number of whole Exchangeable Shares to which the holder of WNI Common Shares is entitled or the cash to which the holder of WNI Preferred Shares, WNI Warrants or electing vested WNI Common Shares has either elected to, or is entitled to, receive under the Recapitalization Agreement. Until holders of certificates have surrendered them for exchange and returned the executed Letter of Transmittal and Escrow Agreement Signature Page, (i) no dividends or other distributions will be paid with respect to any shares represented by such certificate(s), and (ii) no interest will be paid on any cash payable for WNI Preferred Shares, WNI Warrants or eligible electing WNI Common Shares or dividends or other distributions payable with respect to Exchangeable Shares if and when declared. Upon surrender of any certificate(s) in exchange for Exchangeable Shares, the holder thereof will receive any dividends or other distributions which became payable at or after the Effective Time, but were not paid by reason of the foregoing, with respect to the number of whole Exchangeable Shares represented by the certificate(s) issued upon such surrender. See "Proposal I--The Recapitalization and Related Transactions--The Recapitalization--Effect of Recapitalization."

Dissenters' Rights

The shares of any holder of WNI Common Shares or WNI Preferred Shares who has demanded and perfected dissenters' rights for such shares in accordance with the California General Corporation Law ("CGCL") and who, as of the Effective Time, has not effectively withdrawn or lost such dissenters' rights, shall not be converted into or represent a right to receive the consideration to be received by such holder in the Recapitalization, but rather the holder thereof shall only be entitled to such rights as are granted by California Law. See "The WNI Special Meeting of Shareholders--Dissenters' Rights."

SUMMARY OF OTHER PROVISIONS OF THE RECAPITALIZATION AGREEMENT

Representations and Covenants

The Recapitalization Agreement contains certain customary representations and warranties by WNI, the Principal Shareholders and Microsoft. See "Proposal I--The Recapitalization and Related Transactions--Summary of Other Provisions of the Recapitalization Agreement--Representations and Covenants."

Conditions to the Recapitalization

The Recapitalization Agreement provides that, unless waived, the respective obligations of each party to effect the Recapitalization are subject to, among other things, the following material conditions: (i) shareholder approvals as described above; (ii) the absence of any injunction or other specified legal prohibition; (iii) the receipt of required consents; (iv) the performance of agreements and covenants and the absence of a material breach of the representations and warranties of the other party; and (v) the receipt of legal opinions as to the tax consequences of the Recapitalization and other customary matters. See "Proposal I--The Recapitalization and Related Transactions--Summary of Other Provisions of the Recapitalization Agreement--Conditions to the Recapitalization."

Indemnification by Shareholders and by Principal Shareholders

In the Recapitalization Agreement, the holders of WNI Common Shares and WNI Preferred Shares (other than holders who exercise their dissenters' rights under California law) and WNI Warrants will, by the approval of the Recapitalization and acceptance of the consideration provided in the Recapitalization Agreement, agree,

severally, to defend, indemnify and hold Microsoft harmless from and against any and all damages and other amounts (including expenses and attorneys' fees) incurred by Microsoft by reason of or arising out of or in connection with (i) any breach or asserted breach of any representation or warranty of WNI or the Principal Shareholders contained in the Recapitalization Agreement or related documents, or (ii) the failure of WNI or the Principal Shareholders to perform any agreement or covenant in the Recapitalization Agreement. Cash and Securities with an aggregate value of $50 million will be withheld on a pro rata basis from the consideration to be distributed in connection with the Recapitalization and placed in an escrow account to be used to secure the indemnification obligations of the WNI shareholders. See "Proposal I--The Recapitalization and Related Transactions--Summary of Other Provisions of the Recapitalization Agreement--Indemnification by Shareholders and by Principal Shareholders" and "--Related Agreements--Escrow Agreement."

Termination or Amendment

The Recapitalization Agreement may be terminated by mutual consent of the parties at any time prior to the Effective Time of the Recapitalization. Microsoft or WNI may terminate the Recapitalization Agreement (i) upon the failure of the shareholders of WNI to give the requisite approvals for the Recapitalization and related transactions; (ii) upon the entry of any court order that declares the Recapitalization unlawful or enjoins the consummation of the Recapitalization or the enactment of any statute causing the Recapitalization to be unlawful, or (iii) if the Effective Time does not occur by September 30, 1997 (the "Outside Date"); provided that if the parties elect to pursue litigation in connection with antitrust matters, this Outside Date may be extended to March 31, 1998 by mutual agreement of parties. Microsoft may terminate the Recapitalization Agreement (so long as Microsoft is not in material breach of the Recapitalization Agreement) if there has been a material breach by WNI of any representation, warranty, covenant, or agreement contained in the Recapitalization Agreement and such breach has a material adverse effect on the Recapitalization and has not been cured within 30 days after notice of such breach is given. Even if there has been no such breach, or a termination is not otherwise permitted, Microsoft may terminate the Recapitalization Agreement, subject to the payment to WNI of certain fees. WNI may terminate the Recapitalization Agreement (so long as WNI is not in material breach of the Recapitalization Agreement) if there has been a material breach by Microsoft of any representation, warranty, covenant, or agreement contained in the Recapitalization Agreement and such breach has not been cured within 30 days after notice of such breach is given. Even if there has been no such breach, WNI may terminate the Recapitalization Agreement. In such an event, Microsoft shall be entitled to the receipt of specified consideration in the event that WNI is acquired on or before the first anniversary of the effective date of such termination. The Recapitalization Agreement may be amended only by an instrument in writing signed on behalf of each of Microsoft, WNI and the Principal Shareholders. See "Proposal I--The Recapitalization and Related Transactions--Summary of Other Provisions of the Recapitalization Agreement--Termination or Amendment."

RELATED AGREEMENTS

Escrow Agreement

At the Closing, Microsoft, WNI, each of the holders of WNI Common Shares, WNI Preferred Shares and WNI Warrants, the Shareholders' Representative and ChaseMellon Shareholder Services, LLC will enter into an escrow agreement, the form of which is attached to this Proxy Statement/Prospectus as Appendix D and is incorporated herein by reference. The purpose of the escrow agreement is to secure the indemnification obligations of the WNI securities holders under the Recapitalization Agreement. Under the terms of the escrow agreement, cash and securities with an aggregate value of $50 million will be withheld from the consideration to be distributed in connection with the Recapitalization and placed in an escrow account. Execution of the escrow agreement is a prerequisite to the receipt of the WNI Exchangeable Shares or cash provided for in the Recapitalization Agreement. See "Proposal I--The Recapitalization and Related Transactions--Related Agreements--Escrow Agreement."

Voting Agreements

Microsoft has entered into agreements with each of the Principal Shareholders, who on the Record Date together owned beneficially in the aggregate 15,000,000 WNI Common Shares representing approximately 45% of the then outstanding WNI Shares, pursuant to which such shareholders have agreed to vote their WNI Shares in favor of the approval of the Recapitalization and the adoption of certain documents with respect to the Recapitalization and against any action or agreement that would impede or interfere with the performance of such Recapitalization documents or the consummation of the transactions contemplated thereby. See "Proposal I--The Recapitalization and Related Transactions--Related Agreements--Voting Agreements."

Intellectual Property, License of Technology and Patent License Agreements

Immediately prior to the execution of the Recapitalization Agreement, the Principal Shareholders executed Intellectual Property, License of Technology, and Patent License Agreements with WNI, the purpose of which is to ensure that at the Closing, all of the Intellectual Property (as defined in the Recapitalization Agreement) is in fact owned by, or licensed to, WNI, and available for use by WNI. See "Proposal I--The Recapitalization and Related Transactions--Related Agreements--Intellectual Property, License of Technology and Patent License Agreements."

Amended and Restated Shareholder Agreements

Contemporaneous with the execution of the Recapitalization Agreement, Microsoft, WNI and each of the Principal Shareholders entered into Amended and Restated Shareholder Agreements with respect to the vesting of their respective unvested WNI Common Shares. See "Proposal I--The Recapitalization and Related Transactions--Related Agreements--Amended and Restated Shareholder Agreements."

Line of Credit Agreement

Contemporaneous with the execution of the Recapitalization Agreement, Microsoft and WNI entered into a Line of Credit Agreement, whereby Microsoft agreed to loan WNI, on a revolving basis, up to $30,000,000. See "Proposal I--The Recapitalization and Related Transactions--Related Agreements--Line of Credit Agreement."

Make-Well Agreement

It is a condition to WNI's obligation to consummate the Recapitalization that Microsoft execute a Make-Well Agreement in favor of WNI pursuant to which Microsoft will agree to use its reasonable best efforts to ensure that WNI is able to and has the financial resources to take certain actions with respect to its Exchangeable Shares and to ensure that all exchange obligations of WNI under the terms of the Exchangeable Shares are satisfied. See "Proposal I--The Recapitalization Agreement and Related Transactions--Related Agreements--Make-Well Agreement."

Affiliates Agreements

WNI and Microsoft will enter into agreements with each of the Principal Shareholders, and certain officers and directors of WNI, pursuant to which such persons will agree that they will not sell or otherwise dispose of any Exchangeable Shares or Microsoft Common Shares unless such sale or disposition is permitted pursuant to the provisions of Rule 145 under the Securities Act, is otherwise exempt from registration under the Securities Act, or is effected pursuant to a registration statement under the Securities Act. See "Proposal I--The Recapitalization Agreement and Related Transactions--Related Agreements--Affiliates Agreements."

Employment and Noncompetition Agreements

Prior to the Closing of the Recapitalization Agreement, each of the Principal Shareholders will enter into an Employment and Noncompetition Agreement with Microsoft and WNI. See "Proposal I--The Recapitalization and Related Transactions--Related Agreements--Employment and Noncompetition Agreements."

CERTAIN U.S. FEDERAL INCOME TAX MATTERS

It is a condition to the obligation of WNI and Microsoft to consummate the Recapitalization that WNI receive from Venture Law Group, A Professional Corporation ("Venture Law Group"), and Microsoft receive from Preston Gates & Ellis LLP ("Preston Gates & Ellis"), an opinion that the Recapitalization more likely than not constitutes a reorganization within the meaning of Section 368(a)(1)(E) of the Internal Revenue Code of 1986, as amended (the "Code"). WNI security holders are urged to consult their own tax advisors regarding the tax consequences of the Recapitalization. See "Proposal I--The Recapitalization and Related Transactions--Certain U.S. Federal Income Tax Matters."

ACCOUNTING TREATMENT

The Recapitalization is anticipated to be accounted for using the purchase method of accounting under generally accepted accounting principles. Under the purchase method of accounting, the assets of WNI will be valued at their estimated fair market value and reflected on the books and records of Microsoft accordingly. See "Proposal I--The Recapitalization and Related Transactions--Accounting Treatment."

EFFECT OF NONAPPROVAL

If WNI is unable to obtain approval by its shareholders before September 30, 1997 (or March 31, 1998 if Microsoft and WNI have mutually agreed to pursue litigation against any action challenging the Recapitalization as violative of antitrust laws), either Microsoft or WNI may terminate the Recapitalization Agreement.

SELECTED FINANCIAL DATA OF WNI

The selected financial data set forth below should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements of WNI, including notes thereto, included elsewhere in this Proxy Statement/Prospectus. The statement of operations data set forth below for the period from inception (June 30, 1995) to March 31, 1996 and the balance sheet data as of March 31, 1996 have been derived from the audited financial statements of WNI included elsewhere in this Proxy Statement/Prospectus, which have been audited by Ernst and Young LLP, independent auditors. The statement of operations data from inception (June 30, 1995) to December 31, 1995 and for the nine months ended December 31, 1996 and the balance sheet data as of December 31, 1996 are derived from unaudited financial statements of WNI, which, in the opinion of WNI, include all adjustments (consisting of normal recurring adjustments) necessary for fair presentation of WNI's results of operations for those periods, and may not be indicative of the results of operations to be expected in the future.

	PERIOD FROM INCEPTION (JUNE 30, 1995) TO MARCH 31, 1996	PERIOD FROM INCEPTION (JUNE 30, 1995) TO DECEMBER 31, 1995	NINE MONTHS ENDED DECEMBER 31, 1996
STATEMENT OF OPERATIONS DATA:			
Revenues:			
On-line service	$ --	$ --	$ 672,002
Licensing and manufacturing	--	--	35,456,934
Total revenues	--	--	36,128,936
Cost of revenues:			
On-line service	--	--	3,951,187
Licensing and manufacturing	--	--	33,825,324
Total cost of revenues	--	--	37,776,511
Gross loss	--	--	(1,647,575)
Operating expenses:			
Research and development	2,117,852	693,845	7,697,443
Sales and marketing	258,865	41,435	13,090,328
General and administrative	853,373	468,554	4,170,603
Total operating costs and expenses	3,230,090	1,203,834	24,958,374
Loss from operations	(3,230,090)	(1,203,834)	(26,605,949)
Interest income	8,383	3,639	631,711
Interest expense	(10,703)	(2,493)	(144,554)
Net loss	$(3,232,410)	$(1,202,688)	$(26,118,792)
Pro forma net loss per share	$ (0.22)		$ (0.97)
Shares used in computing pro forma net loss per share	14,546,887		26,981,017

	MARCH 31, 1996	DECEMBER 31, 1996
BALANCE SHEET DATA:		
Cash and cash equivalents	$ 4,501,745	$ 21,197,549
Working capital	2,473,015	10,517,444
Total assets	5,931,650	44,556,718
Capital lease obligations, net of current portion	524,013	2,452,662
Redeemable convertible preferred stock	6,500,001	12,359,999
Shareholder's equity (net capital deficiency)(1)	(3,217,410)	5,024,470

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Book value per share(2)	$ (0.21)	$ 0.26

Shares used in computing book per share amounts..... 15,000,000 19,001,548

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(1) WNI has never declared a cash dividend on any of its securities.

(2) Book value per share is computed by dividing total shareholders' equity by the number of WNI Common Shares outstanding at the end of the period. Book value per share does not reflect the exercise of outstanding WNI Options.

There is not currently, nor has there ever been, a public trading market for any class of WNI securities.

INFORMATION ABOUT MICROSOFT

Description of Microsoft's Business

Microsoft was founded as a partnership in 1975 and incorporated in 1981. Microsoft develops, manufactures, licenses, sells, and supports a wide range of software products, including operating systems for personal computers ("PCs") and servers; server applications for client/server environments; business and consumer productivity applications; software development tools; and Internet and intranet software and technologies. It has recently expanded its interactive content efforts, including MSN(TM), the Microsoft Network online service, various Internet-based services, and entertainment and information software programs. Microsoft also sells personal computer books and input devices and researches and develops advanced technologies for future software products. Microsoft(R) products are available for most 16-bit and 32-bit microprocessor-based PCs, including PCs from AST Research, Acer, Apple, Compaq, Dell, Digital Equipment Corporation, Fujitsu, Gateway 2000, Hewlett-Packard, International Business Machines, NEC, Olivetti, Packard Bell, Siemens, Toshiba, and Vobis. Microsoft develops most of its software products internally. Microsoft's business strategy emphasizes the development of a broad line of PC and server software products for business and personal use, marketed through multiple channels of distribution. Microsoft classifies its products into two categories: platforms, and applications and content.

Platform products include desktop operating systems, business systems, consumer platforms, Internet platforms, and tools. Desktop operating systems for PCs include Windows(R) 95 and Windows NT(R) Workstation operating systems. Business systems include Windows NT Server operating system and Microsoft BackOffice(TM) suite of Windows NT-based server applications. Consumer platforms products include system software for non-PC devices, integrated software systems for public networks, and software for the creation of content for digital media productions. Microsoft also offers software development tools, Internet browser technology, and other Internet and intranet software products and technologies.

Applications and content products include productivity applications, interactive entertainment and information products, PC input devices, and desktop finance products. Business productivity applications and products are designed for the business, home, school, and small business markets. The primary products are Microsoft Office, an integrated suite of applications including Microsoft Excel spreadsheet, Microsoft Word word processor, and Microsoft PowerPoint(R) presentation graphics program, and Microsoft Office Professional, which includes the foregoing applications plus Microsoft Access(R) database management program. Other productivity applications include Microsoft Schedule+(TM) calendar and scheduling program, Microsoft Outlook(TM) desktop manager, Microsoft Publisher desktop publishing program, Microsoft Project critical path project scheduling program, and Microsoft FrontPage(TM) Web authoring and management tool for Internet and intranet sites. Interactive products include children's titles, games, information products, and MSN. PC input devices include Microsoft Mouse, Microsoft Natural(R) Keyboard, gamepads and joysticks. The primary desktop finance product is Microsoft Money.

To further its efforts in developing interactive content, Microsoft and the National Broadcasting Company (NBC) recently established two joint ventures: a 24-hour cable news and information channel, MSNBC Cable LLC, and an interactive online news and information service, MSNBC Interactive News LLC.

Microsoft's sales and support operation builds long-term business relationships with three primary customer types: original equipment manufacturers ("OEMs"), end-users, and organizations. Microsoft manages the channels that serve customers by working with OEMs, distributors, and resellers. Microsoft also focuses directly on large enterprises, offering tailored license programs, enterprisewide support, consulting services, and other specialized services. In addition to the OEM channel, Microsoft has three major geographic sales organizations: U.S. and Canada, Europe, and Other International. Microsoft supports its products with technical support for end-users, developers, and organizations.

Selected Financial Data of Microsoft

The following table sets forth certain selected financial data for Microsoft as of and for each of the five fiscal years in the period ended June 30, 1996, which was derived from Microsoft's financial statements and notes thereto. The financial statements as of and for each of the three years in the period ended June 30, 1996, have been audited by Deloitte & Touche LLP, Microsoft's independent auditors, as stated in their report which is incorporated by reference herein. The table also sets forth certain selected financial data for Microsoft as of December 31, 1996, and for the six months ended December 31, 1996 and 1995, which was derived from unaudited financial statements of Microsoft, which, in the opinion of Microsoft, include all adjustments necessary for the fair presentation of Microsoft's financial position and results of operation for such periods, and may not be indicative of the results of operations for a full year. All per share data below reflects the two-for-one split of Microsoft Common Shares effective November 22, 1996.

	YEAR ENDED JUNE 30,					SIX MONTHS ENDED DECEMBER 31,	
	1992	1993	1994	1995	1996	1995	1996
	(IN MILLIONS, EXCEPT PER SHARE AND PERCENTAGE DATA)						
INCOME STATEMENT DATA:							
Net revenues	$2,759	$3,753	$4,649	$5,937	$ 8,671	$4,211	$ 4,975
Net income	708	953	1,146	1,453	2,195	1,074	1,355
Earnings per share	0.60	0.79	0.94	1.16	1.71	0.84	1.04
Return on net revenues	25.7%	25.4%	24.7%	24.5%	25.3%	25.5%	27.2%

	JUNE 30,					DECEMBER 31,
	1992	1993	1994	1995	1996	1996
	(IN MILLIONS, EXCEPT PER SHARE DATA)					
BALANCE SHEET DATA:						
Cash and short-term investments	$1,345	$2,290	$3,614	$4,750	$ 6,940	$ 9,160
Total assets	2,640	3,805	5,363	7,210	10,093	12,786
Stockholders' equity	2,193	3,242	4,450	5,333	6,908	9,642
Historical book value per share					5.79	8.05
Shares used in computing book value per share					1,194	1,198

Market Price Data

The following table sets forth the high and low sales prices of Microsoft Common Shares, which are traded as "National Market Securities" on the Nasdaq Stock Market under the symbol MSFT, for the periods indicated. Such prices reflect the two-for-one split of Microsoft Common Shares effective November 22, 1996.

	HIGH	LOW
First fiscal quarter ended September 30, 1996	$ 69.31	$ 53.75
Second fiscal quarter ended December 31, 1996	86.125	65.438
Third fiscal quarter ended March 31, 1997	103.50	80.75
Fourth fiscal quarter through , 1997		

See Microsoft's Annual Report on Form 10-K for the year ended June 30, 1996 incorporated herein by reference for sales prices for Microsoft Common Shares for prior quarters.

On April 4, 1997, the last full trading day before announcement of the Recapitalization, the closing price of a Microsoft Common Share was $94.1875. As of , 1997, the most recent practicable date prior to the printing of this Proxy Statement/Prospectus, the closing price of a Microsoft Common Share was $. Microsoft has not in the past paid dividends on its Common Shares.

CONSEQUENCES OF HOLDER'S FAILURE TO GIVE TIMELY NOTICE PRIOR TO EXPIRATION OF HOLDER'S EXCHANGE RIGHTS

The Exchangeable Shares will be exchangeable into Microsoft Common Shares for a period of four years and three months following the Effective Time of the Recapitalization. If a holder fails to make a timely exchange election by written notice prior to the expiration of this period, such holder will not be able to exchange such shares. Although Microsoft will have the right to acquire all of the Exchangeable Shares during the period commencing five years and six months after the Effective Time and ending six years after the Effective Time, there can be no assurance that Microsoft will exercise its call right and, therefore, if a holder fails to make such election, such shareholder will be a minority shareholder in a nonpublic corporation with little ability to control such corporation. In addition, such shareholder will have difficulty disposing of his or her shares.

ABSENCE OF PUBLIC MARKET FOR EXCHANGEABLE SHARES

The Exchangeable Shares are new securities for which there is not currently, and will likely never be, a trading market. WNI does not intend to apply for listing of the Exchangeable Shares on any securities exchange or for the inclusion of the Exchangeable Shares in any automated quotation system. Initially, there will be fewer than 200 holders of record of the Exchangeable Shares. This number will be reduced to the extent that holders of vested WNI Common Shares elect to receive cash and to the extent that recipients of the Exchangeable Shares elect to exchange such shares for Microsoft Common Shares. Neither Microsoft nor WNI has been advised by anyone of an intent to make a market in the Exchangeable Shares and, given the nature of the Exchangeable Shares, such a market likely will not develop. Accordingly, a holder who continues to hold the Exchangeable Shares after the 51-month exchange period is subject to the risk, if Microsoft does not exercise its Class Call Right, that such holder will not obtain liquidity for the Exchangeable Shares at any point.

RIGHT OF MICROSOFT TO CALL ALL EXCHANGEABLE SHARES

During the period commencing five years and six months after the Effective Time and ending six years after the Effective Time, Microsoft shall have the right to acquire all, but not less than all, outstanding Exchangeable Shares solely for Microsoft Common Shares. If Microsoft exercises this Class Call Right, holders of Exchangeable Shares who did not elect to exchange such shares for Microsoft Common Shares during the exchange period would, nevertheless, become Microsoft shareholders and would cease to be WNI shareholders. Microsoft, however, is under no obligation to exercise such call right.

EFFECTS OF BANKRUPTCY OF WNI FOLLOWING THE RECAPITALIZATION

Because WNI will hold Microsoft Common Shares and cash that may be issuable upon exchange of Exchangeable Shares as its own corporate assets, in the event WNI declares bankruptcy or its assets otherwise become subject to creditor claims, the holders of Exchangeable Shares may be at risk of not receiving the Microsoft Common Shares and/or cash for which their Exchangeable Shares may be exchangeable. To address this risk, WNI has entered into a Make-Well Agreement with Microsoft pursuant to which Microsoft agrees to use commercially reasonable efforts to preserve WNI and its assets sufficiently to enable it to satisfy any required exchanges of Microsoft Common Shares or cash for Exchangeable Shares. See "Proposal I--The Recapitalization and Related Transactions--Rights and Preferences of Exchangeable Shares."

TAX CONSEQUENCES OF EXCHANGE OF WNI COMMON SHARES FOR EXCHANGEABLE SHARES

It is a condition to the obligations of Microsoft and WNI to consummate the Recapitalization that each receive an opinion from its legal counsel that it is more likely than not that the Recapitalization constitutes a "reorganization" within the meaning of Section 368(a)(1)(E) of the Code. If the Recapitalization does constitute

a reorganization, a WNI shareholder who exchanges WNI Common Shares solely for Exchangeable Shares in the Recapitalization will recognize no gain or loss with respect to the receipt of such Exchangeable Shares.

WNI shareholders should note that an opinion of counsel represents only such counsel's best legal judgment, is not binding on the Internal Revenue Service ("IRS") or a court, and no assurance can be given that the IRS or a court will not adopt a contrary position. Neither WNI nor Microsoft has requested or will request a ruling from the IRS with respect to any of the tax consequences of the Recapitalization. In addition, the Recapitalization involves a unique transaction structure that has not been the subject of a decision or ruling by the courts or the IRS, which may increase the risk that the Recapitalization would be determined not to be a reorganization. If the Recapitalization is treated as a taxable transaction by the IRS or the courts, the exchange of WNI Common Shares for Exchangeable Shares would cause holders of WNI Common Shares to recognize gain or loss equal to the excess of the fair market value of the Exchangeable Shares received in the Recapitalization over the tax basis of the WNI Common Shares exchanged therefor. See "Proposal I--The Recapitalization and Related Transactions--Certain U.S. Federal Income Tax Matters." Whether or not the Recapitalization constitutes a reorganization within the meaning of Section 368(a)(1)(E) of the Code, WNI shareholders who exchange WNI shares for cash will recognize gain or loss equal to the excess of the cash proceeds received over the tax basis of the shares exchanged therefor. WNI shareholders should consult their own tax advisors with respect to the tax consequences to them of the Recapitalization.

RISKS AND UNCERTAINTIES REGARDING FORWARD-LOOKING STATEMENTS

This Prospectus/Proxy Statement contains and incorporates certain statements with respect to Microsoft which may be viewed as forward-looking statements that involve risks and uncertainties. These forward-looking statements, such as the information contained in Microsoft's Annual Report to Shareholders for the year ended June 30, 1996 (the "Annual Report") under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operations," represent known trends and uncertainties; actual events or results may differ materially as a result of risks facing Microsoft. Some of these risks are discussed in the "Outlook: Issues and Uncertainties" section of "Management's Discussion and Analysis of Financial Condition and Results of Operations" in the Annual Report beginning at page 22 thereof and include rapid technological change, changes in personal computer shipment levels, software pricing changes, delays in new-product releases, lack of customer acceptance of new products, market saturation, slower growth rates, changes in product and distribution mix, and difficulties in defending and securing intellectual property rights for Microsoft's products.

EFFECTS OF NON-CONSUMMATION OF THE RECAPITALIZATION ON WNI

The Recapitalization Agreement contains a number of conditions precedent to the Recapitalization, including the receipt of all required government approvals, the absence of any legal restraints on consummation of the transaction, the receipt of the approval of the shareholders of WNI, the effectiveness of the Registration Statement of which this Proxy Statement/Prospectus is a part, the continuing accuracy of representations and warranties and the performance of covenants, the employment of WNI developers and the execution of certain ancillary agreements. The failure of any such conditions could result in the Recapitalization not being consummated. During the pendency of the Recapitalization, WNI expects to conduct its business in a manner different from the manner in which it would conduct its business in the absence of the Recapitalization. Should the Recapitalization not be consummated, actions taken, or not taken, by WNI during the pendency of the transaction could have a material adverse effect on WNI's ability to operate as an independent entity if the Recapitalization is not consummated. For example, WNI currently has strategic relationships with a number of companies. No assurance can be given that the announcement of the Recapitalization will not adversely effect some or all of these strategic relationships or that any of these strategic relationship would continue if the Recapitalization is not consummated. Although the Recapitalization Agreement provides for payments by Microsoft to WNI if the Recapitalization is not consummated under certain circumstances, such payments will not be available in all cases, and, even if available, may not be sufficient to cover the damage experienced by WNI or the cost and expense incurred in connection with the contemplated transaction, including financial advisory and legal fees, printing expenses, filing fees and other related costs.

THE WNI SPECIAL MEETING OF SHAREHOLDERS

DATE, TIME AND PLACE OF MEETING

The Special Meeting will be held at the principal executive offices of WNI, 305 Lytton Avenue, Palo Alto, California, on , 1997, at local time.

RECORD DATE AND OUTSTANDING SHARES

The record date for determining shareholders of WNI entitled to notice of and to vote at the Special Meeting is , 1997 (the "WNI Record Date"). On the WNI Record Date there were approximately WNI Common Shares, Series A Shares, Series B Shares, Series C Shares and Series D Shares outstanding, held by approximately holders of record. Each WNI Common Share and WNI Preferred Share entitles the holders thereof to one vote upon all matters submitted to a vote of shareholders, except that the Series A Shares have 1.1 votes per Series A Share outstanding and entitled to vote. The presence at the Special Meeting in person or by proxy of a majority of the outstanding WNI Common Shares and WNI Preferred Shares constitutes a quorum.

VOTING OF PROXIES

All properly executed proxies given by holders of WNI Common Shares or WNI Preferred Shares that are not revoked will be voted at the Special Meeting, and at any postponements or adjournments thereof, in accordance with the instructions contained therein. Proxies containing no instructions regarding the proposals specified in the proxy will be voted in favor of the Recapitalization and in favor of the employee compensation matters described in this Proxy Statement/Prospectus. If any other matters are properly brought before the Special Meeting, all proxies will be voted in accordance with the judgment of the persons appointed in the proxies. The Special Meeting may be adjourned, and additional proxies solicited, if the vote necessary to approve a proposal has not been obtained. Any adjournment of the Special Meeting will require the affirmative vote of the holders of at least a majority of shares represented, whether in person or by proxy, at the Special Meeting (regardless of whether those shares constitute a quorum).

A WNI shareholder who has executed and returned a proxy may revoke such proxy at any time before it is voted at the Special Meeting by executing and returning a proxy bearing a later date, by filing a written notice of such revocation with the Secretary of WNI which states that such proxy is revoked, or by attending the Special Meeting and voting in person. Attendance at the Special Meeting, in and of itself, will not constitute a revocation of a proxy.

VOTE REQUIRED AND VOTING INTENTIONS OF CERTAIN SHAREHOLDERS

Approval of the Recapitalization requires the affirmative vote of the holders of a majority of the outstanding WNI Common Shares and WNI Preferred Shares, voting together as a single class, the approval of a majority of the outstanding WNI Common Shares and a majority of the outstanding WNI Preferred Shares, each voting as a single class, and the approval of the holders of a majority of the outstanding Series A Shares, Series B Shares and Series D Shares, voting together as a single class. Approval of the employee and consultant compensation matters described elsewhere in this Proxy Statement/Prospectus requires the affirmative vote of the holders of more than 75% of the eligible outstanding WNI Common Shares and WNI Preferred Shares, determined pursuant to Section 280G of the Code, voting together as a class on an as-converted basis. The determination of whether such 75% approval requirement is met with respect to a payment shall be made disregarding WNI Common Shares and WNI Preferred Shares owned (actually or constructively) by a recipient of such payment. Such shareholder vote on employee and consultant compensation matters must, in each case, determine the right of the recipient to receive (or in the case of a payment previously made, retain) such payment.

Stephen G. Perlman, Phillip Y. Goldman and Bruce A. Leak, WNI's President and Chief Executive Officer, Senior Vice President, Engineering, and Chief Operating Officer, respectively (collectively, the "Principal

Shareholders"), the holders of the aggregate of 15,000,000 WNI Common Shares, 45% of the combined WNI Common Shares and WNI Preferred Shares, have agreed to vote their shares in favor of the Recapitalization and against the approval of any proposal made in opposition to or in competition with the consummation of the Recapitalization. See "Principal Shareholders of WNI."

Votes cast by proxy or in person at the Special Meeting will be tabulated by the inspector of election appointed for the meeting and will determine whether or not a quorum is present. The inspector of election will treat abstentions as shares that are present and entitled to vote for purposes of determining the presence of a quorum, and such abstentions will have the effect of a vote against the Recapitalization and a vote against the employee and consultant compensation matters described elsewhere in this Proxy Statement/Prospectus.

SOLICITATION OF PROXIES AND EXPENSES

WNI will bear the costs of solicitations of proxies from its shareholders. Microsoft will bear the cost of printing and filing this Proxy Statement/Prospectus and the registration statement of which it is a part unless the Recapitalization is not completed for certain reasons, in which case such expenses will be divided equally between Microsoft and WNI. In addition to solicitation by mail, the directors, officers and employees of WNI and shareholders of WNI may solicit proxies from other shareholders of WNI by telephone, telegram or letter or in person for no additional compensation. Nominees, fiduciaries and other custodians have been requested by WNI to forward proxy solicitation materials to the beneficial owners of WNI Common Shares and WNI Preferred Shares held of record by such custodians. Such custodians will be reimbursed by WNI for their expenses.

DISSENTERS' RIGHTS

General

The shares of any holder of WNI Shares who has demanded and perfected dissenters' rights for such shares in accordance with the CGCL and who, as of the Effective Time, has not effectively withdrawn or lost such dissenters' rights (as further defined below, "Dissenting Shares") shall not be converted into or represent a right to receive the consideration to be received by such holder in the Recapitalization, but rather the holder thereof shall only be entitled to such rights as are granted by California Law.

Notwithstanding the foregoing, if any holder of WNI Shares who has exercised dissenters' rights under California Law shall effectively withdraw or lose (through failure to perfect or otherwise) such right, then, as of the later of the Effective Time or the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive the consideration to be received by such holder in the Recapitalization, upon surrender of the certificate representing such WNI Shares in the manner provided in the Recapitalization Agreement (or in the case of a lost, stolen or destroyed certificate, upon delivery of an affidavit (and bond, if required)).

WNI shall give Microsoft (i) prompt notice of any written demands for appraisal of any WNI Shares, withdrawals of such demands, and any other instruments served pursuant to California Law and received by WNI which relate to any such demand for appraisal and (ii) the opportunity to participate in all negotiations and proceedings which take place prior to the Effective Time with respect to demands for appraisal under California Law. WNI shall not, except with the prior written consent of Microsoft or as may be required by applicable law, voluntarily make any payment with respect to any demands for appraisal of WNI Shares or offer to settle or settle any such demands. Any payments made in respect of Dissenting Shares shall be made by WNI.

"Dissenting Shares" means shares of WNI Shares with respect to which the holder thereof has perfected such holder's right that WNI purchase the holder's shares in accordance with Chapter 13 ("Chapter 13") of the

CGCL and with respect to which the holder thereof has not effectively withdrawn or lost such rights. "WNI Dissenting Shareholder," as that term is used in this Proxy Statement/Prospectus, means a WNI shareholder of record as of , 1997, who wishes to exercise dissenters' rights, or such holder's duly appointed representative, or a transferee of record of a holder of Dissenting Shares.

A shareholder who wishes to exercise dissenters' rights must not vote in favor of the Recapitalization Agreement and the Recapitalization at the Special Meeting. However, failure to vote in favor of the Recapitalization will not, in and of itself, be sufficient notice of such shareholder's intention to dissent. Rather, any shareholder wishing to exercise dissenters' rights must comply with the procedures described below.

Required Procedures Under Chapter 13

A summary of the material provisions of Chapter 13 is provided below. Reference is made to the full text of Chapter 13, a copy of which is attached to this Proxy Statement/Prospectus as Appendix C and is incorporated herein by reference. Shareholders of WNI are urged to read carefully the full text of Chapter 13 contained in Appendix C.

If the Recapitalization is approved by the required vote of WNI's shareholders and is not abandoned or terminated, each holder of WNI Shares who does not vote in favor of the Recapitalization and who follows the procedures set forth in Chapter 13 will be entitled to have such holder's WNI Shares purchased by WNI for cash at their fair market value. The fair market value of WNI Shares will be determined as of the day before the first announcement of the terms of the Recapitalization, excluding any appreciation or depreciation in consequence of the Recapitalization, but adjusted for any share split, reverse share split, or share dividend that becomes effective thereafter. The determination of fair market value will be made by agreement between WNI and any dissenting shareholder, or in the event agreement cannot be reached, by the Superior Court of Santa Clara County, California (the "Court").

If the Court is to determine the fair market value, the Court may do so itself or may appoint one or more appraisers. If the Court appoints appraisers, each appraiser will submit a report to the Court, which the Court will consider, but is not bound to accept in making a final determination of the fair market value. The CGCL does not specify the criteria and other considerations that the Court may employ in determining fair market value, and California courts generally have interpreted such term to mean the price at which a willing and fully informed buyer and seller would trade the stock under existing conditions. The Court may employ certain methods of valuation, such as liquidation value or asset value, to the extent that they provide evidence as to fair market value, although they are not substitutes for fair market value.

Within ten (10) days after approval of the Recapitalization by WNI shareholders, WNI must mail a notice of such approval (the "Approval Notice") to all WNI shareholders who did not vote in favor of the Recapitalization, together with a statement of the price determined by WNI to represent the fair market value of a Dissenting Share, a brief description of the procedures to be followed in order to pursue dissenters' rights, and a copy of Sections 1300 through 1304 of the CGCL. The statement of price made in the Approval Notice will constitute an offer by WNI to purchase all Dissenting Shares at the stated amount, unless such shares lose their status as Dissenting Shares as described below.

A WNI Dissenting Shareholder must make a written demand upon WNI for the purchase of such holder's Dissenting Shares and for payment to the WNI Dissenting Shareholder in cash of the fair market value of such shares. The written demand must state the number and class of the WNI Shares held of record by the WNI Dissenting Shareholder that the WNI Dissenting Shareholder demands that WNI purchase and must contain a statement of what such WNI Dissenting Shareholder claims to be the fair market value of those shares as of the day before the announcement of the Recapitalization. The statement of fair market value will constitute an offer by the WNI Dissenting Shareholder to sell the shares to WNI at such price. The written demand should also specify the WNI Dissenting Shareholder's name and mailing address. In order for such demand to be effective, it must be received by WNI no later than the day of the approval of the Recapitalization by the WNI

shareholders. Within thirty (30) days after the date of which the Approval Notice is mailed to the WNI Dissenting Shareholder, the WNI Dissenting Shareholder must also submit to WNI the certificate(s) representing such holder's WNI Dissenting Share for endorsement as a WNI Dissenting Share. The written demand and certificate(s) representing the Dissenting Shares should be delivered to WNI, 305 Lytton Avenue, Palo Alto, California 94301, Attention: Secretary.

If WNI and a WNI Dissenting Shareholder agree that the WNI Dissenting Shareholder's shares are Dissenting Shares and agree upon the price of such shares, the WNI Dissenting Shareholder will be entitled to the agreed price with interest thereon at the legal rate on judgments from the date of such agreement. Payment for such Dissenting Shares must be made within thirty (30) days after the later of the date of such agreement or the date on which all statutory and contractual conditions to the Recapitalization are satisfied, and is subject to the surrender by the WNI Dissenting Shareholder of the certificate(s) representing the Dissenting Shares.

If WNI denies that a WNI Dissenting Shareholder's shares qualify as Dissenting Shares, or if WNI and a WNI Dissenting Shareholder fail to agree upon the fair market value of the Dissenting Shares, then the WNI Dissenting Shareholder may file a complaint in the Court requesting a determination as to whether the shares are Dissenting Shares or as to the fair market value of the WNI Dissenting Shareholder's shares, or both. Such complaint must be filed within six (6) months after the date on which the Approval Notice is mailed to the WNI Dissenting Shareholder. A WNI Dissenting Shareholder may also intervene in any action pending on such a complaint. Two or more WNI Dissenting Shareholders may join as plaintiffs or be joined as defendants in any such action and two or more such actions may be consolidated. The costs of the action, including reasonable compensation to appraisers that may be appointed by the Court, will be assessed or apportioned as the Court considers equitable, and, except in the situation where the appraised value exceeds the price offered by WNI and Chapter 13 would require that WNI pay such expenses, may be apportioned to the WNI Dissenting Shareholders.

If any WNI Dissenting Shareholder who demands the purchase of such holder's WNI Shares fails to perfect, or effectively withdraws or loses the right to such purchase, the WNI Shares of such holder will be converted into the right to receive a number of Exchangeable Shares of Microsoft Common Shares equal to the Exchange Ratio or cash, as applicable, in accordance with the Recapitalization Agreement. Dissenting Shares lose their status as Dissenting Shares if (i) the Recapitalization is abandoned; (ii) the shares are transferred prior to their submission for the required endorsement; (iii) the WNI Dissenting Shareholder and WNI do not agree upon the status of the WNI Dissenting Shareholder's shares as Dissenting Shares or do not agree on the purchase price, but neither the WNI Dissenting Shareholder nor WNI files a complaint or intervenes in a pending motion within six (6) months after the Approval Notice is mailed to the WNI Dissenting Shareholder; or (iv) the WNI Dissenting Shareholder, with WNI's consent, withdraws the demand that WNI purchase such holder's Dissenting Shares.

PROPOSAL I--THE RECAPITALIZATION AND RELATED TRANSACTIONS

BACKGROUND OF RECAPITALIZATION; MATERIAL CONTACTS AND DELIBERATIONS

On September 13, 1996, Microsoft purchased 702,939 Series C Shares of WNI. In connection with such purchase, Microsoft and WNI entered into a Memorandum of Understanding relating to possible technology sharing and licensing arrangements between the companies.

From mid-September 1996 until the end of January 1997, Microsoft and WNI personnel conducted discussions relating to such technology sharing and licensing arrangements.

On February 3, 1997, Craig Mundie, Microsoft's Senior Vice President, Consumer Platforms Division, Gregory B. Maffei, Microsoft's Vice President, Corporate Development; Treasurer, and other Microsoft personnel met with Stephen G. Perlman, WNI's President and Chief Executive Officer, and other WNI personnel at Microsoft's Redmond, Washington headquarters to discuss such technology sharing and licensing arrangements.

On February 17, 1997, Messrs. Mundie, Maffei and Perlman and their respective staff members met at WNI's headquarters to continue the discussions regarding such technology sharing and licensing arrangements. Prior to the commencement of such discussions, Mr. Mundie discussed with Mr. Perlman the possibility of a business combination between the two companies. During the following week, Messrs. Mundie and Perlman and other Microsoft and WNI personnel continued such discussions.

On February 20, 1997, the Company engaged DMG to act as its financial advisor in connection with the proposed transaction.

On February 21, 1997, the WNI Board of Directors, together with representatives of DMG and Venture Law Group met to consider, among other things, the proposed business combination with Microsoft.

On February 23, 1997, William Gates, Microsoft's Chairman and Chief Executive Officer, Mr. Mundie and Mr. Maffei met with Mr. Perlman and WNI's executive officers at WNI's headquarters to discuss, among other things, WNI's history, business model, technology and products.

On February 25, 1997, Microsoft and WNI entered into a Non-Disclosure Agreement which superseded an earlier agreement between the companies.

On February 28, 1997, Mr. Maffei communicated an offer to acquire WNI to Albert Pimentel, WNI's Chief Financial Officer, representatives of DMG and representatives of Venture Law Group. After consideration, WNI declined such offer.

During the week of March 3, 1997, representatives of Microsoft, Preston Gates & Ellis, WNI, DMG and Venture Law Group continued negotiations regarding a business combination between the two companies. During such period, due diligence meetings relating to WNI's technology, products and business were also held. Among other contacts, on March 7, 1997, Robert Herbold, Microsoft's Chief Operating Officer, and Paul A. Maritz, Microsoft's Group Vice President, Platforms, held discussions with William Herman, WNI's Vice President of Marketing, and other WNI personnel. On March 4, 1997, technical teams from both companies met in Palo Alto, California, and, later that week, representatives of the Microsoft Network ("MSN") met with WNI's executive officers at WNI's headquarters.

On March 13, 1997, Microsoft's Board of Directors met to consider the proposed business combination, and authorized Microsoft management to continue discussions and to consummate a combination within certain parameters. On March 14, 1997, Mr. Maffei communicated a revised offer to acquire WNI to representatives of WNI, DMG and Venture Law Group. On March 17, following a meeting of its Board of Directors, WNI declined Microsoft's revised offer.

During the week of March 24, 1997, representatives of Microsoft, Preston Gates & Ellis, WNI, DMG and Venture Law Group continued negotiations regarding a business combination between the companies.

On March 30, 1997, Mr. Gates and Mr. Perlman discussed WNI's technology, products and business as well as terms of the proposed business combination.

On March 31, 1997, the WNI Board met again to consider the proposed transaction. After this meeting, representatives of WNI, DMG and Venture Law Group presented a counteroffer to Mr. Maffei. Later that day, Mr. Maffei responded to such counteroffer and a tentative agreement was reached with respect to the principal terms of the transaction, subject to agreement on definitive documentation.

From March 31, 1997 to April 5, 1997, representatives of Microsoft, Preston Gates & Ellis, WNI, DMG and Venture Law Group negotiated the final terms of the transaction.

At a meeting on April 5, 1997, after presentations from DMG and Venture Law Group, the Board of Directors of WNI approved the proposed business combination. The parties executed the Recapitalization Agreement the next morning.

On April 6, 1997, the parties announced the transaction at the National Association of Broadcasters meeting in Las Vegas, Nevada, and contemporaneously issued a joint press release.

WNI'S REASONS FOR THE RECAPITALIZATION

The Board of Directors of WNI has determined that the terms of the Recapitalization Agreement and the transactions contemplated thereby are fair to, and in the best interests of, WNI and its shareholders. Accordingly, the Board of Directors of WNI has unanimously approved the Recapitalization Agreement and unanimously recommends that the shareholders of WNI vote FOR approval and adoption of the Recapitalization Agreement. In reaching its determination, the Board of Directors of WNI has identified certain potential benefits for the WNI shareholders that it believes will contribute to the success of WNI following consummation of the Recapitalization. These potential benefits include principally the following:

- The association with Microsoft will make available to WNI greater resources for product development, marketing and distribution.

- The Recapitalization offers WNI shareholders an opportunity for liquidity at a valuation deemed fair by the WNI Board of Directors and its financial advisor.

- The Recapitalization has been structured with a view toward (i) providing the holders of WNI Preferred Shares with a cash payment in an amount that represents a substantial return on their original investment in WNI, and (ii) providing the holders of WNI Common Shares with either (a) a cash payment in an amount that represents a substantial return on their original investment in WNI or (b) Exchangeable Shares that are exchangeable for Microsoft Common Shares (or cash) with a current market price that would represent a substantial premium over their original investment in WNI.

- The association with Microsoft will permit WNI and Microsoft to share technology to improve each other's products and develop new products and services.

- WNI and Microsoft in association following the Recapitalization will be better positioned than WNI alone to adapt to, and benefit from, rapidly changing technologies and to develop products based on such technologies.

- The association with Microsoft will afford WNI the opportunity to reduce its exposure to the difficulties in competing against larger companies with more diversified product lines and greater financial resources than WNI.

- The management team of WNI and Microsoft in association following the Recapitalization will have greater experience and depth than that of WNI alone.

- The association with Microsoft will permit the WNI management to focus its efforts on the development and marketing of WNI products rather than the time-consuming process of securing additional financing to fund WNI's substantial continuing capital needs.

The WNI Board considered a number of factors relating to the Recapitalization, including, but not limited to, the following: (i) historical information concerning Microsoft's and WNI's respective businesses, prospects, financial performance and condition, operations, technology, management and competitive position; (ii) the financial condition, results of operations and businesses of Microsoft and WNI before and after giving effect to the Recapitalization and the combination of their respective businesses; (iii) current financial market conditions for companies in the Internet television and related business and capital raising in connection with such businesses; (iv) historical market prices, volatility and trading information with respect to the Microsoft Common Shares; (v) the reasonableness of the terms of the Recapitalization Agreement; (vi) the prospects of WNI as an independent company; (vii) the potential for other third parties to enter into strategic relationships with WNI prior to and after consummation of the Recapitalization; (viii) the financial analysis and other financial information with respect to the recapitalization presented by DMG to the Board of Directors of WNI, including DMG's opinion that, as of such date, the consideration to be paid to the holders of WNI Common Shares and the consideration to be paid to the holders of WNI Preferred Shares pursuant to the Recapitalization Agreement

were fair from a financial point of view to the holders of WNI Common Shares and the holders of WNI Preferred Shares, respectively; (ix) the impact of the Recapitalization and the combination with Microsoft on WNI's customers and employees; and (x) reports from management and legal advisors on specific terms of the relevant agreements and other factors.

The WNI Board also identified and considered a variety of potentially negative factors in its deliberations concerning the Recapitalization, including, but not limited to: (i) the risk that the potential benefits sought in the Recapitalization and the combination with Microsoft might not be fully realized if at all; (ii) the possibility that the Recapitalization might not be consummated; (iii) the risk that despite the efforts of WNI following the Recapitalization, key technical and management personnel might not remain employed by WNI; (iv) the effect of public announcement of the Recapitalization and the proposed combination with Microsoft on (a) WNI's sales and operating results, (b) WNI's relationships with third parties, including developers, original equipment manufacturers ("OEMs") and distributors and (c) WNI's ability to attract and retain key management, marketing and technical personnel; and (v) the risk that the Recapitalization might not be consummated and the resulting effects on WNI.

In view of the wide variety of factors considered by the WNI Board, it did not find it practicable to quantify, or otherwise attempt to assign relative weights to, the specific factors considered in making its determination. Consequently, the WNI Board did not quantify the assumptions and results of its analysis in making its determination that the Recapitalization is fair to, and in the best interests of, WNI and its shareholders.

WNI BOARD RECOMMENDATION

THE BOARD OF DIRECTORS OF WNI HAS DETERMINED THAT THE RECAPITALIZATION IS IN THE BEST INTERESTS OF WNI AND ITS SHAREHOLDERS AND UNANIMOUSLY RECOMMENDS A VOTE FOR APPROVAL AND ADOPTION OF THE RECAPITALIZATION AGREEMENT AND THE RECAPITALIZATION.

OPINION OF FINANCIAL ADVISOR

WNI retained Deutsche Morgan Grenfell Inc. ("DMG") to act as its financial advisor in connection with the Recapitalization. DMG was selected by WNI's Board of Directors based on DMG's qualifications, expertise and reputation as well as DMG's investment banking relationship and familiarity with WNI.

At the meeting of the WNI Board of Directors on April 5, 1997, DMG rendered its oral opinion, subsequently confirmed in writing (the "Opinion"), that, as of such date, based upon and subject to the various considerations set forth in the Opinion, the consideration to be paid to the holders of WNI Common Shares and the consideration to be paid to the holders of WNI Preferred Shares were fair from a financial point of view to the holders of WNI Common Shares and WNI Preferred Shares, respectively

THE FULL TEXT OF THE WRITTEN OPINION OF DMG DATED APRIL 5, 1997, WHICH SETS FORTH, AMONG OTHER THINGS, ASSUMPTIONS MADE, PROCEDURES FOLLOWED, MATTERS CONSIDERED, AND LIMITATIONS ON THE SCOPE OF THE REVIEW UNDERTAKEN BY DMG IN RENDERING ITS OPINION, IS ATTACHED AS APPENDIX B TO THIS PROXY STATEMENT/PROSPECTUS. HOLDERS OF WNI COMMON SHARES AND WNI PREFERRED SHARES ARE URGED TO READ THE OPINION CAREFULLY AND IN ITS ENTIRETY. DMG DID NOT RECOMMEND TO WNI THAT ANY SPECIFIC VALUE CONSTITUTED THE ONLY APPROPRIATE VALUE IN THE RECAPITALIZATION. DMG'S OPINION ADDRESSES ONLY THE FAIRNESS OF THE CONSIDERATION FROM A FINANCIAL POINT OF VIEW TO THE HOLDERS OF WNI COMMON SHARES AND WNI PREFERRED SHARES AS OF THE DATE OF THE OPINION, AND DOES NOT CONSTITUTE A RECOMMENDATION TO ANY HOLDER OF WNI COMMON SHARES OR WNI PREFERRED SHARES OR AS TO HOW SUCH HOLDER SHOULD VOTE AT THE SPECIAL MEETING. THE SUMMARY OF THE OPINION OF DMG SET FORTH IN THIS PROXY STATEMENT/PROSPECTUS IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF SUCH OPINION.

In rendering its opinion, DMG, among other things: (i) analyzed certain publicly available financial statements and other information of Microsoft; (ii) analyzed certain internal financial statements and other financial and operating data concerning WNI prepared by the management of WNI; (iii) analyzed certain

financial projections relating to WNI prepared by the managements of WNI and Microsoft; (iv) discussed the past and current operations and financial condition and the prospects of WNI with senior executives of WNI and Microsoft; (v) compared the financial performance of WNI with that of certain publicly-traded companies which DMG deemed to be relevant; (vi) reviewed the reported prices and trading activity for the Microsoft Common Shares; (vii); compared the financial performance of Microsoft and the prices and trading activity of the Microsoft Common Shares with that of certain other publicly-traded companies which DMG deemed to be relevant and their securities; (viii) reviewed the financial terms, to the extent publicly available, of certain merger and acquisition transactions which DMG deemed to be relevant; (ix) participated in discussions and negotiations among representatives of WNI and Microsoft and their respective legal advisors; (x) reviewed the Agreement and certain related agreements; and (xi) performed such other analyses and considered such other factors as DMG deemed appropriate.

In rendering its Opinion, DMG assumed and relied upon, without independent verification, the accuracy and completeness of the information reviewed by it for the purposes of its Opinion. DMG assumed that the financial projections were reasonably prepared on bases reflecting the best currently available estimates and judgments of the future financial performance of WNI. DMG did not make any independent valuation or appraisal of the assets, liabilities or technology of WNI or Microsoft, respectively, and was not furnished with any such appraisals. DMG's Opinion states that it is necessarily based on economic, market and other conditions in effect on, and the information made available to DMG as of, the date of the Opinion.

The following is a summary of the analysis performed by DMG in preparation of its Opinion letter and reviewed with the Board of Directors of WNI at the meeting held on April 5, 1997. This analysis was provided to the Board of Directors of WNI for background information only and was one of the many factors considered by DMG in rendering its Opinion. No conclusions can be independently drawn from any independent analysis.

Peer Group Comparison: DMG compared certain financial information of WNI and Microsoft with a group of companies involved in the internet service provider and software sectors, including America Online, Inc. ("AOL"), Compuserve Corporation ("Compuserve"), Earthlink Network, Inc. ("Earthlink"), Netscape Communications Corporation ("Netscape"), NETCOM On-Line Communication Services, Inc. ("NETCOM") and C/NET, Inc. ("C/NET") (collectively, the "Comparable Companies"). Such financial information included, among other things, market valuation, stock price as a multiple of earnings per share and aggregate market valuation as a multiple of revenues. The multiples are based on a compilation of publicly available information and earnings forecasts by securities research analysts. In particular, such analysis showed that as of April 3, 1997, Microsoft traded at 37.3 and 30.8 times calendar year 1997 and calendar year 1998 forecasted earnings, respectively, 11.1 times latest twelve months revenue and 8.8 times calendar year 1997 forecasted revenue. DMG also observed that AOL traded at 43.9 times calendar year 1998 forecasted earnings, 3.0 times latest twelve months revenue and 2.0 times calendar year 1997 forecasted revenue; Compuserve traded at 1.2 times latest twelve months revenue and 0.8 times calendar year 1997 forecasted revenue; Earthlink traded at 3.9 times latest twelve months revenue; Netscape traded at 54.9 and 35.3 times calendar year 1997 and calendar year 1998 forecasted earnings, respectively, 6.6 times latest twelve months revenue and 4.2 times calendar year 1997 forecasted revenue; NETCOM traded at 0.1 times latest twelve months revenue and 0.1 times calendar year 1997 forecasted revenue; and C/NET traded at 33.4 times calendar year 1998 forecasted earnings, 17.8 times latest twelve months revenue and 6.7 times calendar year 1997 forecasted revenue.

Comparative Shares Price Performance: As part of its analysis, DMG reviewed the recent stock price performance of Microsoft and compared such performance with that of each of the Comparable Companies. DMG observed that over the period from January 1, 1997 to April 3, 1997, the market price of the Microsoft Common Shares increased 15%, compared with increases of 37% for AOL and 29% for Compuserve, and decreases of 10% for Earthlink, 26% for C/NET, 31% for NETCOM, 48% for Netscape and 6% for the NASDAQ composite. DMG noted that over such period, the Microsoft Common Shares outperformed relative to the common stock of Netscape, C/NET, NETCOM, Earthlink and the NASDAQ composite, respectively, and underperformed relative to the common stock of AOL and Compuserve, respectively.

DMG also reviewed the historical prices of the common stock of AOL and the implied aggregate values per subscriber and the implied multiples of aggregate value to trailing revenues since March 1995 to present. DMG observed that, over such period, the average aggregate value per subscriber and average multiple of aggregate value to trailing revenues were $686 and 2.9 times, respectively.

Present Value IPO Analysis: DMG performed an analysis, assuming that WNI did not effect a transaction involving Microsoft or any other third party, of the theoretical present value of the future value of WNI in the context of an initial public offering by the Company in the United States. Assuming dilution to current holders of WNI stock for additional financings, an initial public offering based on WNI management estimates and a range of discount rates from 20% to 30%, DMG observed the following present values per share of WNI: (i) assuming a range of aggregate values per subscriber of $500 to $700, the analysis resulted in a range of present values of $4 to $7; (ii) assuming a range of forward revenue multiples of 1 to 3 times, the analysis resulted in a range of present values of $5 to $12; and (iii) assuming a range of forward earnings multiples of 20 to 40 times, the analysis resulted in a range of present values of $10 to $13.

Discounted Cash Flow Valuation: DMG also performed discounted cash flow analyses (i.e., an analysis of the present value of the projected unlevered free cash flows and terminal value at the discount rates indicated) of WNI for the years 1997 through 2001. Based on WNI management estimates and a discount rate of 30%, DMG observed the following present values per share of WNI: (i) assuming a range of forward revenue multiples of 1 to 3 times, a range of present values of $10 to $20 and (ii) assuming a range of forward earnings multiples of 20 to 40 times, a range of present values of $10 to $14.

In connection with the review of the Recapitalization by the Board of Directors of WNI, DMG performed a variety of financial and comparative analyses for purposes of its Opinion given in connection therewith. While the foregoing summary describes all material analyses and factors reviewed by DMG with the Board of Directors of WNI, it does not purport to be a complete description of the presentations by DMG to the Board of Directors of WNI or the analyses performed by DMG in arriving at its Opinion. The preparation of a fairness opinion is a complex process and is not necessarily susceptible to partial analysis or summary description. DMG believes that its analyses must be considered as a whole and that selecting portions of its analyses and of the factors considered by DMG, without considering all analyses and factors, could create a misleading view of the processes underlying its Opinion. In addition, DMG may have given various analyses more or less weight than other analyses, and may have deemed various assumptions more or less probable than other assumptions, so that the range of valuation resulting from any particular analysis described above should not be taken to be DMG's view of the actual value of WNI. In performing its analyses, DMG made numerous assumptions with respect to industry performance, general business and economic conditions and other matters, many of which are beyond the control of WNI or Microsoft. The analyses performed by DMG are not necessarily indicative of actual values or actual future results, which may be significantly more or less favorable than suggested by such analyses. In addition, analyses relating to the value of businesses or assets do not purport to be appraisals or to necessarily reflect the prices at which businesses or assets may actually be sold. The analyses performed were prepared solely as part of DMG's analysis of the fairness of the consideration, from a financial point of view, to the holders of WNI Common Shares and WNI Preferred Shares, respectively, and were provided to the Board of Directors of WNI in connection with the delivery of DMG's Opinion.

The Board of Directors of WNI retained DMG to act as WNI's financial advisor in connection with the Recapitalization. DMG was selected by WNI's Board of Directors based on DMG's qualifications, expertise and reputation as well as DMG's investment banking relationship and familiarity with WNI. DMG is an internationally recognized investment banking and advisory firm. DMG, as part of its investment banking business, is continuously engaged in the valuation of businesses and securities in connection with mergers and acquisitions, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for corporate and other purposes. In the ordinary course of DMG's trading and brokerage activities, DMG or its affiliates may at any time hold long or short positions, may trade or otherwise effect transactions, for its own account or for the account of customers, in debt or equity securities of Microsoft.

WNI has agreed to pay DMG a fee for its financial advisory services in connection with the Recapitalization, including, among other things, rendering its Opinion and making the presentation referred to above. Pursuant to a letter agreement between WNI and DMG dated February 20, 1997, WNI has agreed to pay DMG a transaction fee in the event the transaction is consummated equal to 0.8% of the aggregate purchase price paid in the transaction. In addition to the foregoing compensation, WNI has agreed to reimburse DMG for its out-of-pocket expenses incurred in connection with its engagement, and to indemnify DMG and certain related persons against certain liabilities and expenses, including certain liabilities under the federal securities laws, arising out of or in conjunction with its rendering of services under its engagement.

INTERESTS OF CERTAIN PERSONS IN THE RECAPITALIZATION

In considering the recommendation of the Board of Directors of WNI with respect to the Recapitalization, and the employee and consultant compensation matters described elsewhere in this Proxy Statement/Prospectus, shareholders should be aware that certain officers and directors of WNI have interests in connection with the Recapitalization.

If the Recapitalization is consummated, Microsoft intends to appoint Stephen G. Perlman, the current President and Chief Executive Officer of WNI, a Vice President of Microsoft. In connection with the Recapitalization, WNI documented its obligation to pay fees associated with certain patents licensed to WNI by Mr. Perlman.

As a result of the Recapitalization, certain officers of WNI will receive employment agreements, grants of new option and other consideration. In addition, certain employees may receive acceleration of existing options. See "--Related Agreements--Employment and Noncompetition Agreements" and "Proposal II--Option Grants, Option Acceleration and Other Compensatory Matters."

Microsoft has agreed that, after the Effective Time, Microsoft and WNI will indemnify each officer and director of WNI serving as such on the date of the Recapitalization Agreement as provided in the CGCL, WNI's Articles of Incorporation and Bylaws, and existing indemnification agreements between WNI and such officers and directors. Microsoft has also agreed that all rights to indemnification (including advancement of expenses) existing on the date of the Recapitalization Agreement in favor of the present or former officers and directors of WNI with respect to actions taken in their capacities as WNI directors or officers prior to the Effective Time as provided in WNI's Articles of Incorporation or Bylaws and indemnification agreements shall survive the Recapitalization and continue in full force and effect for a period of six years following the Effective Time and the obligations related thereto shall be guaranteed and assumed by Microsoft.

Paul Allen, a director of Microsoft, is the beneficial owner of all of the outstanding capital shares of Vulcan Ventures Inc., which is the record owner of 3,220,582 WNI Preferred Shares. Vulcan Ventures will receive $44,076,885 if the Recapitalization is consummated.

MICROSOFT'S REASONS FOR THE RECAPITALIZATION

The Microsoft Board and its management have determined that the terms of the Recapitalization are fair to, and in the best interests of, Microsoft and its shareholders. The Recapitalization has been approved by a majority of the disinterested directors and is not required to be approved by the shareholders of Microsoft. In reaching their determination, the Microsoft Board and its management have identified the following reasons for entering into the Recapitalization Agreement:

- The managements of Microsoft and WNI share a common vision of the consumer PC and the coming "Digital Television" as complementary "home information appliances" that will provide a broad range of new entertainment and information services.

- WNI has developed and is developing promising technologies that, when enhanced with various Microsoft technologies, will serve as a useful base for building a "home information appliance" business.

- WNI has a strong engineering team and strong management which, in addition to being important for the successful development of the nascent WNI business, also increases Microsoft's presence in the critical employment market of Silicon Valley.

THE RECAPITALIZATION

Effects of Recapitalization

WNI's authorized capital shares, as of April , 1997, consisted of 100,000,000 shares of WNI common stock, without par value ("WNI Common Shares"), and 25,000,000 shares of preferred stock, without par value ("WNI Preferred Shares"), of which the following series had been designated: (a) Series A Convertible Preferred Stock ("Series A Shares"); (b) Series B Convertible Preferred Stock ("Series B Shares"); (c) Series C Convertible Preferred Stock ("Series C Shares"); and (d) Series D Convertible Preferred Stock ("Series D Shares"). WNI Common Shares and WNI Preferred Shares are sometimes referred to collectively as the "WNI Shares." As of April , 1997, WNI had reserved 8,000,000 WNI Common Shares under WNI's 1996 Stock Incentive Plan and granted options for WNI Common Shares under such plan ("WNI Options"). WNI has also issued warrants to purchase Series B Shares and Series C Shares (collectively "WNI Warrants"). See "Description of Capital Shares of WNI."

Pursuant to the Recapitalization, WNI will undergo a reorganization of its capital whereby at the Effective Time of the Recapitalization:

(i) each WNI Common Share, other than vested WNI Common Shares of holders who have perfected their dissenters' rights or have elected to have their shares purchased by Microsoft (see paragraph (iii) below), shall be converted into a number of Exchangeable Shares pursuant to an exchange ratio calculated in the manner described below;

(ii) each WNI Common Share subject to repurchase by WNI (i.e., "unvested shares") pursuant to existing agreements in effect as of the Effective Time of the Recapitalization shall be converted into Exchangeable Shares pursuant to such exchange ratio and registered in the holders' names and held by WNI following the Recapitalization pursuant to such existing agreements in effect as of the time of the Agreement;

(iii) each vested WNI Common Share of holders who have returned a completed Letter of Transmittal electing to receive cash in lieu of Exchangeable Shares shall be purchased by Microsoft for $12.841;

(iv) each WNI Preferred Share and WNI Warrant of holders who have returned a completed Letter of Transmittal electing to receive cash shall have their share or warrant purchased by Microsoft for $13.686, less any applicable exercise price (whether in cash or through a net exercise) in the case of a WNI Warrant;

(v) each WNI Preferred Share, other than shares of holders who have perfected their dissenters' rights or have elected to have their shares purchased by Microsoft, shall be converted into the right to receive $13.686 in cash;

(vi) each WNI Warrant, other than warrants of holders who have elected to have their warrants purchased by Microsoft, shall be converted into the right to receive $13.686 per underlying share in cash, less any applicable exercise price (whether in cash or through a net exercise);

(vii) each WNI Option shall be replaced by one or more nonqualified Microsoft options to purchase Microsoft Common Shares; and

(viii) Microsoft shall be entitled to receive all of the outstanding Class B Shares which will represent not less than 80% of the voting power of WNI, in exchange for consideration described below.

Although holders of WNI Preferred Shares and WNI Warrants will receive the same cash consideration whether they elect to sell to Microsoft or have such shares or warrants converted into the right to receive cash from WNI, there may be income tax advantages either to such holders or to other WNI shareholders if they elect to sell such shares or warrants to Microsoft. Such holders should consult their own tax advisors with respect to such election. See "--Certain U.S. Federal Income Tax Matters."

At the Closing, Microsoft shall transfer to WNI cash equal to not less than the amount required to satisfy the conversion rights of holders of WNI Preferred Shares and WNI Warrants who have not elected to have their shares or warrants purchased by Microsoft. Microsoft shall also transfer, at its election, either Microsoft Common

Shares equal to not less than the amount required to satisfy the exchange rights of the Exchangeable Shares, or cash equal to not less than the amount required to purchase such Microsoft Common Shares at the Microsoft Closing Price, or a combination of the foregoing. In connection with such transfers, Microsoft shall have the right, but not the obligation, to acquire Class B Shares that represent at least eighty percent (80%) of the outstanding voting power of the capital shares.

At the Closing, WNI shall make available to ChaseMellon Shareholder Services LLC, or another company reasonably satisfactory to WNI acting as exchange agent (the "Exchange Agent"), the certificates representing Exchangeable Shares and cash to be issued in the conversion of WNI Shares and WNI Warrants in exchange for outstanding certificates of WNI Shares and WNI Warrants ("Certificate" or "Certificates").

Accompanying this Proxy Statement/Prospectus is a Letter of Transmittal, which when properly completed and returned together with such Certificate(s), and an executed Escrow Agreement Signature Page, will enable the holder to exchange such Certificate(s) for the number of whole Exchangeable Shares to which the holder of WNI Common Shares is entitled or the cash to which the holder of WNI Preferred Shares, WNI Warrants or electing vested WNI Common Shares has either elected to, or is entitled to, receive under the Recapitalization Agreement. Until holders of Certificates have surrendered them for exchange and returned the executed Letter of Transmittal and Escrow Agreement Signature Page, (i) no dividends or other distributions will be paid with respect to any shares represented by such Certificate(s), and (ii) no interest will be paid on any cash payable for WNI Preferred Shares, WNI Warrants or eligible electing WNI Common Shares or dividends or other distributions payable with respect to Exchangeable Shares if and when declared. Upon surrender of any Certificate(s) in exchange for WNI Common Shares, the holder thereof will receive any dividends or other distributions which became payable at or after the Effective Time, but were not paid by reason of the foregoing, with respect to the number of whole Exchangeable Shares represented by the Certificate(s) issued upon such surrender.

Conversion of WNI Common Shares

WNI Common Shares, other than vested WNI Common Shares of holders who exercise their dissenters' rights or who elect to have their shares acquired by Microsoft for cash, shall be converted into, and WNI shall issue to holders of WNI Common Shares, a number of Exchangeable Shares pursuant to an exchange ratio determined by dividing $12.841 by the Microsoft Closing Price (the "Exchange Ratio"). The "Microsoft Closing Price" shall be the average closing price of Microsoft Common Shares as publicly reported by The Nasdaq National Market over the twenty (20) consecutive trading days ending two (2) days prior to the Closing. For example, if the Microsoft Closing Price was $100 per share, the Exchange Ratio would be .12841 ($12.841 divided by $100) and a holder would receive .12841 Exchangeable Shares for each WNI Common Share currently held. Thus, if a holder has 1,000 WNI Common Shares, such holder would receive a total of 128 Exchangeable Shares.

Conversion of WNI Unvested Shares

Certain WNI Common Shares are subject to a vesting schedule and may be repurchased by WNI in the event a holder thereof ceases to be employed by WNI. Unvested WNI Common Shares shall be converted into Exchangeable Shares on the same basis as WNI Common Shares and will be registered in each holder's name. Such unvested Exchangeable Shares will be held by WNI pursuant to existing agreements governing such shares in effect as of the Effective Time, except that the existing agreements with the Principal Shareholders have been modified to provide Microsoft or WNI with the right to execute WNI's right to repurchase Exchangeable Shares after the Closing.

Election by Holders of Vested WNI Common Shares

Any holder of vested WNI Common Shares may elect to receive $12.841 per share in cash from Microsoft at the Effective Time in lieu of receiving Exchangeable Shares by properly completing the Letter of Transmittal

and marking the election to have such shares purchased for cash, returning the Letter of Transmittal, Escrow Agreement Signature Page and the Certificates for such shares to WNI prior to the Closing. If no Letter of Transmittal indicating an election for cash is received by WNI from an eligible holder by the Closing, such holder will be deemed to have elected to receive Exchangeable Shares.

Election by Holders of WNI Preferred Shares and Warrants

Any holder of WNI Preferred Shares or WNI Preferred Warrants may elect to have such securities acquired for cash by Microsoft at the Effective Time by properly completing the Letter of Transmittal marking the election to have such shares acquired by Microsoft for cash and returning the Letter of Transmittal, Escrow Agreement Signature Page and the Certificates for such shares to WNI prior to the Closing.

Conversion of WNI Preferred Shares and WNI Warrants

Each of the WNI Preferred Shares, other than shares held by holders who have exercised their dissenter's rights or elected to have their shares acquired by Microsoft for cash, will be converted, without any action on the part of the holders, into the right to receive $13.686 (determined on an as-if-converted to WNI Common Shares basis) in cash. Each WNI Preferred Share is convertible at the rate of one WNI Common Share for each WNI Preferred Share, except for the Series A Shares, which are convertible at the rate of 1.1 WNI Common Shares for each Series A Share. Subject to each of their terms, each WNI Warrant, other than warrants held by holders who have elected to have their warrants acquired by Microsoft for cash, shall be converted, without any action of the part of the holders thereof, into the right to receive $13.686 (determined on an as-if-exercised and converted to WNI Common Shares basis) in cash, less any applicable exercise price (whether in cash or through a net exercise).

Rights and Preferences of Exchangeable Shares

The form of Amended and Restated Articles of Incorporation to be adopted by WNI in connection with the Recapitalization are attached to this Proxy Statement/Prospectus as Appendix E and is incorporated herein by reference. The terms of such Articles are summarized below.

Voting, Dividend and Liquidation Rights of Holders of Exchangeable Shares

Each holder of Exchangeable Shares shall be entitled to vote for directors and such other matters as may be submitted to the shareholders. Except to the extent required by applicable law, each Exchangeable Share shall have one (1) vote. Each holder of Exchangeable Shares shall be entitled to receive notice of, and to attend, any meetings of shareholders of WNI.

The WNI Board of Directors may declare dividends in its discretion from time to time, and WNI shall pay dividends out of its assets properly available for the payment of dividends, provided that any such dividend declared with respect to each Exchangeable Share and Class B Share shall be identical in amount and character. Such dividends shall have record and payment dates as may be determined in the discretion of the WNI Board of Directors. WNI shall provide each holder of Exchangeable Shares written notice of a dividend record date for the Exchangeable Shares not more than sixty (60) and not less than fifteen (15) days prior to the payment of any dividend in respect of the Exchangeable Shares.

In the event of a Liquidation of WNI, WNI shall pay to the holders of the Exchangeable Shares from the assets of WNI available for distribution an amount that is identical in amount and character with respect to each Exchangeable Share and Class B Share. In the event WNI adopts a Liquidation plan, WNI is required to provide each holder of Exchangeable Shares written notice specifying a date for the completion of the Liquidation not more than sixty (60) and not less than fifteen (15) days prior to taking such action.

Exchange Rights

Subject to the call rights of Microsoft described below, holders of Exchangeable Shares shall have the right to exchange each Exchangeable Share held for Microsoft Common Shares at any time prior to the end of fifty-one (51) months after the effective date. Each Exchangeable Share shall be exchanged for (i) such number of Microsoft Common Shares as are equal to the product obtained by multiplying the Class A Exchange Rate in effect at the time the exchange procedure is initiated by the number of Exchangeable Shares being exchanged; or (ii) an amount in immediately available funds equal to the Current Market Value of the Microsoft Common Shares otherwise issuable upon exchange of the Exchangeable Shares ("Cash"). The determination as to whether holders of Exchangeable Shares will receive Microsoft Common Shares or Cash upon the exchange will be made by WNI. The "Class A Exchange Rate" shall initially be 1.0 Microsoft Common Shares for each Exchangeable Share, subject to adjustment based on certain capital changes in Microsoft Common Shares following the Recapitalization, as described below. In the event Microsoft does not exercise its call rights, WNI is obligated to exchange such Exchangeable Shares for either Microsoft Common Shares or Cash. The "Current Market Value" of the Microsoft Common Shares shall the closing price as publicly reported by The Nasdaq Stock Market at 4:00 p.m. (Eastern time) as of the date on which a holder of Exchangeable Shares delivers his or her Certificates and an "Exchange Notice" to the Secretary of WNI, or a person designated by the Secretary.

No fractional Microsoft Common Shares shall be issued upon the exchange of Exchangeable Shares. In lieu of such issuance, all Microsoft Common Shares issued to the WNI shareholders pursuant to the Recapitalization Agreement shall be rounded to the closest whole Microsoft Common Share.

Microsoft Call Rights

WNI shall immediately notify Microsoft of any exchange request. Microsoft shall thereafter have one (1) day in which to exercise its right (the "Call Right") to deliver to such holder, at Microsoft's election, (i) such number of Microsoft Common Shares as are equal to the product obtained by multiplying the Class A Exchange Rate in effect at the time the exchange procedure is initiated by the number of Exchangeable Shares being exchanged; or (ii) Cash. In addition, Microsoft shall have the right to acquire all, but not less than all, of the outstanding Exchangeable Shares ("Class Call Right") solely for a number of Microsoft Common Shares as determined under clause (i) above (except that the Class A Exchange Rate used will be the Class A Exchange Rate in effect at the time Microsoft shall exercise its Class Call Right), upon delivery of an irrevocable written notice by Microsoft to WNI at any time during the period commencing five years and six months after the Effective Time and ending six years after the Effective Time. In the event Microsoft exercises its Class Call Right, Microsoft shall provide each holder of Exchangeable Shares written notice specifying a closing date for such proposed action not more than sixty (60) and not less than fifteen (15) days prior to taking such action.

Adjustments to Class A Exchange Ratio Upon Special Events

Upon the happening of a Special Event (as defined below) after the Effective Time, the Class A Exchange Rate shall, simultaneously with the happening of such Special Event, be adjusted by multiplying the then effective Class A Exchange Rate by a fraction, the numerator of which shall be the number of Microsoft Common Shares outstanding immediately after to such Special Event and the denominator of which shall be the number of Microsoft Common Shares outstanding immediately prior to such Special Event, and the product so obtained shall thereafter be the Class A Exchange Rate. The Class A Exchange Rate, as so adjusted, shall be readjusted in the same manner upon the happening of any successive Special Event or Events. "Special Event" shall mean (i) the issue of additional Microsoft Common Shares either as a dividend or as other type of distribution in respect of outstanding Microsoft Common Shares, (ii) a subdivision or split of outstanding Microsoft Common Shares into a greater number of Microsoft Common Shares, or (iii) a combination of outstanding Microsoft Common Shares into a smaller number of Microsoft Common Shares.

WNI Stock Options

At the Effective Time, Microsoft shall replace the outstanding WNI Options with Microsoft Options subject to terms and conditions as follows: (i) each new Microsoft Option will be exercisable for a number

of whole Microsoft Common Shares equal to the number of WNI Common Shares subject to the WNI Option being replaced immediately prior to the Effective Time multiplied by the Exchange Ratio, rounded to the nearest whole Microsoft Common Share; (ii) the exercise price per Microsoft Common Share shall be the exercise price of the WNI Option being replaced immediately prior to the Effective Time divided by the Exchange Ratio; and (iii) such replacement options will be nonqualified options even if the WNI Options being replaced were incentive stock options (within the meaning of Section 422 of the Code) before such replacement. For example, if a holder has options for 1,000 WNI Common Shares priced at $1.00 per share and the Microsoft Closing Price is $100, the Exchange Ratio is .12841 ($12.841 divided by $100) and such holder's new options would cover 128 Microsoft Common Shares and would be priced at approximately $7.79 per share ($1.00 divided by .12841).

Each Microsoft Option shall be issued pursuant to the Microsoft 1991 Stock Option Plan, as amended (the "1991 Plan"), and each recipient of a replacement Microsoft Option shall be deemed to be an "Optionee" under the 1991 Plan. Each Optionee shall be granted the right to exercise any unexercised replacement Microsoft Options for three (3) months after termination of employment by WNI or Microsoft, whichever occurs later, but in no event later than the expiration date of such option as provided for in the WNI Option.

In addition to the Microsoft Options issued in replacement of WNI Options, Microsoft shall grant additional Microsoft Options to certain employees of WNI with a discounted exercise price (but subject to vesting), with an aggregate discount of $31,774,000. See "Proposal II--Option Grants, Option Acceleration and Other Compensatory Matters."

Microsoft will cause the Microsoft Options issued in replacement of the WNI Options to be issued as soon as practicable after the Effective Time, pursuant to a then effective registration statement on Form S-8 for the 1991 Plan, and will cause such registration statement to remain effective for so long as such replacement Microsoft Options remain outstanding.

Effective Time

It is anticipated that the Recapitalization will become effective as promptly as practicable after the requisite WNI shareholder approval has been obtained and all other conditions to the Recapitalization have been satisfied or waived.

SUMMARY OF OTHER PROVISIONS OF THE RECAPITALIZATION AGREEMENT

Representations and Covenants

The Recapitalization Agreement contains certain customary representations and warranties by WNI and the Principal Shareholders relating to, among other things: (i) organization and related matters; (ii) the capital structure of WNI and ownership of any subsidiaries; (iii) authorization, execution, delivery, performance, and enforceability of the Recapitalization Agreement and related matters; (iv) required consents and approvals, absence of conflicts under charter documents, and non-violation of instruments and laws; (v) WNI's ownership of patents, trademarks, tradenames, copyrights and other intellectual property; (vi) WNI's financial statements; (vii) taxes and related matters; (viii) the accuracy of information supplied by the parties for inclusion in filings and other documents contemplated under the Recapitalization Agreement; (ix) an absence of undisclosed material adverse changes; (x) leases; (xi) title to personal property; (xii) interests of officers and directors of WNI; (xiii) litigation; (xiv) major contracts; (xv) insurance and banking facilities; (xvi) employees and employee benefit plans and payments thereunder by reason of the Recapitalization; (xvii) guarantees; (xviii) the absence of brokers and finders engaged by WNI, other than DMG; (xix) absence of unlawful, unrecorded or certain other payments; (xx) environmental matters; (xxi) the accuracy of WNI's and the Principal Shareholders' representations and warranties under the Recapitalization Agreement; and (xxii) the number of subscribers to the WebTV Network service.

Microsoft has made certain customary representations and warranties relating to (i) organization and related matters; (ii) authorization, execution, delivery, performance, and enforceability of the Recapitalization

Agreement and related matters; (iii) required consents and approvals, absence of conflicts under charter documents, and non-violation of instruments and laws; (iv) Microsoft financial statements and documents filed by Microsoft with the Commission and the accuracy of the information contained therein; (v) the accuracy of information supplied by the parties for inclusion in filings and other documents contemplated under the Recapitalization Agreement; (vi) the absence of undisclosed material adverse changes; and (vii) the accuracy of Microsoft's representations and warranties under the Recapitalization Agreement.

Pursuant to the Recapitalization Agreement, each of WNI and Microsoft have agreed that until the earlier of the termination of the Recapitalization Agreement or the Effective Time, except as expressly contemplated by the Recapitalization Agreement or with the prior written consent of the other party, they will: (i) not take any action that would breach their respective representations and warranties; (ii) apply for, and use their best efforts to obtain, all consents and approvals required for the consummation of the transactions contemplated by the Recapitalization Agreement; and (iii) use their best efforts to effectuate the transactions contemplated by the Recapitalization Agreement.

WNI has agreed that, until the earlier of the termination of the Recapitalization Agreement or the Effective Time, except as expressly contemplated by the Recapitalization Agreement and the WNI Disclosure Schedule or with the prior written consent of Microsoft, WNI will carry on its business in the ordinary course consistent with past practice, and that, among other things, it will not: (i) declare or pay any dividends or make any other distributions in respect of its capital Shares; (ii) issue or agree to issue any capital stock, options, warrants, calls, conversion rights, or other similar securities, subject to certain exceptions; (iii) amend its corporate charter documents; (iv) dispose of any assets, except in the ordinary course of business; (v) incur any debt; (vi) enter into or amend employee benefit plans or increase employee remuneration; or (vii) settle any claim, action, or proceeding, except in the ordinary course of business.

The Recapitalization Agreement also provides that neither WNI nor the Principal Shareholders shall (and they shall use their best efforts to ensure that none of their officers, directors, agents, representatives, or affiliates shall) directly or indirectly solicit, encourage, initiate, or participate in any negotiation, disclose or afford access to anyone, other than Microsoft or its representatives, of any information concerning its business, properties or books and records that is not customary, enter into any agreement, or announce publicly any statement in support of the foregoing, with respect to any offer or proposal to acquire all or a substantial portion of its business, assets or capital shares whether by merger, consolidation, other business combination, purchase of assets, tender or exchange offer or otherwise; provided, however, that this covenant does not prohibit or prevent WNI's Board of Directors from taking any action where the failure to do so would result in a breach of the Board of Directors' fiduciary duties to WNI and its shareholders, based on advice of counsel.

WNI also has agreed that, until the earlier of the termination of the Recapitalization Agreement or the Effective Time, it shall permit Microsoft to participate in negotiations with Fujitsu regarding a joint venture with WNI with respect to operations in Japan.

Microsoft has agreed that it will (i) use its best efforts to cause the Microsoft Common Shares to be issued upon exchange of the Exchangeable Shares, and the Microsoft Common Shares to be issued upon exercise of the assumed WNI Options, to be quoted upon the Effective Time on The Nasdaq Stock Market or listed on such national securities exchange as Microsoft Common Shares are listed, and (ii) enter into the Line of Credit under which Microsoft agrees to loan to WNI up to $30 million for reasonable business needs, bearing interest at 10% per annum, subject to the terms of the Line of Credit. Microsoft has also agreed that, within eight months after the closing of the Recapitalization, WNI will provide benefits to its employees that are in the aggregate at least substantially equivalent to the benefits provided to Microsoft employees who are in similar positions at similar salary levels. Nothing, however, requires Microsoft to continue any specific plan or benefit, or precludes amendments to or reductions in benefits provided through any specific plan or benefit. Until such time as WNI employees receive equivalent Microsoft benefits, WNI employees will receive benefits that in the aggregate are at least substantially equivalent to the benefits they are receiving on the date of closing of the Recapitalization.

Microsoft and WNI each have agreed to use best efforts to resolve any objections that may be asserted by any governmental entity with respect to the Recapitalization or any other transactions provided for in the Recapitalization Agreement under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act,") and any other antitrust laws. In connection therewith, if any administrative or judicial action or proceeding is instituted (or threatened to be instituted) that challenges the Recapitalization as violative of any antitrust law, and, if by mutual agreement, Microsoft and WNI decide that litigation is in their best interest, each of Microsoft and WNI have agreed to cooperate and use best efforts vigorously to contest and resist any such action or proceeding and to have vacated or overturned any order that prohibits, prevents, or restricts consummation of the Recapitalization. Notwithstanding the foregoing, neither Microsoft, or any of its subsidiaries, nor WNI are required to divest any of their respective businesses, product lines or assets, or to take or agree to take any other action or agree to any limitation that would have a material adverse effect on their respective businesses, product lines, or assets.

Conditions to the Recapitalization

The Recapitalization Agreement provides that, unless waived, the respective obligations of each party to effect the Recapitalization are subject to the following material conditions: (i) other than the filing of recapitalization documents with the Secretary of State of the State of California, all consents legally required for the consummation of the Recapitalization and the transactions contemplated by the Recapitalization Agreement shall have been filed, occurred, or been obtained; (ii) no statute, rule, executive order or final and nonappealable decree or injunction shall be enacted, entered, promulgated or enforced by any United States court or governmental entity of competent jurisdiction which enjoins or prohibits the consummation of the Recapitalization; (iii) the Recapitalization Agreement and the Recapitalization shall have been approved and adopted by the required vote of holders of WNI Common Shares and WNI Preferred Shares; (iv) each party shall have received an opinion from its respective counsel to the effect that the Recapitalization will more likely than not constitute a reorganization within the meaning of Section 368(a)(1)(E) of the Code; (v) the representations and warranties of the other party shall be true and correct in all material respects as of the Effective Time as though made on and as of the Effective Time; (vi) the other party shall have performed in all material respects all agreements and covenants to be performed by it under the Recapitalization Agreement; and (vii) each party shall have received an opinion dated as of the date of Closing of the other party's legal counsel as to matters customary to transactions of the type contemplated under the Recapitalization Agreement.

The obligation of Microsoft to effect the Recapitalization is subject to the receipt by Microsoft of (i) signed offers accepting employment with Microsoft and such other signed agreements as are customarily executed by new employees of Microsoft or its subsidiaries in form and content satisfactory to Microsoft from not less than 75% of WNI's hardware and software engineers (not including network operations engineers); (ii) an Affiliate Agreement from each Principal Shareholder and certain officers and directors of WNI, under which such shareholders agree to transfer their shares in compliance with rules concerning affiliates promulgated by the Commission; (iii) acceptance of offers of employment with Microsoft and executed Employment and Noncompetition Agreements from each of the Principal Shareholders; (iv) executed copies of third-party consents, approvals, assignments, waivers, authorizations or other specified certificates, other than those that WNI and Microsoft have agreed will not be obtained; (v) termination or waiver of any registration rights, rights of first refusal, rights to any liquidation preference, or redemption rights relating to any security of WNI, other than rights of no material consequence, and, except as set forth in the Recapitalization Agreement, WNI shall have outstanding no warrants, options, convertible securities or other rights to purchase or acquire securities of WNI; (vi) an amendment, waiver or other modification, in a manner reasonably acceptable to Microsoft, prohibiting conversion of WNI Preferred Shares into Common Shares, and no such conversion shall have occurred; and (vii) an executed counterpart to the Escrow Agreement from holders of at least 80% of the WNI Preferred Shares and Warrants and the Principal Shareholders. Also, the obligation of Microsoft to effect the Recapitalization is subject to the License of Technology between Mr. Perlman and WNI being in full force and effect and no action shall be pending or overtly threatened to materially modify or challenge the licenses and other rights conveyed by such agreement.

The obligation of WNI to effect the Recapitalization is subject to (i) the receipt by WNI of an executed Make-Well Agreement providing assurances to the holders of Exchangeable Shares regarding the conversion of Exchangeable Shares into Microsoft Common Shares or cash and (ii) the quotation on The Nasdaq National Market, or listing on such national securities exchange as Microsoft Common Shares are listed, of the Microsoft Common Shares to be issued upon exchange of the Exchangeable Shares, and the Microsoft Common Shares to be issued upon exercise of the assumed WNI Options.

A condition of the respective obligations of WNI and Microsoft to consummate the Recapitalization is that each receive a tax opinion from its respective legal counsel to the effect that the Recapitalization will more likely than not constitute a reorganization within the meaning of Section 368(a)(1)(E) of the Code. The legal opinions of Venture Law Group and Preston Gates & Ellis will not bind the IRS, will not preclude the IRS or a court from adopting a contrary position, will be subject to certain assumptions and qualifications, and will be based on the truth and completeness of certain representations of WNI, Microsoft, and the Principal Shareholders. See "--Certain U.S. Federal Income Tax Matters."

At any time on or prior to the Recapitalization, to the extent legally allowed, Microsoft, on the one hand, or WNI and the Principal Shareholders, on the other hand, without approval of WNI's other shareholders, may waive compliance with any of the agreements or conditions contained in the Recapitalization Agreement for the benefit of that party. Neither Microsoft nor WNI currently intends to waive compliance with any such agreements or conditions.

Indemnification by Shareholders and by Principal Shareholders

In the Recapitalization Agreement, the holders of WNI Shares (other than holders who exercise their dissenters' rights under California law) and WNI Warrants, will, by the approval of the Recapitalization and acceptance of the consideration provided in the Recapitalization Agreement, agree, severally, to defend, indemnify and hold Microsoft harmless from and against any and all damages and other amounts (including expenses and attorneys' fees) ("Indemnifiable Amounts") incurred by Microsoft by reason of or arising out of or in connection with (i) any breach or asserted breach of any representation or warranty of WNI or the Principal Shareholders contained in the Recapitalization Agreement or related documents, or (ii) the failure of WNI or the Principal Shareholders to perform any agreement or covenant in the Recapitalization Agreement.

At the Closing, Microsoft, WNI, each of the holders of WNI Shares and WNI Warrants, the Shareholders' Representative and ChaseMellon Shareholder Services, LLC will enter into an escrow agreement, the purpose of which is to secure the indemnification obligations of the WNI securities holders under the Recapitalization Agreement. See "--Related Agreements--Escrow Agreement."

With respect to claims made by third parties, Jeffrey D. Brody, a member of the WNI Board of Directors, has been nominated to serve as the representative of the WNI shareholders (the "Shareholders' Representative"). The Shareholders' Representative has the right to receive notice of any such claim and the right to contest, negotiate or settle any such claim on behalf of the holders of WNI Shares and WNI Warrants, solely at their own risk, cost and expense. The holders of WNI Shares and WNI Warrants cannot settle, compromise, or offer to settle or compromise any such claim or demand without the prior written consent of Microsoft, which consent may not be unreasonably withheld. Microsoft has no right to object to a settlement or compromise which consists solely of the payment of monetary damages and which is subject to full indemnification under the Recapitalization Agreement. Approval of the Recapitalization by the shareholders of WNI will be deemed approval of Mr. Brody to serve as the Shareholders' Representative.

The obligation of holders of WNI Shares and WNI Warrants to indemnify Microsoft shall apply only to Indemnifiable Amounts which are incurred or related to claims made on or prior to the eighteen month anniversary of the date of closing of the Recapitalization. Nevertheless, the obligation of the Principal Shareholders (i) to indemnify Microsoft for breaches of representations, warranties and covenants relating to taxes shall continue until 30 days after the expiration of all statutes of limitations applicable to such taxes, and

(ii) for Indemnifiable Amounts arising out of fraud (as defined in the Recapitalization Agreement) or willful misstatements or willful omissions of WNI or the Principal Shareholders will have no time limit.

Microsoft shall be entitled to indemnification only if the aggregate Indemnifiable Amounts exceed a threshold of $500,000. At such time as Indemnifiable Amounts exceed such threshold amount, Microsoft is entitled to be indemnified up to the full Indemnifiable Amounts, including the threshold amount. In addition, regardless of whether the threshold amount has been satisfied, Microsoft shall be entitled to all Indemnifiable Amounts payable with respect to (i) claims regarding the "WebTV" trademark, regardless of the fact that WNI settled a known claim with respect to such mark prior to the execution of the Recapitalization Agreement, and (ii) claims related to taxes. The aggregate amount to which Microsoft shall be entitled for indemnification will not exceed an amount equal to the $50 million escrow amount under the Escrow Agreement, and indemnification is Microsoft's sole remedy against WNI, or any shareholder, director, officer, employee or agent of WNI for Indemnifiable Amounts, except for breaches of representations, warranties or covenants related to tax claims, and fraud, willful misstatements or willful omissions by WNI or the Principal Shareholders, which are not limited to such escrow amount or subject to the exclusivity of remedy limitation. No party has any indemnification obligation for damages arising from a determination that the Recapitalization is not a tax-free "reorganization" under the Code (except to the extent that the failure of the Recapitalization to so qualify as a reorganization shall have as a result of a breach of a term of the Recapitalization Agreement by such party). Microsoft is required to act in good faith and in a commercially reasonable manner to mitigate any Indemnifiable Amounts that it may suffer.

Termination or Amendment

The Recapitalization Agreement may be terminated by mutual consent of the parties at any time prior to the Effective Time. Microsoft or WNI may terminate the Recapitalization Agreement (i) upon the failure of the shareholders of WNI to approve the Recapitalization and related transactions; (ii) upon the entry of any court order that declares the Recapitalization unlawful or enjoins the consummation of the Recapitalization or the enactment of any statute causing the Recapitalization to be unlawful, or (iii) if the Effective Time does not occur by September 30, 1997 (the "Outside Date"); provided that if the parties elect to pursue litigation in connection with antitrust matters, this Outside Date may be extended to March 31, 1998 by mutual agreement of the parties.

Microsoft may terminate the Recapitalization Agreement (so long as Microsoft is not in material breach of the Recapitalization Agreement) if there has been a material breach by WNI of any representation, warranty, covenant, or agreement contained in the Recapitalization Agreement and such breach has a material adverse effect on the Recapitalization and has not been cured within 30 days after notice of such breach is given. Even if there has been no such breach, or a termination is not otherwise permitted, Microsoft may terminate the Recapitalization Agreement, subject to the payment to WNI of certain fees, which fees may be offset against amounts due to Microsoft under the Line of Credit. If such termination relates to (i) objections asserted by a government entity under any antitrust law, (ii) the failure of the Recapitalization to close by the Outside Date, or (iii) because the Recapitalization Agreement terminates for reasons other than by mutual consent, pursuant to a failure to obtain shareholder approval, because the Recapitalization is unlawful, or due to a breach thereof by Microsoft or WNI, the fee due WNI by Microsoft shall be $15 million (the "Termination Fee"). If Microsoft elects to terminate other than as permitted by the Recapitalization Agreement, or fails to proceed with the closing of the Recapitalization after all applicable conditions have been satisfied, the fee due WNI by Microsoft shall be $50 million if such termination is effective prior to the 60th day after the date of the Recapitalization Agreement, and $75 million thereafter (the "Break-up Fee"). In the event that WNI and Fujitsu Limited fail to reach agreement with respect to a joint venture within 30 days after a termination by Microsoft in which the Termination Fee or Break-up Fee are due to WNI, Microsoft agrees to pay WNI, in addition to the Termination Fee or Break-up Fee, as applicable, $5 million.

WNI may terminate the Recapitalization Agreement (so long as WNI is not in material breach of the Recapitalization Agreement) if there has been a material breach by Microsoft of any representation, warranty, covenant, or agreement contained in the Recapitalization Agreement and such breach has not been cured within

30 days after notice of such breach is given. Even if there has been no such breach, WNI may terminate the Recapitalization Agreement. In such event, Microsoft shall be entitled to consideration if WNI is acquired on or before the first anniversary of the effective date of such termination. Upon such an acquisition, Microsoft is entitled to 50% of the difference between the net proceeds of the acquisition and the total aggregate consideration under the Recapitalization Agreement. An acquisition includes (i) the sale by shareholders of WNI of 50% or more of either their voting power or liquidation rights, (ii) a merger, consolidation or statutory share exchange, unless following the completion of such transaction the WNI shareholders prior to such transaction own or control 50% or more of the voting power or liquidation rights of the successor of such transaction, (iii) sale of all or substantially all of the assets of WNI, and (iv) the issuance of additional shares of stock to a person or group of related persons other than to the Principal Shareholders in a transaction or series of related transactions and, as a result, such persons or group owns or controls 50% or more of the voting power or liquidation rights or the capital shares of WNI and the Principal Shareholders directly or indirectly receive additional compensation, remuneration, payments or other economic benefit.

The Recapitalization Agreement may be amended only by an instrument in writing signed on behalf of each of Microsoft, WNI and the Principal Shareholders.

RELATED AGREEMENTS

Escrow Agreement

At the Closing, Microsoft, WNI, each of the holders of WNI Shares and WNI Warrants (the "Securities Holders"), the Shareholders' Representative and ChaseMellon Shareholder Services, LLC will enter into an escrow agreement (the "Escrow Agreement"), the form of which is attached to this Proxy Statement/Prospectus as Appendix D and is incorporated herein by reference. The purpose of the Escrow Agreement is to secure the indemnification obligations of the Securities Holders under the Recapitalization Agreement. Pursuant to the Escrow Agreement, Fifty Million Dollars ($50,000,000) in Exchangeable Shares and cash (the "Escrow Amount") will be withheld from the consideration to be issued or paid in the conversion or sale of the WNI Shares and WNI Warrants on a basis proportionate to the value of the Exchangeable Shares (determined in the same manner as in the Recapitalization Agreement) and/or cash to be received by each Securities Holder and will be placed in an escrow account. The Escrow Agreement provides for the delivery of Cash Escrow (as defined in the Escrow Agreement) by the Escrow Agent to Microsoft and Escrowed Shares to WNI upon the final determination of an indemnifiable claim. The value of any Escrowed Shares used to satisfy demands or claims under the Escrow Agreement will be equal to the Microsoft Closing Price. Within twenty days of the eighteen (18) month anniversary of the Closing, any Escrowed Shares and Cash Escrow remaining in escrow, other than any amount then held pending the determination of a claim, will be released to the Securities Holders in proportion to their contributions to the escrow.

Voting Agreements

Microsoft has entered into agreements (the "Voting Agreements") with each of the Principal Shareholders, who on the Record Date together owned beneficially in the aggregate 15,000,000 WNI Common Shares, representing approximately 45% of the then outstanding WNI Shares, pursuant to which such shareholders have agreed to vote their WNI Shares in favor of the approval of the Recapitalization and the adoption of certain documents with respect to the Recapitalization and against any action or agreement that would impede or interfere with the performance of such Recapitalization Agreement or the consummation of the transactions contemplated thereby. Each of such shareholders have further agreed that until the closing of the Recapitalization or the termination of the Recapitalization Agreement they will not sell or otherwise dispose of or limit their right to vote any of their respective WNI Shares, enter into a voting arrangement with respect to any of their WNI Shares, or participate in any proxy solicitation for the purpose of opposing or competing with the consummation of the Recapitalization. Each of the Voting Agreements terminates on the earlier to occur of (i) the Effective Time of the Recapitalization, or (ii) such date and time as the Recapitalization Agreement shall be terminated.

Intellectual Property, License of Technology and Patent License Agreements

Immediately prior to the execution of the Recapitalization Agreement, the Principal Shareholders executed Intellectual Property, License of Technology, and Patent License Agreements (the "Intellectual Property Agreements") with WNI. The purpose of the Intellectual Property Agreements is to ensure that at the Closing, all of the Intellectual Property (as defined in the Recapitalization Agreement) is in fact owned by, or licensed to, WNI, and available for use by WNI.

Amended and Restated Shareholder Agreements

Contemporaneous with the execution of the Recapitalization Agreement, Microsoft, WNI and each of the Principal Shareholders entered into Amended and Restated Shareholder Agreements (the "Shareholder Agreements"). The Shareholder Agreements amended an agreement previously entered into by WNI and each of the Principal Shareholders in connection with the issuance of their founders shares (the "Founders Shares"). In addition to deleting various provisions which would no longer be relevant after the Recapitalization, each agreement establishes a new vesting schedule. Under the revised agreements, Messrs. Leak and Goldman will have 1,770,830 unvested WNI Common Shares of which 33 1/3% will vest April 5 of 1998, 1999, and 2000, respectively, and Mr. Perlman will have 1,666,667 unvested WNI Common Shares of which 50% will vest on April 5 of 1998 and 1999, respectively.

Line of Credit Agreement

Contemporaneous with the execution of the Recapitalization Agreement, Microsoft and WNI entered into a Line of Credit Agreement (the "Credit Agreement"). In the Credit Agreement, Microsoft agreed to loan WNI, on a revolving basis, up to Thirty Million Dollars ($30,000,000) (the "Loan"). Interest on the outstanding balance on the Loan will accrue at a rate of ten percent (10%). The Loan is secured by a security interest granted by WNI to Microsoft, pursuant to a Security Agreement, covering all of WNI's Intellectual Property (as defined in the Recapitalization Agreement). As of the date of this Proxy Statement/Prospectus, $ of principal amount was outstanding under the Credit Agreement.

In the event the Recapitalization Agreement is terminated, the principal and interest of the Loan is repayable as follows: (i) if WNI terminates the Recapitalization Agreement without cause, all outstanding principal and interest on the Loan is due and payable within ten (10) days of the termination; (ii) if the Reorganization Agreement is terminated other than by WNI without cause, all principal and interest on the Loan is due and payable on that date eighteen (18) months after the effective date of such termination. Microsoft may elect to forgive any of the Loan payable and such forgiveness shall be treated as an offset against any Termination Fee, Break-up Fee or other fee obligations to WNI pursuant to the Recapitalization Agreement. The principal and interest of the Loan is payable in full at the Closing of the Recapitalization Agreement.

Affiliates Agreements

WNI and Microsoft will enter into agreements (the "Affiliates Agreements") with each of the Principal Shareholders and certain other officers and directors of WNI, pursuant to which such persons will agree that they will not sell or otherwise dispose of any Exchangeable Shares or Microsoft Common Shares unless such sale or disposition is permitted pursuant to the provisions of Rule 145 under the Securities Act, is otherwise exempt from registration under the Securities Act, or is effected pursuant to a registration statement under the Securities Act.

Employment and Noncompetition Agreements

Prior to the Closing of the Recapitalization Agreement, each of the Principal Shareholders will enter into an Employment and Noncompetition Agreement with Microsoft and WNI (the "Employment Agreements"). The Employment Agreements define the employment relationship between each of the Principal Shareholders with Microsoft and WNI after the Closing. The Employment Agreements provide that each of the Principal

Shareholders will be employed by WNI or Microsoft for three (3) years from the Effective Time, as defined in the Recapitalization Agreement. After such three year period, the Principal Shareholder's employment will continue on an at will basis.

In addition, each of the Employment Agreements contain restrictions on the Principal Shareholder's ability to engage in a "competing business" with Microsoft. The Employment Agreements generally define "competing business" as a business engaged in software and hardware development in connection with a wide variety of platforms, hardware, applications and operating systems. The term of such restriction is three (3) years from the Closing Date, as defined in the Recapitalization Agreement, or one (1) year after the termination of employment with WNI or Microsoft, whichever is later.

Finally, each of the Employment Agreements contain restrictions on the Principal Shareholder's ability to solicit or assist in the solicitation of any employees or agents of Microsoft to terminate any contract or working relationship with Microsoft. As with the noncompetition provisions described above, the term of such restriction is three (3) years from the Closing Date or one (1) year after the termination of employment with WNI or Microsoft, whichever is later.

CERTAIN U.S. FEDERAL INCOME TAX MATTERS

The following discussion summarizes the material U.S. federal income tax consequences of the Recapitalization that are generally applicable to WNI shareholders. This discussion is based on currently existing provisions of the Code, existing Treasury Regulations thereunder (including final, temporary or proposed), and current administrative rulings and court decisions, all of which are subject to change. Any such change, which may or may not be retroactive, could alter the tax consequences described herein.

The following discussion is intended only as a summary of the material U.S. federal income tax consequences of the Recapitalization and does not purport to be a complete analysis or listing of all of the potential tax effects relevant to a decision whether to approve the Recapitalization Agreement. In particular, this discussion does not deal with all U.S. federal income tax considerations that may be relevant to particular WNI shareholders in light of their particular circumstances, such as shareholders who are dealers in securities, who are subject to the alternative minimum tax provisions of the Code, who are foreign persons, or who acquired their WNI Shares in connection with stock option or stock purchase plans or in other compensatory transactions, nor does it address the tax treatment of holders of WNI Warrants. In addition, the following discussion does not address the tax consequences of the Recapitalization under foreign, state or local tax laws or the tax consequences of transactions effectuated prior to or after the Recapitalization (whether or not such transactions are in connection with the Recapitalization), or the treatment of persons receiving or exchanging options to acquire Microsoft Common Shares or WNI Common Shares except for the matters specifically set forth below.

HOLDERS OF WNI SHARES AND WARRANTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE TAX CONSEQUENCES OF THE RECAPITALIZATION, INCLUDING THE APPLICABLE U.S. FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES TO THEM.

It is a condition to the obligation of WNI and Microsoft to consummate the Recapitalization that Venture Law Group and Preston Gates & Ellis (collectively, "Counsel") render opinions (the "Tax Opinions") that it is more likely than not that the Recapitalization constitutes a reorganization within the meaning of Section 368(a)(1)(E) of the Code. Assuming the Recapitalization so qualifies, then, subject to the assumptions, limitations and qualifications referred to herein and in the Tax Opinions, the Recapitalization will have the following federal income tax consequences:

(i) No gain or loss will be recognized by holders of WNI Common Shares solely upon their receipt in the Recapitalization of Exchangeable Shares in exchange therefor (except to the extent of cash received in lieu of a fractional Exchangeable Share).

(ii) The aggregate tax basis of the Exchangeable Shares received by WNI shareholders in the Recapitalization will be the same as the aggregate tax basis of the WNI Common Shares surrendered in exchange therefor.

(iii) The capital asset holding period of the Exchangeable Shares received by each WNI shareholder in the Recapitalization will include the period for which the WNI Common Shares surrendered in exchange therefor was considered to be held, provided that the WNI Common Shares so surrendered are held as a capital asset at the time of the Recapitalization.

(iv) Holders of WNI Shares or WNI Warrants who receive cash for all or a part of their shares or warrants in the Recapitalization (whether as a result of exercising dissenters' rights with respect to such shares or receiving consideration for part or all of their shares or warrants in the form of cash) will generally recognize gain or loss measured by the difference between the amount of cash received and the holder's basis in the shares or warrants surrendered for such cash, if the payment is neither essentially equivalent to a dividend within the meaning of Section 302 of the Code nor has the effect of a distribution of a dividend within the meaning of Section 356(a)(2) of the Code (collectively, a "Dividend Equivalent Transaction"). The receipt of cash for shares or warrants in the Recapitalization will generally not be a Dividend Equivalent Transaction for a holder of WNI Shares or WNI Warrants if such holder owns (actually or constructively within the meaning of Section 318 of the Code) either no WNI Common Shares immediately after the Recapitalization or shares having sufficiently reduced voting power relative to the voting power of the WNI Shares held by such holder immediately prior to the Recapitalization to meet the "substantially disproportionate" test of Section 302(b)(2) of the Code. If, however, the receipt of cash for shares or warrants is a Dividend Equivalent Transaction, then such holder will generally recognize dividend income for federal income tax purposes in an amount equal to the entire amount of cash so received to the extent of the allocable earnings and profits of WNI, if any, then as a return of basis and then as capital gains.

The parties have not requested and will not request a ruling from the IRS with regard to any of the U.S. federal income tax consequences of the Recapitalization. The Tax Opinions will be based on and subject to certain assumptions and limitations as well as representations to be received from Microsoft, WNI and WNI shareholders, discussed below. An opinion of counsel only represents counsel's best legal judgment, and has no binding effect or official status of any kind, and no assurance can be given that contrary positions may not be taken by the IRS or a court considering the issues. The Recapitalization involves a unique transaction structure that has not been the subject of a decision or ruling by the courts or the IRS.

A successful IRS challenge to the status of the Recapitalization as a "reorganization" within the meaning of Section 368(a)(1)(E) of the Code would result in WNI shareholders who receive Exchangeable Shares being treated as if they sold their WNI Shares in a taxable transaction. In such event, each WNI shareholder would be required to recognize gain or loss with respect to the disposition of each of his or her WNI Shares equal to the difference between the WNI shareholder's basis in such shares and the fair market value, as of the date the Recapitalization becomes effective, of the Exchangeable Shares received in exchange therefor. Such gain or loss would be treated as capital gain or capital loss for each such shareholder if he or she held his or her WNI Shares as a capital asset at the time of the Recapitalization. In such event, a WNI shareholder's aggregate basis in the Exchangeable Shares so received would equal their fair market value as of the Effective Time of the Recapitalization, and the WNI shareholder's capital asset holding period for such Exchangeable Shares would begin the day after the Recapitalization.

Even if the Recapitalization qualifies as a "reorganization" within the meaning of Section 368(a)(1)(E) of the Code, a recipient of Exchangeable Shares at the time of the Recapitalization would recognize gain to the extent that such shares were considered to be received in exchange for services or property (other than solely in exchange for WNI Shares). Gain would also have to be recognized to the extent that an WNI shareholder was treated as receiving (directly or indirectly) consideration other than Exchangeable Shares in exchange for WNI Shares. All or a portion of such gain amounts may be taxable as ordinary income to recipients of Exchangeable Shares.

Escrow Agreement

In connection with the Recapitalization, WNI will deposit the Escrow Amount, consisting of Cash Escrow and Escrowed Shares, in an escrow account with ChaseMellon Shareholders Services, LLC on behalf of the WNI shareholders. See "Related Agreements--Escrow Agreement." The Escrow Amount will be held to satisfy any claims for breaches of representations, warranties, covenants of WNI and the Principal Shareholders, and their indemnification obligations under the Recapitalization Agreement.

The Escrowed Shares should be deemed to be owned by the WNI shareholders receiving Exchangeable Shares for federal income tax purposes. Accordingly, any distribution of the Escrowed Shares from the Escrow to the WNI shareholders should not be a taxable event to such shareholders, but they will be taxed on dividends paid, if any, on the Escrowed Shares.

Assuming the Recapitalization is respected as a reorganization, Federal income tax law is unclear as to the treatment of holders of Exchangeable Shares in the event that any Escrowed Shares are used to satisfy any claim for breaches of representations, warranties, covenants of WNI and the Principal Shareholders, and indemnification obligations under the Recapitalization Agreement. It is possible that satisfaction of indemnification obligations under the Recapitalization Agreement with Escrowed Shares will be treated for federal income tax purposes as an adjustment to the consideration received by WNI shareholders in the Recapitalization, with the result that no gain or loss would be recognized by such shareholders upon the return of such Escrowed Shares. There is a risk, however, that such shareholders will be deemed to have disposed of such shares on a proportionate basis and will recognize gain or loss on such deemed disposition. In that event, each shareholder also would be deemed to have made a payment to WNI in the amount of the value of such Escrowed Shares. Such deemed payment could be treated as a cost of acquiring the Exchangeable Shares received in the Recapitalization, which must be capitalized into the tax basis of such shares. However, there are also arguments that each such shareholder should be allowed a capital loss in an amount equal to the value of the shares allocable to such shareholder which are used to satisfy any such claim, which loss would be allowable against gain realized on the deemed disposition of such shares. Shareholders should consult their tax advisors on the treatment of the use of Escrowed Shares to satisfy claims under the Recapitalization Agreement.

Considerations Relating to Eligibility for Benefit under Code Section 1202

Subject to the requirements and limitations set forth therein, Section 1202 of the Code provides for the exclusion of up to 50% of the gain recognized by a non-corporate taxpayer upon the sale or exchange of "qualified small business stock" that has been held by the taxpayer for more than five years. Exchangeable Shares which are received in exchange for WNI Common Shares that constitute "qualified small business stock" within the meaning of Section 1202(c)(1) of the Code will be treated as "qualified small business stock" acquired on the dates on which such WNI Common Shares were acquired. The aggregate amount of gain that will qualify for the 50% exclusion under Section 1202 of the Code upon the sale or other disposition of the Exchangeable Shares which a WNI shareholder receives in the Recapitalization may not exceed the amount of gain the WNI shareholder would recognize upon the Recapitalization if the Recapitalization is a taxable exchange rather than a reorganization.

Whether WNI Common Shares will constitute qualified small business stock in the hands of any WNI shareholder will depend on a number of factors which are particular to each shareholder, the history of WNI and its operations in the future, including whether a portion of such shareholder's WNI Common Shares or Exchangeable Shares are redeemed in the period beginning two years before and ending two years after the issuance to such shareholder of his or her WNI Common Shares (or more than 5% of the aggregate outstanding WNI Shares are redeemed from WNI shareholders during the period beginning one year before and ending one year after such issuance). Shareholders should be aware that this benefit may be available to them and that they will be required to hold their WNI Common Shares or Exchangeable Shares for the 5-year holding period to obtain such benefit. Accordingly, if the Recapitalization fails to qualify as a reorganization for federal income tax purposes or if, under some circumstances, a portion of the shares of such shareholder are redeemed, such

benefit will not be available to such shareholder. Finally, such benefit will not be available with respect to Exchangeable Shares sold or exchanged prior to the time that the required 5-year holding period expires. Shareholders should consult their tax advisors regarding the availability of this benefit to them of this provision given their respective circumstances. It should be noted that the benefits of this provision may be limited due to the application of the alternative minimum tax, the effect of which will vary from shareholder to shareholder.

Effect of Exchange of Exchangeable Shares

Holders of Exchangeable Shares who, following the Recapitalization, exchange such shares for Microsoft Common Shares (whether pursuant to their exchange rights or exercise by Microsoft of the Class Call Right) will be treated as making a taxable disposition of such shares unless such exchange qualifies as a reorganization within the meaning of Section 368(a)(1)(B) of the Code. Whether such exchange will so qualify is uncertain and will depend in part on the circumstances as of the time of such exchange, including whether WNI or Microsoft is the party which acquires the Exchangeable Shares.

In the event that such exchange does not qualify as a reorganization under Section 368(a)(1)(B) of the Code, holders of Exchangeable Shares would recognize gain or loss equal to the excess of the fair market value of the Microsoft Common Shares received in such exchange over their tax basis in the Exchangeable Shares surrendered therefor, unless such exchange were treated as a "Dividend Equivalent Transaction" (as defined above). Holders of Exchangeable Shares would in all events recognize such gain or loss in the event that they receive cash in lieu of Microsoft Common Shares upon exercise of their exchange rights unless such transaction was a Dividend Equivalent Transaction. If the transaction were a Dividend Equivalent Transaction, a holder would recognize ordinary dividend income equal to the amount of cash or fair market value of Microsoft Common Shares received to the extent of such holder's pro rata share of any accumulated or current year earnings and profits of WNI. Any remaining gain or loss should be taxable as capital gain or loss. Holders are advised to consult their own tax advisors prior to exercising their exchange rights (or upon Microsoft's exercise of its Class Call Right) regarding the income tax consequences of such exchange.

Microsoft Option Grants

Certain WNI employees and consultants will be granted Microsoft Options exercisable at a discount to the current market value of Microsoft Common Shares at the time of the Recapitalization. These options will become vested in accordance with the vesting schedule applicable to the WNI Options and/or WNI Common Shares to which they correspond, treating the Microsoft Options as allocated pro rata among such corresponding WNI Options and/or WNI Common Shares. Applicable Treasury Regulations indicate that compensatory options generally should not be taxable at the time of grant or vesting, but at the time that the options are exercised by the employees and consultants receiving the grants. Microsoft intends to treat the options awarded to the WNI employees and consultants consistently with such Regulations. However, WNI employees and consultants who receive discounted Microsoft Options should be aware that there is a risk that they will recognize taxable compensation income equal to the difference between the value of the Microsoft Common Shares subject to such options over the exercise price thereof at the time such Microsoft Options are granted (or, if later, first become exercisable). WNI employees and consultants should consult their own tax advisors with respect to the income tax consequences to them of the grant, vesting and exercise of such Microsoft Options.

ACCOUNTING TREATMENT

The Recapitalization is anticipated to be accounted for using the purchase method of accounting under generally accepted accounting principles. Under the purchase method of accounting, the assets of WNI will be valued at their estimated fair market value and reflected on the books and records of Microsoft accordingly.

REGULATORY REQUIREMENTS

Under the HSR Act, and the rules promulgated thereunder by the Federal Trade Commission (the "FTC"), the Recapitalization may not be consummated until notifications have been given and certain information has

been furnished to the FTC and the Antitrust Division of the Department of Justice (the "Department of Justice") and specified waiting period requirements have been satisfied. Microsoft and WNI each filed its respective notification and report forms under the HSR Act on April 14, 1997. The parties received a letter from the FTC dated April 15, 1997 confirming receipt of the filed documents and indicating that the waiting period began on April 14, 1997, and will expire at 11:59 p.m. on May 14, 1997, unless extended by a request for additional information or documentary material or unless early termination of the waiting period is granted.

Federal and state antitrust enforcement authorities review the legality of transactions such as the Recapitalization. At any time before or after the Effective Time, and notwithstanding that the HSR Act waiting period has expired, any such agency could take any action under antitrust laws that it deems necessary or desirable in the public interest. Such action could include seeking to enjoin the consummation of the Recapitalization or seeking divestiture of businesses of Microsoft or WNI acquired as a result of the Recapitalization. Under certain circumstances, private parties may also bring legal actions under the antitrust laws.

Based on information available to them, Microsoft and WNI believe that the Recapitalization can be effected in compliance with federal and state antitrust laws. However, there can be no assurance that a challenge to the consummation of the Recapitalization on antitrust grounds will not be made or that, if such a challenge were made, Microsoft and WNI would prevail or would not be required to accept certain conditions (possibly including certain divestitures) in order to consummate the Recapitalization. Under the Recapitalization Agreement, a condition to consummation of the Recapitalization for each of Microsoft and WNI is that all consents and approvals legally required for consummation of the Recapitalization shall have been obtained and no temporary restraining order, preliminary or permanent injunction, or other order or decree which prevents the consummation of the Recapitalization or imposes material conditions with respect to the Recapitalization shall have been issued and remain in effect.

SURRENDER OF CERTIFICATES; LOST CERTIFICATES

Microsoft has selected ChaseMellon Shareholder Services, LLC, the transfer agent for Microsoft Common Shares, as exchange agent (the "Exchange Agent") to effect the exchange of Certificates representing WNI Shares and WNI Warrants in connection with the Recapitalization. Enclosed with this Proxy Statement/Prospectus are instructions with respect to the surrender of Certificates representing WNI Shares and WNI Warrants to be exchanged for Exchangeable Shares or cash. Delivery will be effected, and risk of loss and title to such certificates will pass, only upon delivery of the Certificates to the Exchange Agent. Upon surrender to the Exchange Agent of certificates representing WNI Shares and WNI Warrants in accordance with the instructions, the holder thereof will be entitled to receive in exchange therefor a certificate that represents the appropriate number of Exchangeable Shares or an amount of cash to which such holder is entitled, pursuant to the Reorganization Agreement.

No fractional Exchangeable Shares will be issued in the Recapitalization. In lieu of such issuance, all Exchangeable Shares issued to the holders of WNI Common Shares pursuant to the Recapitalization Agreement shall be rounded to the closest whole Exchangeable Share.

Any WNI shareholder who has lost or misplaced a Certificate for any of his or her WNI Shares or WNI Warrants should immediately contact Bruce A. Leak, Secretary of WNI, at WNI's principal executive offices or by telephone at (415) 614-5502 for information regarding the procedures to be followed for replacing the lost certificate.

AFFILIATES' RESTRICTIONS ON SALE OF SHARES

The Exchangeable Shares to be issued in the Recapitalization, and the Microsoft Common Shares to be issued upon exchanging the Exchangeable Shares, have been registered under the Securities Act. All Microsoft Common Shares will be freely transferable under federal securities laws, except that such shares received by

persons who are deemed to be "affiliates" (as such term is defined under the Securities Act) of WNI prior to the Effective Time may be resold by them only in transactions permitted by the resale provisions of Rule 145(d)(1), (2) or (3) promulgated under the Securities Act or as otherwise permitted under the Securities Act. Rule 145(d)(1) generally provides that "affiliates" of either WNI or Microsoft may not sell securities of Microsoft received in the Recapitalization unless pursuant to an effective registration statement or unless pursuant to the volume, current public information, manner of sale and timing limitations of Rule 144 promulgated under the Securities Act. These limitations generally require that any sales made by an affiliate of WNI not exceed 1% of the outstanding shares of Microsoft in any three-month period and that such sales be made in unsolicited, open market "brokers transactions." Rules 145(d)(2) and (3) generally provide that the foregoing limitations lapse for non-affiliates of Microsoft after a period of one or two years, respectively. Persons who may be deemed to be affiliates of an issuer generally include individuals or entities that control, are controlled by, or are under common control with, such issuer and may include certain officers and directors of such issuer as well as principal shareholders of such issuer. Each of the Principal Shareholders of WNI have agreed not to sell their Microsoft Common Shares except under certain circumstances, including where such sale is permitted pursuant to Rule 145 under the Securities Act. See "The Recapitalization and Related Transactions--Related Agreements--Affiliates Agreement."

RECAPITALIZATION EXPENSES

Whether or not the Recapitalization is consummated, each party will bear its own costs and expenses in connection with the Recapitalization Agreement and the transactions contemplated thereby. Notwithstanding the foregoing, if the Recapitalization is not consummated, Microsoft and WNI have agreed to share equally expenses incurred in connection with printing and mailing of the documents distributed to shareholders of WNI and the filing fee with respect to the registration statement and this Proxy Statement/Prospectus filed with the Commission.

PROPOSAL II--OPTION GRANTS, OPTION ACCELERATION AND OTHER COMPENSATORY MATTERS

Without WNI shareholder approval of certain of the payments and other consideration to be made pursuant to the Recapitalization Agreement and under other agreements and arrangements, such payments and other consideration could be considered "Parachute Payments" under Section 280G of the Code. If deemed Parachute Payments, such payments and other consideration could cause adverse tax and other consequences to WNI, WNI shareholders receiving such Parachute Payments, WNI employees and consultants receiving Parachute Payments, and/or Microsoft. To avoid treatment as Parachute Payments under Section 280G of the Code, such payments must be approved by WNI shareholders holding shares possessing more than 75% of the voting power of the outstanding WNI Shares, computed as provided in Section 280G(b)(5)(B) of the Code and the Treasury Regulations proposed thereunder. The determination of whether such 75% approval requirement is met with respect to a payment is made disregarding shares owned actually or constructively (within the meaning of Section 318 of the Code) by or for a person who would be treated as receiving such Parachute Payment absent such shareholder approval. Such shareholder vote must determine the right to receive (or, in the case of a payment previously made to retain) such payment. The individuals receiving payments and other consideration which may be deemed Parachute Payments absent shareholder approval are employees, independent contractors or other persons who perform services for WNI and who are also officers, shareholders or highly-compensated employees of WNI. The transactions which may involve Parachute Payments generally involve (i) certain payments to be made by Microsoft under employment agreements, (ii) the grant of certain options to purchase WNI Common Shares or Microsoft Common Shares, and (iii) the acceleration of vesting of options to purchase shares held by certain employees in connection with the Recapitalization. The payments and other consideration for which approval is sought are described as follows.

EMPLOYMENT AND NONCOMPETITION AGREEMENTS

One condition of Microsoft's obligation to effect the Recapitalization is that Microsoft shall have received from each of the Principal Shareholders, a duly executed Employment Agreement. The material provisions of

each Employment Agreement are common to all of the Employment Agreements. See "The Recapitalization and Related Transactions--Related Agreements--Employment and Noncompetition Agreements."

GRANT OF OPTIONS TO PURCHASE MICROSOFT COMMON SHARES

Option Grants and Acceleration

A number of WNI employees or consultants who are or could be subject to the Parachute Payment rules described above were granted WNI Options within the one-year period preceding the anticipated Effective Time of the Recapitalization. In addition, certain WNI employees are entitled to additional vesting of previously granted WNI Options upon termination of employment without cause following a change of majority ownership or control of WNI as described below. To the extent such WNI Option grants or additional vesting could constitute Parachute Payments, the discussion herein discloses the material terms thereof, and shareholder approval of each such grant or acceleration (as applicable), as provided above, is being requested. Except as otherwise stated, all WNI Options vest to the extent of 25% of the shares subject to such options after one year from the applicable vesting commencement dates and an additional 1/48 of the remaining shares at the end of each month thereafter and are otherwise subject to the standard terms of the WNI 1996 Stock Incentive Plan.

Furthermore, Microsoft has agreed to grant Microsoft Options following the Closing under its 1991 Plan to certain WNI employees and consultants holding WNI Options (or WNI Common Shares acquired upon exercise of such WNI Options or by direct purchase) prior to the execution of the Recapitalization Agreement. To the extent such Microsoft Options could be treated as Parachute Payments, the material terms thereof are set forth herein and shareholder approval as described above will be sought for such grants. In each case, the specific numbers of shares to be subject to such Microsoft Options and the exercise prices thereof have not yet been determined, but each such WNI employee and consultant will be granted Microsoft Options with an aggregate option spread (i.e., excess of fair market value of a Microsoft Common Share as of the Closing Date over exercise price) equal to (i) $4.779, multiplied by (ii) the sum of the number of WNI Common Shares owned or subject to WNI Options held by such employee prior to the Closing. In each case, such Microsoft Options will vest in accordance with the vesting schedule applicable to the WNI Options and/or WNI Common Shares to which they correspond, treating the Microsoft Options as allocated pro rata among such corresponding WNI Options and/or WNI Common Shares.

David R. Anderson

(a) WNI Options. WNI Options to acquire 15,000 shares were granted and commenced vesting on September 12, 1996 at an exercise price of $.50 per share and WNI Options to acquire an additional 5,000 shares were granted on January 17, 1997 (with vesting commencing on January 16, 1997) at an exercise price of $1.75 per share.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $454,005 will be granted following the Closing, 68.4% of which commence vesting on December 26, 1995, 3.2% of which commence vesting on February 4, 1996, 7.4% of which commence vesting on June 14, 1996, 15.8% of which commence vesting on September 12, 1996 and 5.3% of which commence vesting on January 16, 1997.

Jeffrey Barco

(a) WNI Options. WNI Options to acquire 35,000 shares were granted at an exercise price of $2.50 per share on March 10, 1997 (with vesting commencing March 3, 1997).

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $167,265 will be granted following the Closing, 100% of which commence vesting on March 3, 1997.

Peter Barrett

(a) WNI Options. WNI Options to acquire 26,000 shares were granted at an exercise price of $2.00 per share on February 21, 1997, with 50% of such options vesting on May 1, 1997 and the remaining 50% of such options vesting on August 1, 1997.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $920,760.37 will be granted following the Closing, 86.5% of which will be fully immediately vested and 13.5% of which will vest in accordance with the schedule set forth in (a).

Colleen Bertiglia

(a) WNI Options. WNI Options to acquire 7,500 shares were granted on January 17, 1997 at $1.75 per share, with vesting commencing January 16, 1997.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $744,721.13 will be granted following the Closing, 85.6% of which commence vesting on October 9, 1995, 9.6% of which commence vesting on July 5, 1996, and 4.8% of which commence vesting on January 16, 1997.

Joseph Britt

(a) WNI Options. WNI Options to acquire 15,000 shares were granted and commenced vesting on September 12, 1996 at $.50 per share.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $840,626.10 will be granted following the Closing, 90.1% of which commence vesting on July 24, 1995, 1.4% of which commence vesting on June 14, 1996, and 8.5% of which commence vesting on September 12, 1996.

Tim Bucher

(a) WNI Options. WNI Options to acquire 50,000 shares were granted on September 12, 1996 at an exercise price of $.50 per share, with vesting commencing on September 9, 1996.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $1,202,721.37 will be granted following the Closing, 66.2% of which commence vesting on September 25, 1995, 6.0% of which commence vesting on November 7, 1995, 7.9% of which commence vesting on February 12, 1996, and 19.9% of which commence vesting on September 9, 1996.

Cary Clark

(a) WNI Options. WNI Options to acquire 3,000 shares at an exercise price of $.50 per share were granted and commenced vesting on September 12, 1996 and WNI Options to acquire an additional 1,000 shares at $1.75 per share were granted on January 17, 1997 and commenced vesting on January 16, 1997.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $425,331 will be granted following the Closing, 95.5% of which commence vesting on October 30, 1995, 3.4% of which commence vesting on September 12, 1996 and 1.1% of which commence vesting on January 16, 1997.

Richard Daley

(a) WNI Options. WNI Options to acquire 15,000 shares were granted and commenced vesting on September 12, 1996 at an exercise price of $.50 per share, WNI Options to acquire an additional 3,000 shares were granted on January 17, 1997 and commenced vesting on January 16, 1997 at an exercise price of $1.75 per share, and WNI Options to acquire an additional 20,000 shares were granted on March 10, 1997 and commenced vesting on March 7, 1997 at an exercise price of $2.50 per share.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $898,452 will be granted following the Closing, 79.8% of which commence vesting on October 2, 1995, 8.0% of which commence vesting on September 12, 1996, 1.6% of which commence vesting on January 16, 1997, and 10.6% of which commence vesting on March 7, 1997.

Valerie Gardner

(a) WNI Options. WNI Options to acquire 15,000 shares were granted on January 17, 1997 at an exercise price of $1.75 per share, with vesting commencing January 16, 1997.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $789,070.25 will be granted following the Closing, 67.3% of which commence vesting on September 18, 1995, 9.1% of which commence vesting on April 25, 1996, 14.5% of which commence vesting on July 5, 1996 and 9.1% of which commence vesting on January 16, 1997.

Zara Tepper Haimo

Microsoft Options having an aggregate option spread of $645,165 will be granted following the Closing, 100% of which commence vesting on May 16, 1996.

William C. Herman

(a) WNI Options. WNI Options to acquire 25,000 shares were granted on January 17, 1997 at an exercise price of $1.75 per share, with vesting commencing January 16, 1997. Although such options, together with WNI Options to acquire 200,000 shares which were granted on June 26, 1996 and commenced vesting on June 24, 1996 at an exercise price of $.16 per share, normally vest on the standard schedule noted above, in the event that his employment is terminated without cause or his base salary or primary responsibilities are substantially changed as a result of a change in majority ownership or control of WNI, Mr. Herman is entitled to receive one year's additional vesting of his options. Shareholder approval is being sought for the entire January 17, 1997 option grant and for the right to the one year's additional vesting under the June 26, 1996 option grant.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $1,075,275 will be granted following the Closing, 88.9% of which commence vesting on June 24, 1996 and 11.1% of which commence vesting on January 16, 1997.

William Keating

(a) WNI Options. WNI Options to acquire an aggregate of 400,000 shares were granted on June 26, 1996 at an exercise price of $.16 per share, with 300,000 shares commencing vesting on May 15, 1996 and 100,000 shares commencing vesting on June 1, 1996. Although such options normally vest on the standard schedule noted above, in the event that his employment is terminated without cause as a result of a change in majority ownership or control of WNI Mr. Keating is entitled to receive one year's additional vesting of his options. Shareholder approval is being sought solely for the right to the one year's additional vesting.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $1,911,600 will be granted following the Closing, 75% of which commence vesting on May 15, 1996 and 25% of which commence vesting on June 1, 1996.

Randy Komisar

(a) WNI Options. WNI Options to acquire 75,000 shares were granted on January 17, 1997 at an exercise price of $1.75 per share, with vesting commencing January 16, 1997.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $955,800 will be granted following the Closing, 62.5% of which commence vesting on March 18, 1996, and 37.5% of which commence vesting on January 16, 1997.

Sam Klepper

(a) WNI Options. WNI Options to acquire 25,000 shares were granted on October 25, 1996 at an exercise price of $.75 per share with vesting commencing October 14, 1996, and WNI Options to acquire an additional 2,500 shares were granted on January 17, 1997 at an exercise price of $1.75 per share with vesting commencing January 16, 1997.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $131,422.50 will be granted following the Closing, 90.9% of which commence vesting on October 14, 1996 and 9.1% of which commence vesting on January 16, 1997.

Herb Maeder

Microsoft Options having an aggregate option spread of $585,788.37 will be granted following the Closing, 93.6% of which commence vesting on September 18, 1995, 4.0% of which commence vesting on February 4, 1996, and 2.4% of which commence vesting on June 14, 1996.

John Matheny

(a) WNI Options. WNI Options to acquire 25,000 shares were granted and commenced vesting at an exercise price of $.50 per share on September 12, 1996, and WNI Options to acquire an additional 4,000 shares were granted at an exercise price of $1.75 per share on January 17, 1997, with vesting commencing January 16, 1997.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $888,894 will be granted following the Closing, 80.6% of which commence vesting on August 28, 1995, 1.1% of which commence vesting on February 4, 1996, 2.7% of which commence vesting on June 14, 1996, 13.4% of which commence vesting on September 12, 1996 and 2.2% of which commence vesting on January 16, 1997.

Paul McCabe

(a) WNI Options. WNI Options to acquire 10,000 shares at an exercise price of $.50 per share were granted and commenced vesting on September 12, 1996, and WNI Options to acquire an additional 3,000 shares at an exercise price of $2.00 per share were granted on February 21, 1997 and commenced vesting on February 18, 1997.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $253,287 will be granted following the Closing, 75.5% of which commence vesting on May 13, 1996, 18.9% of which commence vesting on September 12, 1996, and 5.7% of which commence vesting on February 18, 1997.

Lee Mighdoll

(a) WNI Options. WNI Options to acquire 25,000 shares were granted and commenced vesting at an exercise price of $.50 per share on September 12, 1996, and WNI Options to acquire an additional 4,000 shares were granted at an exercise price of $1.75 per share on January 17, 1997 and commenced vesting on January 16, 1997.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $912,789 will be granted following the Closing, 78.6% of which commence vesting on August 28, 1995, 3.1% of which commence vesting on February 4, 1996, 3.1% of which commence to vest on June 14, 1996, 13.1% of which commence vesting on September 12, 1996, and 2.1% of which commence vesting on January 16, 1997.

Kevin Neeson

(a) WNI Options. WNI Options to acquire 10,000 shares of WNI Common Stock at an exercise price of $.50 per share were granted and commenced vesting on September 12, 1996, and WNI Options to acquire an additional 1,500 shares at an exercise price of $2.00 per share were granted on February 21, 1997 and commenced vesting on February 18, 1997.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $270,013.50 will be granted following the Closing, 79.6% of which commence vesting on December 28, 1995, 17.7% of which commence vesting on September 12, 1996, and 2.7% of which commence vesting on February 18, 1997.

Keith Ohlfs

(a) WNI Options. WNI Options to acquire 16,000 shares were granted and commenced vesting on September 12, 1996 at an exercise price of $.50 per share.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $506,574 will be granted following the Closing, 66.0% of which commence vesting on August 28, 1995, 18.9% of which commence vesting on April 1, 1996, and 15.1% of which commence to vest on September 12, 1996.

Albert Pimentel

(a) WNI Options. WNI Options to acquire 400,000 shares were granted and commenced vesting on November 4, 1996 at an exercise price of $1.00 per share. Although his options generally vest on the standard schedule noted above, in the event that his employment is terminated without cause as a result of a change in majority ownership or control of WNI Mr. Pimentel is entitled to receive one year's additional vesting of his options. Shareholder approval is being sought for the entire option grant as well as the additional vesting.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $1,911,600 will be granted following the Closing, 100% of which commence vesting on November 4, 1996.

Andrew E. Rubin

(a) WNI Options. WNI Options to acquire 7,000 shares at an exercise price of $.50 per share were granted and commenced vesting on September 12, 1996, WNI Options to acquire an additional 3,000 shares at an exercise price of $1.75 per share were granted on January 17, 1997 and commenced vesting on January 16, 1997, and WNI Options to acquire an additional 5,000 shares at $2.50 per share were granted on March 10, 1997 and commenced vesting on March 7, 1997.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $296,298 will be granted following the Closing, 56.5% of which commence vesting on February 5, 1996, 19.4% of which commence vesting on June 14, 1996, 11.3% of which commence vesting on September 12, 1996, 4.8% of which commence vesting on January 16, 1997, and 8.1% of which commence vesting on March 7, 1997.

Carol Sacks

(a) WNI Options. WNI Options to acquire 20,000 shares at an exercise price of $2.50 per share were granted and commenced vesting on March 10, 1997.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $95,580 will be granted following the Closing, 100% of which commence vesting on March 10, 1997.

Christopher White

(a) WNI Options. WNI Options to acquire 12,000 shares at an exercise price of $.50 per share were granted and commenced vesting on September 12, 1996.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $802,872 will be granted following the Closing, 89.7% of which commence vesting on August 28, 1995, 1.1% of which commence vesting on February 4, 1996, 2.3% of which commence vesting on March 18, 1996, and 6.9% of which commence vesting on September 12, 1996.

Larry Yang

Microsoft Options having an aggregate option spread of $301,077 will be granted following the Closing, 95.2% of which commence vesting on January 15, 1996 and 4.8% of which commence vesting on June 14, 1996.

William Yundt

(a) WNI Options. WNI Options to acquire 25,000 shares were granted at an exercise price of $1.75 per share on January 17, 1997 and commenced vesting on January 16, 1997.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $836,325 will be granted following the Closing, 85.7% of which commence vesting on June 3, 1996, and 14.3% of which commence vesting on January 16, 1997.

Thomas Ziola

(a) WNI Options. WNI Options to acquire 15,000 shares were granted at an exercise price of $2.50 per share on March 10, 1997, with vesting commencing December 12, 1995.

(b) Microsoft Options. Microsoft Options having an aggregate option spread of $716,850 will be granted following the Closing, 100% of which commence vesting on December 12, 1995.

Other Payments

WNI has agreed to pay Asia Pacific Ventures Co. an aggregate of $600,000 over a period of 12 months as additional consideration for services previously rendered by that firm to WNI and granted that firm a fully vested option to purchase 10,000 shares of WNI Common Stock at an exercise price of $2.50 per share on March 10, 1997. Shareholder approval is being sought for all of the foregoing amounts.

WNI BOARD RECOMMENDATION

THE BOARD OF DIRECTORS OF WNI HAS DETERMINED THAT THE OPTION GRANTS, OPTION ACCELERATION AND OTHER COMPENSATORY MATTERS ARE IN THE BEST INTERESTS OF WNI AND ITS SHAREHOLDERS AND UNANIMOUSLY RECOMMENDS A VOTE FOR APPROVAL AND ADOPTION OF THE OPTION GRANTS, OPTION ACCELERATION AND OTHER COMPENSATORY MATTERS.

WNI'S BUSINESS

GENERAL

WNI offers an on-line service that enables consumers to experience the Internet through their televisions. WNI has developed a set-top terminal (the "WebTV set-top terminal") that attaches to a television and telephone line and enables consumers to access WNI's subscription-based on-line service (the "WebTV Network"). WNI licenses the design for its set-top terminal to consumer electronics manufacturers, currently Sony Electronics ("Sony"), Philips Consumer Electronics ("Philips") and Pace Microtechnology ("Pace"), who offer the set-top terminal to consumers, while WNI operates the WebTV Network. By attempting to reduce the cost and complexity barriers to Web access, WNI's goal is to make the Internet available to a wider audience than has previously been possible.

PRODUCTS, SERVICES AND TECHNOLOGY

WNI offers an Internet on-line service that can be accessed by consumers via the WebTV set-top terminal which connects to a television and a telephone line. Once the WNI set-top terminal is connected, the user pays a flat monthly fee (currently $19.95/month) for unlimited access to the Internet via the WebTV Network, which performs all of the underlying operations necessary to provide the consumer with access to the Internet. In addition, the WebTV Network offers the user a remote-controlled browser, an e-mail interface and aggregated content. WNI's solution for connecting consumers to the Internet via a television and a telephone line is composed of the WNI set-top terminal and the WebTV Network.

The WebTV Set-Top Terminal

The WebTV set-top terminal connects to a television and a telephone line to enable the user to access the Internet via the WebTV Network. In addition to the power cord, the set-top terminal has two cables: one connects to the consumer's television (or VCR), and the other plugs into the telephone line. The front panel of the set-top terminal is equipped with an infrared receiver for the remote control, a smart card slot, and three different LED displays: a POWER LED to indicate when the terminal is on or off, a CONNECTED LED to indicate when the terminal is connecting to the WebTV Network or receiving new information, and a MESSAGE LED to indicate when the user has unread e-mail. The back panel of the set-top terminal comes with several ports for optional enhancements, including a S-video connector, a keyboard connector for standard PC keyboards, audio and video out connectors, and an RF out DC connector for use with an RF adaptor. The WebTV set-top terminals incorporate the following features:

- SIMPLE INSTALLATION AND OPERATION: The WebTV set-top terminal utilizes standard electrical and telephone connections to enable consumers to attach the unit to a television and telephone line. Once the WebTV set-up terminal is connected to the television and telephone line, the user turns the unit on by pressing the power button on the remote control, bringing up a brief on-screen registration form, which includes name, address, phone number, credit card information and preference information.

- HIGH RESOLUTION VIEWING: WNI has developed TVLens technology which reduces the interlace flicker and blurring which has traditionally been associated with the projection of computer-based images onto a television monitor. In addition, WNI's Worldscan technology formats Web content to help optimize appearance in all television broadcast standards.

- CALL-WAITING COMPATIBILITY: The WebTV set-top terminal allows a user to receive incoming telephone calls when the set-top terminal is used on a telephone line that is equipped with a standard call-waiting service. Thus, when a user receives an incoming call while browsing the World Wide Web (the "Web"), the WebTV set-top terminal automatically disconnects and allows the user to answer the call. Upon completion of the incoming telephone call, the set-top terminal automatically reconnects the user to the same Web page that he or she was visiting prior to the call. This function is provided by WNI's LineShare technology but can be disabled if uninterrupted Web browsing is desired.

- BROWSING SPEED AND RELIABILITY: WNI utilizes a variety of hardware, software and network technologies to provide consumers with fast and reliable Internet access, Web-based content and e-mail communication. The WebTV set-top terminal comes standard with a 33.6 Kbps v.34bis modem. Browsing speed is enhanced through the use of advanced caching, the process of storing popular Web content on the WebTV Network and delivering it directly in response to user requests rather than requiring the user to retrieve the information from the original Web site. In addition, WNI employs network management technology that connects the user to any one of several alternative ISPs to help provide a reliable and efficient connection to the Internet even if a particular ISP's network is overloaded or shut down.

- REMOTE CONTROL: The WebTV set-top terminal comes standard with a television-like remote control for interface with the WebTV Network. In addition, the remote control can access the WebTV Network's on-line keyboard which allows users to enter characters for a particular universal resource locator ("URL"), conduct Web searches or create short e-mail messages. The remote control also serves as a standard television remote control for basic operation of a user's television, including volume and channel selection for most standard makes or models, as well as allowing the user to switch between the WebTV Network and regular television.

- INFRARED KEYBOARD (OPTIONAL): Consumers may purchase a wireless keyboard sold as an optional accessory for approximately $70 that contains similar keys and browsing functions as the remote control, as well as offering the data entry functionality of a traditional computer keyboard.

- SMART CARD CAPABILITIES: A smart card reader is built into the face of the WebTV set-top terminal. The initial implementation of the smart card's capabilities will be limited to enabling consumers to use smart cards to access their own WebTV Network accounts through any WebTV set-top terminal. As electronic commerce becomes more common, the uses of smart cards with the WebTV set-top terminal may expand.

- UPGRADING OF WEBTV SET-TOP TERMINALS AND CLIENT SOFTWARE: The WebTV Network's applications framework supports applications download and upgrades. Thus, existing applications can be upgraded and entirely new applications can be delivered on-line to existing users.

The WebTV Network

The WNI Network is accessed through the set-top terminal and consists of three primary components: user interface and functionality, network content and features, and network operations technology.

USER INTERFACE AND FUNCTIONALITY

WNI designed the WebTV browser for consumer viewing on a television by incorporating certain video techniques such as scrolling screens to indicate vertical page movement and fading to new pages as well as substantially eliminating certain effects such as the piecemeal construction of Web pages typical of PC-based browsers, resizable windows and horizontal scroll bars. The WebTV browser resides on the set-top terminal, but is periodically upgraded through the WebTV Network. The WebTV browser is compatible with HTTP, MIME, HTML 3.0 and nearly all Netscape Navigator 3.0 and Microsoft Internet Explorer 3.0 extensions. In addition, the WebTV Network offers an on-line Help function which guides users through certain aspects of the browsing process and introduces the user to certain of the WebTV Network's features.

The WebTV Network includes features designed to help integrate the Web into the user's everyday life. The WebTV Network provides for up to five users per household by assigning each user a WebTV "account." Each account has a personal Internet e-mail address and customized settings and may be protected by a password. Parental control options utilizing SurfWatch software are provided for children's accounts, enabling concerned parents to block access to inappropriate content and e-mail from strangers. It is possible for each user to save selected Web site locations in a personalized "Favorites" location. "Favorites" saves not only the site address but also a miniature view of the page, so individual subscribers can see an overview of their preferred sites and readily return to such sites in the future.

In addition, the WebTV Network allows consumers to experience some of the Web's multimedia functionality, including general MIDI-compatibility with enhanced eMIDI instrument download capability, studio-quality video MPEG 1 and 2 audio compatibility, JPEG, GIF89a animation, and RealAudio compatibility.

NETWORK CONTENT AND FEATURES

The WebTV Network acts primarily as a content aggregator, attempting to provide an organizational structure that aids in locating content on the Web. To locate relevant content for its users, WNI's editorial staff reviews and culls information from the millions of sites that are already available on the Web.

The WebTV Network currently offers basic services, including unlimited access to the Web for a single monthly subscription price. Key features of the WebTV Network's basic services include the following:

- The WebTV Home Page. The first page seen by the user of the WebTV Network is the WebTV home page. Represented on the WebTV home page are icons that symbolize the Explore Directory, the search feature, the mail service, Around Town, and "Favorites." The body of the Home Page also contains a selection of icons with links to certain sites on the Web.

- Explore Directory. WNI's editorial staff locates high quality, engaging and pertinent content from the Web and organizes it for WebTV Network subscribers into a topical directory called Explore. This "best of" directory currently includes a substantial number of Web sites and provides assistance to the consumer by categorizing information into subject areas such as news, entertainment, sports and travel and then makes selections for the directory from among the best Web sites that WNI's editorial staff has discovered.

- Around Town. WNI's editorial staff aggregates local content in an area of the network called "Around Town." This area is currently available with limited functionality which WNI intends to enhance over time.

- Search Capability. The WebTV Network subscribers can search the Web through third-party Web search technology that is integrated into the WebTV Network. This search capability allows users to search for Web sites for information on selected topics by key words input by the user. WNI currently has an agreement with Excite, Inc. ("Excite") for the incorporation of a modified version of Excite's Internet search engine into the WebTV Network.

- E-mail. The WebTV Network has e-mail capability called "Mail." Users can send HTML and multimedia enhanced messages to, and receive messages from, anyone with an address on the Internet. In addition, subscribers to the WebTV Network are allocated designated storage space on the WebTV Network in order to save e-mail messages for future reference. The WebTV set-top terminal will also indicate to the user when Mail has arrived through a LED display on the outside of the box. The WebTV Network allows a user to type a message or a URL using either the software keyboard controlled by the remote control, the optional infrared keyboard, or a standard PC keyboard plugged into the set-top terminal.

NETWORK OPERATIONS TECHNOLOGY

WNI's network operations are based in WNI's facilities located in Palo Alto, California. The technology utilized by the WebTV Network includes the following:

- Internet Access and Load-Balancing Technology: The WebTV Network provides users with Internet access service through the use of multiple ISP relationships which currently provides Internet connectivity to approximately 90% of the United States, as well as redundant access in certain major metropolitan areas. WNI currently utilizes a number of different ISPs in providing Internet access to its subscriber base. WNI's network management technology enables the WebTV Network to perform load balancing among various ISPs and to employ a form of least-cost routing across multiple ISPs.

- Proxy Caching: WNI's TransCache technology caches, transcodes, reformats, streams and reorders Web data from individual Web sites for downloading to the user's set-top terminal. The WebTV Network

determines the timing for content updates from standard periodicity data incorporated in many Web sites or from learning algorithms where the periodicity data is not included. The WebTV Network currently has many Web pages cached on its servers resulting in a substantial number of user requests for Web data being downloaded directly from WNI's servers rather than from the original web site.

. Modular Scalablity: WNI currently maintains the WebTV Network through the use of multiple workstations. The WebTV Network is designed so that it can be scaled to accommodate increased volumes of activity by adding additional workstations to WNI's existing inventory.

. Security Encryption: Client/server encryption technology is employed to help maintain a secure connection between the WebTV Network server and the WebTV set-top terminal client.

SALES, MARKETING AND DISTRIBUTION

To aid in its sales, marketing and distribution efforts, WNI has entered into relationships with Sony, Philips and Pace which contemplate the manufacture, marketing and distribution of the WebTV set-top terminal. The relationships with these consumer electronics licensees are designed to enable the consumer electronics licensees to leverage their consumer brand names and mass market distribution channels, and to provide direct product advertising and marketing in order to sell their specific branded product. WNI supplements this effort with its own marketing of the WebTV brand name.

WNI has granted Sony, Philips and Pace non-exclusive licenses to WNI's technology for incorporation into the WebTV set-top terminals they manufacture and distribute. In addition, WNI and each of such licensees have agreed to cooperate with respect to the development of product enhancements, as well as joint marketing efforts.

The WebTV set-top terminal is distributed primarily through the normal consumer electronics distribution channels to retail stores by the consumer electronics licensees. WNI complements this distribution effort by installing the WebTV Network for demonstration purposes and training the dealers to demonstrate the use of the WebTV Network.

MANUFACTURING

WNI expects that manufacture of its set-top terminals will be performed by its consumer electronics licensees. To facilitate timely introduction of the WebTV set-top terminal, portions of the set-top terminal have been manufactured under WNI's supervision in Sunnyvale, California pursuant to purchase orders from Sony and Philips. It is WNI's intention to transition responsibility for manufacturing operations to its consumer electronics licensees in the future.

CUSTOMER SERVICE

WNI has retained a third-party customer service and technical support organization to provide first-level customer support services to subscribers to the WebTV Network. Complex customer support issues that cannot be addressed by the third-party customer service organization are escalated to WNI's internal customer care team. The third-party customer service organization and the internal WNI customer care team respond to customer service and technical support issues received via e-mail or telephone. The third-party customer service organization also offers pre-subscription support to potential WebTV Network subscribers who are contemplating the purchase of a WebTV set-top terminal.

PROPRIETARY TECHNOLOGY

WNI's proprietary hardware and client and network software incorporate a number of technologies designed to simplify and enhance the process of experiencing the Internet through a television set and telephone line. WNI's principal proprietary technologies are described briefly below.

Hardware

WNI's custom designed ASIC uses WNI's TVLens image enhancement technology to reduce interlace flicker, without blurring, while perceptually enhancing image detail. WNI's ASIC utilizes custom PhosphoRam on-the-fly image decompression technology, minimizing memory consumption, and thereby reducing the set-top terminal's need for additional and costly RAM devices.

WNI's LineShare technology allows incoming calls to be received by a WebTV Network subscriber while the WebTV Network is on a call-waiting-equipped phone line. LineShare also automatically determines whether other extensions of a shared telephone line are active, and prevents network activation when such extensions are in use.

WNI also offers universal remote control with One Thumb Browsing technology. This WebTV set-top terminal technology allows the user to navigate between hypertext links in Web pages displayed on the user's television screen, view Web pages, as well as download and listen to audio files (through the television's speakers) all by way of a remote control device similar to the typical television set remote control unit.

Client Software

The WNI browser is compatible with HTTP, MIME, HTML 3.0 and virtually all Netscape Navigator 3.0 and Microsoft Internet Explorer 3.0 extensions, producing quality television images from virtually all Web pages. WNI browser software is implemented in the processing system housed in the WebTV set-top terminal to facilitate communications over a wide-area network among the WebTV set-top terminal client and one or more servers. Document prefetching is used to enhance system responsiveness. Additionally, the WebTV browser enables secure, MIME-compatible, multimedia e-mail with graphics and sound capability and Flash ROM auto-update technology keeps the WebTV browser current with the latest HTML expansions and plug-ins.

Network System Software

WNI's TransCache technology caches, transcodes, reformats, compresses, streams and reorders Web site data for optimal download to the set-top terminal. TransCache first examines an HTML data stream for compressibility. If compressible, the data stream is then attached to a compression stream, and compression is performed immediately to generate a compressed data stream. The compressed data stream is transmitted continuously as it is generated, as an HTML stream, improving the speed and reliability of WebTV Network data traffic. WNI's client/server encryption software maintains a secure connection between the WebTV Network server and set-top terminal using a physically secure channel.

WNI's other network technologies include MessageWatch and AutoAccess. MessageWatch technology periodically wakes up the set-top terminal when it is off-line, dials in and checks for new e-mail and lights a message LED on the set-top terminal, which notifies the user of new mail. AutoAccess technology automatically determines local access numbers for optimal Internet access providers.

PATENTS, COPYRIGHTS AND TRADEMARKS

WNI regards its patents, copyrights, trademarks, trade dress, trade secrets and similar intellectual property as critical to its success and WNI relies upon patent law, copyright law, trademark law, trade secret protection and confidentiality and/or license agreements with its employees, customers, licensees and others to protect its proprietary rights. WNI has filed United States and foreign patent applications relating to its hardware, client software and network system software inventions. WNI pursues the registration of its copyrights and trademarks in the United States and internationally. Effective patent, copyright, trademark and trade secret protection may not be available in every country in which WNI's products and services are distributed or made available through the Internet. There can be no assurance that any pending registration or application will be granted or that the denial of any such registration or application would not have a material adverse effect on WNI's business.

WNI has in the past, and it expects that it may in the future, license elements of its distinctive trademarks, trade dress and similar proprietary rights to third parties. Although WNI attempts to ensure that the quality of its brand is maintained by such licensees, no assurances can be given that such licensees will not take actions that might materially and adversely affect the value of WNI's proprietary rights or the reputation of its products and services, either of which could have a material adverse effect on WNI's business.

There can be no assurance that the steps taken by WNI to protect any of its proprietary rights will be adequate or that third parties will not infringe or misappropriate WNI's patents, copyrights, trademarks, trade dress and similar proprietary rights. In addition, there has been substantial litigation in the technology industry regarding rights to intellectual property, and WNI is subject to the risk of claims against it for alleged infringement of the intellectual property rights of others. The existence of any such claim by a third party may not become known to WNI until well after it has committed significant resources to the development of a potentially infringing product. From time to time, WNI has received claims that it has infringed third parties' intellectual property rights, and there is no assurance that third parties will not claim infringement by WNI in the future. Any such claims, with or without merit, could be time-consuming, result in costly litigation, cause product shipment delays, or require WNI to enter into royalty or licensing agreements, any of which could have a material adverse effect on WNI. There can be no assurance that such royalty or licensing agreements, if required, will be available on terms acceptable to WNI, or at all.

COMPETITION

The business of providing Internet access services is new, extremely competitive, rapidly evolving and subject to rapid technological change. WNI expects that such competition will intensify significantly in the near future. A large number of companies are developing or have introduced devices and technologies to facilitate access to the Internet via a television. Such competitors include suppliers of low-cost Internet access technologies, such as "network computer" devices promoted by Oracle and others, "set top" boxes developed by Scientific Atlanta and others, the Apple Pippin, the Viewcall Webster and devices that are proposed or under development by, companies such as Navio and Diba, as well as video game devices that provide Internet access such as the Sega Saturn, the Sony Playstation and the Nintendo 64. In addition, manufacturers of television sets have announced plans to introduce Internet access and Web browsing capabilities into their products or through set-top boxes, using technology supplied by NetChannel, Diba and others. Personal computer manufacturers such as Gateway 2000 are introducing PCs that offer full-fledged television viewing combined with Internet access. Operators of cable television systems also plan to offer Internet access in conjunction with cable service. WNI also competes with internet service providers, such as AT&T, MCI, the RBOCs, Netcom and others, and commercial on-line services such as AOL, Compuserve, ICTV and @Home, Inc. There can be no assurance that WNI's competitors will not develop Internet access products and services that are superior to, and priced competitively with, those of WNI, thereby achieving greater market acceptance than WNI's offerings. Many of WNI's existing competitors, as well as potential competitors, have longer operating histories, greater name recognition, larger installed customer bases and significantly greater financial, technical and marketing resources than WNI. In addition, certain of WNI's current and prospective competitors may be acquired by, receive investments from or enter into other commercial relationships with larger, more well-established and well-funded companies. Such competition could have a material adverse effect on WNI's business, operating results and financial condition.

WNI believes that the principal competitive factors in its business are quality and variety of content, consumer acceptance, reliability, ease of use and installation, technological superiority, brand recognition, product timing, third party manufacturing and distribution relationships and price. Although WNI believes that its products and services compete favorably with respect to the factors outlined above, there can be no assurance that WNI will be able to compete successfully against current or future competitors or that the competitive pressures faced by WNI will not have a material adverse effect on WNI's business, operating results and financial condition.

EMPLOYEES

As of December 31, 1996, WNI had 173 employees, including 68 in engineering and product development, 21 in network operations, 9 in customer care, 27 in marketing and sales, 20 in content/editorial and 28 in finance and administration.

None of WNI's employees is represented by a labor organization, and WNI is not a party to any collective bargaining agreement. WNI has never had any employee strike or work stoppage and considers its relations with its employees to be good.

FACILITIES

WNI's headquarters, including its executive offices, network operations center, and engineering, marketing and sales facilities are located in Palo Alto, California, in six buildings occupying approximately 45,000 square feet. WNI occupies these facilities under leases that expire in one to five years and provide options for up to an additional one to five years. WNI believes that its existing facilities are adequate to meet its requirements for the foreseeable future and that suitable additional or substitute space will be available as needed.

LEGAL PROCEEDINGS

From time to time WNI has been, and expects to continue to be, subject to legal proceedings and claims in the ordinary course of its business, including claims of alleged infringement of the trademarks and other intellectual property rights of third parties by WNI and its licensees. Such claims, even if not meritorious, could result in the expenditure of significant financial and managerial resources.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

OVERVIEW

WNI, which was formed in June 1995, operates an on-line service that enables consumers to experience the Internet through their televisions. From its inception to September 1996, WNI's activities related primarily to recruiting personnel, raising capital and developing technology for the WebTV set-top terminal and the WebTV Network. In October 1996, WNI delivered initial shipments of the WebTV set-top terminal through its consumer electronics licensees and activated the WebTV Network.

Though WNI licenses the WebTV set-top terminal reference design to consumer electronics manufacturers, it expects its revenues and profits to be derived from the WebTV Network. WNI expects that its future revenues will be derived predominantly from monthly subscription fees to the WebTV Network as well as from the sale of advertising space on the WebTV Network.

WNI has an extremely limited operating history. WNI's business must be considered in light of the risks, expenses and problems frequently encountered by companies in their early stage of development, particularly companies in new and rapidly evolving markets, such as the Internet. The market for WNI's products and services has recently begun to develop, is rapidly evolving and is characterized by an increasing number of market entrants with products and services for use on the Internet. As a result, WNI's mix of products and services may undergo substantial changes as WNI reacts to competitive and other developments in the overall Internet market. WNI has recorded limited revenues to date, has incurred net losses since inception and expects to continue to operate at a loss in the near term. As of December 31, 1996, WNI had an accumulated deficit of approximately $29.4 million.

As a result of WNI's extremely limited operating history, WNI has no meaningful historical financial data upon which to base planned operating expenses. Accordingly, WNI's expense levels are based in part on its expectations as to future revenues, particularly future subscriber and advertising revenues. WNI's expenses to a large extent are fixed. As a result, any significant shortfall in revenues, whether caused by less than expected growth in subscribers and subscription revenues or the failure to obtain paying advertisers, would have an immediate adverse impact on WNI's business, results of operations and financial condition. In addition, WNI plans to significantly increase its operating expenses. WNI expects to experience significant fluctuations in future quarterly operating results and believes that period-to-period comparisons of its results of operations are not necessarily meaningful and should not be relied upon as any indication of future performance.

RESULTS OF OPERATIONS

Amounts from inception (June 30, 1995) to December 31, 1995 and March 31, 1996 are not comparable to the amounts for the nine months ended December 31, 1996 due to the different duration of the periods and the acceleration of WNI's activities and related expenses throughout fiscal 1997.

REVENUES

WNI derives its revenues principally from on-line service, licenses and manufacturing. On-line service revenue consists primarily of fees charged to subscribers to the WebTV Network, which are recognized when services are provided. Advance payments for on-line services are deferred until the services are provided. Manufacturing revenue, which is described below, is recognized at the time the product is shipped. License revenue consists of certain fees paid by licensees and is recognized ratably over the term of the license agreements. Prepayments from licenses are deferred until the related product is shipped.

LICENSING AND MANUFACTURING REVENUES

Licensing and manufacturing revenues were approximately $35.5 million for the nine months ended December 31, 1996. These revenues were primarily derived from WNI's activities in coordinating the

manufacture of the first release of the WebTV set-top terminal for WNI's consumer electronics licensees during the quarter ended December 31, 1996. WNI does not anticipate recording significant revenue for manufacturing-related activities beyond June 30, 1997. For the nine months ended December 31, 1996, two licensees represented 59% and 41% of licensing and manufacturing revenues, respectively. These revenues were effectively recorded at WNI's cost and therefor WNI's gross profit on these sales was nominal.

ON-LINE SERVICE REVENUES

In conjunction with the distribution of the WebTV set-top terminal, WNI launched the WebTV Network. For the nine months ended December 31, 1996, WNI recorded approximately $672,000 of revenue from the WebTV Network. Substantially all of the on-line service revenue recorded to date is from on-line service subscription fees. WNI expects to derive the principal portion of its future revenues from the operation of the WebTV Network. These revenues currently include subscription fees and limited advertising revenues and may include transaction fees and pay per use services in the future.

COST OF REVENUES

Cost of licensing and manufacturing revenues consists of the associated component and labor costs of the manufactured goods sold to WNI's licensees. Cost of licensing and manufacturing revenues was approximately $33.8 million for the nine months ended December 31, 1996.

Cost of on-line service revenues consist of expenses related to the maintenance and support of the WebTV Network, data communications costs, customer support costs and royalties and commissions paid to information and service providers and licensees. Data communications costs are affected primarily by the number of subscribers and the amount of time those subscribers use the WebTV Network. Customer support costs, which consist primarily of employee costs, costs of contracted personnel and communication costs, are affected primarily by the number of existing and new subscribers in any particular period. Cost of on-line service revenues for the nine months ended December 31, 1996 was approximately $4.0 million.

OPERATING EXPENSES

WNI's operating expenses have increased significantly since WNI's inception as a result of growth in the costs associated with technology development and efforts to commercialize WNI's products and services. WNI believes that continued expansion of its operations will be essential to enhance and extend the WebTV brand, deliver products and services to targeted markets and expand WNI's subscriber and advertising base. Accordingly, WNI expects to incur increased expenses in all operating areas.

RESEARCH AND DEVELOPMENT

Research and development expenses consist primarily of salaries, consulting fees, materials, depreciation and facilities to support product and network development. WNI incurs development costs for the design of hardware and software contained in the WebTV set-top terminal, development of network service software and development of network programming. Research and development expenses were approximately $7.7 million for the nine months ended December 31, 1996. To date, all software development costs have been expensed as incurred. WNI believes that significant investments in research and development are required to remain competitive in the markets it is serving. Accordingly, WNI intends to increase the absolute amount of its research and development expenditures in the future.

SALES AND MARKETING

Sales and marketing expenses consist primarily of salaries, consulting fees and costs of public relations services, advertising and marketing literature. Sales and marketing expenses were approximately $13.1 million for the nine months ended December 31, 1996. WNI intends to increase the level of sales and marketing activity in future periods to build WNI's brand value and develop future revenue sources.

GENERAL AND ADMINISTRATIVE

General and administrative expenses consist primarily of salaries, professional services and legal fees. General and administrative expenses were approximately $4.2 million for the nine months ended December 31, 1996. WNI intends to increase the level of general and administrative expenses to support its operational growth, its efforts to develop strategic business relationships and its plans for securing its intellectual property rights.

INCOME TAXES

At December 31, 1996, WNI had federal net operating loss carry forwards of approximately $26.7 million. The federal net operating loss carry forwards will expire beginning in 2011 through 2012, if not utilized. An ownership change, as defined in the Tax Reform Act of 1986, may restrict the utilization of carry forwards. A valuation allowance has been recorded for the entire deferred tax asset as a result of uncertainties regarding the realization of the asset due to the lack of earnings history of WNI. See Note 7 of Notes to Financial Statements.

LIQUIDITY AND CAPITAL RESOURCES

From inception through December 31, 1996, WNI has financed its operations and met its capital expenditure requirements primarily from proceeds of the private sale of equity securities totaling approximately $46.6 million and equipment leasing activities.

Operating activities used cash of approximately $16.3 million for the nine months ended December 31, 1996. The net cash used during this period was primarily due to the net loss and the increase in accounts receivable and inventory, which were partially offset by increases in accounts payable, accrued liabilities and deferred revenue. Investing activities used net cash of approximately $5.9 million during the nine months ended December 31, 1996 to purchase equipment to support WNI's business and develop the infrastructure for the WebTV Network. Financing activities generated cash of approximately $38.9 million during the nine months ended December 31, 1996 primarily from the issuance of WNI Preferred Shares.

At December 31, 1996, WNI's principal commitments consisted of obligations under operating and capital leases of approximately $3.4 million. Future capital expenditures are anticipated to be primarily for facilities and equipment to support expansion of the WebTV Network, business operations and management information and internal network systems. Although WNI has no material capital commitments, WNI anticipates that its planned purchases of capital equipment in 1997 will require additional expenditures of approximately $16.0 million to $20 million, a portion of which may be financed through capital equipment leases.

WNI expects to require at least $60.0 million to fund operations through December 1997. At December 31, 1996, WNI had approximately $21.2 million in cash and cash equivalents. Subsequent to December 31, 1996, WNI raised approximately $14.0 million from the issuance of WNI Preferred Shares and obtained lease financing of approximately $4.0 million. In addition, in conjunction with the Recapitalization Agreement, Microsoft and WNI entered into the Credit Agreement, pursuant to which Microsoft agreed to loan WNI, on a revolving basis, up to $30,000,000. See "Proposal I--The Recapitalization and Related Transactions--Related Agreements--Line of Credit Agreement."

PRINCIPAL SHAREHOLDERS OF WNI

The following table sets forth certain information regarding beneficial ownership of WNI as of April 5, 1997 (i) by each person known by WNI to own beneficially more than 5% of an outstanding class of WNI Shares, (ii) by each of the directors of WNI and (iii) by all of WNI's directors and officers as a group.

	NUMBER OF SHARES BENEFICIALLY OWNED	CLASS OF SECURITIES	PERCENT OF CLASS BENEFICIALLY OWNED(1)
Phillip Y. Goldman..... WebTV Networks, Inc. 305 Lytton Avenue Palo Alto, CA 94301	5,000,000	Common	26.16%
Bruce A. Leak..... WebTV Networks, Inc. 305 Lytton Avenue Palo Alto, CA 94301	5,000,000	Common	26.16%
Stephen G. Perlman..... WebTV Networks, Inc. 305 Lytton Avenue Palo Alto, CA 94301	5,000,000	Common	26.16%
Brentwood Associates VII, L.P.(2)..... 3000 Sand Hill Road Building 1, Suite 260 Menlo Park, CA 94025	3,559,541	Preferred	25.44%
Citicorp. ..... 153 E. 53rd Street, 6th Floor New York, New York 10043	1,124,701	Preferred	8.04%
Microsoft Corporation.... One Microsoft Way Redmond, WA 98052	702,939	Preferred	5.02%
Seagate Technology, Inc. ..... 920 Disc Drive Scotts Valley, CA 95066	1,343,570	Preferred	9.60%
Soros Capital, L.P.(3)... c/o Westbroke Limited Richmond House 12-Par-La-Ville Road Hamilton, Bermuda HMDX	755,267	Preferred	5.40%
St. Paul Fire & Marine Insurance Co. ..... c/o St. Paul Venture Capital 8500 Normandale Lake Blvd., Suite 194 Bloomington, MN 55437	702,939	Preferred	5.02%
Times Mirror Company .... 220 West First Street Los Angeles, CA 90012	702,939	Preferred	5.02%

	NUMBER OF SHARES BENEFICIALLY OWNED	CLASS OF SECURITIES	PERCENT OF CLASS BENEFICIALLY OWNED(1)
Vulcan Ventures, Inc.(4). 110 110th Avenue, N.E. Suite 550 Bellevue, WA 98004	3,251,256	Preferred	23.24%
Jeffrey D. Brody(5)..... c/o Brentwood Associates 3000 Sand Hill Road Building 1, Suite 260 Menlo Park, CA 94025	3,559,541	Preferred	25.44%
G. Kevin Doren(6)..... c/o Vulcan Ventures Inc. 110--110th Avenue N.E. Suite 550 Bellevue, WA 98004	3,251,256	Preferred	23.24%
Randy Komisar(7).....	200,000	Common	1.04%
WebTV Networks, Inc. 305 Lytton Avenue Palo Alto, CA 94301	61,349	Preferred	0.44%
All directors and officers as a group (13 persons)(8).....	16,196,668	Common	83.87%
	6,879,175	Preferred	49.17%

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(1) Based on 19,110,873 WNI Common Shares and 13,990,346 WNI Preferred Shares.

(2) Includes 70,294 shares held by Brentwood Affiliates Fund. The general partner of Brentwood Affiliates Fund is Brentwood VII Ventures, L.P. Brentwood VII Ventures, L.P. is also the general partner of Brentwood Associates VII, L.P. Brentwood Associates VII, L.P. disclaims beneficial ownership of the shares held by Brentwood Affiliates Fund.

(3) Includes 371,350 shares held by Soros Capital Coinvestment Partners L.L.C. Soros Capital, L.P. disclaims beneficial ownership of the shares held by such entity.

(4) Includes 30,674 shares held by G. Kevin Doren. Mr. Doren, a director of WNI, is an employee of the Paul Allen Group, an affiliate of Vulcan Ventures Inc. See footnote (6) below.

(5) Represents 3,489,247 shares held by Brentwood Associates VII, L.P., and 70,294 shares held by Brentwood Affiliates Fund. Mr. Brody may be deemed to beneficially own such shares by virtue of his status as a general partner of Brentwood VII Ventures, L.P., the general partner of Brentwood Associates VII, L.P. and Brentwood Affiliates Fund. Mr. Brody disclaims beneficial ownership of the shares held by such entities except to the extent of his proportionate partnership interest therein.

(6) Includes 3,220,582 shares held by Vulcan Ventures Inc. See footnote (4) above. Mr. Doren, as acting President of The Paul Allen Group, an affiliate of Vulcan Ventures Inc., may be deemed to beneficially own such shares, although Mr. Doren disclaims beneficial ownership of all such shares except to the extent of his pecuniary interest therein.

(7) Includes 200,000 shares issuable pursuant to currently exercisable WNI Options.

(8) See footnotes (5), (6) and (7) above. Also, includes 7,000 shares owned by trusts for the benefit of the children of Albert E. Pimentel, an officer of WNI. Mr. Pimentel disclaims beneficial ownership of such shares.

DESCRIPTION OF CAPITAL SHARES OF WNI

The currently authorized capital shares of WNI consists of 100,000,000 WNI Common Shares, no par value, and 25,000,000 WNI Preferred Shares, no par value, 1,510,533 of which are designated Series A Shares, 6,567,484 of which are designated Series B Shares, 4,920,568 of which are designated Series C Shares and 9,596,928 of which are designated Series D Shares.

COMMON SHARES

As of April 5, 1997, 19,110,873 WNI Common Shares were outstanding and held of record by 86 shareholders. The holders of WNI Common Shares are entitled to one vote per share on all matters to be voted upon by the shareholders. Subject to preferences that may be applicable to any outstanding WNI Preferred Shares, the holders of WNI Common Shares are entitled to receive ratably such dividends, if any, as may be declared from time to time by the Board of Directors out of funds legally available therefor. In the event of a Liquidation, the holders of WNI Common Shares are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior rights of holders of Preferred Shares then outstanding, if any. WNI Common Shares have no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions available to WNI Common Shares. All outstanding shares of WNI Common Shares are fully paid and non-assessable.

PREFERRED SHARES

WNI Preferred Shares have preferences over WNI Common Shares on dividends and in the event of a Liquidation of WNI. Additionally, the Series D Shares have the right, under certain circumstances, to elect and remove one member of the WNI Board of Directors.

WNI Preferred Shares are convertible, at the option of the holder thereof, into WNI Common Shares. All WNI Preferred Shares are currently convertible on a one-for-one basis into WNI Common Shares, except for the Series A Shares, which convert on a one-for-1.1 basis. Under certain circumstances involving an initial public offering, the WNI Preferred Shares are automatically converted into WNI Common Shares. The conversion rates for each series of WNI Preferred Shares are adjusted in the event of certain issuances of securities below the initial price paid for the shares of such series of WNI Preferred Shares.

Further, the existing Series A Shares and Series B Shares are mandatorily redeemable under certain circumstances beginning in March 2003.

Additionally, the Board of Directors has the authority to issue up to 2,404,487 WNI Preferred Shares and to determine the powers, preferences and rights and the qualifications, limitations or restrictions granted to or imposed upon any wholly unissued shares of undesignated WNI Preferred Shares and to fix the number of shares constituting any series and the designation of such series, without any further vote or action by the shareholders. The issuance of such WNI Preferred Shares may have the effect of delaying, deferring, or preventing a change in control of WNI without further action by the shareholders and may adversely affect the voting and other rights of the holders of WNI Common Shares.

WARRANTS

WNI has issued a warrant (the "Series B Warrant") to purchase 86,000 Series B Shares, of which 46,000 shares are exercisable at $2.50 per share, 20,000 shares are exercisable at $5.00 per share, and 20,000 shares are exercisable at $7.113 per share. The Series B Warrant provides that the holder may exercise the Series B Warrant without payment of cash by surrendering the Series B Warrant at the time of exercise and receiving a number of Series B Shares equal to the shares subject to the Series B Warrant less a number of Series B Shares that, when multiplied by the fair market value of a Series B Share at the time of exercise, is equal to the aggregate exercise price of the Series B Warrant being exercised.

Additionally, WNI has issued warrants (the "Series C Warrants") to purchase 36,553 Series C Shares, all of which shares are exercisable at $7.113 per share. The Series C Warrants provide that the holder may exercise the Series C Warrants without payment of cash by surrendering the Series C Warrants at the time of exercise and receiving a number of Series C Shares equal to the shares subject to the Series C Warrants less a number of Series C Shares that, when multiplied by the fair market value of a Series C Share at the time of exercise, is equal to the aggregate exercise price of the Series C Warrants being exercised.

CERTAIN ANTI-TAKEOVER PROVISIONS

Certain provisions of law and of WNI's Articles of Incorporation and Bylaws could make more difficult the acquisition of WNI by means of a tender offer, a proxy contest or otherwise, and the removal of incumbent officers and directors. These provisions include authorization of the issuance of up to 2,404,487 WNI Preferred Shares, with such characteristics, and potential effects on the acquisition of WNI, as are described in "Preferred Shares" above. These provisions are expected to discourage certain types of coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control of WNI to negotiate first with it. WNI believes that the benefits of increased protection of its potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure it outweigh the disadvantages of discouraging such proposals because, among other things, negotiation of such proposals could result in an improvement of their terms.

CLASS B SHARES AND EXCHANGEABLE SHARES

If the Recapitalization described in this Proxy Statement/Prospectus is approved at the Special Meeting, then WNI will issue newly created Class B Shares to Microsoft and Exchangeable Shares to holders of WNI Common Shares, other than holders who either perfected their dissenters' rights or who have elected to have their shares purchased by Microsoft, in exchange for their existing WNI Common Shares. See "Proposal I--The Recapitalization and Related Transactions--The Recapitalization--Rights and Preference of Exchangeable Shares."

COMPARISON OF RIGHTS OF SHAREHOLDERS OF WNI AND MICROSOFT

RIGHTS UNDER EXISTING COMMON SHARES VERSUS RIGHTS UNDER EXCHANGEABLE SHARES

Voting Rights

Under the CGCL and the Articles of Incorporation of WNI (the "WNI Articles"), holders of WNI Common Shares are entitled to one vote per WNI Common Share, and holders of WNI Preferred Shares are entitled to the number of votes equal to the number of WNI Common Shares into which such WNI Preferred Shares could be converted at the applicable record date. Such votes are counted together and not separately as a class. So long as the holders of Series D Shares hold at least 10% of the total number of votes that may be cast for the election of directors, (i) the holders of Series D Shares, voting separately as a class, may elect one director, and (ii) such director may be removed only by the affirmative vote of a majority of the holders of Series D Shares, voting separately as a class. In addition, without first obtaining the approval of a majority of the outstanding WNI Series A, Series B and Series D Shares, voting together as a class, WNI may not take certain corporate action, including the Recapitalization and similar major corporate changes.

Following the Recapitalization, each holder of Exchangeable Shares shall be entitled to vote for directors and such other matters as may be submitted to the shareholders. Except to the extent required by applicable law, each Exchangeable Share shall have one (1) vote per Exchangeable Share. Each holder of Exchangeable Shares shall be entitled to receive notice of, or to attend, any meetings of shareholders of WNI. Microsoft, however, shall be entitled to receive all of the outstanding Class B Shares which will represent not less than 80% of the voting power of WNI.

Dividends

Pursuant to the WNI Articles, no dividends may be declared or made with respect to any WNI Common Shares until all declared dividends on the WNI Preferred Shares have been paid or set apart. The holders of WNI Preferred Shares are entitled to receive, in preference and priority to any dividend on the WNI Common Shares, dividends at rates specified in the WNI Articles.

Following the Recapitalization, the WNI Board of Directors may declare and pay dividends with respect to each Exchangeable Share and Class B Shares so long as such dividends are identical in amount and character. WNI or Microsoft, as the case may be, shall provide each holder of Exchangeable Shares written notice of a dividend record date specifying a date not more than sixty (60) and not less than fifteen (15) days prior to taking the foregoing actions and holders of Exchangeable Shares may elect to exchange their shares.

Liquidation Rights

Pursuant to the WNI Articles, in the event of any Liquidation of WNI, the holders of WNI Preferred Shares are entitled to receive, prior and in preference to any distributions of WNI assets or surplus funds to holders of WNI Common Shares, liquidation preferences at amounts specified in the WNI Articles.

Following the Recapitalization, in the event of a Liquidation of WNI, WNI shall pay to the holders of the Exchangeable Shares from the assets of WNI available for distribution an amount that is identical in amount and character with respect to each Exchangeable Share and Class B Share. In the event WNI adopts a Liquidation plan, WNI is required to provide each holder of Exchangeable Shares written notice specifying a date not more than sixty (60) and not less than fifteen (15) days prior to taking such action and holders of Exchangeable Shares may elect to exchange their shares for Microsoft Common Shares.

Exchange Rights and Microsoft Call Rights

Under the WNI Articles, holders of WNI Common Shares have no rights to exchange such shares for any other security, and no person has the right to call such WNI Common Shares.

Subject to the call rights of Microsoft described below, holders of Exchangeable Shares shall have the right to exchange each Exchangeable Share into one Microsoft Common Share at any time prior to the end of fifty-one (51) months after the Effective Time. Each Exchangeable Share shall be exchanged, at WNI's election, for Microsoft Common Shares or cash at the Exchange Ratio.

Upon notification of an exchange request, Microsoft shall have one (1) day in which to exercise its Call Right. In addition, Microsoft shall have a Class Call Right during the period commencing five years and six months after the Effective Time and ending six years after the Effective Time.

RIGHTS UNDER WASHINGTON LAW VERSUS RIGHTS UNDER CALIFORNIA LAW

Upon exchange of the Exchangeable Shares for Microsoft Common Shares, the shareholders of WNI will become shareholders of Microsoft whose rights will cease to be defined and governed by the CGCL, and instead will be defined and governed by the Washington Business Corporation Act ("WBCA"). In addition, WNI shareholders' rights will no longer be defined and governed by the WNI Articles and Bylaws ("WNI Bylaws"). Upon receipt of Microsoft Common Shares, each WNI shareholder will become a new shareholder of Microsoft, whose rights as a shareholder will be defined and governed by Microsoft's Restated Articles of Incorporation (the "Microsoft Articles") and Bylaws ("Microsoft Bylaws"). Although the rights and privileges of shareholders of a California corporation are, in many instances, comparable to those of a shareholder of a Washington corporation, there are certain differences. These differences arise from differences between California and Washington law, between the CGCL and the WBCA, and between the WNI Articles and WNI Bylaws and the Microsoft Articles and Microsoft Bylaws. Certain of the significant differences that could materially affect the rights of WNI shareholders are discussed below.

Amendment to Articles of Incorporation

Under the CGCL, once shares of a corporation have been issued, an amendment to the corporation's articles of incorporation may be made by the board alone if (i) the amendment extends the corporate existence or makes the corporate existence perpetual if such corporation was organized prior to August 14, 1929; (ii) the corporation has only one class of stock outstanding and the amendment effects only a stock split; or (iii) the amendment deletes the names and addresses of the first directors or the name and address of the initial agent. Otherwise, an amendment must be approved both by the board of directors and by the affirmative vote of a majority of the outstanding shares entitled to vote. This approval must include the affirmative vote of a majority of the outstanding shares of each class or series entitled to vote unless a greater proportion is specified in the articles of incorporation. The WNI Articles entitle certain holders of WNI Preferred Shares to vote separately as a class on amendments that amend or repeal any provision of, or add any provision to, the WNI Articles that would change the rights, preferences, privileges or limitations of the WNI Preferred Shares.

The WBCA similarly authorizes a corporation's board of directors to make various changes to its articles of incorporation without shareholder action. These so-called housekeeping changes include changes of corporate name, the number of outstanding shares to effectuate a stock split or stock dividend in the corporation's own shares, and the par value of its stock. Other amendments to a corporation's articles of incorporation must be recommended to the shareholders by the board of directors, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment, and must be approved by a majority of all the votes entitled to be cast by any voting group entitled to vote thereon unless another requirement is specified in the articles of incorporation, by the board of directors as a condition to its recommendation, or by provisions of the WBCA. The Microsoft Articles do not specify another proportion.

Right to Call Special Meeting of Shareholders

Under the CGCL, a special meeting of shareholders may be called by the board of directors, the chairman of the board, the president, or the holders of not less than 10% of all shares entitled to vote at the meeting, or by any other persons authorized to do so in the articles of incorporation or the bylaws. The WNI Bylaws authorize the Chairman of the Board and the President to call special meetings at any time.

The WBCA provides that a special meeting of shareholders of a corporation may be called by its board of directors, by holders of at least 10% of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting, or by other persons authorized to do so by the articles of incorporation or bylaws of the corporation. However, the WBCA allows the right of shareholders to call a special meeting to be limited or denied to the extent provided in the articles of incorporation. The Microsoft Articles deny this right by providing that a special meeting of shareholders may be called only by the Board of Directors or by a duly designated committee of the Board.

Anti-Takeover Provisions and Interested Shareholders

The CGCL does not contain provisions regarding control share acquisitions and procedures for corporate take-overs, or transactions involving the corporation and one or more of its shareholders.

The WBCA imposes restrictions on certain transactions between a corporation and certain interested shareholders. First, subject to certain exceptions, a merger, share exchange, sale of assets other than in the regular course of business or dissolution of a corporation involving a shareholder owning beneficially 20% or more of the corporation's voting securities ("Interested Shareholder") must be approved by the holders of two-thirds of the corporation's outstanding voting securities, other than those of the Interested Shareholder. This restriction does not apply if the consideration received as a result of the transaction by noninterested shareholders is not less than the highest consideration paid by the Interested Shareholders for the corporation's shares during the preceding two years or if the transaction is approved by a majority of directors who are not affiliated with the

Interested Shareholder. A Washington corporation may, in its articles of incorporation, exempt itself from coverage of this provision; however, Microsoft has not done so.

Second, Washington law prohibits a corporation, with certain exceptions, from engaging in certain "significant business transactions" with a person or group of persons ("Acquiring Person") who beneficially owns 10% or more of the voting securities of the corporation (the "Target Corporation") for a period of five (5) years after the acquisition of such securities, unless the transaction or acquisition of shares is approved by a majority of the members of the Target Corporation's board of directors prior to the date of the acquisition. Significant business transactions include, among others, merger or consolidation with, disposition of assets to or with, or issuance or redemption of stock to or from, the Acquiring Person, termination of 5% or more of the employees of the Target Corporation employed in Washington State as a result of the Acquiring Person's acquisition of 10% or more of the shares or allowing the Acquiring Person to receive any disproportionate benefit as a shareholder. Target Corporations include domestic corporations with their principal executive offices in Washington and either a majority or over 1,000 of their employees resident in Washington. Microsoft currently meets these standards and is subject to this statute. A corporation may not "opt out" of this statute. The statute exempts shares acquired prior to March 23, 1988.

Mergers, Sales of Assets and Other Transactions

Under the CGCL, a merger reorganization must be approved by the board of directors of each corporation. In addition, the principal terms of the reorganization must be approved by the affirmative vote of a majority of the outstanding shares entitled to vote, unless the corporation is a close corporation. This approval must include the affirmative vote of a majority of the outstanding shares of each class or series entitled to vote unless a greater proportion is specified in the articles of incorporation. The WNI Articles entitle holders of WNI Preferred Shares to vote separately as a class on reorganizations that result in shareholders of the corporation (determined prior to the transaction) holding 50% or less in interest of the outstanding voting securities of the surviving corporation. Notwithstanding the foregoing, no vote of shareholders of a corporation surviving a merger is required (unless the corporation provides otherwise in its articles of incorporation) if the corporation or its shareholders immediately before the reorganization, or both, shall own (immediately after the reorganization) equity securities, other than any warrant or right to subscribe to or purchase such equity securities, of the surviving or acquiring corporation or a parent party possessing more than five-sixths of the voting power of the surviving or acquiring corporation or parent party.

Under the CGCL, a corporation may be dissolved by the vote of shareholders holding shares representing 50% or more of the voting power. The board may dissolve a corporation without shareholder consent if the corporation (i) has an order for relief under Chapter 7 of the federal bankruptcy law entered against it, (ii) disposes all its assets and has not conducted any business for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation, or (iii) has issued no shares.

Under the WBCA, a merger or share exchange of a corporation must be approved by the affirmative vote of a majority of directors when a quorum is present, and by each voting group entitled to vote separately on the plan by two-thirds of all the votes entitled to be cast on the plan by that voting group, unless another proportion is specified in the articles of incorporation. The Microsoft Articles provide that a merger or share exchange must be approved by a majority of the outstanding shares entitled to vote. The WBCA also provides that certain mergers need not be approved by the shareholders of the surviving corporation if (i) the articles of incorporation will not change in the merger, except for specified permitted amendments, (ii) no change occurs in the number, designations, preferences, limitations, and relative rights of shares held by those shareholders who were shareholders prior to the merger; (iii) the number of voting shares outstanding immediately after the merger, plus the voting shares issuable as a result of the merger, will not exceed the authorized voting shares specified in the surviving corporation's articles of incorporation immediately prior to the merger; and (iv) the number of shares entitling their holders to participate without limitation in distributions ("Participating Shares") outstanding immediately after the merger, plus the number of Participating Shares issuable as a result of the merger, will not exceed the authorized Participating Shares specified in the corporation's articles of incorporation immediately prior to the merger.

The WBCA also provides that, in general, a corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, other than in the usual and regular course of business, or dissolve if the board of directors recommends the proposed transaction to the shareholders and the shareholders approve the transaction by two-thirds of all the votes entitled to be cast in the transaction, unless another proportion is specified in the articles of incorporation. The Microsoft Articles provide that the transactions must be approved by a majority of the outstanding shares entitled to vote.

Transactions With Directors

The CGCL provides a safe harbor for contracts and transactions between a corporation and one or more of its directors or any other corporation or entity in which one or more of its directors are directors or officers or are financially interested. Contracts or transactions involving a director are not void or voidable if: (i) the material facts as to the transaction and as to such director's interest are fully disclosed or known to the shareholders and such contract or transaction is approved by the shareholders in good faith, with the shares owned by the interested director or directors not being entitled to vote thereon; (ii) the material facts as to the transaction and as to such director's interest are fully disclosed or known to the board or committee, and the board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the interested director or directors and the contract or transaction is just and reasonable as to the corporation at the time it is authorized, approved or ratified; or (iii) the contract or transaction was just and reasonable as to the corporation at the time it was authorized (such burden of proof resting on the person asserting the validity of the contract or transaction). Contracts or transactions in which directors or officers are financially interested are not void or voidable if: (i) the material facts as to the transaction and as to such director's other directorship are fully disclosed or known to the board or committee, and the board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common director or directors or the contract or transaction is approved by the shareholders in good faith; or (ii) the contract or transaction is just and reasonable as to the corporation at the time it is authorized, approved or ratified.

The WBCA also sets forth a safe harbor for transactions between a corporation and one or more of its directors. A conflicting interest transaction may not be enjoined, set aside or give rise to damages if: (i) it is approved by a majority of qualified directors (but no fewer than two); (ii) it is approved by the affirmative vote of the majority of all qualified shares after notice and disclosure to the shareholders; or (iii) at the time of commitment, the transaction is established to have been fair to the corporation. For purposes of this provision, a "qualified director" is one who does not have either: (i) a conflicting interest respecting the transaction; or (ii) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction. "Qualified shares" are defined generally as shares other than those beneficially owned, or the voting of which is controlled, by a director (or an affiliate of the director) who has a conflicting interest respecting the transaction.

Appraisal or Dissenters' Rights

Under California law, a shareholder of a corporation has the right to dissent from and to obtain payment for his or her shares in the event of any reorganization or merger requiring the approval of outstanding shares. If a dissenting shareholder complies with the prescribed procedures, he or she may receive cash in the amount of the fair market value of his or her shares.

Under the WBCA, a shareholder is similarly entitled to dissent from and, upon perfection of his or her appraisal right, to obtain fair value of his or her shares in the event of certain corporate actions. Among these actions are certain mergers, consolidations, share exchanges, sales of substantially all assets of the corporation, and amendments to the corporation's articles of incorporation that materially and adversely affect shareholder rights.

Dividends

Under the CGCL, a corporation may make a distribution in cash or in property to its shareholders upon the authorization of its board of directors if, (i) the amount of the retained earnings of the corporation immediately prior thereto equals or exceeds the amount of the proposed distribution and or (ii) if immediately after the distribution, (a) the sum of the assets of the corporation would be at least equal to 1 1/4 times its liabilities; and (b) the current assets of the corporation would be at least equal to its current liabilities or, if the average of the earnings of the corporation before taxes on income and before interest expense for the two preceding fiscal years was less than the average of the interest expense of the corporation for such fiscal years, the current assets would be at least equal to 1 1/4 times its current liabilities. Neither a corporation nor any of its subsidiaries may make a distribution to shareholders if the corporation is or as a result of the distribution would be, likely to be unable to meet its liabilities as they mature.

Under the WBCA, a corporation may make a distribution in cash or in property to its shareholders upon the authorization of its board of directors unless, after giving effect to such distribution, (i) the corporation would not be able to pay its debts as they become due, or (ii) the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights of shareholders whose preferential rights are superior to those receiving the distribution. To date, Microsoft has not paid cash dividends on its common shares.

Limitation of Liability and Indemnification of Officers and Directors

Under the CGCL, a person who performs the duties of a director in accordance with guidelines established by law shall have no liability based upon any alleged failure to discharge the person's obligations as a director. In addition, the liability of a director for monetary damages may, subject to some restrictions, be eliminated or limited in a corporation's articles of incorporation in an action brought by or in the right of the corporation for breach of a director's duties to the corporation and its shareholders. The WNI Articles provide that the liability of directors of WNI for monetary damages shall be eliminated to the fullest extent permissible under California law.

The WBCA provides that a corporation's articles of incorporation may include a provision that eliminates or limits the personal liability of a director to the corporation or its shareholders for monetary damages for conduct as a director. However, the provision may not eliminate or limit liability of a director for acts or omissions that involve intentional misconduct by a director, a knowing violation of law by a director, for unlawful distributions, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. Microsoft's Articles adopt this standard.

Under the CGCL and subject to certain parameters (described further below), a corporation may indemnify directors and officers. However, California law does not allow corporations to indemnify directors or officers for: (i) breaches of the director's duty to the corporation or its shareholders unless a court permits; (ii) amounts paid in settling or otherwise disposing of a pending action without court approval; (iii) expenses incurred in defending a pending action which is settled or otherwise disposed of without court approval. Additionally, indemnification is not permitted where it appears (i) that it would be inconsistent with a provision of the articles of incorporation, bylaws, a resolution of the shareholders, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or (ii) that it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

The CGCL provides that a corporation may indemnify any person who is a party or is threatened to be made a party to an action because the person is a director, officer, employee or other agent of the corporation if the person acted in good faith and in a manner he or she reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of the

person was unlawful. To the extent that a director, officer, employee, or agent has been successful on the merits or otherwise in defending any such proceeding, the CGCL requires the corporation to indemnify such person against expenses actually and reasonably incurred in connection therewith. Indemnification under these provisions shall be made only upon a determination that the applicable standard of conduct has been met upon determination by a majority vote of a quorum consisting of directors who are not parties to such proceeding or; if a quorum is not obtainable, by independent legal counsel in a written opinion; by approval of the shareholders with the shares owned by the person to be indemnified not being entitled to vote thereon; or by the court in which the action is pending.

Under the WBCA, if authorized by the articles of incorporation, a bylaw adopted or ratified by shareholders, or a resolution adopted or ratified, before or after the event, by the shareholders, a corporation has the power to indemnify a director or officer made a party to a proceeding, or advance or reimburse expenses incurred in a proceeding, under any circumstances, except that no such indemnification shall be allowed on account of: (i) acts or omissions of the directors finally adjudged to be intentional misconduct or a knowing violation of the law; (ii) conduct of the director finally adjudged to be an unlawful distribution; or (iii) any transaction with respect to which it was finally adjudged that such director personally received a benefit in money, property, or services to which the director was not legally entitled. Written commentary by the drafters of the WBCA, which has the status of legislative history, specifically indicates that a corporation may indemnify its directors and officers for amounts paid in settlement of derivative actions, provided that the director's or officer's conduct does not fall within one of the categories set forth above. Microsoft's Articles provide that Microsoft shall indemnify its directors and officers to the fullest extent not prohibited by law, including indemnification for payments in settlement of actions brought against the director or officer in the name of the corporation, commonly referred to as a derivative action. Such limitation of liability, described above, also may not limit a director's liability for violation of, or otherwise relieve Microsoft or its directors from the necessity of complying with, federal or state securities laws, or affect the availability of non-monetary remedies such as injunctive relief or rescission.

Action by Written Consent

The CGCL authorizes shareholder action without a meeting if consents are received from holders of a majority of the outstanding shares. Under the WBCA, shareholder action may be taken without a meeting only if written consents setting forth such action are signed by all holders of outstanding shares entitled to vote thereon.

Removal of Directors

Under the CGCL, generally any or all of the directors may be removed without cause if the removal is approved by the outstanding shares. Likewise, under the WBCA, the shareholders may remove one or more directors with or without cause, unless the articles of incorporation provide that directors may be removed only for cause, only at a special meeting of shareholders called for the purpose of removing the directors. The Microsoft Articles do not so limit removal of directors. As discussed above, however, the Microsoft Articles provide that a special meeting of shareholders may be called only by the Board of Directors or by a duly designated committee thereof. See "Right to Call Special Meeting of Shareholders."

Under the CGCL, a court may, in a suit by shareholders holding at least 10% of the number of outstanding shares of any class, remove from office any director in case of fraudulent or dishonest acts or gross abuse of authority or discretion with respect to the corporation and may bar from reelection any director so removed for a period prescribed by the court. In addition, the board may declare vacant the office of a director who has been declared of unsound mind by an order of court or convicted of a felony.

Under the WBCA, the superior court of the county where a corporation's principal office is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least 10% of the outstanding shares of any class if the court finds that the director engaged in fraudulent or dishonest conduct with respect to the corporation, and removal is in the best interest of the corporation. The court that removes a director may bar the director from reelection for a period prescribed by the court.

LEGAL MATTERS

The validity of the Exchangeable Shares will be passed upon for WNI by Venture Law Group, A Professional Corporation, Menlo Park, California. The validity of the Microsoft Common Shares will be passed upon for Microsoft by Preston Gates & Ellis LLP, Seattle, Washington. As of the date hereof, attorneys in Preston Gates & Ellis LLP who work on substantive matters for Microsoft own less than 250,000 Microsoft Common Shares.

EXPERTS

The financial statements of WNI at March 31, 1996 and for the period from inception (June 30, 1995) to March 31, 1996 appearing in this Proxy Statement/Prospectus have been audited by Ernst & Young LLP, independent auditors, as set forth in their report thereon appearing elsewhere herein and are included in reliance upon such report given upon the authority of such firm as experts in accounting and auditing.

The financial statements of Microsoft as of June 30, 1996 and 1995 and for each of the three years in the period ended June 30, 1996, incorporated by reference in this Prospectus/Proxy Statement from Microsoft's Annual Report on Form 10-K, have been audited by Deloitte & Touche LLP, independent auditors, as stated in their report which is incorporated herein by reference, and has been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

INDEX TO FINANCIAL STATEMENTS OF WNI

WEBTV NETWORKS, INC.

INDEX TO FINANCIAL STATEMENTS

REPORT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

The Board of Directors and Shareholders
WebTV Networks, Inc.

We have audited the accompanying balance sheet of WebTV Networks, Inc. as of March 31, 1996 and the related statements of operations, shareholders' equity (net capital deficiency), and cash flows for the period from inception (June 30, 1995) to March 31, 1996. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of WebTV Networks, Inc. at March 31, 1996 and the results of its operations and its cash flows for the period from inception (June 30, 1995) to March 31, 1996 in conformity with generally accepted accounting principles.

Palo Alto, California
June 7, 1996

WEBTV NETWORKS, INC.

BALANCE SHEETS

	MARCH 31, 1996	DECEMBER 31, 1996 (UNAUDITED)
ASSETS		
Current assets:		
Cash and cash equivalents	$ 4,501,745	$ 21,197,549
Accounts receivable	--	8,297,222
Inventory	--	5,236,576
Other current assets	96,316	505,684
Total current assets	4,598,061	35,237,031
Property and equipment, net	1,140,958	8,854,391
Other assets	192,631	465,296
	$ 5,931,650	$ 44,556,718
LIABILITIES AND SHAREHOLDERS' EQUITY (NET CAPITAL DEFICIENCY)		
Current liabilities:		
Accounts payable	$ 836,506	$ 17,562,567
Accrued payroll and related obligations	86,642	374,020
Convertible note payable due to director	150,000	--
Notes payable due to founders	401,500	--
Convertible notes payable	500,000	--
Deferred revenue and other	--	5,866,170
Current portion of capital lease obligations	150,398	916,830
Total current liabilities	2,125,046	24,719,587
Capital lease obligations, net of current portion	524,013	2,452,662
Commitments		
Redeemable convertible preferred stock, issuable in series:		
Series A redeemable convertible: 1,510,533 shares designated, 1,510,533 shares issued and outstanding at March 31, 1996 and December 31, 1996 (aggregate liquidation preference of $1,500,000 at December 31, 1996)	1,500,000	1,500,000
Series B redeemable convertible: 6,567,484 shares designated, 3,067,484 and 6,316,707 shares issued and outstanding at March 31, 1996 and December 31, 1996, respectively (aggregate liquidation preference of $10,859,999 at December 31, 1996)	5,000,001	10,859,999
Shareholders' equity (net capital deficiency):		
Preferred stock, 20,000,000 shares authorized, issuable in series:		
Series C convertible: 4,920,568 shares designated, 4,819,538 shares issued and outstanding at December 31, 1996 (none at March 31, 1996) (aggregate liquidation preference of $34,281,374)	--	34,281,374
Common stock, 100,000,000 shares authorized, 15,000,000 and 19,001,548 shares issued and outstanding at March 31, 1996 and December 31, 1996, respectively	15,000	388,437
Shareholder notes receivable	--	(294,139)
Accumulated deficit	(3,232,410)	(29,351,202)
Total shareholders' equity (net capital deficiency)	(3,217,410)	5,024,470
	$ 5,931,650	$ 44,556,718

See accompanying notes.

WEBTV NETWORKS, INC.

STATEMENTS OF OPERATIONS

	PERIOD FROM INCEPTION (JUNE 30, 1995) TO MARCH 31, 1996	PERIOD FROM INCEPTION (JUNE 30, 1995) TO DECEMBER 31, 1995	NINE MONTHS ENDED DECEMBER 31, 1996
		(UNAUDITED)	(UNAUDITED)
Revenues:			
On-line service	$ --	$ --	$ 672,002
Licensing and manufacturing	--	--	35,456,934
Total revenues	--	--	36,128,936
Cost of revenues:			
On-line service	--	--	3,951,187
Licensing and manufacturing	--	--	33,825,324
Total cost of revenues	--	--	37,776,511
Gross loss	--	--	(1,647,575)
Operating expenses:			
Research and development	2,117,852	693,845	7,697,443
Sales and marketing	258,865	41,435	13,090,328
General and administrative	853,373	468,554	4,170,603
Total operating costs and expenses	3,230,090	1,203,834	24,958,374
Loss from operations	(3,230,090)	(1,203,834)	(26,605,949)
Interest income	8,383	3,639	631,711
Interest expense	(10,703)	(2,493)	(144,554)
Net loss	$(3,232,410)	$(1,202,688)	$(26,118,792)
Pro forma net loss per share	$ (0.22)		$ (0.97)
Shares used in computing pro forma net loss per share	14,546,887		26,981,017

See accompanying notes.

WEBTV NETWORKS, INC.

STATEMENT OF SHAREHOLDERS' EQUITY (NET CAPITAL DEFICIENCY)

	SERIES C CONVERTIBLE PREFERRED STOCK	COMMON STOCK	SHAREHOLDER NOTES RECEIVABLE	ACCUMULATED DEFICIT	TOTAL SHAREHOLDERS' EQUITY (NET CAPITAL DEFICIENCY)
Issuance of 15,000,000 shares of common stock	$ --	$ 15,000	$ --	$ --	$ 15,000
Net loss	--	--	--	(3,232,410)	(3,232,410)
Balances at March 31, 1996	--	15,000	--	(3,232,410)	(3,217,410)
Issuance of 4,819,538 shares of Series C convertible preferred stock (unaudited)	34,281,374	--	--	--	34,281,374
Issuance of 4,001,548 shares of common stock (unaudited)	--	373,437	(294,139)	--	79,298
Net loss (unaudited)	--	--	--	(26,118,792)	(26,118,792)
Balances at December 31, 1996 (unaudited)	$34,281,374	$388,437	$(294,139)	$(29,351,202)	$ 5,024,470

See accompanying notes.

WEBTV NETWORKS, INC.

STATEMENTS OF CASH FLOWS

INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS

	PERIOD FROM INCEPTION (JUNE 30, 1995) TO MARCH 31, 1996	PERIOD FROM INCEPTION (JUNE 30, 1995) TO DECEMBER 31, 1995	NINE MONTHS ENDED DECEMBER 31, 1996
		(UNAUDITED)	(UNAUDITED)
CASH FLOWS USED IN OPERATING ACTIVITIES			
Net loss	$(3,232,410)	$(1,202,688)	$(26,118,792)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	126,963	48,333	1,188,841
Changes in operating assets and liabilities:			
Accounts receivable	--	--	(8,297,222)
Inventory	--	--	(5,236,576)
Other current assets and other assets	(288,947)	(108,899)	(684,514)
Accounts payable	836,506	358,913	16,726,061
Accrued payroll and related obligations	86,642	17,406	287,378
Deferred revenue and other	--	--	5,866,170
Net cash used in operating activities	(2,471,246)	(886,935)	(16,268,654)
CASH FLOWS USED IN INVESTING ACTIVITIES			
Capital expenditures	(581,626)	(453,200)	(5,899,793)
CASH FLOWS PROVIDED BY FINANCING ACTIVITIES			
Proceeds from issuance of preferred stock	6,500,001	1,500,000	39,991,372
Proceeds from issuance of common stock	15,000	15,000	79,298
Proceeds from convertible note payable due to director	150,000	--	--
Proceeds from (payments on) notes payable to founders	401,500	85,000	(401,500)
Proceeds from (payments on) convertible notes payable	500,000	--	(500,000)
Principal payments of capital lease obligations	(11,884)	--	(304,919)
Net cash provided by financing activities	7,554,617	1,600,000	38,864,251
Net increase in cash and cash equivalents	4,501,745	259,865	16,695,804
Cash and cash equivalents at beginning of period	--	--	4,501,745
Cash and cash equivalents at end of period	$ 4,501,745	$ 259,865	$ 21,197,549
SUPPLEMENTAL DISCLOSURE			

OF CASH FLOW INFORMATION			
Cash paid for interest..	$ 10,703	$ 2,493	$ 144,554
SUPPLEMENTAL SCHEDULE OF NONCASH INVESTING AND FINANCING ACTIVITIES			
Property and equipment acquired under capital lease obligations.....	$ 686,295	$ 236,735	$ 3,000,000
Conversion of convertible note payable due to director to preferred stock.....	$ --	$ --	$ 150,000
Issuance of common stock in return for shareholder notes receivable.....	$ --	$ --	$ 294,139

See accompanying notes.

WEBTV NETWORKS, INC.

NOTES TO FINANCIAL STATEMENTS

DECEMBER 31, 1996

1. NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

NATURE OF OPERATIONS

WebTV Networks, Inc. (the "Company") was incorporated in California on June 30, 1995 and operates an on-line service that enables consumers to experience the Internet through their televisions. Through September 1996, the Company was in the development stage.

At December 31, 1996, the Company has incurred a net loss and, as of that date, had an accumulated deficit of $29,351,202. Company activities to date have been financed through a private placement of equity interests and loans, including loans from Company founders, a member of the board of directors and other parties. The Company's financing activities are described in Note 8.

Basis of Presentation

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements. Actual results could differ from these estimates.

UNAUDITED INTERIM FINANCIAL INFORMATION

Information for the period from inception (June 30, 1995) to December 31, 1995 and as of and for the nine months ended December 31, 1996 is unaudited.

The financial statements at December 31, 1996 and for the period from inception (June 30, 1995) to December 31, 1995 and the nine months ended December 31, 1996 include all adjustments that the Company considers necessary for a fair presentation of its financial position at such date and its operating results and cash flows for those periods. Results for the interim period are not necessarily indicative of results for the entire year.

SIGNIFICANT ACCOUNTING POLICIES

Cash Equivalents

The Company considers all highly liquid investments with an original maturity from date of purchase of three months or less to be cash equivalents. The Company's excess cash is invested in an uninsured money market account with a major international bank. Carrying value of cash and cash equivalents approximates market value.

Inventories

Inventories consist primarily of raw materials, which are stated at the lower of standard cost (which approximates actual cost on a first-in, first-out cost method) or market value.

Revenue Recognition and Concentration of Credit Risk

The Company derives its revenues principally from on-line service, license and manufacturing revenue. On-line revenue consists primarily of fees charged to subscribers to the Company's on-line service and are recognized when services are provided. Advance payments for on-line services are deferred until the services are provided.

Manufacturing revenue is recognized at the time products are shipped. Prepayments from licensees are deferred until the related product is shipped. License revenue consists of certain fees paid by licensees and is recognized ratably over the term of the agreements. All product and license revenue is generated by two parties which accounted for 58% and 40%, respectively, of total revenue for the nine months ended December 31, 1996.

The Company's accounts receivable are from on-line service subscribers and licensees. The Company generally does not require collateral on accounts receivable. The Company maintains reserves for potential credit losses and such losses have been within management's expectations. The concentration of credit risk with respect to on-line service accounts receivable is limited due to the large number of subscribers comprising the Company's subscriber base. Licensee accounts receivable consists of two multinational consumer electronics companies who have made timely payments to date. These two companies accounted for 65% and 12%, respectively, of accounts receivable at December 31, 1996.

The Company generates all of its revenues in the United States.

Cost of Revenues

Cost of on-line service revenues consist of expenses related to the maintenance and support of the Company's network, data communications costs, customer support costs and royalties and commissions paid to information and service providers and licenses. Licensing and manufacturing cost of revenue consists primarily of the associated component and labor costs of the manufactured goods sold.

Depreciation and Amortization

Property and equipment are depreciated on a straight-line basis over the estimated useful lives of the assets which approximates three years. Equipment purchased under capital lease obligations is amortized over the shorter of the lease term or the estimated useful lives of the related assets.

Advertising Costs

Costs related to advertising are expensed the first time an advertisement appears. Advertising expense was approximately $9,260,000 for the nine months ended December 31, 1996 (none for the period from inception (June 30, 1995) to March 31, 1996).

Research and Development and Software Development Costs

Research and development costs incurred to develop software and hardware products are charged to operations as incurred.

Software development costs have been expensed in accordance with Statement of Financial Accounting Standards No. 86, "Accounting for the Costs of Computer Software to be Sold, Leased or Otherwise Marketed" ("SFAS 86"). Under SFAS 86, capitalization of software development costs begins upon the establishment of technological feasibility and ends when a product is available for general release to customers. Such costs have been immaterial to date.

Stock Compensation

The Company has elected to follow Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") and related Interpretations in accounting for its employee and director stock options because, as discussed below, the alternative fair value accounting provided for under FASB Statement No. 123, "Accounting for Stock-Based Compensation" ("FAS 123"), requires use of option valuation models

that were not developed for use in valuing employee stock options. Under APB 25, because the exercise price of the Company's employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized. Option grants to all others are accounted for under the fair value method prescribed by FAS 123.

Net Loss Per Share

Except as noted below, historical net loss per share is computed using the weighted-average number of common shares outstanding. Common equivalent shares from stock options, convertible preferred stock and warrants are excluded from the computation as their effect is antidilutive.

Historical net loss per share information is as follows:

	PERIOD FROM INCEPTION (JUNE 30, 1995) TO MARCH 31, 1996	PERIOD FROM INCEPTION (JUNE 30, 1995) TO DECEMBER 31, 1995	NINE MONTHS ENDED DECEMBER 31, 1996
Net loss per share.....	$(0.24)	$(0.09)	$(1.49)
Shares used in computing net loss per share.....	13,462,963	12,694,445	17,563,288

Pro forma net loss per share has been computed as described above and also gives effect to the conversion of convertible preferred shares issued using the as if-converted method. Such shares are included from the original date of issuance.

2. OTHER FAIR VALUE DISCLOSURES

At December 31, 1996, the carrying value of notes receivable from shareholders approximates their fair value. The fair values of notes receivable from shareholders are estimated using discounted cash flow analysis, based on interest rates currently being offered for loans with similar terms to borrowers of similar credit quality.

3. PROPERTY AND EQUIPMENT

Property and equipment is recorded at cost and consists of:

	MARCH 31, 1996	DECEMBER 31, 1996
Computer equipment.....	$ 756,248	$ 7,686,066
Office equipment, furniture and fixtures.....	175,984	963,593
Purchased software.....	279,548	1,074,693
Leasehold improvements.....	56,141	443,362
	1,267,921	10,167,714
Less accumulated depreciation and amortization.....	126,963	1,313,323
Property and equipment, net.....	$1,140,958	$ 8,854,391

4. COMMITMENTS

In December 1995, the Company entered into a $1,000,000 equipment lease line of credit, of which approximately $374,000 remains available at December 31, 1996. In addition, the Company entered into equipment lease lines of $2,000,000 and $1,000,000 in 1996 which were fully drawn down as of December 31, 1996. The arrangements are secured by the leased property and equipment of the Company.

In conjunction with the 1996 equipment lease lines, the Company issued warrants to purchase common stock (see Note 6).

Included in property and equipment are assets acquired under capital lease obligations with a cost and related accumulated amortization of approximately $686,000 and $12,000 and $3,686,000 and $476,000 at March 31, 1996 and December 31, 1996, respectively.

Future payments under operating and capital lease arrangements at December 31, 1996 are as follows:

	OPERATING LEASES	CAPITAL LEASES
Years ending March 31:		
1997 (three months remaining)	$ 366,000	$ 330,603
1998	1,321,920	1,375,863
1999	1,249,072	1,179,402
2000	983,048	859,158
2001	868,248	246,914
Thereafter	1,242,302	--
Total minimum payments	$6,030,590	3,991,940
Less amount representing interest		622,448
Present value of minimum payments		3,369,492
Less current portion		916,830
Long-term portion		$2,452,662

Rent expense was approximately $26,000, $62,000 and $550,000 for the period from inception (June 30, 1995) to December 31, 1995, inception (June 30, 1995) to March 31, 1996 and the nine months ended December 31, 1996.

5. NOTES FROM FOUNDERS, SHAREHOLDERS AND OTHER PARTIES

During the year ended March 31, 1996, the Company issued demand promissory notes to two founders totaling $401,500, net of repayments, for purposes of initial funding of the Company. These notes were repaid in April 1996.

In February 1996, the Company issued convertible notes to four parties including a member of the board of directors and relatives of an officer of the Company for a total of $680,000. In March 1996, the Company repaid one of the notes totaling $30,000. In April and July 1996, the Company repaid the remaining notes (with the exception of the note due to the director) totaling $500,000. In April 1996, the note due to the director was converted into 92,025 shares of Series B redeemable convertible preferred stock at a per share price of $1.63.

In conjunction with the issuance of certain of these notes, the Company issued warrants to purchase common stock (see Note 6).

6. SHAREHOLDERS' EQUITY

PREFERRED STOCK

In September and October 1995, under a stock purchase agreement, the Company issued 1,510,533 shares of Series A redeemable convertible preferred stock ("Series A preferred stock") at a price of $0.993 per share. In March and April 1996, under a stock purchase agreement, the Company issued 5,576,682 shares of Series B redeemable convertible preferred stock ("Series B preferred stock") at a price of $1.63 per share. Additionally in April 1996, a $150,000 convertible note due to a member of the board of directors was converted into 92,025 shares of Series B redeemable convertible preferred stock. Also, in July and August of 1996, warrants issued in April 1996 were exercised to purchase 648,000 Series B redeemable convertible preferred shares at an exercise price of $2.50 per share. In September 1996, under a stock purchase agreement, the Company issued 4,819,538 shares of Series C convertible preferred stock ("Series C preferred stock") at a price of $7.113 per share.

Each share of Series A, Series B and Series C preferred stock is convertible, at the option of the holder, into common stock, as determined by dividing $0.993, $1.63 and $7.113, respectively, plus an amount equal to all declared but unpaid dividends on each share into the number of outstanding shares. The price at which common stock shall be deliverable upon conversion of the Series A, Series B and Series C is $0.9027, $1.63 and $7.113, respectively, subject to certain adjustments for dilution, if any, resulting from future stock issuances. The outstanding shares of preferred stock automatically convert into common stock either upon the close of business on the day immediately preceding the closing of an underwritten public offering of common stock under the Securities Act of 1933 in which the Company receives at least $10,000,000 in gross proceeds and the price per share is at least $7.50.

Series A, Series B and Series C preferred shareholders are entitled to noncumulative dividends of $0.0794, $0.1141 and $0.4979, respectively, per share. Dividends will be paid only when declared by the board of directors out of legally available funds. No dividends have been declared as of December 31, 1996.

The Series A, Series B and Series C preferred shareholders are entitled to receive, upon liquidation, an amount per share equal to the issuance price, plus all declared but unpaid dividends. Thereafter, the remaining assets and funds, if any, shall be distributed pro rata among the common shareholders. If the assets or property were not sufficient to allow full payment to the Series A, Series B and Series C shareholders, the available assets shall be distributed ratably among the Series A, Series B and Series C shareholders.

The Series A, Series B and Series C preferred shareholders have voting rights equal to the common shares issuable upon conversion.

The Company is required to redeem the outstanding Series A and Series B preferred shares at an amount equal to the issuance price plus all declared but unpaid dividends in four annual installments beginning in March 2003.

COMMON STOCK

At December 31, 1996, the Company has reserved 12,797,881 shares of its common stock for issuance upon conversion of its Series A, Series B and Series C preferred stock, 1,998,452 common shares for issuance under the 1996 Stock Incentive Plan and 139,000 shares for issuance of common stock upon the exercise of outstanding warrants to purchase common stock and convertible preferred stock.

STOCK WARRANTS

In connection with the issuance of convertible notes in February 1996 as discussed in Note 5, the Company issued warrants to purchase a total of 53,000 shares of common stock, subject to adjustments for stock splits and other reclassifications in capitalization, at an exercise price of $0.05 per share. The warrants will be delivered on or before the respective maturity dates of the convertible promissory notes and may be exercised at any time on or before the expiration of one year following the issuance to the respective holders. Shares issued upon exercise of warrants will be subject to the Company's right of first refusal to purchase these shares prior to an initial public offering by the Company. The shares of common stock issuable to the holders pursuant to the exercise of these warrants are subject to the Company's right of first refusal to purchase the shares, at the market price, prior to the Company's initial public offering.

In connection with equipment lease line financing in June 1996, as discussed in Note 4, the Company issued warrants to purchase a total of 86,000 shares of Series B redeemable convertible preferred stock, subject to adjustments for stock splits and other recapitalization, at an exercise price of $2.50, $5.00 and $7.113 per share for 46,000, 20,000 and 20,000 shares, respectively.

The value ascribed to these warrant issuances was determined by the Company to be immaterial for financial statement purposes.

At December 31, 1996, there were 139,000 warrants outstanding.

1996 STOCK INCENTIVE PLAN

Under the 1996 Stock Incentive Plan (the "Plan"), which was adopted in February 1996, options may be granted for common stock or common stock may be issued, pursuant to actions by the board of directors, to directors, consultants, advisors, and employees of the Company. Options granted are either incentive stock options or nonstatutory stock options and are exercisable within the times or upon the events determined by the board of directors as specified in each option agreement. Incentive stock options granted under the Plan are at prices not less than 100% of the fair value at the date of grant. Nonstatutory options granted under the Plan are at prices not less than 85% of the fair value on the date of the grant, as determined by the board of directors. Stock options granted to a 10% shareholder shall not be less than 110% of the fair value at the date of grant. Options vest over a period of time as determined by the board of directors, generally four years. The term of the Plan is ten years.

The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. Because the Company's employee stock options have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of its employee stock options.

The effect of applying the FASB statement's minimum value method to the Company's stock option grants did not result in pro forma net loss and loss per share that are materially different from historical amounts reported. Therefore, such pro forma information is not separately presented herein. Future pro forma net income and earnings per share results may be materially different from actual amounts reported.

Plan transactions were as follows:

		OUTSTANDING STOCK OPTIONS		WEIGHTED-AVERAGE
	SHARES AVAILABLE	NUMBER OF SHARES	PRICE PER SHARE	PRICE PER SHARE
Original authorization of shares	3,180,188			
Additional shares authorized for issuance	1,819,812			
Options granted	(2,660,849)	2,660,849	$0.05	$ 0.05
Balance at March 31, 1996	2,339,151	2,660,849	$0.05	$ 0.05
Additional shares authorized for issuance	1,000,000			
Options granted	(3,409,242)	3,409,242	$0.05 - $1.00	$0.418
Options exercised	--	(4,001,548)	$0.05 - $0.16	$0.093
Options canceled	305,768	(305,768)	$0.05 - $1.00	$0.145
Balance at December 31, 1996	235,677	1,762,775	$0.05 - $1.00	$ 0.65

The weighted-average contractual life of options outstanding and exercisable at December 31, 1996 is as follows:

	OPTIONS OUTSTANDING			OPTIONS EXERCISABLE
EXERCISE PRICES	OPTIONS OUTSTANDING AT DECEMBER 31, 1996	WEIGHTED-AVERAGE REMAINING CONTRACTUAL LIFE (IN YEARS)		OPTIONS EXERCISABLE AT DECEMBER 31, 1996
$0.05	148,325	9.25		148,325
$0.16	107,750	9.50		17,750
$0.50	636,500	9.70		13,150
$0.75	296,600	9.80		5,000
$1.00	573,600	9.90		--
	1,762,775	9.73		184,225

At December 31, 1996, there were 3,203,614 shares subject to repurchase under the Plan; there were none at March 31, 1996.

7. INCOME TAXES

As of December 31, 1996, the Company had federal net operating loss carryforwards of approximately $26,700,000. The federal net operating loss carryforwards will expire at various dates beginning in 2011 through 2012, if not utilized.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amount used for income tax purposes.

Significant components of the Company's deferred tax assets are as follows:

	MARCH 31, 1996	DECEMBER 31, 1996
Net operating loss carryforwards	$ 1,200,000	$ 9,900,000
Research credits	--	300,000
Capitalized research expenses	--	800,000
Total deferred tax assets	1,200,000	11,000,000
Valuation allowance for deferred tax assets	(1,200,000)	(11,000,000)
Net deferred tax assets	$ --	$ --

Because of the Company's lack of earnings history, the deferred tax assets have been fully offset by a valuation allowance. The valuation allowance increased by $1,200,000 during the period from inception (June 30, 1995) to March 31, 1996.

Utilization of the net operating losses and credits may be subject to a substantial annual limitation due to the ownership change provisions of the Internal Revenue Code of 1986 and similar state provisions. The annual limitation may result in the expiration of net operating losses and credits before utilization.

8. SUBSEQUENT EVENTS (UNAUDITED)

In January 1997, the Board of Directors approved an increase in the number of common shares available for issuance under the 1996 Stock Incentive Plan of 2,000,000 shares.

In February and March 1997, the Company entered into two new master lease agreements which provide $2,000,000 each and include warrants to purchase 16,871 and 19,682 shares, respectively, of Series C convertible preferred stock at an exercise price of $7.113 per share.

In March 1997, under a stock purchase agreement, the Company issued 1,343,570 Series D convertible preferred shares at a price of $10.42 per share. These shares have the same rights and privileges as Series C convertible preferred stock.

In April 1997, the Company and certain shareholders entered into an Agreement and Plan of Recapitalization (the "Recapitalization Agreement") with Microsoft Corporation ("Microsoft"). Pursuant to the Recapitalization Agreement, the Company will undergo a reorganization of its capital ("the Recapitalization"). If the Recapitalization is approved, the following will occur:

- Holders of vested common shares of the Company may elect to receive $12.841 per share in cash directly from Microsoft or receive in the Recapitalization the equivalent value per share in new Class A common shares of the Company which will be exchangeable for Microsoft Common shares initially on a one-to-one basis;

- Holders of unvested common shares of the Company will receive in the Recapitalization $12.841 per share in value in new Class A Common Shares of the Company which will be exchangeable for Microsoft common shares initially on a one-to-one basis;

- Holders of options to purchase common shares of the Company will receive replacement nonqualified options for Microsoft common shares;

- Holders of preferred shares of the Company may elect to receive $13.686 per share in cash directly from Microsoft or alternatively receive $13.686 per share in cash from WNI in the Recapitalization;

- Holders of common shares of the Company or preferred shares of the Company may exercise dissenters' rights by not voting in favor of the Recapitalization and strictly following the statutory procedures of the Company under California law; and

- Holders of warrants to purchase capital shares of the Company may either elect to receive $13.686 per share in cash less any applicable exercise price (whether in cash or through a net exercise) directly from Microsoft or alternatively receive the same cash payment from WNI in the Recapitalization.

In April 1997, in conjunction with the Recapitalization Agreement, Microsoft and the Company entered into a Line of Credit Agreement (the "Credit Agreement"), pursuant to which Microsoft agreed to loan the Company, on a revolving basis, up to $30,000,000 (the "Loan"). Interest on the outstanding balance on the Loan will accrue at a rate of ten percent (10%). The Loan is secured by a security interest granted by the Company to Microsoft, pursuant to a Security Agreement, covering all of the Company's Intellectual Property (as defined in the Recapitalization Agareement). The principal and interest of the Loan is payable in full at the Closing of the Recapitalization Agreement. In the event the Recapitalization Agreement is terminated, the principal and interest of the Loan is repayable as follows: (i) if the Company terminates the Recapitalization Agreement without cause, all outstanding principal and interest on the Loan is due and payable within ten (10) days of the termination; (ii) if the Reorganization Agreement is terminated other than by the Company without cause, all principal and interest on the Loan is due and payable on that date eighteen (18) months after the effective date of such termination. Microsoft may elect to forgive any of the Loan payable and such forgiveness shall be treated as an offset against any Termination Fee, Break-up Fee or other fee obligations to the Company pursuant to the Recapitalization Agreement (as such terms are defined in the Recapitalization Agreement).

Microsoft has also agreed that after the Recapitalization is consummated that additional options to purchase Microsoft common shares will be granted to the Company's employees so that those employees (other than the principal shareholders) who held common shares of the Company and options to purchase common shares of the Company on April 5, 1997 will receive aggregate consideration of approximately $31,774,000.

Immediately following the effective date of the recapitalization, the Company will be a controlled subsidiary of Microsoft and the Company expects that its existing operations will be the same in all material respects. Although Microsoft officers will be appointed to serve on the board of directors, current management expects that it will continue to manage the Company after the recapitalization. In addition, the Company will be engaged in the same lines of business with the same assets.

APPENDIX A

MICROSOFT CORPORATION

WEBTV NETWORKS, INC.

AND

CERTAIN SHAREHOLDERS OF
WEBTV NETWORKS, INC.

AGREEMENT AND PLAN OF RECAPITALIZATION

DATED AS OF APRIL 5, 1997

TABLE OF CONTENTS

DEFINED TERMS

AGREEMENT AND PLAN OF RECAPITALIZATION

AGREEMENT AND PLAN OF RECAPITALIZATION, DATED AS OF April 5, 1997 (this "AGREEMENT"), by and among Microsoft Corporation, a Washington corporation ("MICROSOFT"), WebTV Networks, Inc., a California corporation ("COMPANY"), and the undersigned shareholders of Company (the "PRINCIPAL SHAREHOLDERS").

RECITALS

INTENDING TO BE LEGALLY BOUND, and in consideration of the premises and the mutual representations, warranties, covenants and agreements contained herein, Microsoft, Company, and the Principal Shareholders hereby agree as follows:

1. THE RECAPITALIZATION

1.1 EFFECTIVE TIME OF THE RECAPITALIZATION.

Amended and Restated Articles of Incorporation and any other required documents (collectively the "RECAPITALIZATION DOCUMENTS"), consistent with the term sheet attached as Exhibit 1.1, or in such other form as is reasonably satisfactory to the parties, will be duly prepared, executed and acknowledged by Company and thereafter delivered to the Secretary of State of California as soon as practicable on the Closing Date (as defined in Section 1.4) (the "RECAPITALIZATION"). The Recapitalization will become effective at such time as the Recapitalization Documents have been filed with the Secretary of State of California or at such time thereafter as is provided in the Recapitalization Documents (the "EFFECTIVE TIME"). Solely for purposes of clarification, Company and the Principal Shareholders acknowledge and agree that Microsoft will have no obligation to make any payment or issue any shares pursuant to the Recapitalization or this Agreement until the Recapitalization has been confirmed in writing by the Secretary of State of California.

1.2 CLOSING.

The execution and delivery of the documents required to effectuate the transactions contemplated by this Agreement (the "CLOSING") will take place at 10:00 a.m. local time as soon as practicable after satisfaction or waiver of the last to be fulfilled of the conditions set forth in Article 6, that by their terms are not to occur at the Closing (the "CLOSING DATE"), but in no event more than two business days following the satisfaction of such last condition, at the offices of Preston Gates & Ellis LLP, Seattle, Washington, unless another time, date or place is agreed to in writing by the parties hereto.

1.3 CONVERSION OF COMPANY SECURITIES.

1.3.1 EXCHANGEABLE SHARES FOR COMMON SHARES.

Each of the issued and outstanding Company Common Shares (as defined in Section 2.1.2), other than vested Company Common Shares of holders who elect to receive cash pursuant to Section 1.3.2, shall, at the Effective Time, by virtue of the Recapitalization, be converted, without any action on the part of the holders thereof, into, and Company shall thereupon issue to the holders of Company Common Shares, a number of Company Class A Common Shares (the "EXCHANGEABLE SHARES") having the rights, privileges and conditions set forth in the Recapitalization Documents pursuant to an exchange ratio determined by dividing $12.841 by the Microsoft Closing Price (the "EXCHANGE RATIO"). The "MICROSOFT CLOSING PRICE" shall be the average closing price as publicly reported by the Nasdaq Stock Market as of 4:00 p.m. Eastern Time over the twenty consecutive trading days ending two trading days prior to the Closing. (The following example is inserted solely for purposes of clarification of the preceding sentence: assume the Closing Date is Friday, June 27, 1997, then the specified twenty (20) trading day period will end on and include Wednesday, June 25, 1997.)

1.3.2 CASH FOR PREFERRED SHARES AND WARRANTS AND ELECTING COMMON SHARES.

Each of the issued and outstanding Company Preferred Shares (as defined in Section 2.1.2) shall, at the Effective Time, by virtue of the Recapitalization, be converted, without any action on the part of the holders thereof, into the right to receive $13.686 per share (determined on an as-if-converted to Company Common Shares basis) in cash. Subject to each of their terms, each issued and outstanding Company Warrant (as defined in Section 2.1.2) shall, at the Effective Time, by virtue of the Recapitalization, be converted, without any action on the part of the holders thereof, into the right to receive $13.686 per share (determined on an as-if-exercised and converted to Company Common Shares basis) in cash, less any applicable exercise price (whether in cash or through a net exercise) with respect to such Company Warrants. Holders of Company Common Shares other than Company Restricted Shares (as defined in Section 1.3.4) may elect effective at the Effective Time by the execution of documentation to be provided by the Company at the time the Proxy Statement (as defined in Section 2.1.8) shall be mailed to the Company's shareholders to receive $12.841 per share in lieu of receiving Exchangeable Shares pursuant to Section 1.3.1. If no election to receive cash shall be received by any holder of eligible Company Common Shares, prior to the Effective Time, such holder shall be deemed to have elected to receive Exchangeable Shares pursuant to Section 1.3.1 above. Company agrees that, alternatively, Microsoft may make an offer to purchase Company Preferred Shares, Company Warrants and Company Common Shares which are eligible and elect to receive cash directly from holders of such shares.

1.3.3 COMPANY OPTIONS.

At the Effective Time, each of the then outstanding Company Options (as defined in Section 2.1.2) will by virtue of the Recapitalization, and without any further action on the part of any holder thereof, be replaced by one or more nonqualified stock options ("MICROSOFT OPTIONS") to purchase that number of Microsoft common shares, $.000025 par value ("MICROSOFT COMMON SHARES"), determined by multiplying the number of Company Common Shares subject to each Company Option at the Effective Time by the Exchange Ratio, and at an exercise price per Microsoft Common Share equal to the exercise price per share of such Option immediately prior to the Effective Time divided by the Exchange Ratio. Each Microsoft Option will be issued pursuant to the Microsoft 1991 Employee Stock Option Plan, as amended (the "1991 PLAN"). If the foregoing calculations result in a replaced Company Option being exercisable for a fraction of a Microsoft Common Share, then the number of Microsoft Common Shares subject to such option will be rounded to the nearest whole number of Microsoft Common Shares. The vesting schedule for the replacement Microsoft Options for each holder of Company Options is set forth on Schedule 1.3.3 and the form of the replacement option is attached as Exhibit 1.3.3. Each recipient of a replacement Microsoft Option will be deemed to be an "OPTIONEE" under the 1991 Plan and will be granted the right to exercise any unexercised replacement Microsoft Options for three (3) months after termination by Company or Microsoft, whichever occurs later, but in no event later than the expiration date of such option which will be the same date as provided for in the Company Option.

In addition to the Microsoft Options issued in replacement of Company Options pursuant to the preceding paragraph Microsoft shall grant additional Microsoft Options so that the total aggregate value in Exchangeable Shares, cash or Microsoft Options received by holders (other than Principal Shareholders) of Company Common Shares and/or Company Options equals $17.62 per Company Common Share Equivalent, which amount in the aggregate shall equal not more than $31,774,000.

Microsoft will cause the Microsoft Options issued in replacement of the Company Options to be issued as soon as practicable after the Effective Time, pursuant to a then effective registration statement on Form S-8 for the 1991 Plan, and will cause such registration statement to remain effective for so long as such replacement Microsoft Options remain outstanding.

1.3.4 RESTRICTED SHARES.

Company Shares which are subject to repurchase by Company in the event a Company employee ceases to be employed by Company ("COMPANY RESTRICTED SHARES") shall be converted into Exchangeable Shares on the same basis as provided in Section 1.3.1 and shall be registered in the holder's name, but shall be held by

Company pursuant to existing agreements in effect as of the date of this Agreement; provided, however, that the existing agreements with the Principal Shareholders shall be modified in the manner set forth in Exhibit 3.15. Holders of the Company Restricted Shares are set forth on Schedule 1.3.4., along with the vesting schedule for such shares.

1.4 CAPITAL CONTRIBUTION AND ISSUANCE OF SHARES TO MICROSOFT.

At the Closing Microsoft shall transfer cash, in the form of immediately available funds, equal to not less than the amount required to satisfy the conversion rights of holders of Company Preferred Shares, Company Warrants and Company Common Shares which are eligible and elect to convert to cash pursuant to Section 1.3.2. At the Closing Microsoft shall also transfer, at its election, either Microsoft Common Shares equal to not less than the amount required to satisfy the exchange rights of the Exchangeable Shares issued pursuant to Section 1.3.1 and the Exchangeable Shares issued to Microsoft pursuant to the next sentence, or cash, in the form of immediately available funds, equal to not less than the amount required to purchase such Microsoft Common Shares at the Microsoft Closing Price. Such Microsoft Common Shares or cash shall be held by the Company on a segregated basis earmarked solely to satisfy the Company's obligations in connection with the exchange rights of the holders of Exchangeable Shares following the Effective Time. In consideration for such transfers Microsoft shall receive: one or more Company "CLASS B COMMON SHARES" which shall have the rights, privileges and conditions as provided for in the Recapitalization Documents and such other shares as Microsoft may deem appropriate.

1.5 ESCROW AGREEMENT.

Fifty Million Dollars ($50,000,000) in value, allocated between Exchangeable Shares (valued at the Microsoft Closing Price) and cash in the same manner as the total amounts to be provided under Sections 1.3.1 and 1.3.2 are allocated (the "ESCROW AMOUNT"), will be withheld from the Exchangeable Shares and cash to be issued in the conversion of the Company Shares pursuant to Section 1.3 and shall be deposited with the Exchange Agent (as defined in Section 1.8.1) pursuant to an escrow agreement in substantially the form attached as Exhibit 1.5 ("ESCROW AGREEMENT,") solely to serve as a fund to satisfy possible claims by Microsoft for indemnification pursuant to Article 7. Deductions from the Escrow Amount shall be made on a pro rata basis (i.e., an equal amount per each Company Common Share Equivalent, as defined in Section 2.1.2) from all holders of Company Shares and Company Warrants. In no event shall any holder of Company Shares or Company Warrants be required to contribute more than such holder's pro rata portion of the Escrow Amount as of the Effective Time.

1.6 DISSENTER RIGHTS.

Notwithstanding any provision of this Agreement to the contrary, any holder of Company Common Shares or Company Preferred Shares that are outstanding on the record date for the determination of those shares entitled to vote for or against the Recapitalization who has demanded and perfected appraisal rights for such shares in accordance with California law and who, as of the Effective Time, has not effectively withdrawn or lost such appraisal right ("ELIGIBLE DISSENTING SHARES"), shall not be converted into or represent a right to receive Exchangeable Shares or cash pursuant to Section 1.3, but rather the holder thereof shall only be entitled to such rights as are granted by California law.

Notwithstanding the foregoing, if any holder of Company Common Shares or Company Preferred Shares who demands appraisal of such shares under California law shall effectively withdraw or lose (through failure to perfect or otherwise) the right to appraisal, then, as of the later of the Effective Time or the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive Exchangeable Shares or cash in accordance with Section 1.3 hereof, without interest thereon, upon surrender of the certificate representing such Company Common Shares or Company Preferred Shares in the manner provided in Section 1.8.

Company shall give Microsoft (i) prompt notice of any written demands for appraisal of any Company Common Shares or Company Preferred Shares, withdrawals of such demands, and any other instruments served pursuant to California law and received by Company which relate to any such demand for appraisal and (ii) the opportunity to participate in and/or direct all negotiations and proceedings which take place prior to the Effective Time with respect to demands for appraisal under California law. Company shall not, except with prior written consent of Microsoft or as may be required by applicable law, voluntarily make any payment with respect to any demands for appraisal of Company Common Shares or Company Preferred Shares or offer to settle or settle any such demands.

1.7 FRACTIONAL SHARES.

No fractional Exchangeable Shares will be issued in the Recapitalization. In lieu of such issuance, all Exchangeable Shares issued to the holders of Company Common Shares pursuant to the terms of this Agreement shall be rounded to the closest whole Exchangeable Share.

1.8 EXCHANGE OF CERTIFICATES.

1.8.1 EXCHANGE AGENT.

Prior to the Closing Date, Company shall appoint ChaseMellon Shareholder Services LLC., or other company reasonably satisfactory to Company, to act as exchange agent (the "EXCHANGE AGENT") on behalf of Company in the Recapitalization.

1.8.2 COMPANY TO PROVIDE COMMON SHARES.

Promptly after the Effective Time, Company shall make available to the Exchange Agent the certificates representing Exchangeable Shares and cash to be issued in the conversion of Company Shares and Company Warrants pursuant to Section 1.3 in exchange for outstanding certificates of Company Shares and Company Warrants ("CERTIFICATE" or "CERTIFICATES").

1.8.3 EXCHANGE PROCEDURES.

As of the Effective Time or as soon thereafter as practical, the Exchange Agent shall mail to each holder of record of a Certificate or Certificates, (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent), (ii) instructions for use in effecting the surrender of the Certificates in exchange for certificates representing Exchangeable Shares or cash payable with respect to Company Preferred Shares, Company Warrants or eligible electing Company Common Shares, and (iii) an execution copy of the Escrow Agreement. Upon surrender of a Certificate for cancellation to the Exchange Agent, together with a duly executed letter of transmittal, Escrow Agreement and such other documents as the Exchange Agent shall require, the holder of such Certificate shall be entitled to receive in exchange therefor the number of whole Exchangeable Shares to which the holder of Company Common Shares is entitled pursuant to Section 1.3.1 or the cash to which the holder of Company Preferred Shares, Company Warrants or eligible electing Company Common Shares are entitled to pursuant to Section 1.3.2. The Certificate so surrendered shall forthwith be canceled. Notwithstanding any other provision of this Agreement, until holders of Certificates have surrendered them for exchange as provided herein, (i) no dividends, or other distributions shall be paid with respect to any shares represented by such Certificates, and (ii) without regard to when such Certificates are surrendered for exchange as provided herein, no interest shall be paid on any cash payable for Company Preferred Shares, Company Warrants or eligible electing Company Common Shares or dividends or other distributions payable with respect to Exchangeable Shares if and when declared. Upon surrender of a Certificate in exchange for Company Common Shares, there shall be paid to the holder of such Certificate the amount of any dividends or other distributions which became payable at or after the Effective Time, but which were not paid by reason of the foregoing, with respect to the number of whole Exchangeable Shares represented by the certificate or certificates issued upon such surrender. If any certificate for Exchangeable Shares or any cash payment for Company Preferred Shares or Company Warrants is to be issued in a name other than in which the Certificate surrendered in exchange therefore is registered, it shall be a condition of such exchange that the person requesting such exchange pay any

transfer or other taxes required by reason of the issuance of certificates for such Exchangeable Shares or cash payment in a name or to a person other than that of the registered holder of the Certificate surrendered, or establish to the satisfaction of the Microsoft that such tax has been paid or is not applicable. Certificates of restricted Exchangeable Shares issued to holders of Company Restricted Shares shall bear legends substantially similar to the legends presently on the Company Restricted Shares certificates and as required by applicable law.

1.8.4 NO FURTHER OWNERSHIP RIGHTS IN COMPANY SHARES.

All Exchangeable Shares or cash delivered upon the surrender for exchange of Company Common Shares and cash delivered upon the surrender for exchange of Company Preferred Shares, Company Warrants or eligible electing Company Common Shares in accordance with the terms hereof shall be deemed to have been delivered in full satisfaction of all rights pertaining to such Company Shares or Company Warrants. After the Effective Time, there shall be no transfers on the stock transfer books of the Company of Company Shares other than the Exchangeable Shares or Company Class B Common. If, after the Effective Time, Certificates are presented to the Company for any reason, they shall be canceled and exchanged as provided in this Article 1. Certificates surrendered for exchange by any person constituting an "AFFILIATE" of Company for purposes of Rule 145(c) under the Securities Act of 1933, as amended (the "SECURITIES ACT"), shall not be exchanged until Microsoft and Company receive a written agreement from such persons as provided by Section 5.8.

1.8.5 RETURN TO COMPANY.

Any Exchangeable Shares or cash made available to the Exchange Agent and not exchanged for Certificates within six months after the Effective Time and any dividends and distributions held by the Exchange Agent for payment or delivery to the holders of unsurrendered Certificates representing Company Shares or Company Warrants and unclaimed at the end of such six month period shall be redelivered or repaid by the Exchange Agent to Company, after which time any holder of Certificates who has not theretofore delivered or surrendered such Certificates to the Exchange Agent, subject to applicable law, shall look as a general creditor only to Company for payment of the Exchangeable Shares and the Microsoft Common Shares as to which such Exchangeable Shares shall be exchangeable and any such dividends or distributions thereon, and any cash payable with respect to Company Preferred Shares, Company Warrants or eligible electing Company Common Shares. Notwithstanding any provision of this Agreement, none of Microsoft, the Exchange Agent, Company or any other party hereto shall be liable to any holder of Company Shares or Company Warrants for any Exchangeable Shares or cash delivered to a public official pursuant to applicable abandoned property, escheat or similar law.

1.9 TAX-FREE REORGANIZATION.

The Recapitalization is intended to be a "REORGANIZATION" within the meaning of Section 368(a)(1)(E) of the Internal Revenue Code of 1986, as amended (the "CODE"), and this Agreement is intended to constitute a "PLAN OF REORGANIZATION" within the meaning of the regulations promulgated under Section 368 of the Code. No party shall take any action which is inconsistent with such intent.

2. REPRESENTATIONS AND WARRANTIES

2.1 REPRESENTATIONS AND WARRANTIES OF COMPANY AND PRINCIPAL SHAREHOLDERS.

Except as disclosed in a document referring specifically to the representations and warranties in this Agreement attached hereto as Exhibit 2.1 which identifies by section number the section to which such disclosure relates and is delivered by Company to Microsoft prior to the execution of this Agreement (the "COMPANY DISCLOSURE SCHEDULE"), Company and the Principal Shareholders, jointly and severally, represent and warrant to Microsoft as follows:

2.1.1 ORGANIZATION, STANDING AND POWER.

Company is a corporation duly organized, validly existing and in good standing under the laws of California, has all requisite power and authority to own, lease and operate its properties and to carry on its

businesses as now being conducted, and is duly qualified and in good standing to do business in each jurisdiction in which a failure to so qualify would have a material adverse effect on the Business Condition (as hereinafter defined) of Company. As used in this Agreement, "BUSINESS CONDITION" with respect to any entity will mean the business, financial condition, results of operations or assets (without giving effect to the consequences of the transactions contemplated by this Agreement) of such entity or entities including its Subsidiaries taken as a whole. In this Agreement, a "SUBSIDIARY" of any corporation or other entity means a corporation, partnership or other entity of which such corporation or entity directly or indirectly owns or controls voting securities or other interests which are sufficient to elect a majority of the Board of Directors or other managers of such corporation, partnership or other entity. Company has delivered to Microsoft or its counsel complete and correct copies of the articles, certificate, bylaws, and/or other primary charter and organizational documents ("CHARTER DOCUMENTS") of Company, in each case, as amended to the date hereof. The minute books and stock records of Company contain correct and complete records of all proceedings and actions taken at all meetings of, or effected by written consent of, the shareholders of Company and its Board of Directors, and all original issuances and subsequent transfers, repurchases, and cancellations of Company's capital stock. The Company Disclosure Schedule contains a complete and correct list of the officers and directors of Company.

The Company's two wholly-owned Subsidiaries currently do not conduct, and have never conducted, any business. The Company has no other Subsidiary.

2.1.2 CAPITAL STRUCTURE.

The authorized capital stock of Company consists of 100,000,000 shares of Company common stock, without par value, ("COMPANY COMMON SHARES") of which 18,960,873 shares are issued and outstanding, and 25,000,000 shares of preferred stock, without par value, ("COMPANY PREFERRED SHARES") of which 1,510,533 have been designated as Series A Convertible Preferred Stock ("SERIES A SHARES") of which 1,510,533 are issued and outstanding, 6,567,484 have been designated as Series B Convertible Preferred Stock ("SERIES B SHARES") of which 6,316,705 are issued and outstanding, 4,920,568 have been designated as Series C Convertible Preferred ("SERIES C SHARES") of which 4,819,538 are issued and outstanding, and 9,596,928 have been designated as Series D Convertible Preferred ("SERIES D SHARES") of which 1,343,570 are issued and outstanding. Each Company Preferred Share is, and will be as of the Closing, convertible at the rate of one Company Common Share for each Company Preferred Share, except for the Series A Shares, which are convertible at the rate of 1.1 Company Common Shares for each Series A Share. Company Common Shares and Company Preferred Shares are sometimes referred to collectively as the ("COMPANY SHARES"). The Company has reserved 1,351,227 Company Common Shares under Company's 1996 Stock Incentive Plan (the "COMPANY STOCK OPTION PLAN") net of grants and issuances to the date of this Agreement, and options for 2,745,400 Company Common Shares ("COMPANY OPTIONS") have been granted and remain outstanding. The Company has issued warrants to purchase 86,000 Series B Shares and 36,553 Series C Shares (collectively "COMPANY WARRANTS"). Company Shares, Company Options and Company Warrants are sometimes collectively referred to as "COMPANY COMMON SHARE EQUIVALENTS." All Company Common Share Equivalents and other securities outstanding as of the date of this Agreement are set forth on Schedule 2.1.2, and no Company Common Share Equivalents are held by Company in its treasury. True and complete copies of the Company Stock Option Plan and the forms of any other instruments setting forth the rights of all Company Common Share Equivalents as of the date of this Agreement have been delivered to Microsoft or its counsel.

All outstanding Company Shares are, and any Company Shares issued upon exercise of any Company Option or Company Warrant will be, validly issued, fully paid, nonassessable and not subject to any preemptive rights, repurchase rights, rights of first refusal or rights to maintain interests. Except for the shares described above issuable pursuant to the conversion of Company Preferred Shares and the exercise of Company Options and Company Warrants, there are not any options, warrants, calls, conversion rights, commitments, agreements, contracts, understandings, restrictions, arrangements or rights of any character to which Company is a party or by which Company may be bound obligating Company to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of the capital stock of Company, or obligating Company to grant, extend or enter into any such option, warrant, call, conversion right, conversion payment, commitment, agreement, contract,

understanding, restriction, arrangement or right. Company does not have outstanding any bonds, debentures, notes or other indebtedness the holders of which (i) have the right to vote (or convertible or exercisable into securities having the right to vote) with holders of Company Shares on any matter ("COMPANY VOTING DEBT") or (ii) are or will become entitled to receive any payment as a result of the execution of this Agreement or the completion of the transactions contemplated hereby.

2.1.3 AUTHORITY.

The execution, delivery, and performance of this Agreement and the Related Agreements by Company has been duly authorized by all necessary action of the Board of Directors of Company. Certified copies of the resolutions adopted by the Board of Directors of Company approving this Agreement and the Related Agreements and the Recapitalization have been provided to Microsoft. Each of Company and the Principal Shareholders has duly and validly executed and delivered this Agreement and the Related Agreements or, as to those Related Agreements to be executed following the date hereof, will be duly and validly executed and delivered, and this Agreement each of and the Related Agreements constitute or, upon execution will constitute, a valid, binding, and enforceable obligations of each of Company and the Principal Shareholders in accordance with their respective terms. In this Agreement, the "RELATED AGREEMENTS," with respect to any party, means those agreements contemplated by this Agreement to which such party is a signatory.

2.1.4 COMPLIANCE WITH LAWS AND OTHER INSTRUMENTS.

Company holds, and at all times has held all licenses, permits, and authorizations from all Governmental Entities (as defined below), necessary for the lawful conduct of its business pursuant to all applicable statutes, laws, ordinances, rules, and regulations of all such authorities having jurisdiction over it or any part of its operations, excepting, however, when such failure to hold would not have a material adverse effect on Company's Business Condition. There are no material violations or claimed violations known by Company or the Principal Shareholders of any such license, permit, or authorization or any such statute, law, ordinance, rule or regulation. Neither the execution and delivery of this Agreement or any of the Related Agreements by Company and the Principal Shareholders nor the performance by Company and the Principal Shareholders of their obligations under this Agreement or any of the Related Agreements will, in any material respects, violate any provision of laws or will conflict with, result in the breach of any of the material terms or conditions of, constitute a breach of any of the material terms or conditions of, constitute a default under, give any party the right to accelerate any right under, or terminate, require consent, approval, or waiver by any party under, or result in the creation of any lien, charge, encumbrance, or restriction upon any of the properties, assets, or Company Shares pursuant to, any of the Charter Documents or any material agreement (including government contracts), indenture, mortgage, franchise, license, permit, lease or other instrument of any kind to which Company is a party or by which Company or any of its assets is bound or affected. No consent, approval, order or authorization of or registration, declaration or filing with or exemption (collectively "CONSENTS") by, any court, administrative agency or commission or other governmental authority or instrumentality, whether domestic or foreign (each a "GOVERNMENTAL ENTITY") is required by or with respect to Company in connection with the execution and delivery of this Agreement or any of the Related Agreements by Company or the consummation by Company of the transactions contemplated hereby, except for (i) the filing of the appropriate Recapitalization Documents with the Secretary of State of California, (ii) the filing of a premerger notification report and all other required documents by Microsoft and Company and the expiration of all applicable waiting periods, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR ACt", (iii) the filing with the Securities and Exchange Commission (the "SEC") of the S-4 (as defined in Section 2.1.10), including the Proxy Statement/Prospectus (as defined in Section 2.1.10), and such reports and information as may be required under the Securities Exchange Act of 1934, as amended (the "EXCHANGE ACT"), the Securities Act and the rules and regulations promulgated by the SEC under the Exchange Act or the Securities Act, and the declaration of the effectiveness of the S-4 by the SEC, (iv) such filings, authorizations, orders and approvals as may be required under foreign laws, state securities laws and the NASD Bylaws or "BLUE SKY" laws and (v) such other Consents, which failure to obtain or make would not have a material adverse effect on Company's Business Condition.

2.1.5 TECHNOLOGY.

2.1.5.1. "INTELLECTUAL PROPERTY" consists of the following:

2.1.5.1.1 all patents, trademarks, trade names, service marks, trade dress, copyrights and any renewal rights therefor, mask works, net lists, schematics, technology, inventions, manufacturing processes, supplier lists, trade secrets, know-how, moral rights, computer software programs or applications (in both source and object code form), applications and registrations for any of the foregoing;

2.1.5.1.2 all software and firmware listings, and updated software source code, and complete system build software and instructions related to all software described herein;

2.1.5.1.3 all documents, records and files relating to design, end user documentation, manufacturing, quality control, sales, marketing or customer support for all intellectual property described herein;

2.1.5.1.4 all other tangible or intangible proprietary information and materials; and

2.1.5.1.5 all license and other rights in any third party product, intellectual property, proprietary or personal rights, documentation, or tangible or intangible property, including without limitation the types of intellectual property and tangible and intangible proprietary information described in Section 2.1.5.1.1 through Section 2.1.5.1.4 above; that are owned or held by or on behalf of Company, and/or any Principal Shareholder, or that are being, and/or have been, used, or are currently under development for use, in the business of Company as it has been, is currently anticipated or is reasonably anticipated (as of the date of this Agreement and as of the Closing) by Company and/or the Principal Shareholders to be, conducted. Each Principal Shareholder shall specifically identify on the Company Disclosure Schedule any intellectual property as to which he asserts individual rights and identify any Intellectual Property which he will not assign or license to the Company in accordance with Section 6.2.11.

2.1.5.2 The Company Disclosure Schedule lists: (i) all patents, copyrights, mask works, trademarks, service marks, trade dress, any renewal rights for any of the foregoing, and any applications and registrations for any of the foregoing, which are included in the Company Intellectual Property and owned by or on behalf of Company; (ii) all material hardware products and tools, software products and tools, and services that are currently published, offered, or under development by Company; and (iii) all material licenses, sublicenses and other agreements to which Company is a party and pursuant to which Company or any other person is authorized to use the Company Intellectual Property or exercise any other right with regard thereto.

2.1.5.3 The Company Intellectual Property consists solely of items and rights which are either: (i) owned by Company, (ii) in the public domain or (iii) rightfully used and authorized for use by Company and its successors pursuant to a valid license. All material Company Intellectual Property which consists of license or other rights to third party property is set forth in the Company Disclosure Schedule. Company has all rights in the Company Intellectual Property necessary to carry out Company's current, former, and future, as currently anticipated or reasonably anticipated (as of the date of this Agreement and as of the Closing) by Company and/or the Principal Shareholders, activities, including without limitation rights to make, use, reproduce, modify, adapt, create derivative works based on, translate, distribute (directly and indirectly), transmit, display and perform publicly, license, rent, lease, assign, and sell the Company Intellectual Property and products embodying the Company Intellectual Property in all geographic locations and fields of use, and to sublicense any or all such rights to third parties, including the right to grant further sublicenses.

2.1.5.4 Company and each Principal Shareholder is not, nor as a result of the execution or delivery of this Agreement, or performance of Company's obligations hereunder, will Company be, in violation of any license, sublicense or other agreement to which Company or any Principal Shareholder is a party or otherwise bound. Except as specifically described in the Company Disclosure Schedule, neither Company nor any Principal Shareholder is obligated to provide any consideration (whether financial or otherwise) to any third party, nor is any third party otherwise entitled to any consideration, with respect to any exercise of rights by Company or Microsoft in the Company Intellectual Property.

2.1.5.5 The use, reproduction, modification, distribution, licensing, sublicensing, sale, or any other exercise of rights in any product, work, technology, service or process as used, provided or offered at any time, or as reasonably proposed by Company and/or the Principal Shareholders for use, reproduction, modification, distribution, licensing, sublicensing, sale or any other exercise of rights, by Company does not infringe any copyright, patent, trade secret, trademark, service mark, trade name, firm name, logo, trade dress, mask work, moral right, other intellectual property right, right of privacy or right in personal data of any person. No claims (i) challenging the validity, effectiveness, or ownership by Company of any of the Company Intellectual Property, or (ii) to the effect that the use, reproduction, modification, manufacturing, distribution, licensing, sublicensing, sale or any other exercise of rights in any product, work, technology, service or process as used, provided or offered at any time, or as currently proposed or reasonably proposed (as of the date of this Agreement and as of the Closing) by Company and/or the Principal Shareholders for use, reproduction, modification, distribution, licensing, sublicensing, sale or any other exercise of rights, by Company infringes or will infringe on any intellectual property or other proprietary or personal right of any person have been asserted or, to the knowledge of Company and each of the Principal Shareholders, are threatened by any person nor are there any valid grounds for any bona fide claim of any such kind. All granted or issued patents and mask works and all registered trademarks listed on the Company Disclosure Schedule and all copyright registrations held by Company are valid, enforceable and subsisting. To the knowledge of Company and each of the Principal Shareholders, there is no unauthorized use, infringement or misappropriation of any of the Company Intellectual Property by any third party, employee or former employee.

2.1.5.6 No parties other than Company possess any current or contingent rights to any source code which is part of the Company Intellectual Property.

2.1.5.7 The Company Disclosure Schedule lists all parties other than employees who have created any portion of, or otherwise have any rights in or to, the Company Intellectual Property. Company has secured from all parties who have created any portion of, or otherwise have any rights in or to, the Company Intellectual Property valid and enforceable written assignments of any such work or other rights to Company and has provided true and complete copies of such assignments to Microsoft.

2.1.5.8 The Company Disclosure Schedule includes a true and complete list and summary of principal terms relating to support and maintenance agreements relating to Company Intellectual Property including without limitation the identity of the parties entitled to receive such service or maintenance, the term of such agreements and any other provisions relating to the termination of such agreements.

2.1.6 FINANCIAL STATEMENTS.

Company has delivered to Microsoft audited balance sheet(s) as of March 31, 1996 and unaudited balance sheet(s) as of December 31, 1996, and the related audited statement(s) of income for the periods(s) ended March 31, 1996 and the unaudited nine-month period ended December 31, 1996 (such balance sheets and statements of income are collectively referred to as the "FINANCIAL STATEMENTS"). Such Financial Statements: (i) are in accordance with the books and records of Company, (ii) present fairly, in all material respects, the financial position of Company as of the date indicated and the results of their operations for each of the periods indicated, and (iii) have been prepared in accordance with generally accepted accounting principles consistently applied except as described in the Company Disclosure Schedule. There are no material off-balance sheet liabilities, claims or obligations of any nature, whether accrued, absolute, contingent, anticipated, or otherwise, whether due or to become due, that are not shown or provided for either in the Financial Statements or the Company Disclosure Schedule. The liabilities of Company were incurred in the ordinary course of Company's business.

2.1.7 TAXES.

All returns, reports and other forms related to taxes required to be filed on or before the Closing Date by or on behalf of Company under the laws of any jurisdiction, domestic or foreign, have been or will be filed, which returns, reports and forms are true, correct and complete in all respects, and all taxes which were required to be paid in connection with such returns, reports and forms have been paid or will have been paid prior to the Closing

other than taxes for which adequate reserves have been established in Company's Financial Statements, and no penalties or other charges are due or will become due with respect to the late filing of any such return, report or form. All taxes shown to be due from or payable by Company on such returns, reports and forms have been paid and all other taxes otherwise accruing and payable prior to Closing will have been paid other than taxes for which adequate reserves have been established in Company's Financial Statements. Complete and correct copies of all federal and state income, franchise, sales and use tax returns of Company for any year or portion of a year or other applicable tax period, since the Company's incorporation, as filed with the Internal Revenue Service ("IRS") and all state taxing authorities, will be supplied to Microsoft within seven (7) days. No subsequent federal income tax or state tax return has become due or has been filed by Company.

With respect to any taxable year ending on or before March 31, 1996 or any other "open" year for which the IRS or other taxing authority is not precluded from assessing a deficiency: (i) Company and the Principal Shareholders have not been notified that there is any assessment or proposed assessment of deficiency or additional tax with respect to Company, and (ii) there is no completed, pending, or, to the knowledge of Company, threatened tax audit or investigation with respect to Company. Neither Company nor any of the Principal Shareholders is a party to any agreement, contract or arrangement in the nature of a tax-sharing agreement, whether in writing or otherwise. No consent has been filed under Section 341(f) of the Code with respect to Company. Company is not required to include in income any adjustment pursuant to Section 481(a) of the Code (or similar provisions of other law or regulations) in its current or in any future taxable period by reason of a change in accounting method nor do Company or any of the Principal Shareholders have any knowledge that the IRS (or other taxing authority) has proposed, or is considering, any such change in accounting method. Company is not a party to any agreement, contract or arrangement that would result in the payment of any "excess parachute payment" within the meaning of Section 280G of the Code. Alternatively, the disclosure provided to the shareholders of Company in respect of each and every transaction to be consummated in connection with this Agreement, whether performed prior to, at or following the Closing, and the resolutions adopted after review of the foregoing, will be sufficient to comply with the provisions of Section 280G of the Code of transactions that might otherwise result in the payment of any "excess parachute payment" within the meaning of Section 280G of the Code. Company is not a party to any "safe harbor lease" as defined in Section 168(f)(8) of the Code as in effect prior to the enactment of the Tax Reform Act of 1986, and none of the property of Company constitutes tax-exempt use property as defined in Section 168(h) of the Code. None of the assets of Company secures debt the interest on which is exempt from tax pursuant to Section 103 of the Code.

The amounts reflected for taxes on the balance sheet included in the Financial Statements are and will be sufficient for the payment of all unpaid federal, state, local, and foreign taxes, assessments, and deficiencies for all periods prior to and including the periods covered in the Financial Statements. For the purposes of this Agreement, the terms "TAX" and "TAXES" will include all federal, state, local and foreign taxes, assessments, duties, tariffs, registration fees, and other similar governmental charges including without limitation all income, franchise, property, production, sales, use, payroll, license, windfall profits, severance, withholding, excise, gross receipts and other taxes, as well as any interest, additions or penalties relating thereto and any interest in respect of such additions or penalties.

2.1.8 INFORMATION SUPPLIED.

None of the information supplied or to be supplied by Company or its, auditors, attorneys, financial advisors or other consultants or advisors for inclusion in (a) the registration statement on Form S-4, and any amendment thereto, to be filed under the Securities Act with the SEC by Microsoft in connection with the issuance of the Exchangeable Shares in or as a result of the Recapitalization (the "S-4"), or (b) the proxy statement and any amendment or supplement thereto to be distributed in connection with Company's meetings of shareholders to vote upon this Agreement and the transactions contemplated hereby (the "PROXY STATEMENT" and, together with the prospectus included in the S-4, the "PROXY STATEMENT/PROSPECTUS") will, in the case of the Proxy Statement and any amendment or supplement thereto, at the time of the mailing of the Proxy Statement and any amendment or supplement thereto, and at the time of the meeting of shareholders of Company to vote upon this Agreement and the transactions contemplated hereby, or, in the case of the S-4, as amended or supplemented, at the time it

becomes effective and at the time of any post-effective amendment thereto and at the time of the meeting of shareholders of Company, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they are made, not misleading. The Proxy Statement/Prospectus will comply as to form in all material respects with the provisions of all applicable laws, including the provisions of the Exchange Act and the rules and regulations of the SEC thereunder, except that no representation is made by Company with respect to information that is not supplied by Company specifically for inclusion therein.

2.1.9 ABSENCE OF CERTAIN CHANGES AND EVENTS.

Except as set forth in the Company Disclosure Schedule, since December 31, 1996, there has not been:

2.1.9.1 Any material adverse effect on the Business Condition of Company or any development or combination of developments of which management of Company has knowledge which is reasonably likely to result in such an effect;

2.1.9.2 Any damage, destruction or loss, whether or not covered by insurance, having a material adverse effect on the Business Condition of Company;

2.1.9.3 Any declaration, payment, or setting aside of any dividend or other distribution to or for the holders of any Company Shares;

2.1.9.4 Any termination, modification, or rescission of, or waiver by Company of rights under, any existing contract having or likely to have a material adverse effect on Company's Business Condition;

2.1.9.5 Any discharge or satisfaction by Company of any lien or encumbrance, or any payment of any obligation or liability (absolute or contingent) other than current liabilities shown on the balance sheet included in the Financial Statements as of December 31, 1996 and current liabilities incurred since December 31, 1996 in the ordinary course of business; or

2.1.9.6 Any mortgage, pledge, imposition of any security interest, claim, encumbrance, or other restriction on any of the assets, tangible or intangible, of Company.

2.1.10 LEASES IN EFFECT.

All real property leases and subleases as to which Company is a party and any amendments or modifications thereof are listed on the Company Disclosure Schedule (each a "LEASE" and collectively, the "LEASES"), are valid, in full force and effect, enforceable, and, to the knowledge of the Company, there are no existing defaults, and Company has not received or given notice of default or claimed default with respect to any Lease, nor is there any event that with notice or lapse of time, or both, would constitute a default thereunder.

2.1.11 PERSONAL PROPERTY.

Company has good and marketable title, free and clear of all title defects, security interests, pledges, options, claims, liens, encumbrances, and restrictions of any nature whatsoever (including, without limitation, leases, chattel mortgages, conditional sale contracts, purchase money security interests, collateral security arrangements, and other title or interest-retaining agreements) to all inventory, receivables, furniture, machinery, equipment, and other personal property, tangible or otherwise, reflected on the December 31, 1996 balance sheet included in the Financial Statements or used in Company's business as of the date of such balance sheet even if not reflected thereon, except for acquisitions and dispositions since December 31, 1996 in the ordinary course of business. All computer equipment and other personal property listed on the Company Disclosure Schedule and used by Company in the conduct of its business are in good operating condition and repair, reasonable wear and tear excepted.

2.1.12 CERTAIN TRANSACTIONS.

None of the directors, officers, or Principal Shareholders of Company, or any member of any of their families, is presently a party to, or was a party to during the year preceding the date of this Agreement any transaction with Company, including, without limitation, any contract, agreement, or other arrangement:

(i) providing for the furnishing of services to or by, (ii) providing for rental of real or personal property to or from, or (iii) otherwise requiring payments to or from, any such person or any corporation, partnership, trust, or other entity in which any such person has or had a 5%-or-more interest (as a shareholder, partner, beneficiary, or otherwise) or is or was a director, officer, employee, or trustee.

2.1.13 LITIGATION AND OTHER PROCEEDINGS.

Neither Company nor any of its officers, or directors, nor to the best knowledge of Company or any Principal Shareholders, any employees of Company, is a party to any pending or, to the best knowledge of Company, threatened action, suit, labor dispute (including any union representation proceeding), proceeding, investigation, or discrimination claim in or by any court or governmental board, commission, agency, department, or officer, or any arbitrator, arising from the actions or omissions of Company or, in the case of an individual, from acts in his or her capacity as an officer, director, or employee of Company which individually or in the aggregate would be materially adverse to Company. Company is not subject to any order, writ, judgment, decree, or injunction that has a material adverse effect on Company's Business Condition.

2.1.14 MAJOR CONTRACTS.

Except as disclosed in the Company Disclosure Schedule, Company is not a party to or subject to:

2.1.14.1 Any union contract, or any employment contract or arrangement providing for future compensation, written or oral, with any officer, consultant, director or employee;

2.1.14.2 Any plan or contract or arrangement, written or oral, providing for bonuses, pensions, deferred compensation, retirement payments, profit-sharing, or the like;

2.1.14.3 Any joint venture contract or arrangement or any other agreement which has involved or is expected to involve a sharing of profits;

2.1.14.4 Any OEM reseller, distribution or equivalent agreement, volume purchase agreement, corporate end user sales or service agreement or manufacturing agreement in which the amount involved exceeds annually, or is expected to exceed in the aggregate over the life of the contract $1,000,000 or pursuant to which Company has granted or received manufacturing rights, most favored nation pricing provisions or exclusive marketing, reproduction, publishing or distribution rights related to any product, group of products or territory;

2.1.14.5 Any lease for real or personal property in which the amount of payments which Company is required to make on an annual basis exceeds $100,000;

2.1.14.6 Any agreement, license, franchise, permit, indenture or authorization which has not been terminated or performed in its entirety and not renewed which may be, by its terms, terminated, impaired or adversely affected by reason of the execution of this Agreement, the Closing of the Recapitalization, or the consummation of the transactions contemplated hereby or thereby;

2.1.14.7 Except for trade indebtedness incurred in the ordinary course of business, any instrument evidencing or related in any way to indebtedness incurred in the acquisition of companies or other entities or indebtedness for borrowed money by way of direct loan, sale of debt securities, purchase money obligation, conditional sale, guarantee, or otherwise which individually is in the amount of $250,000 or more;

2.1.14.8 Any material license agreement, either as licensor or licensee (excluding nonexclusive hardware, software and content licenses granted to or received from distributors or end-users in the ordinary course of business consistent with prior practice); or

2.1.14.9 Any contract containing covenants purporting to limit Company's freedom to compete in any line of business in any geographic area.

All contracts, arrangements, plans, agreements, leases, licenses, franchises, permits, indentures, authorizations, instruments and other commitments which are listed in the Company Disclosure Schedule

pursuant to this Section 2.1.14 are valid and in full force and effect and Company has not, nor, to the best knowledge of Company or any Principal Shareholder, has any other party thereto, breached in any material respect any provisions of, or entered into default in any material respect under the terms thereof.

2.1.15 INSURANCE AND BANKING FACILITIES.

The Company Disclosure Schedule contains a complete and correct list of (i) all contracts of insurance or indemnity of Company in force at the date of this Agreement and (ii) the names and locations of all banks in which Company has accounts or safe deposit boxes. All premiums and other payments due from Company with respect to any such contracts of insurance or indemnity have been paid, and Company does not know of any fact, act, or failure to act which has or might cause any such contract to be canceled or terminated. All known claims for insurance or indemnity have been presented.

2.1.16 EMPLOYEES.

Company does not have any written contract of employment or other employment agreement with any of its employees that is not terminable at will by Company. Company is not a party to any pending, or to Company's knowledge, threatened, labor dispute. Company has complied with all applicable federal, state, and local laws, ordinances, rules and regulations and requirements relating to the employment of labor, including but not limited to the provisions thereof relating to wages, hours, collective bargaining, payment of Social Security, unemployment and withholding taxes, and ensuring equality of opportunity for employment and advancement of minorities and women. There are no claims pending, or threatened to be brought, in any court or administrative agency by any former or current Company employees for compensation, pending severance benefits, vacation time, vacation pay or pension benefits, or any other claim pending from any current or former employee or any other person arising out of Company's status as employer, whether in the form of claims for employment discrimination, harassment, unfair labor practices, grievances, wrongful discharge or otherwise.

2.1.17 EMPLOYEE BENEFIT PLANS.

Each employee benefit plan ("PLAN") covering active, former or retired employees of Company is listed in the Company Disclosure Schedule. Company will make available to Microsoft a copy of each Plan, and where applicable, any related trust agreement, annuity or insurance contract and, where applicable, all annual reports (Form 5500) filed with the IRS within 7 days. To the extent applicable, each Plan complies with the requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and the Code, and any Plan intended to be qualified under Section 401(a) of the Code has been determined by the IRS to be so qualified and has remained tax-qualified to this date and its related trust is tax-exempt and has been so since its creation. No Plan is covered by Title IV of ERISA or Section 412 of the Code. No "PROHIBITED TRANSACTION," as defined in ERISA Section 406 or Code Section 4975 has occurred with respect to any Plan. Each Plan has been maintained and administered in compliance with its terms and with the requirements prescribed by any and all statutes, orders, rules and regulations, including but not limited to ERISA and the Code, which are applicable to such Plans. There are no pending or anticipated claims against or otherwise involving any of the Plans and no suit, action or other litigation (excluding claims for benefits incurred in the ordinary course of Plan activities) has been brought against or with respect to any Plan. All contributions, reserves or premium payments to the Plan, accrued to the date hereof, have been made or provided for. Company has not incurred any liability under Subtitle C or D of Title IV of ERISA with respect to any "SINGLE-EMPLOYER PLAN," within the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by Company, or any entity which is considered one employer with Company under Section 4001 of ERISA. Company has not incurred, and will not incur as a result of the transactions contemplated by this Agreement, any withdrawal liability under Subtitle E of Title IV of ERISA with respect to any "MULTIEMPLOYER PLAN," within the meaning of Section 4001(a)(3) of ERISA. Company has no obligations for retiree health and life benefits under any Plan, except as set forth on the Company Disclosure Schedule and as required to avoid excise taxes under Section 4980(B) of the Code and there are no restrictions on the rights of Company to amend or terminate any Plan without incurring any liability thereunder. Company has not engaged in nor is it a successor or parent corporation to an entity that has engaged in a transaction described in ERISA Section 4069. There have been no amendments to, written interpretation of,

or announcement (whether or not written) by Company relating to, or change in employee participation or coverage under, any Plan that would increase the expense of maintaining such Plan above the level of expense incurred in respect thereof for the year ended March 31, 1996. Neither Company nor any of its ERISA affiliates has any current or projected liability in respect of post-employment or post-retirement welfare benefits for retired or former employees of Company, except as required to avoid excise tax under Section 4980 of the Code. No tax under Section 4980B of the Code has been incurred in respect of any Plan that is a group health plan, as defined in Section 5000(b)(1) of the Code.

2.1.18 CERTAIN AGREEMENTS.

Except as disclosed in the Company Disclosure Schedule or as contemplated by this Agreement, neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby will: (i) result in any payment by Company (including, without limitation, severance, unemployment compensation, parachute payment, bonus or otherwise) becoming due to any director, employee or independent contractor of Company under any Plan, agreement or otherwise, (ii) increase any benefits otherwise payable under any Plan or agreement, or (iii) result in the acceleration of the time of payment or vesting of any such benefits.

2.1.19 GUARANTEES AND SURETYSHIPS.

Company has no powers of attorney outstanding (other than those issued in the ordinary course of business with respect to tax matters). Company has no obligations or liabilities (absolute or contingent) as guarantor, surety, cosigner, endorser, co-maker, indemnitor, or otherwise respecting the obligations or liabilities of any person, corporation, partnership, joint venture, association, organization, or other entity.

2.1.20 BROKERS AND FINDERS.

Other than Deutsche Morgan Grenfell Inc., neither Company nor any of the Principal Shareholders has retained any broker, finder, or investment banker in connection with this Agreement or any of the transactions contemplated by this Agreement, nor does or will Company owe any fee or other amount to any broker, finder, or investment banker in connection with this Agreement or the transactions contemplated by this Agreement. The fee of Deutsche Morgan Grenfell Inc. in connection with the Recapitalization is set forth on the Company Disclosure Schedule.

2.1.21 CERTAIN PAYMENTS.

Neither Company nor the Principal Shareholders acting on behalf of Company, nor to the best knowledge of Company, any person or other entity acting on behalf of Company has, directly or indirectly, on behalf of or with respect to Company: (i) made an unreported political contribution, (ii) made or received any payment which was not legal to make or receive, (iii) engaged in any transaction or made or received any payment which was not properly recorded on the books of Company, (iv) created or used any "off-book" bank or cash account or "slush fund," or (v) engaged in any conduct constituting a violation of the Foreign Corrupt Practices Act of 1977.

2.1.22 DISTRIBUTORS, BROKERS AND CUSTOMERS.

None of Company's distributors or brokers has terminated, or intends to reduce or terminate the amount of its business with or for Company in the future. Company has maintained its customer lists and related information on a confidential and proprietary basis and has not granted to any third party any right to use such customer lists for any purpose unrelated to the business of Company.

2.1.23 ENVIRONMENTAL MATTERS.

To the best knowledge of Company:

2.1.23.1 There has not been a discharge or release on any real property owned or leased by Company (the "REAL PROPERTY") of any Hazardous Material (as defined below) in violation of any federal, state or local statute, regulation, rule or order applicable to health, safety and the environment, including without

limitation, contamination of soil, groundwater or the environment, generation, handling, storage, transportation or disposal of Hazardous Materials or exposure to Hazardous Materials;

2.1.23.2 No Hazardous Material has been used by Company in the operation of Company's business;

2.1.23.3 Company has not received from any Governmental Entity or third party any request for information, notice of claim, demand letter or other notification, notice or information that Company is or may be potentially subject to or responsible for any investigation or clean-up or other remediation of Hazardous Material present on any Real Property;

2.1.23.4 There have been no environmental investigations, studies, audits, tests, reviews or other analyses, the purpose of which was to discover, identify or otherwise characterize the condition of the soil, groundwater, air, or presence of asbestos at any of the Real Property sites;

2.1.23.5 There is no asbestos present in any Real Property presently owned or operated by Company, and no asbestos has been removed from any Real Property while such Real Property was owned or operated by Company; and

2.1.23.6 There are no underground storage tanks on, in or under any of the Real Property and no underground storage tanks have been closed or removed from any Real Property which are or have been in the ownership of Company.

"HAZARDOUS MATERIAL" means any substance (i) that is a "hazardous waste" or "hazardous substance" under any federal, state or local statute, regulation, rule or order, (ii) that is toxic, explosive, corrosive, flammable, infectious, radioactive, or otherwise hazardous and is regulated by any Governmental Entity, (iii) the presence of which on any of the Real Property causes or threatens to cause a nuisance on any of the Real Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about any of the Real Property, or (iv) the presence of which on adjacent properties could constitute a trespass by Company or the then current owner(s) of any of the Real Property.

2.1.24 DISCLOSURE.

Neither the representations or warranties made by Company or the Principal Shareholders in this Agreement, nor the final Company Disclosure Schedule or any other certificate executed and delivered by Company or the Principal Shareholders pursuant to this Agreement, when taken together, contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements or facts contained herein or therein not misleading in light of the circumstances under which they were furnished.

2.1.25 RELIANCE.

The foregoing representations and warranties are made by Company and the Principal Shareholders with the knowledge and expectation that Microsoft is placing reliance thereon.

2.1.26 SUBSCRIBERS.

As of April 1, 1997 Company had 56,000 subscribers to its Web TV service, excluding (i) any subscribers who are receiving their service on a free, complimentary, approval or other basis which does not require the regular payment for such service in accordance with the standard terms and conditions generally offered by the Company; and (ii) any subscribers that are more than one hundred twenty (120) days past due in the payments required by their applicable subscription plan.

2.2 REPRESENTATIONS AND WARRANTIES OF MICROSOFT.

Except as disclosed in a document referring specifically to the representations and warranties in this Agreement attached as Exhibit 2.2 which identifies by section number the section to which such disclosure relates and is delivered by Microsoft to Company prior to the execution of this Agreement (the "MICROSOFT DISCLOSURE SCHEDULE"), Microsoft represent and warrant to Company and the Principal Shareholders as follows:

2.2.1 ORGANIZATION, STANDING AND POWER.

Microsoft is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization (except with respect to any jurisdiction where the concept of good standing is not recognized), respectively, has all requisite power and authority to own, lease and operate its properties and to carry on its businesses as now being conducted, and is duly qualified and in good standing to do business in each jurisdiction in which a failure to so qualify would have a material adverse effect on the Business Condition of Microsoft. As of December 31, 1996 Microsoft did not have any "SIGNIFICANT SUBSIDIARIES" as that term is defined in regulations promulgated under the Securities Act or the Exchange Act

2.2.2 AUTHORITY.

The execution, delivery, and performance of this Agreement and the Related Agreements by Microsoft has been duly authorized by all necessary corporate action of Microsoft. Microsoft has duly and validly executed and delivered this Agreement and the Related Agreements or, as to those Related Agreements to be executed following the date hereof, will be duly and validly executed and delivered, and this Agreement and each of the Related Agreements constitutes or, upon execution will constitute, valid, binding, and enforceable obligations of Microsoft in accordance with its terms.

2.2.3 COMPLIANCE WITH LAWS AND OTHER INSTRUMENTS.

Neither the execution and delivery of this Agreement or any of the Related Agreements by Microsoft nor the performance by Microsoft of their obligations under this Agreement or any of the Related Agreements will violate any provision of law or will conflict with, result in the breach of any of the terms and conditions of, constitute a default under, permit any party to accelerate any right under, renegotiate or terminate, require consent, approval, or waiver by any party under, or result in the creation of any lien, charge, or encumbrance upon any of the properties, assets, or shares of capital stock of Microsoft pursuant to any charter document of Microsoft or any agreement, indenture, mortgage, franchise, license, permit, lease, or other instrument of any kind to which Microsoft is a party or by which Microsoft or any of its assets are bound or affected. No Consent is required by or with respect to Microsoft in connection with the execution and delivery of this Agreement or any of the Related Agreements by Microsoft or the consummation by Microsoft of the transactions contemplated hereby or thereby, (i) except for the filing of the Recapitalization Documents with the Secretary of State of California, (ii) the filing of a premerger notification by Microsoft and Company under the HSR Act, and (iii) such other consents, authorizations, filings, approvals and registrations which failure to obtain or make would not have a material adverse effect on Microsoft's Business Condition.

2.2.4 SEC DOCUMENTS; FINANCIAL STATEMENTS.

The Microsoft Annual Report on Form 10-K for the fiscal year ended June 30, 1996 (including those portions of Microsoft's annual report to its shareholders which are incorporated by reference), the definitive proxy statement for the annual meeting of Microsoft shareholders held on November 12, 1996, and Microsoft's Form 10-Q's filed for quarters ended September 30, 1996 and December 31, 1996 (collectively the "SEC DOCUMENTS"), as of the time filed, contained no material misstatement or omission to state any fact necessary to make the statements therein not misleading. Microsoft has made all filings currently required to be filed with the SEC under the Exchange Act. Each of the consolidated financial statements (including, in each case, any related notes thereto) contained in Microsoft's SEC Documents was prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto) and each fairly presented the consolidated financial position of Microsoft and its Subsidiaries as at the respective dates thereof and the consolidated results of operations and cash flows for the periods indicated.

2.2.5 INFORMATION SUPPLIED.

None of the information supplied or to be supplied by Microsoft, auditors, attorneys, financial advisors, other consultants or advisors for inclusion in the S-4 or the Proxy Statement/Prospectus, will, in the case of the Proxy Statement and any amendment or supplement thereto, at the time of the mailing of the Proxy Statement

and any amendment or supplement thereto, and at the time of any meeting of shareholders of Company to vote upon this Agreement and the transactions contemplated hereby, or in the case of the S-4, as amended or supplemented, at the time it becomes effective and at the time of any post-effective amendment thereto contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they are made, not misleading or necessary to correct any statement in any earlier filing with the SEC of such Proxy Statement/Prospectus or any amendment or supplement thereto or any earlier communication (including the Proxy Statement/Prospectus) to shareholders of Company with respect to the transactions contemplated by this Agreement. The S-4 and the Proxy Statement/Prospectus will comply as to form in all material respects with the provisions of all applicable laws including the provisions of the Securities Act and the Exchange Act and the rules and regulations of the SEC thereunder, except that no representation is made by Microsoft with respect to information supplied by Company specifically for inclusion therein.

2.2.6 NO DEFAULTS.

Microsoft is not, or has received notice that it would be with the passage of time, in default or violation of any term, condition or provision of (i) the Restated Articles of Incorporation or Bylaws of Microsoft; (ii) any judgment, decree or order applicable to Microsoft; or (iii) any loan or credit agreement, note, bond, mortgage, indenture, contract, agreement, lease, license or other instrument to which Microsoft is now a party or by which it or any of its properties or assets may be bound, except for defaults and violations which, individually or in the aggregate, would not have a material adverse effect on the Business Condition of Microsoft.

2.2.7 NO MATERIAL ADVERSE CHANGE.

Since June 30, 1996, Microsoft and its Subsidiaries have conducted their respective businesses in the ordinary course and there has not been a material adverse effect on the Business Condition of Microsoft or any development or combination of developments of which management of Microsoft has knowledge which is reasonably likely to result in such an effect.

2.2.8 DISCLOSURE.

Neither the representations or warranties made by Microsoft in this Agreement, nor the final Microsoft Disclosure Schedule or any other certificate executed and delivered by Microsoft pursuant to this Agreement, when taken together, contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements or facts contained herein or therein not misleading in light of the circumstances under which they were furnished.

2.2.9 RELIANCE.

The foregoing representations and warranties are made by Microsoft with the knowledge and expectation that Company is and the Principal Shareholders are placing reliance thereon.

3. COVENANTS OF COMPANY

During the period from the date of this Agreement (except as otherwise indicated) and continuing until the earlier of the termination of this Agreement or the Effective Time (or later where so indicated), each of Company and the Principal Shareholders, jointly and severally, agree (except as expressly contemplated by this Agreement, as specifically permitted by the Company Disclosure Schedule and as accepted by Microsoft or otherwise permitted by Microsoft's prior written consent):

3.1 CONDUCT OF BUSINESS.

3.1.1 ORDINARY COURSE.

Company will carry on its business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted and, to the extent consistent with such business, use all reasonable efforts

consistent with past practice and policies to preserve intact its present business organizations, keep available the services of its present officers, consultants, and employees and preserve its relationships with customers, suppliers, distributors and others having business dealings with it. Company will promptly notify Microsoft of any event or occurrence or emergency which is not in the ordinary course of business of Company and which is adverse to Company's Business Condition. The foregoing notwithstanding, Company will not, except as approved in writing by Microsoft:

3.1.1.1 enter into any commitment or transaction (i) to be performed over a period longer than six (6) months in duration, or (ii) to purchase assets (other than raw materials, supplies, or cash equivalents) for a purchase price in excess of $500,000, other than those proposed transactions set forth on Schedule 3.1.1.1;

3.1.1.2 grant any bonus, severance, or termination pay to any officer, director, independent contractor or employee of Company in excess of $25,000 individually or $100,000 in the aggregate;

3.1.1.3 transfer to any person or entity any rights to the Company Intellectual Property other than pursuant to normal licenses to end-users;

3.1.1.4 enter into or amend any material agreements pursuant to which any other party is granted marketing, publishing or distribution rights of any type or scope with respect to any hardware or software products of Company;

3.1.1.5 except in the ordinary course of business consistent with prior practice, enter into or terminate any contracts, arrangements, plans, agreements, leases, licenses, franchises, permits, indentures authorizations, instruments or commitments, or amend or otherwise change the terms thereof;

3.1.1.6 commence a lawsuit other than: (i) for the routine collection of bills, (ii) in such cases where Company in good faith determines that failure to commence suit would result in a material impairment of a valuable aspect of Company's business, provided Company consults with Microsoft prior to filing such suit, or (iii) for a breach of this Agreement;

3.1.1.7 materially modify existing discounts or other terms and conditions with dealers, distributors and other resellers of Company's products;

3.1.1.8 materially modify the terms and conditions of existing corporate end-user licenses or service agreements or enter into new corporate end-user licenses or service agreements;

3.1.1.9 maintain inventories other than as necessary to (i) satisfy anticipated demand during the period between the date of this Agreement and Closing, and (ii) maintain reasonable inventory levels; or

3.1.1.10 accelerate the vesting or otherwise modify any Company Option, restricted stock, or other outstanding rights or other securities.

3.2 DIVIDENDS, ISSUANCE OF OR CHANGES IN SECURITIES.

Company will not: (i) declare or pay any dividends on or make other distributions to its shareholders (whether in cash, shares or property), (ii) issue, deliver, sell, or authorize, propose or agree to, or commit to the issuance, delivery, or sale of any shares of its capital stock of any class, any Company Voting Debt or any securities convertible into its capital stock, any options, warrants, calls, conversion rights, commitments, agreements, contracts, understandings, restrictions, arrangements or rights of any character obligating Company to issue any such shares, Company Voting Debt or other convertible securities except as any of the foregoing is required by outstanding Company Options or Company Preferred Shares or as permitted by Section 3.1.1, (iii) split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of capital stock of Company, (iv) repurchase or otherwise acquire, directly or indirectly, any shares of its capital stock, except pursuant to existing agreements with employees, consultants and directors, or (v) propose any of the foregoing.

3.3 GOVERNING DOCUMENTS.

Company will not amend its Charter Documents except in the manner contemplated by this Agreement.

3.4 NO DISPOSITIONS.

Company will not sell, lease, license, transfer, mortgage, encumber or otherwise dispose of any of its assets or cancel, release, or assign any indebtedness or claim, except in the ordinary course of business consistent with prior practice.

3.5 INDEBTEDNESS.

Except as contemplated by this Agreement, Company will not incur any indebtedness for borrowed money by way of direct loan, sale of debt securities, purchase money obligation, conditional sale, guarantee, or otherwise.

3.6 COMPENSATION.

Company will not adopt or amend any Plan or pay any pension or retirement allowance not required by any existing Plan. Company will not enter into or modify any employment contracts, increase the salaries, wage rates or fringe benefits of its officers, directors or employees or pay bonuses or other remuneration except for current salaries and other remuneration for which Company is obligated pursuant to a written agreement a copy of which has been provided to Microsoft.

3.7 CLAIMS.

Company will not settle any claim, action or proceeding, except in the ordinary course of business consistent with past practice.

3.8 BREACH OF REPRESENTATION AND WARRANTIES.

Neither Company or any of the Principal Shareholders will take any action that would cause or constitute a breach of any of the representations and warranties set forth in Section 2.1 or that would cause any of such representations and warranties to be inaccurate in any material respect. In the event of, and promptly after becoming aware of, the occurrence of or the pending or threatened occurrence of any event that would cause or constitute such a breach or inaccuracy, Company will give detailed notice thereof to Microsoft and will use its best efforts to prevent or promptly remedy such breach or inaccuracy.

3.9 CONSENTS.

Company will promptly apply for or otherwise seek, and use its best efforts to obtain, all consents and approvals, and make all filings, required with respect to the consummation of the Recapitalization.

3.10 TAX RETURNS AND PAYMENTS.

Company will promptly provide Microsoft with copies of all income, franchise, sales or use tax returns, reports and information statements that have been filed or are filed prior to the Closing Date. Company will: (i) fully pay and discharge any and all taxes attributable to Company for all periods ended on or before the Closing Date, other than taxes for which adequate reserves have been established in the Company's Financial Statements; (ii) file all required returns, reports and information statements covering all periods ending on or before the Closing to the extent that such filings shall be due prior to such time; and (iii) provide Microsoft with copies of all income, franchise, sales or use filings at least fifteen (15) calendar days prior to the projected filing date. All such filings will be reasonably satisfactory to Microsoft.

3.11 SHAREHOLDER APPROVAL.

Company will call a special Shareholders Meeting to be held no later than 20 business days after the date on which the Proxy Statement shall be mailed to Company shareholders (which shall be as soon as practicable following the time the S-4 shall have been declared effective by the SEC) to submit this Agreement, the

Recapitalization and related matters for the consideration and approval of Company's shareholders ("COMPANY SHAREHOLDERS MEETING"). Such approval will be recommended by Company's Board of Directors and management, unless such persons shall have received the written advice of counsel that to so recommend would result in a violation of such person's fiduciary duties to the Company and its shareholders. Such meeting will be called, held and conducted, and any proxies will be solicited, in compliance with applicable law. Concurrently with the execution of this Agreement, the Principal Shareholders have executed Voting Agreements in the form of Exhibit 3.11 ("VOTING AGREEMENTS") agreeing, among other things, to vote in favor of the Recapitalization and against any competing proposals.

3.12 PREPARATION OF DISCLOSURE AND SOLICITATION MATERIALS.

Company will promptly provide to Microsoft and its counsel for inclusion within the Proxy Statement/Prospectus and the S-4, such information concerning Company, its operations, capitalization, technology, share ownership and other information as Microsoft or its counsel may reasonably request. Company will not provide or publish to the holders of its securities any material concerning it or its affiliates that violates the California General Corporation Law, the Securities Act or the Exchange Act with respect to the transactions contemplated hereby.

3.13 EXCLUSIVITY; NO ACQUISITIONS.

Neither Company nor any of the Principal Shareholders will (and each will use its best efforts to ensure that none of its officers, directors, agents, representatives or affiliates) take or cause or permit any person to take, directly or indirectly, any of the following actions with any party other than Microsoft and its designees: (i) solicit, encourage, initiate or participate in any negotiations, inquiries or discussions with respect to any offer or proposal to acquire all or any significant part of its business, assets or capital shares whether by merger, consolidation, other business combination, purchase of assets, tender or exchange offer or otherwise (each of the foregoing, an "ACQUISITION TRANSACTION"), (ii) disclose, in connection with an Acquisition Transaction, any information not customarily disclosed to any person other than Microsoft or its representatives concerning Company's business or properties or afford to any person other than Microsoft or its representatives or entity access to its properties, books or records, except in the ordinary course of business and as required by law or pursuant to a governmental request for information, (iii) enter into or execute any agreement relating to an Acquisition Transaction, or (iv) make or authorize any public statement, recommendation or solicitation in support of any Acquisition Transaction or any offer or proposal relating to an Acquisition Transaction other than with respect to the Recapitalization; provided, however, that no provision of this Section 3.13 shall have the effect of prohibiting or preventing the Company's Board of Directors from taking any action where the failure to do so would result in a breach of the Board of Directors' fiduciary duties to the Company and its shareholders, based upon written advice of counsel.

3.14 NOTICE OF EVENTS.

Throughout the period between the date of this Agreement and the Closing, Company will promptly advise Microsoft of any and all material events and developments concerning its financial position, results of operations, assets, liabilities, or business or any of the items or matters concerning Company covered by the representations, warranties, and covenants of Company and the Principal Shareholders contained in this Agreement.

3.15 MODIFICATION OR DISSOLUTION OF CONTRACTS.

Contemporaneous with the execution of this Agreement, agreements with respect to intellectual property, technology licensing, patent licensing and shareholders, substantially in forms attached as Exhibits 3.15.1, 3.15.2, 3.15.3 and 3.15.4, respectively, shall have been executed by the Principal Shareholders.

3.16 BEST EFFORTS.

Company and the Principal Shareholders will use their best efforts to effectuate the transactions contemplated hereby and to fulfill and cause to be fulfilled the conditions to Closing under this Agreement.

3.17 RESIGNATIONS.

Upon the request of Microsoft, Company and the Principal Shareholders shall use their respective best efforts to cause such officers and directors of Company as requested by Microsoft to deliver resignations from their respective offices, in a form reasonably satisfactory to Microsoft.

3.18 NEGOTIATIONS WITH FUJITSU.

Company shall permit Microsoft to participate in negotiations with Fujitsu regarding a joint venture with Company with respect to operations in Japan. Company shall use its best efforts to arrange negotiation meetings among Fujitsu, Company and Microsoft at such times as are reasonably acceptable to Microsoft, and Company shall participate in good faith in all proposals regarding the terms of such a venture presented to Fujitsu by Microsoft. Company agrees and acknowledges that Microsoft may present to Fujitsu terms of a joint venture that differ from those terms currently being considered by Fujitsu and Company.

4. COVENANTS OF MICROSOFT

During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Effective Time (or later where so indicated), Microsoft agrees (except as expressly contemplated by this Agreement or with Company's prior written consent) that it will take or cause the following actions to be taken:

4.1 BREACH OF REPRESENTATIONS AND WARRANTIES.

Microsoft will not take any action which would cause or constitute a breach of any of the representations and warranties set forth in Section 2.2 or which would cause any of such representations and warranties to be inaccurate in any material respect. In the event of, and promptly after becoming aware of, the occurrence of or the pending or threatened occurrence of any event which would cause or constitute such a breach or inaccuracy, Microsoft will give detailed notice thereof to Company and will use its best efforts to prevent or promptly remedy such breach or inaccuracy.

4.2 CONSENTS.

Microsoft will promptly apply for or otherwise seek, and use its best efforts to obtain, all consents and approvals, and make filings, required with respect to the consummation of the Recapitalization.

4.3 BEST EFFORTS.

Microsoft will use its best efforts to effectuate the transactions contemplated hereby and to fulfill and cause to be fulfilled the conditions to Closing under this Agreement.

4.4 OFFICERS AND DIRECTORS.

Subject to Article 7 Microsoft agrees that all rights to indemnification (including advancement of expenses) existing on the date hereof in favor of the present or former officers and directors of Company with respect to actions taken in their capacities as directors or officers of Company prior to the Effective Time as provided in Company's Articles of Incorporation or Bylaws and indemnification agreements shall survive the Recapitalization and continue in full force and effect for a period of six years following the Effective Time and the obligations related thereto shall be guaranteed and assumed by Microsoft.

4.5 NASDAQ LISTING.

Microsoft will use its best efforts (i) to cause the Microsoft Common Shares to be issued upon exchange of the Exchangeable Shares to be quoted upon the Effective Time on the Nasdaq National Market or listed on such

national securities exchange as Microsoft Common Shares is listed and (ii) to cause the Microsoft Common Shares issued upon the exercise of assumed Company Options to be quoted upon issuance on the Nasdaq National Market or listed on such national securities exchange as Microsoft Common Shares is listed as of the Effective Time.

4.6 REQUEST FOR NO ACTION LETTER.

As soon as practicable following the date hereof, Microsoft will request the Division of Corporate Finance of the SEC to confirm that (i) it will not recommend any enforcement action to the SEC if the Recapitalization is consummated without registration under the Securities Act of the Microsoft Common Shares issuable upon exchange of the Exchangeable Shares in reliance on the exemption of such shares from registration under Section 3(a)(9) of the Securities Act, and (ii) that the Microsoft Common Shares to be received upon the exchange of any Exchangeable Shares will not be deemed to be "restricted securities" as defined in Rule 144 under the Securities Act. To the extent that Microsoft shall fail to receive such confirmation as to either such matter, Microsoft agrees that it shall take all steps necessary to cause the issuance of Microsoft Common Shares and/or the resale of the Microsoft Common Shares to be registered under the Securities Act.

4.7 LINE OF CREDIT.

Contemporaneously with the execution of this Agreement, a line of credit (the "LINE OF CREDIT"), in the form attached as Exhibit 4.7, shall have been entered into between Company and Microsoft, under which Microsoft shall agree to loan, from time to time prior to the earlier of the Closing Date, the Outside Date or the effective date of termination of this Agreement, up to $30 million to Company for reasonable business needs of Company, which Line of Credit shall bear interest at a per annum rate of 10%.

5. ADDITIONAL AGREEMENTS

In addition to the foregoing, each of Microsoft, Company and the Principal Shareholders agrees to take the following actions after the execution of this Agreement:

5.1 LEGAL CONDITIONS TO THE RECAPITALIZATION.

Each of Microsoft and Company will take all reasonable actions necessary to comply promptly with all legal requirements which may be imposed on it with respect to the Recapitalization. Each of Microsoft, Company and the Principal Shareholders will take all reasonable actions to obtain (and to cooperate with the other parties in obtaining) any consent required to be obtained or made by Company, the Principal Shareholders or Microsoft in connection with the Recapitalization, or the taking of any action contemplated thereby or by this Agreement.

5.2 EMPLOYEE BENEFITS.

Microsoft and Company agree that within eight months after Closing, Company will provide benefits to Company employees which are in the aggregate at least substantially equivalent to the benefits provided to Microsoft employees who are in similar positions or at similar salary levels, provided, however, that nothing contained herein shall be considered as requiring Microsoft or Company to continue any specific plan or benefit or as precluding amendments to or reductions in the benefits provided through any specific plan or benefit. Until such time as Company employees are provided with benefits which are in the aggregate at least substantially equivalent to the benefits provided to Microsoft employees in similar positions or salary levels, Company employees shall be given benefits which are in the aggregate at least substantially equivalent to the benefits they are receiving on the date of Closing. Once Company employees begin receiving benefits which are in the aggregate at least substantially equivalent to the benefits provided to Microsoft employees, the aggregate level of benefits provided to Company employees may be reduced to reflect a drop in the aggregate level of benefits provided to Microsoft employees in similar positions or salary levels. Although Company will, within eight

months after Closing, provide its employees with benefits which are in the aggregate at least substantially equivalent to Microsoft's benefits, Microsoft shall not be required to permit Company employees to participate in the exact same plans and benefit programs in which Microsoft employees participate, but instead Company employees may participate in plans which are provided only to Company employees. For purposes of determining (i) the amount of paid vacation which Company employees are awarded under a vacation policy, (ii) their vested percentage in employer contributions to a 401(k) Plan, and (iii) the amount of severance pay they receive if they are awarded severance benefits, a Company employee's period of employment with Company immediately prior to Closing shall also be considered a period of employment with Microsoft. In addition, with respect to a Company employee who transfers participation from a Company plan to a similar Microsoft plan which is self-funded, any provision in the Microsoft plan which limits benefits based upon an employee's preexisting condition ("Preexisting Condition Provision") shall be waived to the extent either (i) a similar Preexisting Condition Provision is not contained in the Company plan from which the employee transferred, or (ii) the Company plan's Preexisting Condition Provision was satisfied by the Company employee prior to transfer. If a Company employee is involuntarily terminated from Company within the first 30 days after Closing and is not rehired by Company nor hired by Microsoft, the employee shall receive severance pay in an amount which is equivalent to the amount the employee would receive under Microsoft's severance plan (provided, however, that the employee shall not receive a job search period). Nothing expressed or implied in this Agreement shall confer upon any employee or former employee of Company, or any beneficiary, dependent, legal representative or collective bargaining agent of such employee or former employee, any right or remedy of any nature or kind whatsoever under or by reason of this Agreement, including without limitation any right (i) to employment or to continued employment for any specified period, at any specified location or under any specified job category, (ii) to a specified level of compensation or benefits, or (iii) to enforce the terms of this Section 5.2.

5.3 EXPENSES.

Whether or not the Recapitalization is consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby and thereby will be paid by the party incurring such expense except that if the Recapitalization is not consummated expenses incurred in connection with printing and mailing of the documents distributed or to be distributed to shareholders of Company and the filing fee with respect to the S-4 and Proxy Statement shall be shared equally by Microsoft and Company.

5.4 ADDITIONAL AGREEMENTS.

If at any time after the Effective Time, any further action is reasonably necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with full title to all properties, assets, rights, approvals, immunities and franchises of Company, the proper officers and directors of each corporation which is a party to this Agreement will take all such necessary action.

5.5 PUBLIC ANNOUNCEMENTS.

Neither Microsoft, Company or the Principal Shareholders will disseminate any press release or other announcement concerning this Agreement or the transactions contemplated herein to any third party without the prior written consent of each of the other parties hereto, which consent will not be unreasonably withheld. Notwithstanding the foregoing, the parties acknowledge and agree that a joint press release announcing the transactions contemplated by this Agreement shall be made following the execution of this Agreement, subject to review and approval by each party of the form of such announcement.

5.6 HSR ACT FILING.

5.6.1 FILINGS AND COOPERATION.

Each of Microsoft and Company shall (i) promptly make or cause to be made the filings required of such party or any of its affiliates or subsidiaries under the HSR Act with respect to the Recapitalization and the other transactions provided for in this Agreement, (ii) comply at the earliest practicable date with any request under

the HSR Act for additional information, documents, or other material received by such party or any of its affiliates or subsidiaries from the Federal Trade Commission or the Department of Justice or other Governmental Entity in respect of such filings, the Recapitalization, or such other transactions, and (iii) cooperate with the other party in connection with any such filing and in connection with resolving any investigation or other inquiry of any such agency or other Governmental Entity under any Antitrust Laws (as defined in Section 5.6.2) with respect to any such filing, the Recapitalization, or any such other transaction. Each party shall promptly inform the other party of any material communication with, and any proposed understanding, undertaking, or agreement with, any Governmental Entity regarding any such filings, the Recapitalization, or any such other transactions. Neither party shall participate in any meeting with any Governmental Entity in respect of any such filings, investigation, or other inquiry without giving the other party notice of the meeting and, to the extent permitted by such Governmental Entity, the opportunity to attend and participate.

5.6.2 BEST EFFORTS.

Each of Microsoft and Company shall use its best efforts to resolve such objections, if any, as may be asserted by any Governmental Entity with respect to the Recapitalization or any other transactions provided for in this Agreement under the HSR Act, the Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other federal, state or foreign statutes, rules, regulations, orders, or decrees that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade (collectively, "ANTITRUST LAWS"). In connection therewith, if any administrative or judicial action or proceeding is instituted (or threatened to be instituted) challenging the Recapitalization as violative of any Antitrust Law, and, if by mutual agreement, Microsoft and Company decide that litigation is in their best interests, each of Microsoft and Company shall cooperate and use its best efforts vigorously to contest and resist any such action or proceeding and to have vacated, lifted, reversed, or overturned any decree, judgment, injunction, or other order, whether temporary, preliminary, or permanent (each an "ORDER"), that is in effect and that prohibits, prevents, or restricts consummation of the Recapitalization. Each of Microsoft and Company shall use its best efforts to take such action as may be required to cause the expiration of the notice periods under the HSR Act or other Antitrust Laws with respect to the Recapitalization and such other transactions as promptly as possible after the execution of this Agreement. Notwithstanding anything to the contrary in Section 5.6.1 or this Section 5.6.2, (x) neither Microsoft nor any of its Subsidiaries shall be required to divest any of their respective businesses, product lines, or assets, or to take or agree to take any other action or agree to any limitation that would have a material adverse effect on their respective businesses, product lines, or assets, and (y) Company shall not be required to divest any of its businesses, product lines, or assets, or to take or agree to take any other action or agree to any limitation would have a material adverse effect on the Business Condition of Company.

5.7 PREPARATION OF PROXY STATEMENT AND S-4.

As promptly as practicable after the date hereof, Microsoft and Company shall prepare and file with the SEC the Proxy Statement and any other documents required by the Exchange Act in connection with the Recapitalization, and Microsoft shall prepare and file with the SEC the S-4, in which the Proxy Statement will be included as a prospectus. Each of Microsoft and Company shall use its best efforts to have the S-4 declared effective under the Securities Act as promptly as practicable after such filing. Microsoft shall also take any action required to be taken under any applicable state securities or "BLUE SKY" laws in connection with the issuance of the Microsoft Common Shares in the Recapitalization.

5.8 ACCESS TO PROPERTIES AND RECORDS.

Subject to applicable law, throughout the period between the date of this Agreement and the Closing, Company will give Microsoft and its representatives full access, during reasonable business hours, and subject to reasonable notice, and in such a manner as not unduly to disrupt the business of Company, to its premises, properties, contracts, commitments, books, records, and affairs, and will provide Microsoft with such financial, technical, and operating data and other information pertaining to its business as Microsoft reasonably may

request; provided, however, that nothing contained herein shall require Company to provide Microsoft with information regarding its Intellectual Property, which Company reasonably believes it should not provide prior to the consummation of the Recapitalization. With Company's prior consent, which will not be unreasonably withheld, Microsoft will be entitled to make appropriate inquiries of third parties in the course of its investigation. Company and Microsoft agree that the non-disclosure agreement, dated February 25, 1997 (the "CONFIDENTIALITY AGREEMENT"), between Company and Microsoft shall continue in full force and effect and shall be applicable to all Evaluation Material (as defined in the Confidentiality Agreement) received pursuant to this Agreement

5.9 COMPLETION OF AUDIT.

Company shall promptly direct Ernst & Young LLP to complete its audit according to generally accepted auditing standards of Company's balance sheet as of December 31, 1996 and statements of income, equity and cash flow for the nine-month period ended December 31, 1996, and the notes thereto, and shall cause such independent accounting firm to issue to Company a report by independent auditors with respect to such audit. The fees and expenses incurred by such independent accounting firm subsequent to the date of this Agreement shall be applied against the Threshold Amount (as defined at Section 7.6).

6. CONDITIONS PRECEDENT

6.1 CONDITIONS TO EACH PARTY'S OBLIGATION TO EFFECT THE RECAPITALIZATION.

The respective obligation of each party to effect the Recapitalization will be subject to the satisfaction prior to the Closing Date of the following conditions, unless waived by all parties hereto:

6.1.1 GOVERNMENTAL APPROVALS.

Other than the filing of the Recapitalization Documents with the Secretary of State of California, all Consents legally required for the consummation of the Recapitalization and the transactions contemplated by this Agreement, including without limitation expiration or termination of the applicable waiting period, and any extension thereof, of the HSR Act, will have been filed, satisfied, occurred, or been obtained, other than such Consents, for which the failure to obtain would have no material adverse effect on the consummation of the Recapitalization or the other transactions contemplated hereby or on the Business Condition of Microsoft or Company.

6.1.2 NO RESTRAINTS.

No statute, rule, regulation, executive order, and no final and nonappealable decree or injunction will have been enacted, entered, promulgated or enforced by any United States court or Governmental Entity of competent jurisdiction which enjoins or prohibits the consummation of the Recapitalization will be in effect.

6.1.3 STOCKHOLDER APPROVAL.

This Agreement and the Recapitalization shall have been approved and adopted by the required vote of holders of all Company Shares voting as a group and all Company Preferred Shares voting as a group.

6.1.4 SECURITIES LAWS.

The S-4 shall have become effective under the Securities Act and shall not be the subject of any stop order or proceedings seeking a stop order and the Proxy Statement shall not be at the Effective Time subject to any proceedings commenced or threatened by the SEC and all necessary qualifications and filings under applicable blue sky laws shall have been received or made.

6.2 CONDITIONS OF OBLIGATIONS OF MICROSOFT.

The obligations of Microsoft to effect the Recapitalization are subject to the satisfaction of the following conditions unless waived by Microsoft:

6.2.1 REPRESENTATIONS AND WARRANTIES OF COMPANY AND THE PRINCIPAL SHAREHOLDERS.

The representations and warranties of Company and the Principal Shareholders set forth in this Agreement will be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date, except (i) as otherwise contemplated by this Agreement, (ii) in respects that do not have a material adverse effect on the transactions provided for in this Agreement; (iii) as a result of actions taken or avoided at the direction of Microsoft which Company would not have otherwise taken or avoided. Microsoft will have received a certificate in substantially the form attached as Exhibit 6.2.1 signed by each of the Principal Shareholders, as officers and directors of Company and on behalf of Company to such effect on the Closing Date.

6.2.2 PERFORMANCE OF OBLIGATIONS OF COMPANY AND THE PRINCIPAL SHAREHOLDERS.

Company and the Principal Shareholders will have performed in all material respects all agreements and covenants required to be performed by them under this Agreement prior to the Closing Date, except for breaches that (i) do not have a material adverse effect on the benefits of the transactions provided for in this Agreement or (ii) result from or arise out of actions taken or avoided at the direction of Microsoft which Company would not have otherwise taken or avoided, and Microsoft will have received a certificate in substantially the form attached as Exhibit 6.2.1 signed by each of the Principal Shareholders, as officers and directors of Company and on behalf of Company to such effect on the Closing Date.

6.2.3 EMPLOYMENT OF DEVELOPERS.

As of the Closing, not less than seventy-five percent (75%) of the Company's hardware and software engineers (which shall not be deemed to include network operations engineers), will have signed, and not taken any action or expressed any intent to terminate or modify, an offer letter accepting employment with Company or Microsoft together with and such other agreements as are customarily executed by new employees of Microsoft or its subsidiaries or other affiliates in form and content satisfactory to Microsoft.

6.2.4 AFFILIATES.

The affiliate agreements (the "AFFILIATE AGREEMENTS") in the form attached as Exhibit 6.2.4 have been executed with the Company's Principal Shareholders and certain officers and directors of the Company (the "AFFILIATES"). Microsoft shall be entitled to place appropriate legends on the certificate evidencing any Exchangeable Shares and Microsoft Common Shares to be received by the Principal Shareholders and the other Affiliates pursuant to the terms of this Agreement and to issue appropriate stop transfer instructions to the transfer agent for such Exchangeable Shares and Microsoft Common Shares consistent with the terms of the Affiliates Agreements.

6.2.5 OPINION OF COUNSEL.

Microsoft will have received an opinion dated as of the Closing Date of Venture Law Group, A Professional Corporation, counsel to Company, substantially in the form attached as Exhibit 6.2.5.

6.2.6 EMPLOYMENT AND NONCOMPETITION AGREEMENTS.

Each of the Principal Shareholders shall have (i) accepted an offer of employment (which shall commence as of the Effective Time) with Microsoft, (ii) taken no action to rescind such acceptance, and (iii) executed an Employment and Noncompetition Agreement substantially in the form attached as Exhibit 6.2.6.

6.2.7 CONSENTS.

Company will have received duly executed copies of those third-party consents, approvals, assignments, waivers, authorizations or other certificates identified in Section 2.1.4 of the Company Disclosure Schedule, in each case, in form and substance reasonably satisfactory to Microsoft, except for such thereof as Microsoft and Company will have agreed in writing will not be obtained.

6.2.8 TERMINATION OF RIGHTS AND CERTAIN SECURITIES.

Any registration rights, rights of refusal, rights to any liquidation preference, or redemption rights relating to any security of Company will have been terminated, waived or of no material consequence as of the Closing. Except as set forth in Schedule 2.1.1, no warrants, options, convertible securities or other rights to purchase or acquire any securities of Company will be outstanding.

6.2.9 LICENSE OF TECHNOLOGY.

The License of Technology between Perlman and Company, amended as of the date of this Agreement and any subsequent amendments thereto shall be in full force and effect and no action shall be pending or overtly threatened to inadvertently or materially modify or challenge the licenses and other rights conveyed by such Agreement.

6.2.10 RIGHTS AND PREFERENCES OF COMPANY PREFERRED SHARES.

Company Preferred Shares shall not have been converted into Company Common Shares and the rights and preferences shall have been amended, waived or otherwise modified, in a manner reasonably acceptable to Microsoft, to prohibit such conversion.

6.2.11 EXECUTION OF ESCROW AGREEMENT.

Holders of at least 80% of Company Preferred Shares and Company Warrants, and the Principal Shareholders shall have executed the Escrow Agreement or a counterpart of such agreement.

6.2.12 TAX-FREE REORGANIZATION.

Microsoft shall have received a written opinion from their counsel to the effect that the Recapitalization will constitute a reorganization within the meaning of Section 368(a)(1)(E) of the Code. In preparing Microsoft tax opinions, counsel may rely on reasonable representations related thereto.

6.3 CONDITIONS OF OBLIGATION OF COMPANY.

The obligation of Company and the Principal Shareholders to effect the Recapitalization is subject to the satisfaction of the following conditions unless waived by Company and the Principal Shareholders:

6.3.1 REPRESENTATIONS AND WARRANTIES OF MICROSOFT.

The representations and warranties of Microsoft set forth in this Agreement will be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date, except as otherwise contemplated by this Agreement, and Company will have received a certificate signed on behalf of Microsoft by appropriately authorized officers of Microsoft to such effect.

6.3.2 PERFORMANCE OBLIGATIONS OF MICROSOFT.

Microsoft will have performed in all material respects all agreements and covenants required to be performed by it under this Agreement prior to the Closing Date, and Company will have received a certificate signed on behalf of Microsoft by appropriately authorized officers of Microsoft to such effect.

6.3.3 OPINION OF MICROSOFT'S COUNSEL.

Company and the Principal Shareholders have received an opinion dated the Closing Date of Preston Gates & Ellis LLP, counsel to Microsoft, substantially in the form attached as Exhibit 6.3.3.

6.3.4 TAX-FREE REORGANIZATION.

Company shall have received a written opinion from their counsel to the effect that the Recapitalization will constitute a reorganization within the meaning of Section 368(a)(1)(E) of the Code. In preparing Company tax opinions, counsel may rely on reasonable representations related thereto.

6.3.5 NASDAQ LISTING.

The Microsoft Common Shares to be issued upon exchange of the Exchangeable Shares shall be quoted as of the Effective Time on The Nasdaq National Market or listed on such national securities exchange as Microsoft Common Shares are listed as of the Effective Time and the Microsoft Common Shares issued upon the exercise of assumed Company Options shall be quoted upon issuance on The Nasdaq National Market or listed on such national securities exchange as Microsoft Common Shares are listed as of the Effective Time.

6.3.6 MAKE-WELL AGREEMENT.

Microsoft shall have executed and delivered a Make-Well Agreement substantially in the form attached as Exhibit 6.3.6 and such agreement shall remain in full force and effect.

7. INDEMNIFICATION

7.1 INDEMNIFICATION RELATING TO AGREEMENT.

Subject to Sections 7.5 and 7.6, the holders of Company Shares (other than Eligible Dissenting Shares) and Company Warrants (the "HOLDERS,") by reason of the approval by the Company's shareholders of the Recapitalization and each Holder's acceptance of the consideration provided for in Section 1.3 by the execution of the Escrow Agreement, shall severally agree to defend, indemnify, and hold Microsoft harmless from and against, and to reimburse Microsoft with respect to, any and all losses, damages, liabilities, claims, judgments, settlements, fines, costs, and expenses (including reasonable attorneys' fees) ("INDEMNIFIABLE AMOUNTS") of every nature whatsoever incurred by Microsoft by reason of or arising out of or in connection with (i) any breach, or any claim (including claims by parties other than Microsoft) that if true, would constitute a breach, by Company or the Principal Shareholders of any representation or warranty of Company or the Principal Shareholders contained in this Agreement or in any certificate or other instrument delivered to Microsoft pursuant to the provisions of this Agreement, and (ii) the failure, partial or total, of Company or the Principal Shareholders to perform any agreement or covenant required by this Agreement to be performed by it or them. The obligations of any Holder to indemnify Microsoft will be determined without regard to any right to indemnification to which any Holder may have in his or her capacity as an officer, director, employee, agent or any other capacity of Company and no Holder will be entitled to any indemnification from Company for amounts paid hereunder.

7.2 THIRD PARTY CLAIMS.

With respect to any claims or demands by third parties, whenever Microsoft will have received a written notice that such a claim or demand has been asserted or threatened, Microsoft will notify Jeffrey D. Brody (the "HOLDERS' REPRESENTATIVE") of such claim or demand and of the facts within Microsoft's knowledge that relate thereto within a reasonable time after receiving such written notice, but in any event within 15 days of receipt thereof. The Holders' Representative will then have the right to contest, negotiate or settle any such claim or demand through counsel of his own selection, reasonably satisfactory to Microsoft, which will not be unreasonably withheld, and solely at the Holders' own cost, risk, and expense, which such costs and expenses shall be payable out of the Escrow Amount. Notwithstanding the preceding sentence, the Holders' Representative will not settle, compromise, or offer to settle or compromise any such claim or demand without the prior written consent of Microsoft, which consent will not be unreasonably withheld. By way of illustration and not limitation, it is understood that Microsoft may object to a settlement or compromise which includes any provision which in its reasonable judgment may have an adverse impact on or establish an adverse precedent for the Business Condition of Microsoft or any of its Subsidiaries. Microsoft will not have the right to object to a settlement which

consists solely of the payment of a monetary damage amount and which is subject to full indemnification under this Agreement. If the Holders' Representative fails to give written notice to Microsoft of the intention to contest or settle any such claim or demand within twenty (20) calendar days after Microsoft has notified the Holders' Representative that any such claim or demand has been made in writing and received by Microsoft, or if any such notice is given but any such claim or demand is not promptly contested by the Holders' Representative, Microsoft will have the right to satisfy and discharge the same by payment, compromise, or otherwise, and the Holders will be entirely liable therefor to Microsoft under this indemnity. Notwithstanding any of the foregoing, but subject to the remainder of this Section 7.2, the Holders will have no right under this section to control or participate in any federal or state income tax audit. In the event any Indemnifiable Amounts arise out of such audits, Microsoft will notify the Holders' Representative and allow him to comment on any written submissions relating to any Indemnifiable Amounts, Microsoft will consult in good faith with Holders' Representative regarding the conduct of any audit, and will not settle any claims with respect to any Indemnifiable Amount without the consent of the Holders' Representative; provided, however, that if Microsoft waives its rights under this Section 7.2 with respect to an Indemnifiable Amount and agrees that any amount payable with respect thereto shall not apply against the Threshold Amount, Holders' Representative will have no consent rights (or consultation rights under this sentence) with respect thereto. Microsoft will conduct the audit in good faith in order to minimize the Indemnifiable Amounts of the Holders. Microsoft may also, if it so elects and entirely within its own discretion, defend any such claim or demand if the Holders' Representative fails to give notice within the aforementioned 20-calendar day period of his intention to contest or settle any such claim or demand, in which event the Holders will be required to indemnify Microsoft and its affiliates for any and all costs, losses, liabilities, and expenses whatsoever, including without limitation reasonable attorneys' and other professional fees, that Microsoft may sustain, suffer, incur, or become subject to as a result of Microsoft's decision to defend any such claim or demand.

7.3 NOTICE OF CLAIMS.

In the event that any indemnification involves a claim or legal proceeding by Microsoft not related to a third party claim, as described above, the parties will comply with the notice provisions contained in the Escrow Agreement.

7.4 BINDING EFFECT.

The indemnification obligations of the Holders and Principal Shareholders contained in this Article 7 are an integral part of this Agreement and Recapitalization in the absence of which Microsoft would not have entered into this Agreement.

7.5 TIME LIMIT.

The provisions of this Article 7 shall apply only to Indemnifiable Amounts which are incurred or relate to claims as to which Microsoft shall have made an appropriate claim under this Article 7 or the Escrow Agreement on or prior to the eighteen month anniversary of the Closing; provided (i) that the obligation of the Principal Shareholders to indemnify Microsoft for breaches of the representations, warranties and covenants in Sections 2.1.9 and 3.10 relating to taxes (as defined in Section 2.1.9) ("TAX CLAIMS") shall continue until thirty (30) days after the expiration of all statutes of limitations applicable to such taxes (the "STATUTORY TAX PERIOD") and (ii) that obligations of the Principal Shareholders for Indemnifiable Amounts arising out of Fraud or willful misstatements or willful omissions of Company or the Principal Shareholders will have no time limit. For all purposes under this Agreement and any instruments or documents created in connection herewith, "Fraud" shall mean a material misrepresentation of fact by the company or a Principal Shareholder under this Agreement or any such document or instrument or criminal conduct or a criminal act by a Principal Shareholder related to the business condition of the Company, with actual knowledge of such Principal Shareholder of its falsity or illegality on which Microsoft has relied to its detriment or suffered actual damages, as finally determined by a court. No Principal Shareholder shall be liable to Microsoft for any claim based on fraud under the terms of this Agreement or any instrument or document executed in connection herewith without having actual knowledge

thereof or active and knowing participation therein. The parties acknowledge that the liability of the Holders other than the Principal Shareholders for Indemnifiable Amounts shall terminate upon the termination of the escrow contemplated by the Escrow Agreement.

7.6 LIMITS OF INDEMNIFICATION.

Notwithstanding any other provision in this Article 7, Microsoft shall be entitled to indemnification only if the aggregate Indemnifiable Amounts exceed Five Hundred Thousand Dollars ($500,000) (the "THRESHOLD AMOUNT"), provided that at such time as the amount to which Microsoft is entitled to be indemnified exceeds the Threshold Amount, Microsoft shall be entitled to be indemnified up to the full Indemnifiable Amounts including the Threshold Amount and provided further that Microsoft shall be indemnified on a first dollar basis regardless of whether the Threshold Amount has been satisfied for any Indemnifiable Amounts payable with respect to all amounts paid or payable with respect to claims regardless of the fact that the claim was settled prior to the execution of this Agreement relating to the "WebTV" trademark. Other than as provided below, (a) the aggregate amount to which Microsoft shall be entitled to be indemnified will not exceed, an amount equal to the Escrow Amount and (b) Microsoft's sole remedy for breaches of this Agreement including without limitation those matters set forth in Section 7.1(i)-(iii), shall be claims against the Escrow Amount. The Indemnifiable Amounts for breaches of representations and warranties or covenants relating to Tax Claims, and fraud or willful misstatements or willful omissions by Company or the Principal Shareholders shall be subject to neither the Threshold Amount nor the Escrow Amount

7.7 TAX CONSEQUENCES.

As stated in Section 1.13, it is the intent of the parties that the Recapitalization is intended to be a "REORGANIZATION" within the meaning of Section 368(a)(1)(E) of the Code, and no party shall take any position inconsistent with this interpretation. However, no party or its counsel shall have any obligation, of indemnification or otherwise, in the event it is determined that the tax consequences differ from those intended or those described in the S-4 or otherwise (except to the extent that the failure of the Recapitalization to so qualify as a reorganization shall have been as a result of a breach of the terms of this Agreement by such party).

7.8 SOLE REMEDY.

Except as provided in the last sentence of Section 7.6 above, this Article 7 shall set forth the sole exclusive remedy and recourse (and corresponding liability for any Holder) of Microsoft and Company arising for any claim, cause of action or right of any nature against Company or any Company shareholder, officer, director, employee or agent in connection with this Agreement.

7.9 DUTY TO MITIGATE.

Microsoft shall act in good faith and in a commercially reasonable manner to mitigate any Indemnifiable Amounts it may suffer.

8. TERMINATION

8.1 MUTUAL AGREEMENT.

This Agreement may be terminated at any time prior to the Effective Time by the written consent of Microsoft and Company.

8.2 FAILURE TO OBTAIN SHAREHOLDER APPROVAL.

This Agreement may be terminated by Microsoft or Company (provided that such party is not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement), by means

of written notice to the other party, upon the failure of the shareholders of Company to approve the transactions contemplated by this Agreement at a the Company Shareholders Meeting.

8.3 TERMINATION BY MICROSOFT.

This Agreement may be terminated by Microsoft (provided that it is not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement) alone, by means of written notice to Company, (i) if there has been a material breach by Company of any representation, warranty, covenant or agreement set forth in the Agreement or other ancillary agreements, which breach would result in a failure to satisfy the Closing condition contained in Section 6.2.1 and has not been cured within thirty (30) business days following receipt by Company of notice of such breach, or (ii) following payment of the Break-Up Fee, in the manner contemplated by Section 8.7.4, or (iii) upon payment of the Termination Fee following the occurrence of the circumstances contemplated by Section 8.7.2.

8.4 TERMINATION BY COMPANY.

This Agreement may be terminated by Company (provided that it is not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement) alone, by means of written notice to Microsoft, (i) if there has been a material breach by Microsoft of any representation, warranty, covenant or agreement set forth in the Agreement or other ancillary agreements, which breach has not been cured within thirty (30) business days following receipt by Microsoft of notice of such breach, (ii) in the manner contemplated by Section 8.7.3.

8.5 UNLAWFUL TRANSACTION.

This Agreement may be terminated by Microsoft or Company, alone, by means of written notice to the other party, upon the entry of an order by any court of competent jurisdiction declaring the Recapitalization unlawful or enjoining the consummation of the Recapitalization, or the enactment of any statute causing the Recapitalization to be unlawful.

8.6 OUTSIDE DATE.

This Agreement may be terminated by Microsoft alone or by Company alone by means of written notice if the Effective Time does not occur on or prior to September 30, 1997, provided, however if the parties have agreed to pursue litigation pursuant to Section 5.6.2, such date shall be extended to March 31, 1998 (the "OUTSIDE DATE").

8.7 EFFECT OF TERMINATION.

8.7.1 OBLIGATIONS UPON TERMINATION.

In the event of termination of this Agreement by either Company or Microsoft as provided this Article 8, this Agreement will forthwith become void and have no effect, and, except as set forth in this Article 8, there will be no liability or obligation on the part of Microsoft, Company or their respective officers or directors or the Holders or Principal Shareholders, except that the provisions of Sections 5.3, 5.5, 8.7.3 and 9.2, and any confidentiality agreement will survive any such termination and abandonment

8.7.2 TERMINATION WITHOUT BREACH.

Microsoft agrees to pay Company (provided that Company is not then in material breach or any representation, warranty, covenant or agreement contained in this Agreement), by wire transfer or by forgiveness of Company indebtedness, the sum of $15 million in immediately available funds (the "TERMINATION FEE") in the event that following the execution of this Agreement, and at or prior to the termination of this Agreement (i) with respect to any administrative or judicial action or proceeding instituted (or threatened to be instituted) challenging the Recapitalization as violative of any Antitrust Law, Microsoft and Company, pursuant to

Section 5.6.2, fail to mutually agree that it is in their best interests to vigorously contest or resist any such action or proceeding or to have vacated, lifted, reversed, or overturned any Order that is in effect and that prohibits, prevents, or restricts consummation of the Recapitalization, (ii) following such mutual agreement pursuant to Section 5.6.2, Microsoft and Company fail to successfully contest or resist any such action or proceeding, or fail to have vacated, lifted, reversed, or overturned any such Order, or (iii) the Recapitalization shall fail to have been consummated on or prior to the Outside Date for reasons other than as set forth in Sections 8.1 through 8.5. Microsoft shall have the right to set-off the Termination Fee against any amounts due under the Line of Credit. The right to payment of the Termination Fee shall be the exclusive remedy at law or in equity to which Company or any of the Principal Shareholders may be entitled with respect to objections asserted by any Governmental Entity with respect to the Recapitalization or any other transactions provided for in this Agreement under any Antitrust Laws or for the transactions contemplated by this Agreement otherwise failing to close by the Outside Date for reasons other than as set forth in Sections 8.1 through 8.5. Company and the Principal Shareholders each agree that receipt of the Termination Fee pursuant to this Section shall preclude any action for damages pursuant to this Section 8.7 or otherwise. Upon the payment of the Termination Fee to the Company upon the occurrence of the circumstances identified in clauses (i), (ii) and (iii) above, this Agreement shall be terminated.

8.7.3 TERMINATION BY COMPANY WITHOUT CAUSE.

8.7.3.1 RIGHT TO CONSIDERATION UPON SALE OF COMPANY.

In the event that Company terminates this Agreement other than as permitted by Sections 8.1, 8.2, 8.4 or 8.5 or fails to proceed with the Closing after all applicable conditions have been satisfied, then this Agreement will forthwith become void and have no effect, and Microsoft (provided that it is not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement) shall be entitled to consideration in the event that Company is acquired on or before the first anniversary of the effective date of such termination, pursuant to the terms and conditions of this Section 8.7.3.

8.7.3.2 DEFINITION OF ACQUIRED.

As used in this Section 8.7.3, Company shall have been considered to be "ACQUIRED" in the event that:

(a) The shareholders of Company sell capital shares to a third party having rights to 50% or more of either the "VOTING POWER" (i.e., the rights to elect directors or approve a merger, recapitalization, reorganization or sale of asset) or rights to receive assets of the Company in a liquidation, dissolution or winding up "LIQUIDATION RIGHTS."

(b) Company is involved in any merger, consolidation or statutory share exchange unless, following the completion of such transaction, the then existing shareholders of Company own or control, directly or indirectly, at least 50% of the voting power or liquidation rights of Company or the successor of such merger, consolidation or statutory share exchange;

(c) Company sells or transfers all or substantially all of the assets of Company; or

(d) Company issues additional shares of stock to a person or group of related persons other than to the Principal Shareholders ("THIRD PARTY") in a transaction or series of related transactions and as a result of such transaction or transactions, (i) the Third Party owns or controls 50% or more of the voting power or liquidation rights of the issued and outstanding capital shares of the Purchaser or Company and (ii) the Principal Shareholders directly or indirectly receive additional compensation, remuneration, payments or other economic benefit.

8.7.3.3 AMOUNT OF CONSIDERATION.

In the event that Company is acquired within the period specified in Section 8.7.3.1, Microsoft shall be entitled to fifty percent (50%) of the proceeds of such transaction, net of all costs of closing (including, without limitation, attorneys' fees, financial consultant fees, and other costs incidental to such transaction) (the "NET ACQUISITION PROCEEDS") that exceed the amount determined by multiplying Company Common Share Equivalents as of the time of determination by $13.686 per share (the "TOTAL AGGREGATE CONSIDERATION"). Net Acquisition Proceeds shall not be deemed to include the assumption of Company debt to the extent such debt was not incurred by Company for purposes of

making or paying additional compensation, remuneration, or

payments directly to Company shareholders in connection with the acquisition, or to any of the Principal Shareholders in their capacities as employees or for or in connection with noncompetition agreements. If there occurs (i) an event covered by Section 8.7.3.2(d), (ii) an event covered by Sections 8.7.3.2(a) that involves less than 100% of the issued and outstanding capital stock of Company, or (iii) an event covered by Section 8.7.3.2(b) that involves the carryover of some of the interest of the shareholders of Company into the successor, the amount for purposes of calculation of Total Aggregate Consideration under this Section 8.7.3 shall be reduced by the percentage of the total outstanding capital stock of Company that is not sold, transferred or not carried-over. (The following example is inserted solely for purposes of clarification of the preceding sentence: assume that the shareholders of Company sell 60% of the shares of Company capital stock to a third party pursuant to Section 8.7.3.2(a), then the Total Aggregate Consideration for purposes of this Section 8.7.3 shall be reduced by 40%.)

8.7.3.4 PAYMENT OF CONSIDERATION.

(a) To the extent Company or its shareholders receives consideration in cash at the closing of an event contemplated by this Section 8.7.3, the payment contemplated by this Section in respect of such cash payment shall be made at such closing of the event giving rise to the payment.

(b) To the extent cash payments are made after closing (for example, by release from escrow after closing), the payment contemplated by this Section 8.7.3 shall be made upon receipt of such cash.

(c) To the extent Company or its shareholders receives other forms of consideration at the closing of an event contemplated by this Section 8.7.3, Microsoft will receive its share of such consideration at such closing.

(d) In the event Company or its shareholders receives a combination of cash at closing, cash paid after closing, and other consideration, or any of them, the payment contemplated by this Section 8.7.3 shall be made as contemplated for each such type of consideration on a pro rata basis (based on the relationship of the consideration in question to the total aggregate consideration received).

8.7.3.5 EXCLUSIVE REMEDY.

The rights pursuant to this section shall be the exclusive remedy at law or in equity to which Microsoft and its officers, directors, representatives and other affiliates shall be entitled in the event that the Agreement is terminated by Company pursuant to Section 8.4(ii) and this Section 8.7.3.

8.7.4 TERMINATION BY MICROSOFT WITHOUT CAUSE.

In the event that Microsoft terminates this Agreement other than as permitted by Sections 8.1, 8.2 or 8.3 or fails to proceed with the Closing after all applicable conditions have been satisfied, then this Agreement will forthwith become void and have no effect, and, provided that Company is not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement, Microsoft immediately shall pay to Company, by wire transfer, in immediately available funds, the Break-up Fee (as defined below). Microsoft shall have set-off the Break-up Fee against any amounts due under the Line of Credit. For purposes of this Section 8.5.5, the "BREAK-UP FEE" shall equal (a) $50 million, in the event that the effective date of termination by Microsoft hereunder is on or before the sixtieth (60th) day after the date of this Agreement, or (b) $75 million, in the event the effective date of termination by Microsoft hereunder is after such sixtieth day.

The rights pursuant to this section shall be the exclusive remedy at law or in equity to which Company and its officers, directors, representatives and other affiliates shall be entitled in the event that the Agreement is terminated by Microsoft pursuant to Section 8.3(ii) and this Section 8.7.4.

8.7.5 ADDITIONAL FEE WITH RESPECT TO FUJITSU.

In the event that Company and Fujitsu have failed to reach agreement with respect to a joint venture arrangement within thirty (30) days after termination of this Agreement pursuant to either Section 8.7.2 or 8.7.4, Microsoft agrees to pay Company, by wire transfer or by forgiveness of Company indebtedness, in addition to the Termination Fee or Break-up Fee under Sections 8.7.2 or 8.7.4, respectively, as applicable, the sum of $5 million in immediately available funds (the "ADDITIONAL FEE"). Company and the Principal Shareholders each agree that receipt of the Termination Fee or Break-up Fee,

as applicable, and the Additional Fee shall preclude any action for damages pursuant to this Section 8.7 or otherwise.

9. MISCELLANEOUS

9.1 ENTIRE AGREEMENT.

This Agreement, including the exhibits and schedules delivered pursuant to this Agreement, and any confidentiality agreement between the parties, contain all of the terms and conditions agreed upon by the parties relating to the subject matter of this Agreement and supersede all prior agreements, negotiations, correspondence, undertakings, and communications of the parties, whether oral or written, respecting that subject matter.

9.2 GOVERNING LAW.

This Agreement will be governed by, and construed in accordance with, the laws of the State of Washington as applied to agreements entered into and entirely to be performed within that state.

9.3 NOTICES.

All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Agreement will be in writing and will be deemed to have been duly given: (i) on the date of delivery if personally delivered by hand, (ii) upon the third day after such notice is (a) deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (b) sent by a nationally recognized overnight express courier, or (iii) by facsimile upon written confirmation (other than the automatic confirmation that is received from the recipient's facsimile machine) of receipt by the recipient of such notice:

If to Microsoft:	Microsoft Corporation One Microsoft Way Redmond, WA 98052-6399 Attention: Robert A. Eshelman Telephone No.: (206) 882-8080 Facsimile No.: (206) 869-1327
With a copy to:	Preston Gates & Ellis LLP 5000 Columbia Center 701 Fifth Avenue Seattle, WA 98104-7078 Attention: Richard B. Dodd Telephone No.: (206) 623-7580 Facsimile No.: (206) 623-7022
If to Company:	WebTV Networks, Inc. 305 Lytton Avenue Palo Alto, CA 94301 Attention: Stephen G. Perlman Telephone No.: (415) 326-3240 Facsimile No.: (415) 614-1380
With a copy to:	Venture Law Group A Professional Corporation 2800 Sand Hill Road Menlo Park, CA 94025 Attention: Joshua Pickus Telephone No.: (415) 854-4488 Facsimile No.: (415) 854-1121
If to Principal Shareholders Representative:	

Such addresses may be changed, from time to time, by means of a notice given in the manner provided in this Section 9.3.

9.4 SEVERABILITY.

If any provision of this Agreement is held to be unenforceable for any reason, it will be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible. In any event, all other provisions of this Agreement will be deemed valid and enforceable to the full extent.

9.5 SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

All representations and warranties contained in this Agreement, including the exhibits and schedules delivered pursuant to this Agreement, shall terminate at midnight on the eighteen month anniversary of the Closing of this Agreement; provided that the representations, warranties and covenants relating to Tax Claims shall continue until thirty (30) days after the expiration of the applicable Statutory Tax period.

9.6 ASSIGNMENT.

No party to this Agreement may assign, by operation of law or otherwise, all or any portion of its rights, obligations, or liabilities under this Agreement without the prior written consent of the other party to this Agreement, which consent may be withheld in the absolute discretion of the party asked to grant such consent. Any attempted assignment in violation of this Section 9.6 will be voidable and will entitle the other party to this Agreement to terminate this Agreement at its option.

9.7 COUNTERPARTS.

This Agreement may be executed in two or more partially or fully executed counterparts each of which will be deemed an original and will bind the signatory, but all of which together will constitute but one and the same instrument. The execution and delivery of a "Signature Page--Agreement and Plan of Reorganization" in the form annexed to this Agreement by any party hereto who will has been furnished the final form of this Agreement will constitute the execution and delivery of this Agreement by such party, it being understood that a signature page may be delivered via facsimile.

9.8 AMENDMENT.

This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

9.9 EXTENSION, WAIVER.

At any time prior to the Effective Time, any party hereto may, to the extent legally allowed: (i) extend the time for the performance of any of the obligations or other acts of the other party hereto, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto, and (iii) waive compliance with any of the agreements, covenants or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver will be valid only if set forth in an instrument in writing signed on behalf of such party.

9.10 INTERPRETATION.

When a reference is made in this Agreement to Sections, Exhibits or Schedules, such reference will be to a Section, Exhibit or Schedule to this Agreement unless otherwise indicated. The words "include" and "including" when used therein will be deemed in each case to be followed by the words "without limitation." The "knowledge of," "the best of knowledge of," or other derivations of "know" with respect to Company will mean the knowledge of Stephen G. Perlman, Bruce A. Leak, Phillip Y. Goldman, Albert A. Pimentel and William Keating, in each case assuming the exercise of reasonable inquiry either directly or by representative on his or their behalf. The table of contents, index to defined terms, and headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

9.11 ATTORNEYS' FEES.

In the event of any action to enforce any provision of this Agreement, or on account of any breach of this Agreement, the prevailing party or parties in such action shall be entitled to recover, in addition to all other relief, from the losing party or parties all attorneys' fees in connection with such action (including, but not limited to, any appeal thereof).

[Remainder of Page Intentionally Omitted]

SIGNATURE PAGE--AGREEMENT AND PLAN OF RECAPITALIZATION

IN WITNESS WHEREOF, Microsoft, Company, and Principal Shareholders have executed this Agreement as of the date first written above.

MICROSOFT CORPORATION

By /s/ Gregory B. Maffei

COMPANY

By /s/ Bruce A. Leak

PRINCIPAL SHAREHOLDERS:

/s/ Stephen G. Perlman
Perlman

/s/ Phillip Y. Goldman
Goldman

/s/ Bruce A. Leak
Leak

CERTIFICATES OF APPROVAL BY SHAREHOLDERS

The undersigned Secretary of Company hereby certifies that holders of a majority of the voting power of Company Shares approved the foregoing Agreement and Plan of Reorganization on .

COMPANY

By

Secretary

SCHEDULES AND EXHIBITS INDEX

EXHIBITS

Exhibit 1.1	Form of Recapitalization Documents
Exhibit 1.3.3	Form of Replacement Microsoft Option
Exhibit 1.5	Form of Escrow Agreement
Exhibit 2.1	Company Disclosure Schedule
Exhibit 2.2	Microsoft Disclosure Schedule
Exhibit 3.11	Form of Voting Agreements
Exhibit 3.15.1	Form of Intellectual Property Agreement
Exhibit 3.15.2	Form of Technology Licensing Agreement
Exhibit 3.15.3	Form of Patent Licensing Agreement
Exhibit 3.15.4	Form of Shareholders Agreement
Exhibit 4.7	Line of Credit
Exhibit 6.2.1	Form of Certificate of Representations and Warranties; Performance of Obligations
Exhibit 6.2.4	Form of Affiliates Agreement
Exhibit 6.2.5	Form of Venture Law Group Opinion
Exhibit 6.2.6	Form of Employment and Noncompetition Agreement
Exhibit 6.2.10	Form of Assignment of Copyrights, Patents and other Intellectual Property
Exhibit 6.3.3	Form of Preston Gates & Ellis LLP Legal Opinion
Exhibit 6.3.6	Form of Make-Well Agreement

SCHEDULES

Schedule 1.3.3	Vesting Schedule for Replacement Microsoft Options
Schedule 1.3.4	List of Holders of Company Restricted Shares
Schedule 2.1.2	Company Common Share Equivalents
Schedule 3.1.1.1	Schedule of Proposed Transactions

APPENDIX B

April 5, 1997

Board of Directors
WebTV Networks, Inc.
305 Lytton Avenue
Palo Alto, CA 94301

Members of the Board:

We understand that Microsoft Corporation ("Microsoft"), WebTV Networks, Inc. ("WNI"), and certain shareholders of WNI (the "Principal Shareholders") have entered into an Agreement and Plan of Recapitalization, dated as of the date hereof (the "Agreement"). Pursuant to the Agreement, WNI will effect a recapitalization (the "Transaction") resulting in the exchange of all issued and outstanding common stock, without par value, of WNI (the "WNI Common Shares"), preferred stock, without par value, of WNI (the "WNI Preferred Shares"), options to purchase WNI Common Shares and warrants to purchase WNI Preferred Shares into a combination of Class A Common Stock of WNI (the "Exchangeable Shares" as defined in the Agreement) which is exchangeable for Common Stock of Microsoft, par value $0.000025 per share (the "Microsoft Common Shares"), cash and options to purchase Microsoft Common Shares, all in the manner and according to the terms of the Agreement. As a result of the Transaction, holders of the WNI Common Shares shall receive a total aggregate value per share in cash and/or Exchangeable Shares equal to $12.841 (the "Common Consideration") and holders of the WNI Preferred Shares shall receive $13.686 in cash (the "Preferred Consideration"). The terms and conditions of the Transaction are more fully set forth in the Agreement.

You have asked for our opinion as to whether the Common Consideration and the Preferred Consideration pursuant to the Agreement are fair from a financial point of view to the holders of WNI Common Shares and WNI Preferred Shares, respectively.

For purposes of the opinion set forth herein, we have:

i. analyzed certain publicly available financial statements and other information of Microsoft;

ii. analyzed certain internal financial statements and other financial and operating data concerning WNI prepared by the management of WNI;

iii. analyzed certain financial projections relating to WNI prepared by the managements of WNI and Microsoft;

iv. discussed the past and current operations and financial condition and the prospects of WNI with senior executives of WNI and Microsoft;

v. compared the financial performance of WNI with that of certain publicly-traded companies which we deemed to be relevant;

vi. reviewed the reported prices and trading activity for the Microsoft Common Shares;

vii. compared the financial performance of Microsoft and the prices and trading activity of the Microsoft Common Shares with that of certain other publicly-traded companies which we deemed to be relevant and their securities;

viii. reviewed the financial terms, to the extent publicly available, of certain merger and acquisition transactions which we deemed to be relevant;

ix. participated in discussions and negotiations among representatives of WNI and Microsoft and their respective legal advisors;

x. reviewed the Agreement and certain related agreements; and

xi. performed such other analyses and considered such other factors as we have deemed appropriate.

We have assumed and relied upon, without independent verification, the accuracy and completeness of the information reviewed by us for the purposes of this opinion. With respect to the financial projections, we have assumed that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the future financial performance of WNI. We have not made any independent valuation or appraisal of the assets, liabilities or technology of Microsoft or WNI, respectively, nor have we been furnished with any such appraisals. Our opinion is necessarily based on economic, market and other conditions as in effect on, and the information made available to us as of, the date hereof.

In arriving at our opinion, we did not solicit interest from, nor did we negotiate with, any party, other than Microsoft, with respect to a possible acquisition of or business combination involving all or any part of WNI or any of its assets.

We have acted as financial advisor to the Board of Directors of WNI in connection with this transaction and will receive a fee for our services.

It is understood that this letter is for the information of the Board of Directors of WNI only and may not be used for any other purpose without our prior written consent, except that this opinion may be included in its entirety in any filing made by WNI with the Securities and Exchange Commission with respect to the transactions contemplated by the Agreement. In addition, we express no recommendation or opinion as to how the holders of WNI Common Shares or WNI Preferred Shares should vote at the shareholders' meeting held in connection with the Transaction.

Based upon and subject to the foregoing, we are of the opinion on the date hereof that the Common Consideration and the Preferred Consideration pursuant to the Agreement are fair from a financial point of view to the holders of WNI Common Shares and WNI Preferred Shares, respectively.

Very truly yours,

DEUTSCHE MORGAN GRENFELL INC.

By: /s/ Frank P. Quattrone

Frank P. Quattrone
Managing Director

By: /s/ George F. Boutros

George F. Boutros
Managing Director

CALIFORNIA GENERAL CORPORATION LAW

CHAPTER 13
DISSENTERS' RIGHTS

SEC. 1300. REORGANIZATION OR SHORT-FORM MERGER; DISSENTING SHARES; CORPORATE PURCHASE AT FAIR MARKET VALUE; DEFINITIONS

(a) If the approval of the outstanding shares (Section 152) of a corporation is required for a reorganization under subdivisions (a) and (b) or subdivision (e) or (f) of Section 1201, each shareholder of the corporation entitled to vote on the transaction and each shareholder of a subsidiary corporation in a short-form merger may, by complying with this chapter, require the corporation in which the shareholder holds shares to purchase for cash at their fair market value the shares owned by the shareholder which are dissenting shares as defined in subdivision (b). The fair market value shall be determined as of the day before the first announcement of the terms of the proposed reorganization or short-form merger, excluding any appreciation or depreciation in consequence of the proposed action, but adjusted for any stock split, reverse stock split, or share dividend which becomes effective thereafter.

(b) As used in this chapter, "dissenting shares" means shares which come within all of the following descriptions:

(1) Which were not immediately prior to the reorganization or short-form merger either (A) listed on any national securities exchange certified by the Commissioner of Corporations under subdivision (o) of Section 25100 or (B) listed on the list of OTC margin stocks issued by the Board of Governors of the Federal Reserve System, and the notice of meeting of shareholders to act upon the reorganization summarizes this section and Sections 1301, 1302, 1303 and 1304; provided, however, that this provision does not apply to any shares with respect to which there exists any restriction on transfer imposed by the corporation or by any law or regulation; and provided, further, that this provision does not apply to any class of shares described in subparagraph (A) or (B) if demands for payment are filed with respect to 5 percent or more of the outstanding shares of that class.

(2) Which were outstanding on the date for the determination of shareholders entitled to vote on the reorganization and (A) were not voted in favor of the reorganization or, (B) if described in subparagraph (A) or (B) of paragraph (1) (without regard to the provisos in that paragraph), were voted against the reorganization, or which were held of record on the effective date of a short-form merger; provided, however, that subparagraph (A) rather than subparagraph (B) of this paragraph applies in any case where the approval required by Section 1201 is sought by written consent rather than at a meeting.

(4) Which the dissenting shareholder has submitted for endorsement, in accordance with Section 1302.

(c) As used in this chapter, "dissenting shareholder" means the recordholder of dissenting shares and includes a transferee of record.

SEC. 1301. NOTICE TO HOLDERS OF DISSENTING SHARES IN REORGANIZATIONS; DEMAND FOR PURCHASE; TIME; CONTENTS

(a) If, in the case of a reorganization, any shareholders of a corporation have a right under Section 1300, subject to compliance with paragraphs (3) and (4) of subdivision (b) thereof, to require the corporation to purchase their shares for cash, such corporation shall mail to each such shareholder a notice of the approval of the reorganization by its outstanding shares (Section 152) within 10 days after the date of such approval, accompanied by a copy of Sections 1300, 1302, 1303, 1304 and this section, a statement of the price determined by the corporation to represent the fair market value of the dissenting shares, and a brief description of the procedure to be followed if the shareholder desires to exercise the shareholder's right under such sections. The statement of price constitutes an offer by the corporation to purchase at the price stated any dissenting shares as defined in subdivision (b) of Section 1300, unless they lose their status as dissenting shares under Section 1309.

(b) Any shareholder who has a right to require the corporation to purchase the shareholder's shares for cash under Section 1300, subject to compliance with paragraphs (3) and (4) of subdivision (b) thereof, and who desires the corporation to purchase such shares shall make written demand upon the corporation for the purchase of such shares and payment to the shareholder in cash of their fair market value. The demand is not effective for any purpose unless it is received by the corporation or any transfer agent thereof (1) in the case of shares described in clause (i) or (ii) of paragraph (1) of subdivision (b) of Section 1300 (without regard to the provisos in that paragraph), not later than the date of the shareholders' meeting to vote upon the reorganization, or (2) in any other case within 30 days after the date on which the notice of the approval by the outstanding shares pursuant to subdivision (a) or the notice pursuant to subdivision (i) of Section 1110 was mailed to the shareholder.

(c) The demand shall state the number and class of the shares held of record by the shareholder which the shareholder demands that the corporation purchase and shall contain a statement of what such shareholder claims to be the fair market value of those shares as of the day before the announcement of the proposed reorganization or short-form merger. The statement of fair market value constitutes an offer by the shareholder to sell the shares at such price.

SEC. 1302. SUBMISSION OF SHARE CERTIFICATES FOR ENDORSEMENT; UNCERTIFICATED SECURITIES

Within 30 days after the date on which notice of the approval by the outstanding shares or the notice pursuant to subdivision (i) of Section 1110 was mailed to the shareholder, the shareholder shall submit to the corporation at its principal office or at the office of any transfer agent thereof, (a) if the shares are certificated securities, the shareholder's certificates representing any shares which the shareholder demands that the corporation purchase, to be stamped or endorsed with a statement that the shares are dissenting shares or to be exchanged for certificates of appropriate denomination so stamped or endorsed or (b) if the shares are uncertificated securities, written notice of the number of shares which the shareholder demands that the corporation purchase. Upon subsequent transfers of the dissenting shares on the books of the corporation, the new certificates, initial transaction statement, and other written statements issued therefor shall bear a like statement, together with the name of the original dissenting holder of the shares.

SEC. 1303. PAYMENT OF AGREED PRICE WITH INTEREST; AGREEMENT FIXING FAIR MARKET VALUE; FILING; TIME OF PAYMENT

(a) If the corporation and the shareholder agree that the shares are dissenting shares and agree upon the price of the shares, the dissenting shareholder is entitled to the agreed price with interest thereon at the legal rate on judgments from the date of the agreement. Any agreements fixing the fair market value of any dissenting shares as between the corporation and the holders thereof shall be filed with the secretary of the corporation.

(b) Subject to the provisions of Section 1306, payment of the fair market value of dissenting shares shall be made within 30 days after the amount thereof has been agreed or within 30 days after any statutory or contractual conditions to the reorganization are satisfied, whichever is later, and in the case of certificated securities, subject to surrender of the certificates therefor, unless provided otherwise by agreement.

SEC. 1304. ACTION TO DETERMINE WHETHER SHARES ARE DISSENTING SHARES OR FAIR MARKET VALUE; LIMITATION; JOINDER; CONSOLIDATION; DETERMINATION OF ISSUES; APPOINTMENT OF APPRAISERS

(a) If the corporation denies that the shares are dissenting shares, or the corporation and the shareholder fail to agree upon the fair market value of the shares, then the shareholder demanding purchase of such shares as dissenting shares or any interested corporation, within six months after the date on which notice of the approval by the outstanding shares (Section 152) or notice pursuant to subdivision (i) of Section 1110 was mailed to the shareholder, but not thereafter, may file a complaint in the superior court of the proper county praying the court to determine whether the shares are dissenting shares or the fair market value of the dissenting shares or both or may intervene in any action pending on such a complaint.

(b) Two or more dissenting shareholders may join as plaintiffs or be joined as defendants in any such action and two or more such actions may be consolidated.

(c) On the trial of the action, the court shall determine the issues. If the status of the shares as dissenting shares is in issue, the court shall first determine that issue. If the fair market value of the dissenting shares is in issue, the court shall determine, or shall appoint one or more impartial appraisers to determine, the fair market value of the shares.

SEC. 1305. REPORT OF APPRAISERS; CONFIRMATION; DETERMINATION BY COURT; JUDGMENT; PAYMENT; APPEAL; COSTS

(a) If the court appoints an appraiser or appraisers, they shall proceed forthwith to determine the fair market value per share. Within the time fixed by the court, the appraisers, or a majority of them, shall make and file a report in the office of the clerk of the court. Thereupon, on the motion of any party, the report shall be submitted to the court and considered on such evidence as the court considers relevant. If the court finds the report reasonable, the court may confirm it.

(b) If a majority of the appraisers appointed fail to make and file a report within 10 days from the date of their appointment or within such further time as may be allowed by the court or the report is not confirmed by the court, the court shall determine the fair market value of the dissenting shares.

(c) Subject to the provisions of Section 1306, judgment shall be rendered against the corporation for payment of an amount equal to the fair market value of each dissenting share multiplied by the number of dissenting shares which any dissenting shareholder who is a party, or who has intervened, is entitled to require the corporation to purchase, with interest thereon at the legal rate from the date on which judgment was entered.

(d) Any such judgment shall be payable forthwith with respect to uncertificated securities and, with respect to certificated securities, only upon the endorsement and delivery to the corporation of the certificates for the shares described in the judgment. Any party may appeal from the judgment.

(e) The costs of the action, including reasonable compensation to the appraisers to be fixed by the court, shall be assessed or apportioned as the court considers equitable, but, if the appraisal exceeds the price offered by the corporation, the corporation shall pay the costs (including in the discretion of the court attorneys' fees, fees of expert witnesses and interest at the legal rate on judgments from the date of compliance with Sections 1300, 1301 and 1302 if the value awarded by the court for the shares is more than 125 percent of the price offered by the corporation under subdivision (a) of Section 1301).

SEC. 1306. PREVENTION OF IMMEDIATE PAYMENT; STATUS AS CREDITORS; INTEREST

To the extent that the provisions of Chapter 5 prevent the payment to any holders of dissenting shares of their fair market value, they shall become creditors of the corporation for the amount thereof together with interest at the legal rate on judgments until the date of payment, but subordinate to all other creditors in any liquidation proceeding, such debt to be payable when permissible under the provisions of Chapter 5.

SEC. 1307. DIVIDENDS ON DISSENTING SHARES

Cash dividends declared and paid by the corporation upon the dissenting shares after the date of approval of the reorganization by the outstanding shares (Section 152) and prior to payment for the shares by the corporation shall be credited against the total amount to be paid by the corporation therefor.

SEC. 1308. RIGHTS OF DISSENTING SHAREHOLDERS PENDING VALUATION; WITHDRAWAL OF DEMAND FOR PAYMENT

Except as expressly limited in this chapter, holders of dissenting shares continue to have all the rights and privileges incident to their shares, until the fair market value of their shares is agreed upon or determined. A dissenting shareholder may not withdraw a demand for payment unless the corporation consents thereto.

SEC. 1309. TERMINATION OF DISSENTING SHARE AND SHAREHOLDER STATUS

Dissenting shares lose their status as dissenting shares and the holders thereof cease to be dissenting shareholders and cease to be entitled to require the corporation to purchase their shares upon the happening of any of the following:

(a) The corporation abandons the reorganization. Upon abandonment of the reorganization, the corporation shall pay on demand to any dissenting shareholder who has initiated proceedings in good faith under this chapter all necessary expenses incurred in such proceedings and reasonable attorneys' fees.

(b) The shares are transferred prior to their submission for endorsement in accordance with Section 1302 or are surrendered for conversion into shares of another class in accordance with the articles.

(c) The dissenting shareholder and the corporation do not agree upon the status of the shares as dissenting shares or upon the purchase price of the shares, and neither files a complaint or intervenes in a pending action as provided in Section 1304, within six months after the date on which notice of the approval by the outstanding shares or notice pursuant to subdivision (i) of Section 1110 was mailed to the shareholder.

(d) The dissenting shareholder, with the consent of the corporation, withdraws the shareholder's demand for purchase of the dissenting shares.

SEC. 1310. SUSPENSION OF RIGHT TO COMPENSATION OR VALUATION PROCEEDINGS; LITIGATION OF SHAREHOLDERS' APPROVAL

If litigation is instituted to test the sufficiency or regularity of the votes of the shareholders in authorizing a reorganization, any proceedings under Sections 1304 and 1305 shall be suspended until final determination of such litigation.

SEC. 1311. EXEMPT SHARES

This chapter, except Section 1312, does not apply to classes of shares whose terms and provisions specifically set forth the amount to be paid in respect to such shares in the event of a reorganization or merger.

SEC. 1312. RIGHT OF DISSENTING SHAREHOLDER TO ATTACK, SET ASIDE OR RESCIND MERGER OR REORGANIZATION; RESTRAINING ORDER OR INJUNCTION; CONDITIONS

(a) No shareholder of a corporation who has a right under this chapter to demand payment of cash for the shares held by the shareholder shall have any right at law or in equity to attack the validity of the reorganization or short-form merger, or to have the reorganization or short-form merger set aside or rescinded, except in an action to test whether the number of shares required to authorize or approve the reorganization have been legally voted in favor thereof; but any holder of shares of a class whose terms and provisions specifically set forth the amount to be paid in respect to them in the event of a reorganization or short-form merger is entitled to payment in accordance with those terms and provisions or, if the principal terms of the reorganization are approved pursuant to subdivision (b) of Section 1202, is entitled to payment in accordance with the terms and provisions of the approved reorganization.

(b) If one of the parties to a reorganization or short-form merger is directly or indirectly controlled by, or under common control with, another party to the reorganization or short-form merger, subdivision (a) shall not apply to any shareholder of such party who has not demanded payment of cash for such shareholder's shares pursuant to this chapter; but if the shareholder institutes any action to attack the validity of the reorganization or short-form merger or to have the reorganization or short-form merger set aside or rescinded, the shareholder shall not thereafter have any right to demand payment of cash for the shareholder's shares pursuant to this chapter. The court in any action attacking the validity of the reorganization or short-form merger or to have the reorganization or short-form merger set aside or rescinded shall not restrain or enjoin the consummation of the transaction except upon 10 days' prior notice to the corporation and upon a determination by the court that clearly no other remedy will adequately protect the complaining shareholder or the class of shareholders of which such shareholder is a member.

(c) If one of the parties to a reorganization or short-form merger is directly or indirectly controlled by, or under common control with, another party to the reorganization or short-form merger, in any action to attack the validity of the reorganization or short-form merger or to have the reorganization or short-form merger set aside or rescinded, (1) a party to a reorganization or short-form merger which controls another party to the reorganization or short-form merger shall have the burden of proving that the transaction is just and reasonable as to the shareholders of the controlled party, and (2) a person who controls two or more parties to a reorganization shall have the burden of proving that the transaction is just and reasonable as to the shareholders of any party so controlled.

APPENDIX D

ESCROW AGREEMENT

AMONG

MICROSOFT CORPORATION,
A WASHINGTON CORPORATION,

THE SECURITIES HOLDERS OF
WEBTV NETWORKS, INC.
A CALIFORNIA CORPORATION,

AND

CHASEMELLON SHAREHOLDER SERVICES L.L.C.,
AS CUSTODIAN

DATED

AS OF

TABLE OF CONTENTS

INDEX OF DEFINED TERMS

ESCROW AGREEMENT

This Escrow Agreement (this "ESCROW AGREEMENT") is made and entered into as of , 1997 (the "CLOSING DATE"), by and among Microsoft Corporation, a Washington corporation ("MICROSOFT"), the undersigned holders of the equity securities and certain warrants to purchase securities ("COMPANY SECURITIES") of WebTV Networks, Inc., a California corporation ("COMPANY") (the "SECURITIES HOLDERS"), Jeffrey D. Brody as the Representative of the Securities Holders ("REPRESENTATIVE"), and ChaseMellon Shareholder Services LLC, as Custodian (the "CUSTODIAN").

RECITALS

Whereas, Microsoft, Company, and certain principal shareholders of Company (the "PRINCIPAL SHAREHOLDERS") have entered into an Agreement and Plan of Recapitalization dated as of April 5, 1997 (the "RECAPITALIZATION AGREEMENT") setting forth certain terms and conditions pursuant to which the securities of Company will be reclassified and whereby Microsoft will acquire all of the outstanding shares of a new issue of Class B Common Shares which will represent the general voting rights and residual liquidation rights of Company's capital shares (the "RECAPITALIZATION");

Whereas, pursuant to the Recapitalization Agreement, upon the closing of the Recapitalization, the Securities Holders will receive of Class A Common Shares ("EXCHANGEABLE SHARES"); which are exchangeable into Microsoft Common Shares, par value $.000025 per share ("MICROSOFT COMMON SHARES"), or cash, from either the Company or Microsoft, having a total value of approximately $.

Whereas, the Recapitalization Agreement provides that Fifty Million Dollars ($50,000,000) (the "ESCROW AMOUNT") will be withheld from the Exchangeable Shares and cash to be issued in the conversion of the Company Securities on a basis proportionate to the value of the Exchangeable Shares (determined in the same manner as in the Recapitalization Agreement) and/or cash to be received by each Securities Holder and will be placed in an escrow account to secure certain indemnification obligations of the Holders, as defined in Section 7.1 of the Recapitalization Agreement, to Microsoft under Article 7 of the Recapitalization Agreement on the terms and conditions set forth therein and herein;

Whereas, it is a condition of the Closing of the Recapitalization Agreement that the Principal Shareholders and holders of at least 80% of Company Preferred Shares and Company Warrants execute an escrow agreement in substantially the form of this Escrow Agreement; and

Whereas, capitalized terms not otherwise defined herein will have the same meaning as set forth in the Recapitalization Agreement, which is incorporated herein by this reference.

Now Therefore Intending to be Legally Bound, in consideration of the mutual promises contained herein and other good and valid consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. ESTABLISHMENT OF ESCROW; ACCOUNT

1.1 Deposit of Exchangeable Shares. The Company shall, immediately upon the date of this Agreement, deposit on the Securities Holders behalf with the Custodian an aggregate of Exchangeable Shares issued in the respective names of the Securities Holders and in the relative amounts as set forth on Exhibit 1.1 hereto (the "INITIAL ESCROWED SHARES") and shall promptly deliver to the Custodian duly authorized share certificates for the Initial Escrowed Shares registered in the respective names of the Shareholders as set forth on Exhibit 1.1 hereto. In lieu of issuing share certificates, the issuance of Escrowed Shares (as defined below) provided for in this Escrow Agreement may be recorded by journal entry in the stock transfer records of the transfer agent for Escrowed Shares (as defined below) (the "TRANSFER AGENT"). Any capital shares or other securities that result from any share dividend, reclassification, stock split, subdivision or combination of shares, recapitalization,

merger, or conversion of Escrowed Shares into Microsoft Common Shares as permitted by the Articles, or other events made with respect to any Escrowed Shares or Microsoft Common Shares then held in escrow under this Escrow Agreement ("ADDITIONAL SHARES") shall be delivered to the Custodian and shall be held in the Escrow Account (and, as required under this Escrow Agreement, shall be released from the Escrow Account). Unless otherwise indicated, as used in this Escrow Agreement, the term "ESCROWED SHARES" includes the Initial Escrowed Shares and any Additional Shares. The Escrowed Shares, as well as the Cash Escrow (as defined below), are to be held by the Custodian and released pursuant to the provisions of this Escrow Agreement. The Custodian agrees to accept delivery of the Escrowed Shares and to hold such Escrowed Shares in escrow in accordance with this Escrow Agreement and to release the Escrowed Shares out of escrow as provided in this Escrow Agreement.

1.2 Cash Escrow. Microsoft shall, immediately upon the date of this Agreement, deposit with the Custodian cash in the amount of in the respective names of the Securities Holders and in the relative amounts as set forth on Exhibit 1.2 hereto. The cash deposited in connection with this Agreement is referred to as the "CASH ESCROW," which along with the Escrowed Shares are collectively referred to as the "TOTAL ESCROW".

1.3 Escrow Account. The Custodian shall maintain the Cash Escrow in a separate, interest bearing money market account.

1.4 Dividends; Voting and Rights of Ownership. Any cash dividends, dividends payable in property or other distributions of any kind (except for Additional Shares) made in respect of the Escrowed Shares shall be distributed currently by Microsoft or the Company, as the case may be, to the Securities Holders on a pro rata basis with respect to the Escrowed Shares as to which such dividends are paid. Each Securities Holder shall have the right to any voting rights applicable to the Escrowed Shares held in escrow for the account of such Securities Holder so long as such Escrowed Shares are held in escrow, and Microsoft shall take all steps necessary to allow the exercise of such rights. While the Escrowed Shares remain in the Custodian's possession pursuant to this Escrow Agreement, the Securities Holder shall retain and shall be able to exercise all other incidents of ownership of the Escrowed Shares that are not inconsistent with the terms and conditions hereof.

1.5 No Encumbrance. None of the Total Escrow or any beneficial interest therein may be pledged, sold, assigned or transferred, including by operation of law, other than by will or by the laws of descent or distribution in the event of the death of a Securities Holder, by a Securities Holder or may be taken or reached by any legal or equitable process in satisfaction of any debt or other liability of a Securities Holder, prior to the delivery of the Escrowed Shares or the Cash Escrow by the Custodian to such Securities Holder pursuant to this Escrow Agreement.

1.6 Power to Transfer Total Escrow. The Custodian is hereby granted the power to effect any transfer of the Total Escrow provided for in this Escrow Agreement.

2. RESOLUTION OF CLAIMS

2.1 Indemnification Obligations. Payment for any amount determined as provided below to be owing for any Indemnifiable Amounts ("DAMAGES") and any award of attorneys' fees and charges pursuant to Section 2.3.3.5 or 12.2 of this Agreement (a "PREVAILING PARTY AWARD") shall be made by: (i) the release of Escrowed Shares, and (ii) the release of any Cash Escrow (collectively referred to as "ESCROW ADJUSTMENTS"). Any Escrow Adjustments shall be made in proportion to each of the Securities Holders' interest in Escrowed Shares and/or Cash Escrow as of the date or dates specified in and the manner provided for in this Agreement for the resolution of Claims. The value of the Escrowed Shares shall equal the average closing prices of Microsoft Common Shares for the respective periods as provided for in this Escrow Agreement and shall not be subject to any reduction, discount or other adjustment. Provided, however, if the applicable conversion rate for the Class A Common Shares, set forth in the Company Amended and Restated Articles, is different than 1.0, an appropriate adjustment to the value shall be made; provided further that each reference to the "average closing prices of Microsoft Common Shares" hereafter shall take into account any then required adjustment.

2.2 Notice of Claims. Promptly after the receipt by Microsoft of notice or discovery of any claim, damage, or legal action or proceeding giving rise to indemnification rights under the Recapitalization Agreement (a "CLAIM"), Microsoft shall give the Representative written notice of such Claim and shall provide a copy of such notice to the Custodian. Each notice of a Claim by Microsoft (the "NOTICE OF CLAIM") shall be in writing and shall be delivered on or before the Release Date. The Notice of Claim shall also specify the approximate, to the extent known, aggregate dollar amount of the Damages and the proposed Escrow Adjustments to be made as a result of the Claim.

2.3 Resolution of Claims. Any Notice of Claim received by the Representative and the Custodian pursuant to Section 2.2 above shall be resolved as follows:

2.3.1 Uncontested Claims. In the event that the Representative does not contest a Notice of Claim in writing within twenty (20) calendar days, as provided below in Section 2.3.2, Microsoft may deliver to the Custodian, with a copy to the Representative, a written demand by Microsoft (a "MICROSOFT DEMAND") stating that a Notice of Claim has been given as required in this Escrow Agreement and that no notice of contest has been received from the Representative during the period specified in this Escrow Agreement and further setting forth the proposed Escrow Adjustments to be made in accordance with this Section 2.3.1. In calculating the value of the Escrowed Shares to be canceled, the value shall equal the Microsoft Closing Price as determined pursuant to the Recapitalization Agreement (the "MICROSOFT CLOSING PRICE"). It is provided, however, that within twenty (20) calendar days after receipt of the Microsoft Demand, the Representative may object to the proposed Escrow Adjustments whereupon neither the Custodian nor Microsoft shall make any of the Escrow Adjustments until either: (i) Microsoft and the Representative shall have given the Custodian written notice setting forth agreed Escrow Adjustments, or (ii) the matter is resolved as provided in Sections 2.3.2 and 2.3.3. Upon satisfaction of the foregoing the Custodian and Microsoft shall promptly take all steps to implement the final Escrow Adjustments.

2.3.2 Contested Claims. In the event that the Representative gives written notice contesting all or a portion of a Notice of Claim to Microsoft and the Custodian (a "CONTESTED CLAIM") within the 20-day period provided above, matters that are subject to third party claims brought against Microsoft or Company in a litigation or arbitration shall await the final decision, award or settlement of such litigation or arbitration, while matters that arise between Microsoft on the one hand and Company and/or the Securities Holders on the other hand, including any disputes regarding performance or nonperformance of a party's obligations under this Escrow Agreement ("ARBITRABLE CLAIMS"), shall be settled in accordance with Section 2.3.3 below. Any portion of a Notice of Claim that is covered by Section 2.3.1 or subsequently settled shall be resolved as set forth above in Section 2.3.1, provided that in the case of a settlement the value of Escrowed Shares shall equal the Microsoft Closing Price, and provided further that the Representative's signature shall be required on the Microsoft Demand as evidence of the Representative's agreement to the Escrow Adjustments. If notice is received by the Custodian that a Notice of Claim is contested by the Representative, then the Custodian shall hold in the Escrow Account, after what would otherwise be the Release Date (as defined in Section 3.1 below), the Retained Escrow as provided in Section 3.1, until the earlier of: (i) receipt of a settlement agreement executed by Microsoft and the Representative setting forth a resolution of the Notice of Claim and the Escrow Adjustments; (ii) receipt of a written notice from Microsoft (a "MICROSOFT DISTRIBUTION NOTICE") attaching a copy of the final award or decision of the arbitrator and setting forth the Escrow Adjustments (Microsoft shall at the same time provide a copy of the Microsoft Distribution Notice to the Representative); or (iii) receipt of a written notice from the Representative (a "REPRESENTATIVE DISTRIBUTION NOTICE") attaching a copy of the final award or decision of the arbitrator that no Escrow Adjustments are to be made as a result of such award (Representative shall at the same time provide a copy of the Representative Distribution Notice to Microsoft). If the earliest of the three events described in the preceding sentence is (i) or (ii), the Custodian shall, within ten (10) business days of receipt of the settlement agreement or Microsoft Distribution Notice, as applicable, cancel the number of Escrowed Shares and release to Microsoft an amount of Escrowed Cash specified in such agreement or Microsoft Distribution Notice. If the earliest of the three events described above is (iii), the Custodian shall, within ten (10) business days of receipt of the Representative Distribution Notice, release

to the Securities Holders the Retained Escrow, in accordance with the Securities Holders' interests therein. If the award or decision of the arbitrator concludes that Escrowed Shares are to be cancelled and Cash Escrow are to be released to Microsoft either in satisfaction of Damages or as Prevailing Party Awards, the arbitrator shall specify the number of Escrowed Shares and the amount of Cash Escrow to be so released either in the arbitrator's final award or decision or a supplementary report or finding. The value of the Escrowed Shares released shall equal the Microsoft Closing Price. In the event that the Custodian institutes an action for interpleader in accordance with Section 4.6 of this Escrow Agreement as a result of a dispute between the parties, the parties hereby agree to jointly seek to stay such interpleader action pending the resolution of any arbitration commenced by the parties.

2.3.3 Arbitration.

2.3.3.1 AAA Rules. Any Arbitrable Claim, and any dispute between the Securities Holders and Microsoft under this Escrow Agreement, shall be submitted to final and binding arbitration in King County, Seattle, Washington, which arbitration shall, except as herein specifically stated, be conducted in accordance with the commercial arbitration rules of the American Arbitration Association (the "AAA") then in effect; provided, however, that the parties agree first to try in good faith to resolve any Arbitrable Claim that does not exceed Two Hundred Thousand Dollars ($200,000) by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration; provided, further, that, in the event of an arbitration, the arbitration provisions of this Escrow Agreement shall govern over any conflicting rules which may now or hereafter be contained in the AAA rules.

2.3.3.2 Binding Effect. The final decision of the arbitrator shall be furnished in writing to the Custodian, the Representative, the Securities Holders and Microsoft and will constitute a conclusive determination of the issue in question, binding upon the Securities Holders, the Representative and Microsoft. The arbitrator shall have the authority to grant any equitable and legal remedies that would be available in any judicial proceeding instituted to resolve an Arbitrable Claim. Any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over the subject matter thereof.

2.3.3.3 Compensation of Arbitrator. Any such arbitration shall be conducted before a single arbitrator who will be compensated for his or her services, as provided below in Section 2.3.3.5, at a rate to be determined by the parties or by the AAA, but based upon reasonable hourly or daily consulting rates for the arbitrator in the event Microsoft and the Representative are not able to agree upon his or her rate of compensation.

2.3.3.4 Selection of Arbitrator. The AAA shall have the authority to select an arbitrator from a list of arbitrators who are partners in a nationally recognized firm of independent certified public accountants from the management advisory services department (or comparable department or group) of such firm or who are partners in a major law firm; provided, however, that such accounting firm or law firm cannot be a firm that has rendered or is then rendering services to any party hereto or, in the case of a law firm, appeared or is then appearing as counsel of record in opposition in any legal proceeding to any party hereto.

2.3.3.5 Payment of Costs. The prevailing party in any arbitration shall be entitled to an award of attorneys' fees and costs, and all costs of arbitration, including those provided for above, will be paid by the losing party, subject in each case to a determination by the arbitrator as to which party is the prevailing party and the amount of such fees and costs to be allocated to such party. Any amounts

payable to Microsoft by or on account of the Securities Holders under this subsection will be reimbursed as if the amount of such awarded fees and expenses were an Uncontested Claim.

2.3.3.6 Terms of Arbitration. The arbitrator chosen in accordance with these provisions shall not have the power to alter, amend or otherwise affect the terms of these arbitration provisions or the provisions of this Escrow Agreement, the Recapitalization Agreement or any other documents that are executed in connection therewith.

2.3.3.7 Exclusive Remedy. Arbitration or mediation under this Section 2.3.3 shall be the sole and exclusive remedy of the parties for any Arbitrable Claim arising out of this Escrow Agreement or the Recapitalization Agreement.

3. RELEASE FROM ESCROW

3.1 Release of Total Escrow. The Total Escrow shall be released by the Custodian as soon as practicable, but not later than twenty (20) days, to the Securities Holders after , 199 , (the "RELEASE DATE"), less: (i) any Escrowed Shares cancelled and Cash Escrow delivered to or deliverable to Microsoft in satisfaction of Uncontested Claims or Contested Claims which have been settled, and (ii) any of the Total Escrow subject to cancellation or delivery to Microsoft in accordance with Section 2.3.2 with respect to any then pending Contested Claims. On or before the Release Date, Microsoft and the Representative shall deliver to the Custodian a jointly approved written notice (a "RELEASE NOTICE") setting forth the number of Escrowed Shares and amount of Cash Escrow to be released by the Custodian to each Securities Holder (the "RELEASED ESCROW") and the number of Escrowed Shares and amount of Cash Escrow to be retained in Escrow as provided above (the "RETAINED ESCROW"). The Released Escrow shall be released to the Securities Holders in proportion to their respective interests in the Initial Escrowed Shares and Cash Escrow, plus any interest earned thereon. In lieu of releasing any fractional Escrowed Shares, any fraction of a released Escrowed Share that would otherwise be released shall be rounded to the nearest whole Exchangeable Share or Microsoft Common Share then distributable. Within ten (10) business days after receipt of the Release Notice, the Custodian, acting as Microsoft's transfer agent, shall deliver (by registered mail or overnight carrier) to each Securities Holder the number of Escrowed Shares in the names of the appropriate Securities Holders, and amount of Cash Escrow, plus any earned interest, as specified in the Release Notice. The Custodian shall not be required to deliver the Escrowed Shares and Cash Escrow to the Securities Holders following satisfaction of release conditions until it has received the Release Notice or, in the event Microsoft and the Representative fail to deliver a Release Notice, a final award or decision which specifies the distribution of the Escrow Shares and Cash Escrow.

3.2 Release of Retained Escrow. Upon the resolution of Contested Claims as provided for in Section 2.3.2, the Retained Escrow shall be subject to release by the Custodian to Microsoft and/or to the Securities Holders in accordance with Section 2.3.2, this Section and as otherwise provided for in this Escrow Agreement. The Custodian shall cause the transfer agent to cancel the number of Escrowed Shares to be cancelled pursuant to Section 2.3.2 and to reissue certificates for Escrowed Shares that are to be either distributed to the Securities Holders pursuant to Section 3.1 or further retained by the Custodian pending the resolution of Contested Claims, and Prevailing Party Awards. In addition, the Custodian shall release to Microsoft the Cash Escrow as provided for in Section 2.3.2 less that amount of Cash Escrow, including any earned interest, that is either to be distributed to the Securities Holders pursuant to Section 3.1 or further retained by the Custodian pending the resolution of Contested Claims and Prevailing Party Awards.

3.3 Expenses of Representative. The Representative shall be entitled to be reimbursed for his reasonable out-of-pocket expenses and the reasonable fees and disbursements of counsel. Such reimbursements shall be made from the Total Escrow, on a pro rata basis among the contributors to the Total Escrow, for all services performed pursuant to the Recapitalization Agreement and the Escrow Agreement. The Custodian shall be entitled to liquidate and sell Escrowed Shares as may be necessary to reimburse the Representative.

4. CUSTODIAN

4.1 Duties. The duties of the Custodian hereunder shall be entirely administrative and not discretionary. The Custodian shall be obligated to act only in accordance with written instructions received by it as provided in this Escrow Agreement and is authorized hereby to comply with any orders, judgments or decrees of any court with or without jurisdiction or arbitrator (pursuant to Section 2.3.3) and shall not be liable as a result of its compliance with the same.

4.2 Legal Opinions. As to any legal questions arising in connection with the administration of this Escrow Agreement, the Custodian may rely absolutely upon the joint instruction of Microsoft and the Representative or the opinions given to the Custodian by its outside counsel and shall be free of liability for acting in reliance on such joint instructions or opinions.

4.3 Signatures. The Custodian may rely absolutely upon the genuineness and authorization of the signature and purported signature of any party upon any instruction, notice, release, receipt or other document delivered to it pursuant to this Escrow Agreement.

4.4 Receipts and Releases. The Custodian may, as a condition to the disbursement of monies or disposition of securities as provided herein, require from the payee or recipient a receipt therefor and, upon final payment or disposition, a release of the Custodian from any liability arising out of its execution or performance of this Escrow Agreement, such release to be in a form reasonably satisfactory to the Custodian.

4.5 Refrain from Action. The Custodian shall be entitled to refrain from taking any action contemplated by this Escrow Agreement in the event it becomes aware of any dispute between Company, the Securities Holders and Microsoft as to any material facts or as to the happening of any event precedent to such action.

4.6 Interpleader. If any controversy arises between the parties hereto or with any third person, the Custodian shall not be required to determine the same or to take any action, but the Custodian in its discretion may institute such interpleader or other proceedings in connection therewith as the Custodian may deem proper, and in following either course, the Custodian shall not be liable to any person.

4.7 Tax Forms. All entities entitled to receive interest from the Escrow Account will provide Custodian with W-9 IRS tax forms or W-8 tax forms prior to disbursement of interest. Interest earned in the account will be reported as income to the party receiving such interest.

5. INDEMNIFICATION

5.1 Waiver and Indemnification. Microsoft, Company, the Representative, and the Securities Holders agree to and hereby do waive any suit, claim, demand or cause of action of any kind which they may have or may assert against the Custodian arising out of or relating to the execution or performance by the Custodian of this Escrow Agreement, unless such suit, claim, demand or cause of action is based upon the willful neglect or gross negligence or bad faith of the Custodian. They further agree to indemnify the Custodian against and from any and all claims, demands, costs, liabilities and expenses, including reasonable attorneys' fees, which may be asserted against it or to which it may be exposed or which it may incur by reason of its execution or performance of this Escrow Agreement, except to the extent attributable to its willful neglect, gross negligence, or bad faith. Such agreement to indemnify shall survive the termination of this Escrow Agreement until extinguished by any applicable statute of limitations.

5.2 Conditions to Indemnification. In case any litigation is brought against the Custodian in respect of which indemnification may be sought hereunder, the Custodian shall give prompt notice of that litigation to the parties hereto, and the parties upon receipt of that notice shall have the obligation and the right to assume the defense of such litigation, provided that failure of the Custodian to give that notice shall not relieve the parties hereto from any of their obligations under this Section 5 unless that failure prejudices the defense of such litigation by said parties. At its own expense, the Custodian may employ separate counsel and participate in the defense. The parties hereto shall not be liable for any settlement without their respective consents.

6. ACKNOWLEDGMENTS BY THE CUSTODIAN

By execution and delivery of this Escrow Agreement, the Custodian acknowledges that the terms and provisions of this Escrow Agreement are acceptable and it agrees to carry out the provisions of this Escrow Agreement on its part.

The Custodian further acknowledges receipt of a copy of the Recapitalization Agreement.

7. RESIGNATION OR REMOVAL OF CUSTODIAN; SUCCESSOR

7.1 Resignation and Removal.

7.1.1 Notice. The Custodian may resign as such following the giving of thirty (30) days' prior written notice to the other parties hereto. Similarly, the Custodian may be removed and replaced following the giving of thirty (30) days' prior written notice to be given to the Custodian jointly by the Representative and Microsoft. In either event, the duties of the Custodian shall terminate thirty (30) days after the date of such notice (or as of such earlier date as may be mutually agreeable), and the Custodian shall then deliver the balance of the Escrowed Shares and Cash Escrow then in its possession to a successor Custodian as shall be appointed by the other parties hereto as evidenced by a written notice filed with the Custodian.

7.1.2 Successor Custodian Appointment. If Microsoft and the Representative are unable to agree upon a successor or shall have failed to appoint a successor prior to the expiration of thirty (30) days following the date of the notice of resignation or removal, then the acting Custodian may appoint a successor escrow holder authorized to do business as a trust company in the State of California or may petition any court of competent jurisdiction for the appointment of a successor Custodian or other appropriate relief, any such resulting appointment shall be binding upon all of the parties hereto.

7.2 Successors. Every successor appointed hereunder shall execute, acknowledge and deliver to its predecessor, and also to the Representative and Microsoft, an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, shall become fully vested with all the duties, responsibilities and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of its successor or any of the parties hereto, execute and deliver an instrument or instruments transferring to such successor all the rights of such predecessor hereunder, and shall duly assign, transfer and deliver all property, securities and monies held by it pursuant to this Escrow Agreement to its successor. Should any instrument be required by any successor for more fully vesting in such successor the duties, responsibilities and obligations hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on the request of any of the other parties hereto, be executed, acknowledged and delivered by the predecessor.

7.3 New Custodian. In the event of an appointment of a successor, the predecessor shall cease to be custodian of any funds, securities or other assets and records it may hold pursuant to this Escrow Agreement, and the successor shall become such custodian.

7.4 Release. Upon acknowledgment by any successor Custodian of the receipt of the then remaining balance of the Escrowed Shares and Cash Escrow, the then acting Custodian shall be fully released and relieved of all duties, responsibilities and obligations under this Escrow Agreement that may arise and accrue thereafter.

7.5 Change of Transfer Agent. In the event ChaseMellon Shareholder Services, L.L.C. ("CHASE"), ceases to be Microsoft's transfer agent, Microsoft shall have the right to substitute its successor transfer agent as the Custodian (assuming such change is acceptable to the successor transfer agent). In the event of such substitution Chase agrees to waive any transfer or other charges other than regular charges for services rendered through such change.

8. FEE

The Custodian will be paid by Microsoft as billed for services hereunder in accordance with the fee schedule attached hereto as Exhibit A and such fees shall not be considered Damages or Indemnifiable Amounts for any

purpose whatsoever. In the event that the Custodian is made a party to litigation with respect to the property held hereunder, or brings an action in interpleader, or in the event that the conditions to this Escrow are not promptly fulfilled, or the Custodian is required to render any service not provided for in this Escrow Agreement and fee schedule, or there is any assignment of the interests of this Escrow or any modification hereof, the Custodian shall be entitled to reasonable compensation for such extraordinary services and reimbursement for all fees, costs, liability, and expenses, including attorneys fees.

9. SECURITIES HOLDERS' REPRESENTATIVE

For purposes of this Escrow Agreement, the Securities Holders have, by the execution of this Escrow Agreement, consented to the appointment of the Representative as representative of the Securities Holders and as the attorney-in-fact for and on behalf of each Securities Holder, and, subject to the express limitations set forth below, the taking by the Representative of any and all actions and the making of any decisions required or permitted to be taken by him under this Escrow Agreement, including but not limited to the exercise of the power to: (i) authorize delivery to or cancellation by Microsoft of the Escrowed Shares and Cash Escrow, or any portion thereof, in satisfaction of Claims otherwise in connection with an Escrow Adjustment, (ii) agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such Claims, (iii) resolve any Claims, and (iv) take all actions necessary in the judgment of the Representative for the accomplishment of the foregoing and all of the other terms, conditions and limitations of this Escrow Agreement. The Representative shall have unlimited authority and power to act on behalf of each Securities Holder with respect to this Escrow Agreement and the disposition, settlement or other handling of all Claims, rights or obligations arising under this Escrow Agreement so long as all Securities Holders are treated in the same manner. The Securities Holders shall be bound by all actions taken by the Representative in connection with this Escrow Agreement, and the Custodian shall be entitled to rely on any action or decision of the Representative. In performing his functions hereunder, the Representative shall not be liable to the Securities Holders in the absence of gross negligence or willful misconduct. In taking any action whatsoever hereunder, the Representative shall be protected in relying upon any notice, paper or other document reasonably believed by him to be genuine, or upon any evidence reasonably deemed by him to be sufficient. The Representative may consult with counsel in connection with his duties hereunder and shall be fully protected in any act taken, suffered or permitted by him in good faith in accordance with the advice of counsel. The Representative shall not be responsible for determining or verifying the authority of any person acting or purporting to act on behalf of any party to this Escrow Agreement. The Representative may be replaced at any time by affirmative vote or written consent of the holders of a majority-in-interest of the Total Escrow (computed based on the dollar value of the total Escrow as of the Closing Date, valuing the Escrowed Shares based on the Microsoft Closing Price). The Representative shall not be entitled to receive any compensation from Microsoft in connection with this Escrow Agreement.

10. TERMINATION

This Escrow Agreement and the Escrow created hereby shall terminate following Custodian's delivery of all remaining Escrowed Shares and Cash Escrow to either the Securities Holders and/or Microsoft pursuant to Sections 2 or 3.

11. INDEMNITY

The terms, conditions, covenants and provisions of Article 7 of the Recapitalization Agreement regarding the indemnification obligations of the Securities Holders are hereby incorporated in full by reference herein.

12. MISCELLANEOUS PROVISIONS

12.1 Parties in Interest. This Escrow Agreement is not intended, nor shall it be construed, to confer any enforceable rights on any person not a party hereto. All of the terms and provisions of this Escrow Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

12.2 Attorneys' Fees. In the event of any action to enforce any provision of this Escrow Agreement, or on account of any default under or breach of this Escrow Agreement, the prevailing party in such action, if Microsoft, shall be entitled to recover from the Securities Holders, in addition to all other relief, all attorneys' fees incurred by Microsoft in connection with such action (including, but not limited to, any appeal thereof). Such fees shall be treated as an Uncontested Claim and shall be payable to Microsoft by the submission of a Microsoft Demand pursuant to Section 2.3.1, and such payments out of the Total Escrow shall be attributed, on a pro rata basis, among the losing parties in such action. If the prevailing party is the Representative or the Securities Holders, such parties shall be entitled to recover from Microsoft, in addition to all other relief, all attorneys' fees incurred by the Securities Holders and/or the Representative in connection with such action (including, but not limited to, any appeal thereof).

12.3 Entire Agreement. This Escrow Agreement constitutes the final and entire agreement among the parties with respect to the subject matter hereof and supersedes all prior arrangements or understandings.

12.4 Notices. All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Agreement will be in writing and will be deemed to have been duly given: (i) on the date of delivery if personally delivered by hand, (ii) upon the third day after such notice is (a) deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (b) sent by a nationally recognized overnight express courier, or (iii) by facsimile upon written confirmation (other than the automatic confirmation that is received from the recipient's facsimile machine) of receipt by the recipient of such notice:

If to Microsoft or Sub:

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
Attention: Robert A. Eshelman
Telephone No.: (206) 882-8080
Facsimile No.: (206) 869-1327

With a copy to:

Preston Gates & Ellis LLP
5000 Columbia Center
701 Fifth Avenue
Seattle, WA 98104-7078
Attention: Richard B. Dodd
Telephone No.: (206) 623-7580
Facsimile No.: (206) 623-7022

If to Company:

WebTV Networks, Inc.
305 Lytton Avenue
Palo Alto, CA 94301
Attn:
Telephone No.: (415) 326-3240
Facsimile No.: (415) 614-1380

With a copy to:

Venture Law Group
2800 Sand Hill Road
Menlo Park, CA 94025
Attn: Joshua Pickus
Telephone No.: (415) 854-4488
Facsimile No.: (415) 854-1121

If to Securities Holders Representative:

Jeffrey D. Brody
c/o Brentwood Associates
3000 Sand Hill Road
Building 1, Suite 260
Menlo Park, CA 94025
Telephone No.: (415)
Facsimile No.: (415)

If to Custodian:

ChaseMellon Shareholder Services, LLC
520 Pike Street, Suite 1220
Seattle, WA 98101
Attention: Dee Henderson
Facsimile: (206) 292-3196

12.5 Amendment. The terms of this Escrow Agreement may not be modified or amended, or any provisions hereof waived, temporarily or permanently, except pursuant to the written agreement of Microsoft, the Representative, and a majority in interest in the Total Escrow.

12.6 Severability. If any term or provision of this Escrow Agreement or the application thereof as to any person or circumstance shall to any extent be invalid or unenforceable, the remaining terms and provisions of this Escrow Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Escrow Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.7 Counterparts. This Escrow Agreement may be executed in two or more partially or fully executed counterparts each of which shall be deemed an original and shall bind the signatory, but all of which together shall constitute but one and the same instrument. The execution and delivery, by facsimile or otherwise, of an Escrow Agreement Signature Page in the form annexed to this Escrow Agreement by any party hereto who shall has been furnished the final form of this Escrow Agreement shall constitute the execution and delivery of this Escrow Agreement by such party, provided counterparts are executed by all other parties herero.

12.8 Headings. The headings of the various sections of this Escrow Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Escrow Agreement.

12.9 Governing Law. This Escrow Agreement shall be construed and controlled by the laws of the State of Washington without regard to the principles of conflicts of laws.

12.10 Binding Effect. This Escrow Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, affiliates, successors and assigns.

ESCROW AGREEMENT SIGNATURE PAGE

In Witness Whereof, the parties have duly executed this Escrow Agreement as of the day and year first above written.

Microsoft Corporation

By _____

Its _____

WebTV Networks, Inc.

By _____

Its _____

Securities Holders' Representative

_____
JEFFREY D. BRODY

ChaseMellon Shareholder Services

By _____
AUTHORIZED SIGNATORY

Securities Holder(s)

_____
(SIGNATURE)

_____
(SIGNATURE)

Print Name(s) _____

Social Security Number(s) _____

Address _____

_____

_____

_____

[PROPOSED]

CERTIFICATE

OF

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

WEBTV NETWORKS, INC.

The undersigned hereby certify that:

1. They are the President and Secretary, respectively, of WebTV Networks, Inc., a California corporation (the "COMPANY").

2. Pursuant to Section 910 of the California General Corporation Law ("CGCL"), the Articles of Incorporation of the Company are amended and restated in its entirety to read as follows:

ARTICLE I

Name

The name of this corporation is WebTV Networks, Inc.

ARTICLE II

Purpose

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the CGCL other than the banking business, the trust company business or the practice or a profession permitted to be incorporated by the CGCL.

ARTICLE III

Capital Shares

3.1 Authorized Shares. The total number of capital shares which the Company shall have authority to issue is shares, which shall consist of shares of Class A Shares, $.01 par value per share ("CLASS A SHARES") and shares of Class B Shares, $.01 par value per share ("CLASS B SHARES").

3.2 Terms of Class A Shares and Class B Shares.

The Class A Shares and Class B Shares shall have the following rights, privileges, restrictions and conditions.

3.2.1 Dividends.

(a) The Board of Directors may declare in its discretion from time to time, and the Company shall pay, dividends out of the assets of the Company properly available to the payment of dividends; provided that, so long as any share of either class is outstanding, any dividend that shall be declared and paid with respect to each share of Class A Shares and Class B Shares shall be identical in amount and character.

(b) Such dividends shall have record and payment dates as may be determined in the discretion of the Board of Directors, subject to compliance with the requirements of Section 3.2.6.

3.2.2 Liquidation

In the event of the liquidation, dissolution or winding-up of the Company or other similar distribution of assets of the Company including the filing of a petition for involuntary liquidation or other proceeding in bankruptcy, of the Company (collectively, a "LIQUIDATION"), the Company shall pay, or shall cause such other person to pay, to the holders of the Class A Shares and the Class B Shares from the assets of the Company available for distribution, for each Class A Share or Class B Share outstanding on the effective date or record date ("LIQUIDATION DATE") of such Liquidation, an amount that, with respect to each share of Class A Shares and Class B Shares, is identical in amount and character. The Company shall immediately give notice to Microsoft Corporation ("MICROSOFT") of any proposed Liquidation and shall also comply with the notice to shareholders requirements of Section 3.2.6.

3.2.3 Company Voting Rights.

The holders of the Class A Shares and Class B Shares shall be entitled to vote for directors and such other matters as may be submitted to the shareholders. Except to the extent required by applicable law, each Class A Share shall have one (1) vote per Class A Share. Each Class B Share shall have ten (10) votes per Class B Share. Except to the extent required by applicable law, the Class A Shares and Class B Shares shall vote as one class. Each holder of Class A Shares and Class B Shares shall be entitled to receive notice of, and to attend, any meetings of shareholders of the Company.

3.2.4 Exchange Rights.

Subject to the exercise of the call right of Microsoft as provided for in Section 3.2.5, holders of Class A Shares shall initially have the right to exchange each Class A Share held into one share of fully paid and non-assessable Microsoft Common Shares, par value $.000025 ("MICROSOFT COMMON SHARES"). The right to exchange and the exchange ratio is subject to the following rights, adjustments and limitations:

(a) Voluntary Exchange. Any share of Class A Shares may, at the option of the holder, be exchanged at any time prior to the end of fifty one months after the effective date of the filing of these Amended and Restated Articles of Incorporation ("EFFECTIVE DATE"). Upon satisfaction of the procedures identified in Section 3.2.4(f), the Company shall, or shall cause some other person to, exchange each share of Class A Shares for, at the Company's election, either (i) such number of Microsoft Common Shares as are equal to the product obtained by multiplying the Class A Exchange Rate (as defined herein) in effect at the time the exchange procedure is initiated in accordance with Section 3.2.4(f) by the number of shares of Class A Shares being exchanged; or (ii) an amount in immediately available funds equal to the Current Market Value of the Microsoft Common Shares issuable upon exchange of the Class A Shares (taking into account the Class A Exchange Rate then in effect) (the "Cash Equivalent Amount").

The "CURRENT MARKET VALUE" of Microsoft Common Shares shall be the closing price as publicly reported by the Nasdaq Stock Market as of 4:00 p.m. (Eastern time) as of the date on which the Exchange Notice is received by the Secretary as provided for in Section 3.2.4(f).

(b) Class A Exchange Rate. The exchange rate (the "CLASS A EXCHANGE RATE") shall initially be 1.0 Microsoft Common Share for each Class A Share and shall be subject to adjustment as provided in this Section 3.2.4.

(c) Adjustments to Class A Exchange Rate Upon Special Event. Upon the happening of a Special Event (as defined below) after the Effective Date, the Class A Exchange Rate shall, simultaneously with the happening of such Special Event, be adjusted by multiplying the then effective Class A Exchange Rate by a fraction, the numerator of which shall be the number of Microsoft Common Shares outstanding immediately after such Special Event and the denominator of which shall be the number of Microsoft Common Shares outstanding immediately prior to such Special Event, and the product so obtained shall thereafter be the Class A Exchange Rate. The Class A Exchange Rate, as so adjusted, shall be readjusted in the same manner upon the happening of any successive Special Event or Events.

"SPECIAL EVENT" shall mean (i) the issue of additional Microsoft Common Shares as a dividend or other distribution on outstanding Microsoft Common Shares, (ii) a subdivision or split of outstanding Microsoft Common Shares into a greater number of Microsoft Common Shares, or (iii) a combination of outstanding Microsoft Common Shares into a smaller number of Microsoft Common Shares.

(d) Capital Reorganization or Reclassification. If the Microsoft Common Shares issuable upon the exchange of Class A Shares shall be changed into the same or a different number of shares of any class or classes of shares, whether by capital reorganization, reclassification, merger, consolidation or otherwise (other than a Special Event provided for elsewhere herein) (collectively referred to as a "REORGANIZATION"), then and in each such event the holder of each Class A Share shall have the right thereafter to exchange each Class A Share into the kind and amount of shares and other securities and property receivable upon such Reorganization, as a holder of a Microsoft Common Share immediately prior to such Reorganization.

(e) Company's Certificate as to Adjustments. In each case of an adjustment or readjustment of the Class A Exchange Rate after the Effective Date the Company and Microsoft will furnish each holder of Class A Shares with a certificate, prepared by the Company in conjunction with Microsoft, showing such adjustment or readjustment, and stating in detail the facts upon which such adjustment or readjustment is based.

(f) Exercise of Exchange Right and Procedure for Exchange. To exercise its exchange right, a holder of Class A Shares shall surrender to the Secretary of the Company, or other person designated by the Company, the certificate or certificates (each a "CERTIFICATE") representing the Class A Shares being exchanged, duly endorsed, and accompanied by a written notice (the "EXCHANGE NOTICE") that such holder elects to exchange such shares. The exchange shall be deemed effective on the day the Certificate and Exchange Notice are received by the Secretary of the Company, or other person designated by the Company. Thereafter, the rights of the holder in the Class A Shares shall cease and the holder (or such other person or persons in whose name or names the Cash Equivalent Amount or any certificate or certificates for Microsoft Common Shares shall be issuable upon such exchange) shall be deemed to have become the holder or holders of record of the Microsoft Common Shares represented thereby (unless the Company shall elect to pay the Cash Equivalent Amount in the exchange, in which event the holder shall be deemed to have a claim against the Company for the Cash Equivalent Amount).

(g) Payment in Absence of Microsoft Exercise of Call Rights. If Microsoft does not exercise its rights under Section 3.2.5 within three (3) business days after the Secretary receives the Exchange Notice, the Company shall cause to be delivered to the holder of Class A Shares being exchanged one or more certificates for Microsoft Common Shares issuable upon the exchange of such Class A Shares or the payment of the Cash Equivalent Amount in immediately available funds as provided for in Section 3.2.4(a).

(h) Fractional Shares. No fractional Microsoft Common Shares shall be issued upon the exchange of Class A Shares. In lieu of such issuance, all Microsoft Common Shares issued to the holders of Class A Shares pursuant to the terms of these Articles shall be rounded to the closest whole Microsoft Common Share.

(i) Partial Exchange. In the event some but not all of the Class A Shares represented by a Certificate or Certificates surrendered by a holder are exchanged, the Company shall execute and deliver to the holder a new certificate representing the number of Class A Shares that were not exchanged.

3.2.5 Call Rights of Microsoft.

(a) Upon Delivery of Certificate and Exchange Notice. Microsoft shall have the right to acquire any Class A Shares as to which the holder has delivered to the Secretary one or more Certificates and an Exchange Notice by delivering, at Microsoft's election, to the holder (i) such number of Microsoft Common

Shares as are equal to the product obtained by multiplying the Class A Exchange Rate in effect at the time the exchange procedure is initiated by the holder in accordance with Section 3.2.4(f) by the number of shares of Class A Shares being exchanged; or (ii) an amount in immediately available funds equal to the Cash Equivalent Amount.

(b) Class Call. Microsoft shall have the right to acquire all, but not less than all, outstanding Class A Shares, solely for Microsoft Common Shares, upon delivery of an irrevocable written notice by Microsoft to the Company at any time during the period commencing five years and six months after the Effective Date and ending six years after the Effective Date. Microsoft's right to acquire the Class A Shares pursuant to this paragraph may be effected without any further action by the holders of the Class A Shares. Microsoft may, as a condition to payment (which condition Microsoft may in its sole discretion waive), require holders of the Class A Shares to surrender the Certificates representing the Class A Shares to the Company or its Secretary. In settlement of its obligations under this Section 3.2.5, Microsoft shall deliver to each holder of Class A Shares such number of Microsoft Common Shares as are equal to the product obtained by multiplying the Class A Exchange Rate in effect at the time Microsoft shall deliver its written notice to the Company of its election to exercise the Class Call by the number of shares of Class A Shares then held by such holder.

3.2.6 Notices to Shareholders. The Company or Microsoft, as the case may be, shall provide each holder of Class A Shares written notice of (1) adoption of a plan of Liquidation by the Company; (2) declaration of a dividend record date by the Company; (3) exercise of call rights by Microsoft pursuant to Section 3.2.5(b), in each case specifying a date for the taking of the foregoing actions not more than sixty (60) and not less than fifteen (15) days prior thereto. Any notice required by this Article III shall be sent by first class mail to the address of each holder of Class A Shares on the stock records of the Company as maintained by the Secretary.

3.2.7 Payments to Shareholders.

Whenever required by this Article III, the Company shall pay or deliver, or cause another person to pay or deliver, the dollar amounts or certificates representing the Microsoft Common Shares specified by this Article III (collectively, the "CONSIDERATION"). The Company's obligations hereunder shall be satisfied by delivering, or causing another person to deliver, to each holder, at the address of the holder recorded in the securities register of the Company for the Class A Shares or Class B Shares the Consideration. On and after receipt of an Exchange Notice or notice of exercise of Microsoft's call rights under Section 3.2.5, the holders of the Class A Shares shall cease to be holders of such Class A Shares and shall not be entitled to exercise any of the rights of holders in respect thereof, other than the right to receive the Consideration payable to them. In the event of any Liquidation or exercise of Microsoft's rights pursuant to Section 3.2.5(b), the Company shall have the right to deposit or cause to be deposited the Consideration payable in respect of the Class A Shares represented by Certificates that have not at such date been surrendered by the holders thereof in a custodial account with any national bank or trust company. Upon such deposit being made, the rights of the holders of Class A Shares after such deposit shall be limited to receiving their proportionate part of the Consideration (less any tax required to be deducted and withheld therefrom) for such Class A Shares so deposited, against presentation and surrender of the said Certificates held by them, respectively, in accordance with the foregoing provisions.

3.2.8 Rights Reserved to Class B Shares.

Except as specifically provided in this Article III, the holders of the Series B Shares shall be entitled to all residual rights in the Company.

3.2.9 Amendment and Approval.

The rights, privileges, restrictions and conditions applicable to the Class A Shares may be amended or modified only on the approval of the holders of a majority of the Class A Shares of a resolution which is first approved by the Board of Directors of the Company and submitted for approval by the holders of Class A Shares at a duly called meeting or pursuant to the solicitation of written consents either of which shall be in accordance with applicable provisions of the CGCL.

ARTICLE IV

Limitation of Liability

The liability of the directors of the Company for monetary damages shall be eliminated to the fullest extent permissible under California law as the same exists or may hereafter be amended.

ARTICLE V

Indemnification

The Company is authorized to provide indemnification of agents (as defined in Section 317 of the CGCL) for breach of duty to the Company and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the CGCL, subject to the limits on such excess indemnification set forth in Section 204 of the CGCL.

3. The foregoing Restated Articles of Incorporation of the Company have been duly approved by the Board of Directors of the Company.

4. The foregoing Restated Articles of Incorporation have been duly approved by the required vote of shareholders in accordance with Section 902 and 903 of the CGCL. The total number of outstanding shares of the Company is Common Shares, 1,510,533 Series A Convertible Preferred Shares (entitled to vote 1,661581 shares), 6,316,705 Series B Convertible Preferred Shares, 6,316,705 Series C Convertible Preferred Shares, and 1,343,570 Series D Convertible Preferred Shares.

5. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required for the amendment was: (i) more than fifty percent (50%) of the Series A, B, C, and D Convertible Preferred Shares voting together as a single class; and (ii) more than fifty percent (50%) of the Common Shares voting as a single class.

_____

Stephen G. Perlman
President

_____

Bruce A. Leak
Secretary

The undersigned declare under penalty of perjury that the matters set forth in the foregoing certificate are true and correct of our own knowledge.

Executed in Palo Alto, California on , 1997

_____

Stephen G. Perlman

_____

Bruce A. Leak

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 20. INDEMNIFICATION OF OFFICERS AND DIRECTORS.

WebTV Networks, Inc.

Article XII of the WNI Bylaws provides that it may indemnify each person who is or was a director or officer of the Company to the full extent permitted by California law. Such article also provides that WNI may, but is not required to, indemnify its employees and agents (other than directors and officers) to the extent and in the manner permitted by California law.

WNI has entered into an indemnification agreement with each of the directors and officers and intends to maintain insurance for the benefit of its directors and officers insuring such persons against certain liabilities, including liabilities under the securities laws.

See also the undertakings set out in response to Item 22 herein.

Microsoft

Article XII of the Restated Articles of Incorporation of Microsoft authorizes Microsoft to indemnify any present or former director or officer to the fullest extent not prohibited by the WBCA, public policy or other applicable law. Sections 23B.08.510 through .570 of the WBCA authorizes a corporation to indemnify its directors, officers, employees, or agents in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including provisions permitting advances for expenses incurred) arising under the Securities Act.

In addition, Microsoft maintains directors' and officers' liability insurance under which its directors and officers are insured against loss (as defined in the policy) as a result of claims brought against them for their wrongful acts in such capacities.

ITEM 21. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.

(A) EXHIBITS

WebTV Networks, Inc.

EXHIBIT NO.	DESCRIPTION	PAGE OR FOOTNOTE
2.1	Agreement and Plan of Recapitalization (See Appendix A).....	
2.2	Escrow Agreement (See Appendix D).....	
3.1(a)	Articles of Incorporation of WNI as amended to date....	
3.1(b)	Articles of Incorporation of WNI to be filed in connection with the consummation of the Recapitalization (See Appendix E).....	
3.2	Bylaws of WNI as amended to date.....	
4.1	Stock Purchase Agreement dated November 9, 1995, between WNI and the purchaser of Series A Convertible Preferred Stock.....	
4.2	Restated Series B Convertible Preferred Stock Purchase Agreement between WNI and the purchasers of Series B Convertible Preferred Stock.....	
4.3	Series C Convertible Preferred Stock Purchase Agreement dated September 13, 1996 between WNI and the purchasers of Series C Convertible Preferred Stock....	
4.4	Series D Convertible Preferred Stock Purchase Agreement between WNI and the Purchaser of Series D Preferred Stock.....	
4.5	Warrant Agreement dated January 6, 1997 between WNI and Comdisco, Inc.	

EXHIBIT NO.	DESCRIPTION	PAGE OR FOOTNOTE
4.6	Preferred Stock Purchase Warrant dated June 30, 1996 between WNI and Lighthouse Capital Partners II, L.P. ..	
4.7	Warrant to Purchase Series C Preferred Stock dated February 7, 1997 between WNI and MMC/GATX Partnership No. 1.....	
4.8	1996 Stock Incentive Plan and forms of Incentive Stock Option Agreements and Nonstatutory Stock Option Agreements thereunder.....	
5.1*	Opinion of Venture Law Group, A Professional Corporation.....	
8.1*	Tax Opinion of Venture Law Group, A Professional Corporation.....	
10.1	Form of Indemnification Agreement between WNI and its directors and officers.....	
10.2	Lease dated September 1, 1995 for facilities located at 275 Alma Street in Palo Alto, California.....	
10.3	Lease dated August 10, 1996 for facilities located at 325 Lytton Avenue in Palo Alto, California.....	
10.4	Sublease dated June 14, 1996 for facilities located at 305 Lytton Avenue and 335 Bryant Avenue in Palo Alto, California.....	
10.5	Lease dated January 6, 1997 for facilities located at 151 Lytton Avenue in Palo Alto, California.	
10.6	Sublease dated December 10, 1996 for facilities located at 361 Lytton Avenue, Palo Alto, California.....	
11.1	Calculation of Net Loss Per Share.....	
23.1	Consent of Ernst & Young LLP, Independent Auditors.....	
23.2	Consent of Counsel (contained in Exhibit 5.1).....	
23.3	Consent of Deutsche Morgan Grenfell Inc. (contained in Appendix B)	
24.1	Power of Attorney.....	II-5

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* To be filed by amendment.

EXHIBIT NO.	DESCRIPTION	PAGE OR FOOTNOTE
3.1	Restated Articles of Incorporation of Microsoft Corporation.....	(3)
3.2	Bylaws of Microsoft Corporation.....	(1)
5.1*	Opinion of Preston Gates & Ellis LLP.....	
8.1*	Tax Opinion of Preston Gates & Ellis.....	
13.1	Quarterly and Market Information Incorporated by Reference to Page 28 of 1996 Annual Report to Shareholders ("1996 Annual Report").....	(2)
13.2	(Intentionally Omitted).....	
13.3	Management's Discussion and Analysis of Financial Condition and Results of Operations Incorporated by Reference to Pages 16-19, 22, and 23 of 1996 Annual Report.....	(2)
13.4	Financial Statements Incorporated by Reference to Pages 1, 15, 20, 21, 24-29, and 31 of 1996 Annual Report.....	(2)

EXHIBIT NO.	DESCRIPTION	PAGE OR FOOTNOTE
23.1	Consent of Deloitte & Touche LLP.....	
23.2	Consent of Preston Gates & Ellis LLP (contained in Exhibit 5.1).....	
24.1	Power of Attorney.....	II-6

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* To be filed by amendment.
(1) Incorporated by reference to Microsoft's Form 10-K for the fiscal year ended June 30, 1994.
(2) Incorporated by reference to Microsoft's Form 10-K for the fiscal year ended June 30, 1996.
(3) Incorporated by reference to Microsoft's Regulation Statement on Form S-3 (Commission File No. 333-17143)

(B) FINANCIAL STATEMENT SCHEDULES

Financial statement schedules have been omitted because they are not applicable or are not required as the information set forth therein is included in the financial statements or notes thereto.

ITEM 22. UNDERTAKINGS.

Each of the undersigned registrants hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) ((S) 230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

Each of the undersigned registrants hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934; and, where interim financial information required to be presented by Article 3 of Regulation S-X are not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, each of the registrants has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

Each of the undersigned registrants hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

Each of the undersigned registrants hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

SIGNATURES

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, THE REGISTRANT HAS DULY CAUSED THIS REGISTRATION STATEMENT TO BE SIGNED ON ITS BEHALF BY THE UNDERSIGNED, THEREUNTO DULY AUTHORIZED, IN THE CITY OF PALO ALTO, STATE OF CALIFORNIA ON MAY 2, 1997.

WebTV Networks, Inc.

By: /s/ Albert A. Pimentel
ALBERT A. PIMENTEL
CHIEF FINANCIAL OFFICER

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Albert A. Pimentel and/or Stephen G. Perlman, his or her attorney-in-fact, for him or her in any and all capacities, to sign any amendments to this Registration Statement, and to file the same, with exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorney-in-fact, or his substitute, may do or cause to be done by virtue hereof.

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, THIS REGISTRATION STATEMENT HAS BEEN SIGNED BY THE FOLLOWING PERSONS IN THE CAPACITIES AND ON THE DATES INDICATED.

SIGNATURES	TITLE	DATED
/s/ Albert A. Pimentel ALBERT A. PIMENTEL	Chief Financial Officer (Principal Financial and Accounting Officer)	May 2, 1997
/s/ Stephen G. Perlman STEPHEN G. PERLMAN	President and Chief Executive Officer; Director (Principal Executive Officer)	May 2, 1997
/s/ Bruce A. Leak BRUCE A. LEAK	Director	May 2, 1997
/s/ Phillip Y. Goldman PHILLIP Y. GOLDMAN	Director	May 2, 1997
/s/ Jeffrey D. Brody JEFFREY D. BRODY	Director	May 2, 1997
/s/ G. Kevin Doren G. KEVIN DOREN	Director	May 2, 1997
/s/ Randy Komisar RANDY KOMISAR	Director	May 2, 1997

SIGNATURES

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, THE REGISTRANT HAS DULY CAUSED THIS REGISTRATION STATEMENT TO BE SIGNED ON ITS BEHALF BY THE UNDERSIGNED, THEREUNTO DULY AUTHORIZED, IN THE CITY OF REDMOND, STATE OF WASHINGTON ON MAY 2, 1997.

Microsoft Corporation

By: /s/ Michael W. Brown
MICHAEL W. BROWN VICE PRESIDENT, FINANCE, CHIEF FINANCIAL OFFICER

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints William H. Gates III and/or Michael W. Brown, his or her attorney-in-fact, for him or her in any and all capacities, to sign any amendments to this Registration Statement, and to file the same, with exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorney-in-fact, or his substitute, may do or cause to be done by virtue hereof.

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, THIS REGISTRATION STATEMENT HAS BEEN SIGNED BY THE FOLLOWING PERSONS IN THE CAPACITIES AND ON THE DATES INDICATED.

SIGNATURE	TITLE	DATE
/s/ Michael W. Brown MICHAEL W. BROWN	Vice President, Finance; Chief Financial Officer (Principal Financial and Accounting Officer)	May 2, 1997
/s/ William H. Gates WILLIAM H. GATES	Chairman, Chief Executive Officer, Director (Principal Executive Officer)	May 2, 1997
/s/ Paul G. Allen PAUL G. ALLEN	Director	May 2, 1997
/s/ Jill E. Barad JILL E. BARAD	Director	May 2, 1997
/s/ Richard A. Hackborn RICHARD A. HACKBORN	Director	May 2, 1997
/s/ David F. Marquardt DAVID F. MARQUARDT	Director	May 2, 1997
/s/ Robert D. O'Brien ROBERT D. O'BRIEN	Director	May 2, 1997
/s/ William G. Reed, Jr. WILLIAM G. REED, JR.	Director	May 2, 1997
/s/ Jon A. Shirley JON A. SHIRLEY	Director	May 2, 1997

EXHIBIT INDEX

WebTV Networks, Inc.

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* To be filed by amendment.

EXHIBIT 3.1(a)

ARTICLES OF INCORPORATION
OF
WEBTV NETWORKS, INC.

I.

The name of this corporation is WebTV Networks, Inc.

II.

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

The name and address in the State of California of this corporation's initial agent for service of process is:

Stephen G. Perlman
721 Tiana Lane
Mountain View, California 94041

IV.

The corporation is authorized to issued one (1) class of shares, designated Common Stock, of which the corporation is authorized to issued one hundred million (100,000,000) shares.

V.

The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law as the same exists or may hereafter be amended.

VI.

The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the Corporations Code) for breach of duty to the corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the Corporations Code.

The undersigned declares under penalty of perjury under the laws of the State of California that the matters set forth in the foregoing certificate are true of his own knowledge.

Executed on this 29th day of June, 1995.

_____

Stephen G. Perlman Incorporator

CERTIFICATE OF AMENDMENT OF
ARTICLES OF INCORPORATION OF
WEBTV NETWORKS, INC.

The undersigned hereby certify that:

1. They are the President and Secretary, respectively, of WebTV Networks, Inc., a California corporation (the "Corporation").

2. Article IV of the Articles of Incorporation of the Corporation is amended in its entirety to read as follows:

"The Corporation is authorized to issue two classes of shares to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares the Corporation shall have the authority to issue is one hundred million (100,000,000) shares of Common Stock, without par value, and twenty-five million (25,000,000) shares of Preferred Stock, without par value. Preferred Stock may be issued from time to time in one or more series.

Subject to the provisions set forth in Section 6, the Board of Directors is authorized to fix the number of shares of any series of any Preferred Stock and to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series of Preferred Stock, to increase or decrease, but not below the number of shares of any such series then outstanding, the number of shares of any such series subsequent to the issue of shares of that series. The first series of Preferred Stock shall be designated "Series A Convertible Preferred" and shall consist of one million five hundred ten thousand five hundred thirty-three (1,510,533) shares. The second series of Preferred Stock shall be designated "Series B Convertible Preferred" and shall consist six million five hundred sixty-seven thousand four hundred eighty-four (6,567,484) shares. The third series of Preferred Stock shall be designated "Series C Convertible Preferred" and shall consist of four million nine hundred twenty thousand five hundred sixty-eight (4,920,568) shares. The fourth series of Preferred Stock shall be designated "Series D Convertible Preferred" and shall consist of nine million five hundred ninety-six thousand nine hundred twenty-eight (9,596,928) shares.

The relative rights, designations, preferences, qualifications, privileges, limitations and restrictions granted to or imposed upon the authorized Preferred Stock and the holders thereof are as follows:

Section 1. Dividends. The holders of Series A Convertible Preferred, Series B Convertible Preferred, Series C Convertible Preferred and Series D Convertible Preferred shall be entitled to receive, when, as and if declared by the Board of Directors, out of funds legally available therefor, dividends at the annual rate of $0.0794 per share in the case of Series A Convertible Preferred, $0.1141 per share in the case of Series B Convertible Preferred, $0.4979 per share in the case of Series C Convertible Preferred and $0.7294 per

share in the case of Series D Convertible Preferred held by the respective holders thereof (appropriately adjusted for any recapitalization, stock dividend, stock split, reverse stock split or similar event (each, a "Recapitalization")), payable in semi-annual installments and in preference and priority to any payment of any dividend on Junior Stock (as defined below) of the Corporation. So long as any share of Preferred Stock is outstanding, no deposit, payment, dividends or other distributions shall be made with respect to the Junior Stock until all declared dividends on the Preferred Stock have been paid or set apart. Dividends shall not be cumulative, and no right to such dividends shall accrue to holders of Series A Convertible Preferred, Series B Convertible Preferred, Series C Convertible Preferred or Series D Convertible Preferred, unless declared by the Board of Directors. "Junior Stock" means Common Stock and all other stock of the Corporation ranking junior to the Preferred Stock as to the payment of dividends and the distribution of assets upon liquidation. Dividends, if paid or declared and set apart for payment, must be paid or declared and set apart for payment in full on Series A Convertible Preferred, Series B Convertible Preferred, Series C Convertible Preferred and Series D Convertible Preferred, as applicable.

Section 2. Liquidation Preference.

(a) In the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary (a "Liquidation"), the holders of each share of Series A Convertible Preferred, Series B Convertible Preferred, Series C Convertible Preferred and Series D Convertible Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Junior Stock by reason of their ownership of such stock, an amount equal to $0.9930 per share for each share of Series A Convertible Preferred, $1.63 per share for each share of Series B Convertible Preferred, $7.1130 per share for each share of Series C Convertible Preferred and $10.42 per share for each share of Series D Convertible Preferred then held by them, in each case adjusted for any Recapitalization with respect to such shares and, in addition, an amount equal to all declared but unpaid dividends on such shares (respectively, the "Series A Convertible Preferred Liquidation Preference," the "Series B Convertible Preferred Liquidation Preference," the "Series C Convertible Preferred Liquidation Preference" and the "Series D Convertible Preferred Liquidation Preference").

(b) If the assets or property to be distributed are insufficient to permit the payment to holders of Series A Convertible Preferred, Series B Convertible Preferred, Series C Convertible Preferred and Series D Convertible Preferred of their full preferential amounts, the entire assets and property legally available for distribution shall be distributed ratably among the holders of Series A Convertible Preferred, Series B Convertible Preferred, Series C Convertible Preferred and Series D Convertible Preferred in such a manner that the preferential amount to be distributed to each such holder shall equal the amount obtained by multiplying the entire assets and funds of the Corporation legally available for distribution hereunder by a fraction, which

(i) in the case of Series A Convertible Preferred, shall have a numerator determined by multiplying the number of shares of Series A Convertible Preferred then held by such holder by the Series A Convertible Preferred Liquidation Preference, and a denominator consisting of the sum of (A) the total number of shares of Series A Convertible

Preferred then outstanding multiplied by the Series A Convertible Preferred Liquidation Preference, (B) the total number of shares of Series B Convertible Preferred then outstanding multiplied by the Series B Convertible Preferred Liquidation Preference, (C) the total number of shares of Series C Convertible Preferred then outstanding multiplied by the Series C Convertible Preferred Liquidation Preference and (D) the total number of shares of Series D Convertible Preferred then outstanding multiplied by the Series D Convertible Preferred Liquidation Preference; and

(ii) in the case of Series B Convertible Preferred, shall have a numerator determined by multiplying the number of shares of Series B Convertible Preferred then held by such holder by the Series B Convertible Preferred Liquidation Preference, and a denominator consisting of the sum of (A) the total number of shares of Series A Convertible Preferred then outstanding multiplied by the Series A Convertible Preferred Liquidation Preference, (B) the total number of shares of Series B Convertible Preferred then outstanding multiplied by the Series B Convertible Preferred Liquidation Preference, (C) the total number of shares of Series C Convertible Preferred then outstanding multiplied by the Series C Convertible Preferred Liquidation Preference and (D) the total number of shares of Series D Convertible Preferred then outstanding multiplied by the Series D Convertible Preferred Liquidation Preference;

(iii) in the case of Series C Convertible Preferred, shall have a numerator determined by multiplying the number of Series C Convertible Preferred then held by such holder by the Series C Convertible Preferred Liquidation Preference, and a denominator consisting of the sum of (A) the total number of shares of Series A Convertible Preferred then outstanding multiplied by the Series A Convertible Preferred Liquidation Preference, (B) the total number of shares of Series B Convertible Preferred then outstanding multiplied by the Series B Convertible Preferred Liquidation Preference, (C) the total number of shares of Series C Convertible Preferred then outstanding multiplied by the Series C Convertible Preferred Liquidation Preference and (D) the total number of shares of Series D Convertible Preferred then outstanding multiplied by the Series D Convertible Preferred Liquidation Preference; and

(iv) in the case of Series D Convertible Preferred, shall have a numerator determined by multiplying the number of Series D Convertible Preferred then held by such holder by the Series D Convertible Preferred Liquidation Preference, and a denominator consisting of the sum of (A) the total number of shares of Series A Convertible Preferred then outstanding multiplied by the Series A Convertible Preferred Liquidation Preference, (B) the total number of shares of Series B Convertible Preferred then outstanding multiplied by the Series B Convertible Preferred Liquidation Preference, (C) the total number of shares of Series C Convertible Preferred then outstanding multiplied by the Series C Convertible Preferred Liquidation Preference and (D) the total number of shares of Series D Convertible Preferred then outstanding multiplied by the Series D Convertible Preferred Liquidation Preference.

(c) After payment has been made to the holders of Series A Convertible Preferred, Series B Convertible Preferred, Series C Convertible Preferred and Series D Convertible Preferred of the full preferential amounts to which they shall be entitled as

aforesaid, the holders of the Junior Stock shall be entitled to receive distributions of the remaining assets of the Corporation in proportion to their respective ownership of Junior Stock.

(d) For purposes of this Section 2, a Liquidation shall be deemed to be occasioned by, or to include (i) a merger or consolidation of this Corporation (excluding any merger effected exclusively for the purpose of changing the domicile of this Corporation), or (ii) a sale of all or substantially all of the assets of this Corporation, unless in either case this Corporation's shareholders of record as constituted immediately prior to such transaction will, immediately after such transaction (by virtue of securities issued in such transaction or otherwise), hold at least 50% of the voting power of the surviving or acquiring entity.

Section 3. Voting Rights.

(a) Except as otherwise required by law or by Section 3(b) or Section 6, the holder of each share of Common Stock issued and outstanding shall have one vote and the holder of each share of Preferred Stock issued and outstanding shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted at the record date for determination of the shareholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is solicited, such votes to be counted together with all other shares of stock of the Corporation having general voting power and not separately as a class. Holders of Common Stock, Series A Convertible Preferred, Series B Convertible Preferred, Series C Convertible Preferred and Series D Convertible Preferred shall be entitled to notice of any shareholders' meeting made in accordance with the Bylaws of the Corporation. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) be rounded to the nearest whole number.

(b) So long as the holders of Series D Preferred Stock hold at least ten percent (10%) of TVP (as defined in Section 4(d)(i)(5) below), (i) the holders of Series D Preferred Stock, voting separately as a class, shall have the right to elect one member of the Board of Directors of this Corporation (the "Series D Director"), and (ii) the remaining members of the Board of Directors of this Corporation (collectively, the "Other Directors") shall be elected by the holders of Preferred Stock and the holders of Common Stock, voting together as a class in accordance with Section 3(a). So long as the holders of Series D Preferred Stock hold at least ten percent (10%) of TVP, the Series D Director may be removed from the Board of Directors only by the affirmative vote of the holders of a majority of Series D Preferred Stock, voting separately as a class, and the Other Directors may be removed from the Board of Directors only by the affirmative vote of the holders of a majority of Preferred Stock and Common Stock, voting together as a class in accordance with Section 3(a); provided, however, that no director may be removed (unless the entire board is removed) when the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively by the shareholders entitled to vote thereon at an election in which the same total number of votes were cast (or, if the action is taken by written consent, all shares entitled to vote were voted) and the entire number of

directors authorized at the time of the director's most recent election were then being elected. If a vacancy on the Board of Directors is to be filled by the Board of Directors, only a director or directors elected by the same class or classes of shareholders as those who would be entitled to vote to fill such a vacancy, if any, shall vote to fill such vacancy.

Section 4. Conversion. The holders of Preferred Stock have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert.

(i) Each share of Series A Convertible Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for Series A Convertible Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing $0.9930 plus an amount equal to all declared but unpaid dividends on each such share on such date by the Series A Conversion Price, determined as hereinafter provided, in effect at the time of the conversion. The price at which Common Stock shall be deliverable upon conversion of Series A Convertible Preferred shall initially be $0.9027 per share of Common Stock upon the conversion of Series A Convertible Preferred (the "Series A Conversion Price"), and shall be subject to adjustment as set forth in this Section 4.

(ii) Each share of Series B Convertible Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for Series B Convertible Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing $1.63 plus an amount equal to all declared but unpaid dividends on each such share on such date by the Series B Conversion Price, determined as hereinafter provided, in effect at the time of the conversion. The price at which Common Stock shall be deliverable upon conversion of Series B Convertible Preferred shall initially be $1.63 per share of Common Stock upon the conversion of Series B Convertible Preferred (the "Series B Conversion Price"), and shall be subject to adjustment as set forth in this Section 4.

(iii) Each share of Series C Convertible Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for Series C Convertible Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing $7.1130 plus an amount equal to all declared but unpaid dividends on each such share on such date by the Series C Conversion Price, determined as hereinafter provided, in effect at the time of the conversion. The price at which Common Stock shall be deliverable upon conversion of Series C Convertible Preferred shall initially be $7.1130 per share of Common Stock upon the conversion of Series C Convertible Preferred (the "Series C Conversion Price"), and shall be subject to adjustment as set forth in this Section 4.

(iv) Each share of Series D Convertible Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for Series D Convertible Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing $10.42

plus an amount equal to all declared but unpaid dividends on each such share on such date by the Series D Conversion Price, determined as hereinafter provided, in effect at the time of the conversion. The price at which Common Stock shall be deliverable upon conversion of Series D Convertible Preferred shall initially be $10.42 per share of Common Stock upon the conversion of Series D Convertible Preferred (the "Series D Conversion Price"), and shall be subject to adjustment as set forth in this Section 4.

For purposes of this Section 4, the term "Conversion Price" shall refer to the applicable Series A Conversion Price, the Series B Conversion Price, Series C Conversion Price and/or Series D Conversion Price, as the case may be, unless specifically stated otherwise.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price upon the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock of the Corporation to the public, which public offering results in aggregate gross proceeds to the Corporation (net of underwriting discounts and commissions) of at least (i) $10,000,000 with a price per share of at least $7.50, in the case of Series A Convertible Preferred, Series B Convertible Preferred and Series C Convertible Preferred, and (ii) $40,000,000 with a price per share of at least $11.50, in the case of Series D Convertible Preferred (in each case as adjusted for any Recapitalization) (the "Initial Public Offering"). Notwithstanding the foregoing, in the event of the automatic conversion of the Preferred Stock upon the Initial Public Offering, the person(s) entitled to receive the Common Stock issuable upon such conversion shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock and shall give written notice to the Corporation at such office that he elects to convert the same; provided, however, that in the event of an automatic conversion pursuant to Section 4(b), the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after delivery of such certificates or such agreement and indemnification in the case of a lost, stolen or destroyed certificate, issue and

deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted or, in the case of automatic conversion pursuant to Section 4(b), on the date immediately preceding the closing of the Initial Public Offering, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. Notwithstanding the foregoing, in the event of the automatic conversion of the Preferred Stock upon the Initial Public Offering, the person(s) entitled to receive the Common Stock issuable upon such conversion shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock as from time to time shall be sufficient to effect the conversion of all outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall in accordance with the laws of the State of California increase the authorized amount of its Common Stock to a level sufficient to permit conversion of the Preferred Stock.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Section 4(d) and Section 3(b), the following definitions shall apply:

(1) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(2) "Original Issue Date" shall mean the date on which the first share of Series D Convertible Preferred was first issued.

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than the Common Stock) or other securities convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 4(d)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable at any time:

(A) upon conversion of Series A Convertible Preferred, Series B Convertible Preferred, Series C Convertible Preferred or Series D Convertible Preferred;

(B) to officers, directors, and employees of, and consultants to, the Corporation to be designated and approved by the Board of Directors;

(C) to the Corporation's landlords or lenders which represent, or upon exercise would represent, less than one percent (1%) of TVP (as defined in Section 4(d)(i)(5) below) in the aggregate; or

(D) as a dividend or distribution on Series A Convertible Preferred, Series B Convertible Preferred, Series C Convertible Preferred and Series D Convertible Preferred if such dividend or distribution is made pro rata based on the respective percentages of TVP represented by Series A Convertible Preferred, Series B Convertible Preferred, Series C Convertible Preferred and Series D Convertible Preferred on the record date for such dividend or distribution or, if no record date is established, on the date such dividend or distribution is made.

(5) "TVP" shall mean the total number of votes that may be cast in the election of directors (without taking into effect cumulative voting, if any) of the Corporation if all securities entitled to vote generally in such election were present and voted, assuming full conversion, exchange or exercise of all Convertible Securities and Options of the Corporation that are issued or granted and outstanding or reserved for issuance or grant by the Corporation.

(ii) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event that the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii), but, excluding any shares issued whereby an adjustment to the Conversion Price is made pursuant to Section 4(e), (f), (g) or (h) below) without consideration or for a consideration per share less than the Conversion Price on the date of and immediately prior to such issue, then and in such event, the Conversion Price shall be reduced to a price (calculated to the nearest hundredth of a cent) determined by multiplying the Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock would purchase at the Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; provided, that, for the purpose of this Section 4(d)(ii), all shares of Common Stock issuable upon conversion of any outstanding Preferred Stock, options, warrants, or convertible securities shall be deemed to be outstanding. The Conversion Price shall not be so reduced at that time if the amount of such reduction would be an amount less than one cent ($0.01), but any such amount shall be carried forward and reduction with respect thereto made at the time of any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate to one cent ($0.01) or more. No adjustment in the Series A Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the

Series A Conversion Price in effect on the date of, and immediately prior to, such issue. No adjustment in the Series B Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Series B Conversion Price in effect on the date of, and immediately prior to, such issue. No adjustment in the Series C Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Series C Conversion Price in effect on the date of, and immediately prior to, such issue. No adjustment in the Series D Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Series D Conversion Price in effect on the date of, and immediately prior to, such issue. Except to the limited extent provided in Section 4(d)(iii)(1)(B), Section 4(d)(iii)(1)(C) and Section 4(e), no adjustment of the Conversion Price shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(iii) Deemed Issuance of Additional Shares of Common Stock.

(1) Options and Convertible Securities. Except as otherwise provided in Section 4(d)(ii), in the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 4(d)(iv) hereof) of such Additional Shares of Common Stock would be less than the Conversion Price and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the

occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(I) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) no readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(E) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options.

(iv) Determination of Consideration. For purposes of this Section 4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends and provided further that no deduction shall be made for any commission or expense paid or incurred by the Corporation for any underwriting of the issue or otherwise in connection therewith;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(d)(iii)(1), relating to Options and Convertible Securities, shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) Adjustments for Subdivisions, Stock Dividends, Combinations or Consolidation of Common Stock. In the event that the outstanding shares of Common Stock shall be subdivided or increased (by stock split, stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion Price then in effect shall, concurrently with the effectiveness of such subdivision or the close of business on the record date for the determination of holders of Common Stock entitled to receive such stock dividend, be proportionately decreased; provided, however, that if following the record date with respect to such stock dividend such dividend is not fully paid, the Conversion Price shall be recomputed accordingly based on the number of shares of Common Stock actually issued. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification, reverse stock split or otherwise, into a lesser number of shares of Common Stock, the Conversion Price then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(f) Adjustments for Other Distributions. In the event the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, any distribution payable in securities of the Corporation (other than shares of Common Stock) or other persons and other than as otherwise provided for elsewhere in this Section 4, then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation or such other person which they would have received had their Preferred Stock

been converted into Common Stock immediately prior to such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4 with respect to the rights of the holders of the Preferred Stock.

(g) Adjustment for Reclassification, Exchange and Substitution. If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than as provided for elsewhere in this Section 4 or Section 2), the Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Preferred Stock immediately before that change.

(h) Adjustment for Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than as provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of Preferred Stock shall thereafter be entitled to receive upon conversion of Preferred Stock the number of shares of stock or other securities or property of this Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(i) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each affected holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate

setting forth (i) such adjustments and readjustments, (ii) the appropriate Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(k) Notices of Record Date. In the event that this Corporation shall propose at any time:

(i) to declare any dividend or distribution upon its Junior Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights (except for offers for subscription made pursuant to the Corporation's 1996 Stock Incentive Plan);

(iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iv) to merge or consolidate, or enter into any other business combination with, or into any other corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up;

then, in connection with each such event, this Corporation shall send to the holders of the Preferred Stock (1) at least twenty (20) days' prior written notice of the date on which a record shall be taken for any such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto); and (2) in the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such an event).

Each such written notice shall be delivered personally or given by first-class mail, postage prepaid, addressed to the holders of the Preferred Stock at the address for each such holder as shown on the books of this Corporation.

Section 5. Status of Converted Shares. In case shares of Preferred Stock shall be converted pursuant to Section 4, the shares so converted shall be canceled, retired and eliminated from the shares which the Corporation is authorized to issue.

Section 6. Covenants. In addition to any other rights provided by law, this Corporation shall not, without first obtaining the approval of the majority of the outstanding shares of Series A Convertible Preferred, Series B Convertible Preferred and Series D Convertible Preferred, voting together as a class on an as-converted basis:

(a) apply any of its assets to the redemption, retirement, purchase or other acquisition directly or indirectly, through subsidiaries or otherwise, of any shares of Preferred Stock, except as set forth in Section 7 herein;

(b) apply any of its assets to the repurchase or other acquisition directly or indirectly, through subsidiaries or otherwise, of any shares of Common Stock (except from directors, employees and consultants of the Corporation upon termination of employment) exceeding $25,000 in any twelve month period;

(c) create or issue any new class or series of stock or any new series of Preferred Stock or reclassify any shares of Common Stock or any other stock of the Corporation into shares having any preference or priority as to dividends or assets superior to or on a parity with any such preference or priority of the Preferred Stock;

(d) declare or pay dividends on or make any distribution on account of any shares of Common Stock;

(e) merge, consolidate or sell or assign substantially all of the Corporation's assets;

(f) increase or decrease the authorized number of shares of Preferred Stock; and

(g) amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation (as amended from time to time) that would change the rights, preferences, privileges or limitations of the Preferred Stock.

Section 7. Mandatory Redemption.

(a) Series A Redemption. This Corporation shall redeem, from any source of funds legally available therefor, the Series A Convertible Preferred in four annual installments beginning on March 13, 2003, and continuing thereafter each year until March 13, 2006 (each a "Series A Redemption Date"). The Corporation shall effect such redemptions on the applicable Series A Redemption Date by paying in cash in exchange for the shares of Series A Convertible Preferred to be redeemed a sum of $0.9930 per share of Series A Convertible Preferred (as adjusted for any Recapitalization) plus all declared or accumulated but unpaid dividends on such shares (the "Series A Redemption Price"). The number of shares of Series A Convertible Preferred that the Corporation shall be required under this Section 7(a) to redeem on any one Series A Redemption Date shall be equal to the amount determined by dividing (i) the aggregate number of shares of Series A Convertible Preferred outstanding immediately prior to the Series A Redemption Date by (ii) the number of remaining Series A Redemption Dates (including the Series A Redemption Date to which such calculation applies). Any redemption effectuated pursuant to this Section 7(a) shall be made on a pro rata basis among the holders of Series A Convertible Preferred in proportion to the number of shares of Series A Convertible Preferred then held by such holders. Notwithstanding anything to the contrary set forth above, this redemption provision with respect to Series A Convertible Preferred shall terminate upon the closing of an Initial Public Offering.

(b) Series B Redemption. This Corporation shall redeem, from any source of funds legally available therefor, the Series B Convertible Preferred in four annual installments beginning on March 13, 2003, and continuing thereafter each year until March 13, 2006 (each a "Series B Redemption Date"). The Corporation shall effect such redemptions on the applicable Series B Redemption Date by paying in cash in exchange for

the shares of Series B Convertible Preferred to be redeemed a sum of $1.63 per share of Series B Convertible Preferred (as adjusted for any Recapitalization) plus all declared or accumulated but unpaid dividends on such shares (the "Series B Redemption Price"). The number of shares of Series B Convertible Preferred that the Corporation shall be required under this Section 7(b) to redeem on any one Series B Redemption Date shall be equal to the amount determined by dividing (i) the aggregate number of shares of Series B Convertible Preferred outstanding immediately prior to the Series B Redemption Date by (ii) the number of remaining Series B Redemption Dates (including the Series B Redemption Date to which such calculation applies). Any redemption effectuated pursuant to this Section 7(b) shall be made on a pro rata basis among the holders of Series B Convertible Preferred in proportion to the number of shares of Series B Convertible Preferred then by held by such holders. Notwithstanding anything to the contrary set forth above, this redemption provision with respect to Series B Convertible Preferred shall terminate upon the closing of an Initial Public Offering.

(c) Redemption Mechanics. At least fifteen (15) days prior to each
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Series A Redemption Date or Series B Redemption Date (in either case, a "Redemption Date"), written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of Series A Convertible Preferred and Series B Convertible Preferred (collectively, the "Redeemable Preferred"), at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Series A Redemption Price or Series B Redemption Price (in either case, the "Redemption Price"), the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in Section 7(d) hereof, on or after the Redemption Date, each holder of the Redeemable Preferred shall surrender to this Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares. Nothing herein shall be deemed to prevent a holder of the Redeemable Preferred from converting all or part of such holder's Preferred Stock into Common Stock in accordance with the terms of Section 4 hereof at any time prior to a Redemption Date covering such shares, and the provisions of this Section 7 shall not apply to any shares so converted.

(d) Insufficient Funds for Redemption. From and after the Redemption
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Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Redeemable Preferred designated for redemption in the Redemption Notice (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates), shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption

of all shares of Redeemable Preferred on any Redemption Date are insufficient to redeem the total number of shares of Redeemable Preferred to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares from holders of Series A Convertible Preferred and from holders of Series B Convertible Preferred having an aggregate Redemption Price equal to the total amount of funds which are legally available for redemption multiplied by a fraction, which

(i) in the case of Series A Convertible Preferred, shall have a numerator determined by multiplying the number of shares of Series A Convertible Preferred then held by such holder by the Series A Redemption Price, and a denominator consisting of the sum of (A) the total number of shares of Series A Convertible Preferred then outstanding multiplied by the Series A Redemption Price and (B) the total number of shares of Series B Convertible Preferred then outstanding multiplied by the Series B Redemption Price; and

(ii) in the case of Series B Convertible Preferred, shall have a numerator determined by multiplying the number of shares of Series B Convertible Preferred then held by such holder by the Series B Redemption Price, and a denominator consisting of the sum of (A) the total number of shares of Series A Convertible Preferred then outstanding multiplied by the Series A Redemption Price and (B) the total number of shares of Series B Convertible Preferred then outstanding multiplied by the Series B Redemption Price.

The shares of Series A Convertible Preferred or Series B Convertible Preferred, as the case may be, not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein, including the rights of conversion set forth in Section 4 hereof. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Redeemable Preferred, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on any Redemption Date but which it has not redeemed in accordance with the foregoing procedures."

[intentionally left blank]

3. The foregoing amendment of Articles of Incorporation has been duly approved by the Board of Directors.

4. The foregoing amendment of Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Sections 902 and 903 of the Corporations Code. The total number of outstanding shares of the Corporation is 18,866,348 shares of Common Stock, 1,510,533 shares of Series A Convertible Preferred Stock, 6,316,705 shares of Series B Convertible Preferred Stock and 4,819,538 shares of Series C Convertible Preferred Stock. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was (i) more than fifty percent (50%) of the Common Stock and the Preferred Stock voting together as a single class, (ii) more than fifty percent (50%) of the Common Stock voting as a single class, (iii) more than fifty percent (50%) of the Preferred Stock voting as a single class, (iv) more than fifty percent (50%) of the Series A Convertible Preferred Stock voting as a single class, and (v) more than fifty percent (50%) of the Series B Convertible Preferred Stock voting as a single class.

_____
Stephen G. Perlman
President

_____
Bruce A. Leak
Secretary

The undersigned declare under penalty of perjury that the matters set forth in the foregoing certificate are true and correct of our own knowledge.

Executed in Palo Alto, California, on February ___, 1997.

_____
Stephen G. Perlman

_____
Bruce A. Leak

EXHIBIT 3.2

BY-LAWS

OF

WEBTV NETWORKS, INC.

(a California corporation)

dated as of

JUNE 30, 1995

ARTICLE I

OFFICES

Section 1.1 Principal Office. The principal office for the transaction of the business of the corporation shall be located at 721 Tiana Lane, Mountain View, California 94041. The Board of Directors is hereby granted full power and authority to change said principal office to another location within or without the State of California.

Section 1.2 Other Offices. One or more branch or other subordinate offices may at any time be fixed and located by the Board of Directors at such place or places within or without the State of California as it deems appropriate.

ARTICLE II

DIRECTORS

Section 2.1 Exercise of Corporate Powers. Except as otherwise provided by the Articles of Incorporation of the corporation or by the laws of the State of California now or hereafter in force, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors. The Board may delegate the management of the day-to-day operation of the business of the corporation as permitted by law, provided that the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

Section 2.2 Number. The number of the corporation's directors shall be eight (8) until changed by an amendment of the Articles of Incorporation or by an amendment to this Section 2.2 duly adopted by the shareholders; provided, however, that any amendment of the Articles of Incorporation or of this section reducing the minimum number of directors to a

number less than five cannot be adopted if the votes cast against its adoption at a meeting or the shares not consenting in the case of action by written consent are equal to more than 16-2/3 percent of the outstanding shares entitled to vote.

Section 2.3 Need Not Be Shareholders. The directors of the corporation need not be shareholders of the corporation.

Section 2.4 Compensation. Directors shall receive such compensation for their services as directors and such reimbursement for their expenses of attendance at meetings as may be determined from time to time by resolution of the Board. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

Section 2.5 Election and Term of Office. At each annual meeting of shareholders, directors shall be elected to hold office until the next annual meeting, provided that, if for any reason, said annual meeting or an adjournment thereof is not held or the directors are not elected thereat, then the directors may be elected at any special meeting of the shareholders called and held for that purpose. The term of office of the directors shall begin immediately after their election and shall continue until the expiration of the term for which elected and until their respective successors have been elected and qualified.

Section 2.6 Vacancies. A vacancy or vacancies in the Board of Directors shall exist when any authorized position of director is not then filled by a duly elected director, whether caused by death, resignation, removal, change in the authorized number of directors (by the Board or the shareholders) or otherwise. The Board of Directors may declare vacant the office of a director who has been declared of unsound mind by an order of court or convicted of a felony. Except for a vacancy created by the removal of a director, vacancies on the Board may be filled by approval of the board or, if the number of directors then in office is less than a quorum, by (1) the unanimous written consent of the directors then in office, (2) the affirmative vote of a majority of the directors then in office at a meeting held pursuant to notice or waivers of notice, or (3) a sole remaining director. A vacancy created by the removal of a director may be filled only by the approval of the shareholders. The shareholders may elect a director at any time to fill any vacancy not filled by the directors, but any such election by written consent other than to fill a vacancy created by removal requires the consent of a majority of the outstanding shares entitled to vote. Any director may resign effective upon giving written notice to the Chairman of the Board, the President, the Secretary or the Board of Directors of the corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

Section 2.7 Removal. (a) Any or all of the directors may be removed without cause if such removal is approved by the affirmative vote of a majority of the outstanding shares entitled to vote at an election of directors, subject to the following:

(1) No director may be removed (unless the entire Board is removed) when the votes cast against removal, or not consenting in writing to such removal, would be

sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected; and

(2) When by the provisions of the Articles the holders of the shares of any class or series, voting as a class or series, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the holders of the shares of that class or series.

(b) Any reduction of the authorized number of directors does not remove any director prior to the expiration of such director's term of office.

ARTICLE III

OFFICERS

Section 3.1 Election and Qualifications. The officers of this corporation shall consist of a President, one or more Vice Presidents, a Secretary and a Chief Financial Officer who shall be chosen by the Board of Directors and such other officers, including a Chairman of the Board, an Assistant Secretary and/or an Assistant Treasurer, as the Board of Directors shall deem expedient, all of whom shall be chosen in such manner and hold their offices for such terms as the Board of Directors may prescribe. Any two or more of such offices may be held by the same person. Any Vice President, Assistant Treasurer or Assistant Secretary, respectively, may exercise any of the powers of the President, the Chief Financial Officer, or the Secretary, respectively, as directed by the Board of Directors and shall perform such other duties as are imposed upon such officer by the By-Laws or the Board of Directors.

Section 3.2 Term of Office and Compensation. The term of office and salary of each of said officers and the manner and time of the payment of such salaries shall be fixed and determined by the Board of Directors and may be altered by said Board from time to time at its pleasure, subject to the rights, if any, of said officers under any contract of employment.

Section 3.3 Removal and Vacancies. Any officer of the corporation may be removed at the pleasure of the Board of Directors at any meeting or by vote of shareholders entitled to exercise the majority of voting power of the corporation at any meeting or at the pleasure of any officer who may be granted such power by a resolution of the Board of Directors. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party. If any vacancy occurs in any office of the corporation, the Board of Directors may elect a successor to fill such vacancy for the remainder of the unexpired term and until a successor is duly chosen and qualified.

ARTICLE IV

CHAIRMAN OF THE BOARD

Section 4.1 Powers and Duties. The Chairman of the Board of Directors, if there be one, shall have the power to preside at all meetings of the Board of Directors, and to call meetings of the shareholders and of the Board of Directors to be held within the limitations prescribed by law or by these By-Laws, at such times and at such places as the Chairman of the Board shall deem proper. The Chairman of the Board shall have such other powers and shall be subject to such other duties as the Board of Directors may from time to time prescribe.

ARTICLE V

PRESIDENT

Section 5.1 Powers and Duties. The powers and duties of the President are:

(a) To act as the chief executive officer of the corporation and, subject to the control of the Board of Directors, to have general supervision, direction and control of the business and affairs of the corporation.

(b) To preside at all meetings of the shareholders and, in the absence of the Chairman of the Board, or if there be none, at all meetings of the Board of Directors.

(c) To call meetings of the shareholders and also of the Board of Directors to be held, subject to the limitations prescribed by law or by these By-Laws, at such times and at such places as the President shall deem proper.

(d) To affix the signature of the corporation to all deeds, conveyances, mortgages, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board of Directors or which, in the judgment of the President, should be executed on behalf of the corporation, to sign certificates for shares of stock of the corporation and, subject to the direction of the Board of Directors, to have general charge of the property of the corporation and to supervise and control all officers, agents and employees of the corporation.

Section 5.2 President pro tem. If neither the Chairman of the Board, the President, nor any Vice President is present at any meeting of the Board of Directors, a President pro tem may be chosen to preside and act at such meeting. If neither the President nor any Vice President is present at any meeting of the shareholders, a President pro tem may be chosen to preside at such meeting.

ARTICLE VI

VICE PRESIDENT

Section 6.1 Powers and Duties. In case of the absence, disability or death of-the President, the Vice President, or one of the Vice Presidents, shall exercise all the powers and perform all the duties of the President. If there is more than one Vice President, the order in which the Vice Presidents shall succeed to the powers and duties of the President shall be as fixed by the Board of Directors. The Vice President or Vice Presidents shall have such other powers and perform such other duties as may be granted or prescribed by the Board of Directors.

ARTICLE VII

SECRETARY

Section 7.1 Powers and Duties. The powers and duties of the Secretary are:

(a) To keep a book of minutes at the principal office of the corporation, or such other place as the Board of Directors may order, of all meetings of its directors and shareholders with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present at directors meetings, the number of shares present or represented at shareholders' meetings and the proceedings thereof.

(b) To keep the seal of the corporation and to affix the same to all instruments which may require it.

(c) To keep or cause to be kept at the principal office of the corporation, or at the office of the transfer agent or agents, a share register, or duplicate share registers, showing the names of the shareholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for shares, and the number and date of cancellation of every certificate surrendered for cancellation.

(d) To keep a supply of certificates for shares of the corporation, to fill in all certificates issued, and to make a proper record of each such issuance; provided, that so long as the corporation shall have one or more duly appointed and acting transfer agents of the shares, or any class or series of shares, of the corporation, such duties with respect to such shares shall be performed by such transfer agent or transfer agents.

(e) To transfer upon the share books of the corporation any and all shares of the corporation; provided, that so long as the corporation shall have one or more duly appointed and acting transfer agents of the shares, or any class or series of shares, of the corporation, such duties with respect to such shares shall be performed by such transfer agent or transfer agents, and the method of transfer of each certificate shall be subject to the reasonable regulations of the transfer agent to which the certificate is presented for transfer, and also, if the corporation then has one or more duly appointed and acting registrars, to the reasonable regulations of the

registrar to which the new certificate is presented for registration; and provided, further, that no certificate for shares of stock shall be issued or delivered or, if issued or delivered, shall have any validity whatsoever until and unless it has been signed or authenticated in the manner provided in Section 12.4 hereof.

(f) To make service and publication of all notices that may be necessary or proper, and without command or direction from anyone. In case of the absence, disability, refusal or neglect of the Secretary to make service or publication of any notices, then such notices may be served and/or published by the President or a Vice President, or by any person thereunto authorized by either of them or by the Board of Directors or by the holders of a majority of the outstanding shares of the corporation.

(g) Generally to do and perform all such duties as pertain to the office of Secretary and as may be required by the Board of Directors.

Section 7.2 Assistant Secretary. The Assistant Secretary, if one there be, shall assist the Secretary in the performance of his or her duties hereunder, shall in the absence of the Secretary exercise all powers and perform all duties of the Secretary, and shall have such other powers and perform such other duties as may be granted or prescribed by the Board of Directors.

ARTICLE VIII

CHIEF FINANCIAL OFFICER

Section 8.1 Powers and Duties. The powers and duties of the Chief Financial Officer (who may also be referred to as the Treasurer) are:

(a) To supervise and control the keeping and maintaining of adequate and correct accounts of the corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and shares. The books of account shall at all reasonable times be open to inspection by any director.

(b) To have the custody of all funds, securities, evidence of indebtedness and other valuable documents of the corporation and, at the Chief Financial Officer's discretion, to cause any or all thereof to be deposited for the account of the corporation with such depositary as may be designated from time to time by the Board of Directors.

(c) To receive or cause to be received, and to give or cause to be given, receipts and acquittances for moneys paid in for the account of the corporation.

(d) To disburse, or cause to be disbursed, all funds of the corporation as may be directed by the Board of Directors, taking proper vouchers for such disbursements.

(e) To render to the President and to the Board of Directors, whenever they may require, accounts of all transactions and of the financial condition of the corporation.

(f) Generally to do and perform all such duties as pertain to the office of Chief Financial Officer and as may be required by the Board of Directors.

Section 8.2 Assistant Treasurer. The Assistant Treasurer, if one there be, shall assist the Treasurer in the performance of his or her duties hereunder, shall in the absence of the Treasurer exercise all powers and perform all duties of the Treasurer, and shall have such other powers and perform such other duties as may be granted or prescribed by the Board of Directors.

ARTICLE IX

COMMITTEES OF THE BOARD

Section 9.1 Appointment and Procedure. The Board of Directors may, by resolution adopted by a majority ofthe authorized number of directors, designate one or more committees, each consisting of two or more directors, to serve at the pleasure of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. The appointment of members or alternate members of a committee requires the vote of a majority of the authorized number of directors.

Section 9.2 Powers. Any committee appointed by the Board of Directors, to the extent provided in the resolution of the Board or in these By-Laws, shall have all the authority of the Board except with respect to:

(a) the approval of any action which requires the approval or vote of the shareholders;

(b) the filling of vacancies on the Board or on any committee;

(c) the fixing of compensation of the directors for serving on the Board or on any committee;

(d) the amendment or repeal of By-Laws or the adoption of new By-Laws;

(e) the amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;

(f) a distribution to the shareholders of the corporation, except at a rate, in a periodic amount or within a price range set forth in the articles or determined by the Board;

(g) the appointment of other committees of the Board or the members thereof.

Section 9.3 Executive Committee. In the event that the Board of Directors appoints an Executive Committee, such Executive Committee, in all cases in which specific direction to the contrary shall not have been given by the Board of Directors, shall have and may exercise, during the intervals between the meetings of the Board of Directors, all the powers and

authority of the Board of Directors in the management of the business and affairs of the corporation (except as provided in Section 9.2 hereof) in such manner as the Executive Committee may deem in the best interests of the corporation.

ARTICLE X

MEETINGS OF SHAREHOLDERS

Section 10.1 Place of Meetings. Meetings (whether regular, special or adjourned) of the shareholders of the corporation shall be held at the principal office for the transaction of business as specified in accordance with Section 1.1 hereof, or any place within or without the State which may be designated by written consent of all the shareholders entitled to vote thereat, or which may be designated by the Board of Directors.

Section 10.2 Time of Annual Meetings. The annual meeting of the shareholders shall be held at the hour of ten o'clock in the morning on the third Thursday in April of each year, if not a legal holiday, and if a legal holiday, then on the next succeeding business day not a legal holiday, or such other time or date as may be set by the Board of Directors.

Section 10.3 Special Meetings. Special meetings of the shareholders may be called by the Board of Directors, the Chairman of the Board, the President or the holders of shares entitled to cast not less than 10 percent of the vote at the meeting.

Section 10.4 Notice of Meetings.

(a) Whenever shareholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than 10 (or, if sent by third class mail, 30) nor more than 60 days before the day of the meeting to each shareholder entitled to vote thereat. Such notice shall state the place, date and hour of the meeting and (1) in the case of a special meeting, the general nature of the business to be transacted, and that no other business may be transacted, or (2) in the case of the annual meeting, those matters which the Board, at the time of the mailing of the notice, intends to present for action by the shareholders but subject to the provisions of subdivision (b) any proper matter may be presented at the meeting for such action. The notice of any meeting at which directors are to be elected shall include the names of nominees intended at the time of the notice to be presented by the Board for election.

(b) Any shareholder approval at a meeting, other than unanimous approval by those entitled to vote, on any of the matters listed below, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice:

(1) a proposal to approve a contract or other transaction between the corporation and one or more of its directors, or between the corporation and any corporation, firm or association in which one or more directors has a material financial interest;

(2) a proposal to amend the Articles of Incorporation;

(3) a proposal regarding a reorganization, merger or consolidation involving the corporation;

(4) a proposal to wind up and dissolve the corporation;

(5) a proposal to adopt a plan of distribution of the shares, obligations or securities of any other corporation, domestic or foreign, or assets other than money which is not in accordance with the liquidation rights of any preferred shares as specified in the Articles of Incorporation.

Section 10.5 Delivery of Notice. Notice of a shareholders' meeting or any report shall be given either personally or by first class mail or in the case of a corporation with outstanding shares held of record by 500 or more persons (determined as provided in Section 605 of the California General Corporation Law) on the record date for the shareholders' meeting, notice may be sent third class mail, or other means of written communication, addressed to the shareholder at the address of such shareholder appearing on the books of the corporation or given by the shareholder to the corporation for the purpose of notice; or if no such address appears or is given, at the place where the principal executive office of the corporation is located or by publication at least once in a newspaper of general circulation in the county in which the principal executive office is located. The notice or report shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by other means of written communication. An affidavit of mailing of any notice or report in accordance with the provisions of this section, executed by the Secretary, Assistant Secretary or any transfer agent, shall be prima facie evidence of the giving of the notice or report.

If any notice or report addressed to the shareholder at the address of such shareholder appearing on the books of the corporation is returned to the corporation by United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the shareholder at such address, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available for the shareholder upon written demand of the shareholder at the principal executive office of the corporation for a period of one year from the date of the giving of the notice or report to all other shareholders.

Section 10.6 Adjourned Meetings. When a shareholders' meeting is adjourned to another time or place, unless the By-Laws otherwise require and except as provided in this section, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting.

Section 10.7 Consent to Shareholders' Meeting. The transactions of any meeting of shareholders, however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by

proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, signs a written waiver of notice or a consent to the holding of the meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of and presence at such meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by the California General Corporation Law to be included in the notice but not so included in the notice if such objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of shareholders need be specified in any written waiver of notice, consent to the holding of the meeting or approval of the minutes thereof, unless otherwise provided in the Articles of Incorporation or By-Laws, except as provided in subdivision (b) of Section 10.4.

Section 10.8 Quorum.

(a) The presence in person or by proxy of the persons entitled to vote the majority of the voting shares at any meeting shall constitute a quorum for the transaction of business. Except as provided in subdivision (b), the affirmative vote of a majority of the shares represented and voting at a duly held meeting at which a quorum is present (which shares voting affirmatively also constitute at least a majority of the required quorum) shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by law or the Articles of Incorporation or these By-Laws.

(b) The shareholders present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of the number of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum.

(c) In the absence of a quorum, any meeting of shareholders may be adjourned from time to time by the vote of a majority of the shares represented either in person or by proxy, but no other business may be transacted, except as provided in subdivision (b).

Section 10.9 Actions Without Meeting.

(a) Any action which may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted; provided that, subject to the provisions of Section 2.6, directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors.

(b) Unless the consents of all shareholders entitled to vote have been solicited in writing,

(1) notice of any shareholder approval on matters described in subparagraphs (1), (3) or (5) of subdivision (b) of Section 10.4 or respecting indemnification of agents of the corporation without a meeting by less than unanimous written consent shall be given at least ten (10) days before the consummation of the action authorized by such approval, and

(2) prompt notice shall be given of the taking of any other corporate action approved by shareholders without a meeting by less than unanimous written consent, to those shareholders entitled to vote who have not consented in writing; the provisions of Section 10.5 shall apply to such notice.

Section 10.10 Revocation of Consent. Any shareholder giving a written consent, or the shareholder's proxyholders, or a transferee of the shares or a personal representative of the shareholder or their respective proxyholders, may revoke the consent by a writing received by the corporation prior to the time that written consents of the number of shares required to authorize the proposed action have been filed with the Secretary of the corporation, but may not do so thereafter. Such revocation is effective upon its receipt by the Secretary of the corporation.

Section 10.11 Voting Rights. Except as provided in Section 10.13 or in the Articles of Incorporation or in any statute relating to the election of directors or to other particular matters, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote of shareholders. Any holder of shares entitled to vote on any matter may vote part of the shares in favor of the proposal and refrain from voting the remaining shares or vote them against the proposal, other than elections to office, but, if the shareholder fails to specify the number of shares such shareholder is voting affirmatively, it will be conclusively presumed that the shareholder's approving vote is with respect to all shares such shareholder is entitled to vote.

Section 10.12 Determination of Holders of Record.

(a) In order that the corporation may determine the shareholders entitled to notice of any meeting or to vote or entitled to receive payment of any dividend or other distribution or allotment of any rights or entitled to exercise any rights in respect of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days prior to the date of such meeting nor more than 60 days prior to any other action.

(b) In the absence of any record date set by the Board of Directors pursuant to subdivision (a) above, then:

(1) The record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the business day next

preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

(2) The record date for determining shareholders entitled to give consent to corporate action in writing without a meeting, when no prior action by the Board has been taken, shall be the day on which the first written consent is given.

(3) The record date for determining shareholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto, or the 60th day prior to the date of such other action, whichever is later.

(c) A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting unless the Board fixes a new record date for the adjourned meeting, but the Board shall fix a new record date if the meeting is adjourned for more than 45 days from the date set for the original meeting.

(d) Shareholders at the close of business on the record date are entitled to notice and to vote or to receive the dividend, distribution or allotment of rights or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date, except as otherwise provided in the Articles or by agreement or applicable law.

Section 10.13 Elections for Directors.

(a) Every shareholder complying with subdivision (b) and entitled to vote at any election of directors may cumulate such shareholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the shareholder's shares are normally entitled, or distribute the shareholder's votes on the same principle among as many candidates as the shareholder thinks fit.

(b) No shareholder shall be entitled to cumulate votes (i.e., cast for any candidate a number of votes greater than the number of votes which such shareholder normally is entitled to cast) unless such candidate or candidates' names have been placed in nomination prior to the voting and the shareholder has given written notice to the chairman of the meeting at the meeting prior to the voting of the shareholder's intention to cumulate the shareholder's votes. If any one shareholder has given such notice, all shareholders may cumulate their votes for candidates in nomination.

(c) In any election of directors, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them up to the number of directors to be elected by such shares are elected; votes against the director and votes withheld shall have no legal effect.

(d) Elections for directors need not be by ballot unless a shareholder demands election by ballot at the meeting and before the voting begins or unless the By-Laws so require.

Section 10.14 Proxies.

(a) Every person entitled to vote shares may authorize another person or persons to act by proxy with respect to such shares. Any proxy purporting to be executed in accordance with the provisions of the General Corporation Law of the State of California shall be presumptively valid.

(b) No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy continues in full force and effect until revoked by the person executing it prior to the vote pursuant thereto, except as otherwise provided in this section. Such revocation may be effected by a writing delivered to the corporation stating that the proxy is revoked or by a subsequent proxy executed by the person executing the prior proxy and presented to the meeting, or as to any meeting by attendance at such meeting and voting in person by the person executing the proxy. The dates contained on the forms of proxy presumptively determine the order of execution, regardless of the postmark dates on the envelopes in which they are mailed.

(c) A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted, written notice of such death or incapacity is received by the corporation.

Section 10.15 Inspectors of Election.

(a) In advance of any meeting of shareholders the Board may appoint inspectors of election to act at the meeting and any adjournment thereof. If inspectors of election are not so appointed, or if any persons so appointed fail to appear or refuse to act, the chairman of any meeting of shareholders may, and on the request of any shareholder or a shareholder's proxy shall, appoint inspectors of election (or persons to replace those who so fail or refuse) at the meeting. The number of inspectors shall be either one or three. If appointed at a meeting on the request of one or more shareholders or proxies the majority of shares represented in person or by proxy shall determine whether one or three inspectors are to be appointed.

(b) The inspectors of election shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum and the authenticity, validity and effect of proxies, receive votes, ballots or consents, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes or consents, determine when the polls shall close, determine the result and do such acts as may be proper to conduct the election or vote with fairness to all shareholders.

(c) The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

ARTICLE XI

MEETINGS OF DIRECTORS

Section 11.1 Place of Meetings. Unless otherwise specified in the notice thereof, meetings (whether regular, special or adjourned) of the Board of Directors of this corporation shall be held at the principal office of the corporation for the transaction of business, as specified in accordance with Section 1.1 hereof, which is hereby designated as an office for such purpose in accordance with the laws of the State of California, or at any other place within or without the State which has been designated from time to time by resolution of the Board or by written consent of all members of the Board.

Section 11.2 Regular Meetings. Regular meetings of the Board of Directors, of which no notice need be given except as required by the laws of the State of California, shall be held after the adjournment of each annual meeting of the shareholders (which meeting shall be designated the Regular Annual Meeting) and at such other times as may be designated from time to time by resolution of the Board of Directors.

Section 11.3 Special Meetings. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board or the President or by any Vice President or the Secretary or by any one or more of the directors.

Section 11.4 Notice of Meetings. Except in the case of regular meetings, notice of which has been dispensed with, the meetings of the Board of Directors shall be held upon four (4) days' notice by mail or forty-eight (48) hours' notice delivered personally or by telephone, telegraph or other electronic or wireless means. If the address of a director is not shown on the records and is not readily ascertainable, notice shall be addressed to the director at the city or place in which the meetings of the directors are regularly held. Except as set forth in Section 11.6, notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place be fixed at the meeting adjourned.

Section 11.5 Quorum. A majority of the authorized number of directors constitutes a quorum of the Board for the transaction of business. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors except as otherwise provided by law. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 11.6 Adjourned Meetings. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 11.7 Waiver of Notice and Consent. Notice of a meeting need not be given to any director who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 11.8 Action Without a Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of such directors.

Section 11.9 Conference Telephone Meetings. Members of the Board may participate in a meeting through use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Participation in a meeting pursuant to this section constitutes presence in person at such meeting.

Section 11.10 Meetings of Committees. The provisions of this Article apply also to committees of the Board and incorporators and action by such committees and incorporators.

ARTICLE XII

SUNDRY PROVISIONS

Section 12.1 Instruments in Writing. All checks, drafts, demands for money and notes of the corporation, and all written contracts of the corporation, shall be signed by such officer or officers, agent or agents, as the Board of Directors may from time to time by resolution designate. No officer, agent, or employee of the corporation shall have power to bind the corporation by contract or otherwise unless authorized to do so by these By-Laws or by the Board of Directors.

Section 12.2 Fiscal Year. The fiscal year of this corporation shall end on the 31st day of March of each year.

Section 12.3 Shares Held by the Corporation. Shares in other corporations standing in the name of this corporation may be voted or represented and all rights incident thereto may be exercised on behalf of this corporation by the President or by any other officer of this corporation authorized so to do by resolution of the Board of Directors.

Section 12.4 Certificates of Stock. There shall be issued to each holder of fully paid shares of the capital stock of the corporation a certificate or certificates for such shares. Every holder of shares in the corporation shall be entitled to have a certificate signed in the name of the corporation by the Chairman or Vice Chairman of the Board or the President or a Vice President and by the Chief Financial Officer or an Assistant Treasurer or the Secretary or any

Assistant Secretary, certifying the number of shares and the class or series of shares owned by the shareholder. Any or all of the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were an officer, transfer agent or registrar at the date of issue.

Section 12.5 Lost Certificates. The corporation may issue a new share certificate or a new certificate for any other security in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate or the owner's legal representative to give the corporation a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate. The Board of Directors may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

Section 12.6 Certification and Inspection of By-Laws. The corporation shall keep at its principal executive office in this state, or if its principal executive office is not in this state at its principal business office in this state, the original or a copy of these By-Laws as amended to date, which shall be open to inspection by the shareholders at all reasonable times during office hours. If the principal executive office of the corporation is outside this state and the corporation has no principal business office in this state, it shall upon the written request of any shareholder furnish to such shareholder a copy of the By-Laws as amended to date.

Section 12.7 Notices. Any reference in these By-Laws to the time a notice is given or sent means, unless otherwise expressly provided, the time a written notice by mail is deposited in the United States mails, postage prepaid; or the time any other written notice is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient; or the time any oral notice is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

Section 12.8 Reports to Shareholders. Except as may otherwise be required by law, the rendition of an annual report to the shareholders is waived so long as there are less than 100 holders of record of the shares of the corporation (determined as provided in Section 605 of the California General Corporation Law). At such time or times, if any, that the corporation has 100 or more holders of record of its shares, the Board of Directors shall cause an annual report to be sent to the shareholders not later than 120 days after the close of the fiscal year or within such shorter time period as may be required by applicable law, and such annual report shall contain such information and be accompanied by such other documents as may be required by applicable law.

Section 12.9 Indemnification of Directors, Officers and Employees.

(a) For the purposes of this section, "agent" means any person who is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under subdivision (d) or paragraph (4) of subdivision (e).

(b) Subject to the specific determination required by subdivision (e), the corporation shall, and it hereby agrees to, indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor) by reason of the fact that such person is or was an agent of the corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if it is determined pursuant to subdivision (e) that such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

(c) Subject to the specific determination required by subdivision (e), the corporation shall, and it hereby agrees to, indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was an agent of the corporation, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if it is determined pursuant to subdivision (e) that such person acted in good faith, in a manner such person believed to be in the best interests of the corporation and its shareholders. No indemnification shall be made under this subdivision for any of the following:

(1) In respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation in the performance of such person's duty to the corporation and its shareholders, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for expenses and then only to the extent that the court shall determine.

(2) Of amounts paid in settling or otherwise disposing of a pending action without court approval.

(3) Of expenses incurred in defending a pending action which is settled or otherwise disposed of without court approval.

(d) To the extent that an agent of the corporation has been successful on the merits in defense of any proceeding referred to in subdivision (b) or (c) or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

(e) Except as provided in subdivision (d), any indemnification under this section shall be made by the corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subdivision (b) or (c), by any of the following:

(1) A majority vote of a quorum consisting of directors who are not parties to such proceeding.

(2) If such a quorum of directors is not obtainable, by independent legal counsel in a written opinion.

(3) Approval of the shareholders, with the shares owned by the person to be indemnified not being entitled to vote thereon.

(4) The court in which such proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney or other person is opposed by the corporation.

(f) Expenses incurred in defending any proceeding may be advanced by the corporation prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount if it shall be determined ultimately that the agent is not entitled to be indemnified as authorized in this section.

(g) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, to the extent such additional rights to indemnification are authorized in the articles of incorporation. The rights to indemnity hereunder shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person. Nothing contained in this section shall affect any right to indemnification to which persons other than such directors and officers may be entitled by contract or otherwise.

(h) No indemnification or advance shall be made under this section, except as provided in subdivision (d) or paragraph (4) of subdivision (e), in any circumstance where it appears:

(1) That it would be inconsistent with a provision of the Articles, By-Laws, a resolution of the shareholders or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification.

(2) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

(i) The corporation shall have power to purchase and maintain insurance on behalf of any agent of the corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against such liability under the provisions of this section. The corporation may purchase such insurance from a company in which the corporation owns all or a portion of the shares provided that the requirements of Section 317(i) of the California Corporations Code are met.

(j) This section does not apply to any proceeding against any trustee, investment manager or other fiduciary of an employee benefit plan in such person's capacity as such, even though such person may also be an agent as defined in subdivision (a) of the employer corporation. The corporation shall, and it hereby agrees to, indemnify each officer, director or employee of the corporation against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any action taken or omitted by such person in such person's capacity as trustee, investment manager or other fiduciary of any employee benefit plan of the corporation unless, or to the extent that, the Board of Directors of the corporation shall reasonably determine that any such action so taken or omitted by such person constituted gross negligence or willful misconduct on the part of such person. Expenses reasonably incurred by any such person in defending any liability asserted against such person in any such capacity shall be advanced by the corporation but shall be repaid to the corporation by such person if, or to the extent that, the Board of Directors of the corporation shall reasonably determine that the action allegedly taken or omitted by such person upon which the asserted liability is based constituted gross negligence or willful misconduct on the part of such person.

(k) Nothing in this section shall restrict the power of the corporation to indemnify its agents under any provision of the California General Corporation Law, as amended from time to time, or under any other provision of law from time to time applicable to the corporation, nor shall anything in this section authorize the corporation to indemnify its agents in situations prohibited by the California General Corporation Law or other applicable law.

ARTICLE XIII

CONSTRUCTION OF BY-LAWS WITH REFERENCE TO PROVISIONS OF LAW

Section 13.1 Definitions. Unless defined otherwise in these By-Laws or unless the context otherwise requires, terms used herein shall have the same meaning, if any, ascribed thereto in the California General Corporation Law, as amended from time to time.

Section 13.2 By-Law Provisions Additional and Supplemental to Provisions of Law. All restrictions, limitations, requirements and other provisions of these By-Laws shall be construed, insofar as possible, as supplemental and additional to all provisions of law applicable to the subject matter thereof and shall be fully complied with in addition to the said provisions of law unless such compliance shall be illegal.

Section 13.3 By-Law Provisions Contrary to or Inconsistent with Provisions of Law. Any article, section, subsection, subdivision, sentence, clause or phrase of these By-Laws which upon being construed in the manner provided in Section 13.2 hereof, shall be contrary to or inconsistent with any applicable provision of law, shall not apply so long as said provisions of law shall remain in effect, but such result shall not affect the validity or applicability of any other portions of these By-Laws, it being hereby declared that these By-Laws would have been adopted and each article, section, subsection, subdivision, sentence, clause or phrase thereof, irrespective of the fact that any one or more articles, sections, subsections, subdivisions, sentence clauses or phrases is or are illegal.

ARTICLE XIV

ADOPTION, AMENDMENT OR REPEAL OF BY-LAWS

Section 14.1 By Shareholders. By-Laws may be adopted, amended or repealed by the approval of the affirmative vote of a majority of the outstanding shares of the corporation entitled to vote.

Section 14.2 By the Board of Directors. Subject to the right of shareholders to adopt, amend or repeal By-Laws, By-Laws other than a By-Law or amendment thereof changing the authorized number of directors may be adopted, amended or repealed by the Board of Directors. A By-Law adopted by the shareholders may restrict or eliminate the power of the Board of Directors to adopt, amend or repeal any or all By-Laws.

CERTIFICATE OF SECRETARY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned does hereby certify that the undersigned is the Secretary of WebTV Networks, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of California; that the above and foregoing By-Laws of said corporation were duly and regularly adopted as such by the Incorporator of said corporation by written consent dated June 30, 1995, and were duly and regularly ratified as such by the Board of Directors of said corporation pursuant to resolutions adopted by the Board made to be effective June 30, 1995; and that the above and foregoing By-Laws are now in full force and effect.

Dated: June 30, 1995

Bruce A. Leak

CERTIFICATE OF AMENDMENT OF BYLAWS
OF
WEBTV NETWORKS, INC.

October 12, 1995

The undersigned, Bruce A. Leak, hereby certifies that:

1. He is the duly elected and incumbent Secretary of WebTV Networks, Inc. (the "Company").
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2. By Written Consent of the Shareholders of the Company dated October 12, 1995, Article II, Section 2.2 of the Bylaws of the Company was amended to read in its entirety as follows:

"Section 2.2 Number. The number of the corporation's directors
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shall be six (6) until changed by an amendment of the Articles of Incorporation or by an amendment to this Section 2.2 duly adopted by the shareholders; provided, however, that any amendment of the Articles of Incorporation or of this section reducing the minimum number of directors to a number less than five cannot be adopted if the votes cast against its adoption at a meeting or the shares not consenting in the case of action by written consent are equal to more than 16-2/3 percent of the outstanding shares entitled to vote."

3. The matters set forth in this certificate are true and correct of my own knowledge.

Date: October 12, 1995

Bruce A. Leak, Secretary

CERTIFICATE OF AMENDMENT OF BYLAWS
OF
WEBTV NETWORKS, INC.

March 18, 1996

The undersigned, Bruce A. Leak, hereby certifies that:

1. He is the duly elected and incumbent Secretary of WebTV Networks, Inc. (the "Company").
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2. By Written Consent of the Shareholders of the Company dated March 18, 1996, Article XI, Section 11.3 of the Bylaws of the Company was amended to read in its entirety as follows:

"Section 11.3 Special Meetings. Special meetings of the Board of
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Directors may be called at any time by the Chairman of the Board or the President or by any Vice President or the Secretary or by any one or more of the directors."

3. The matters set forth in this certificate are true and correct of my own knowledge.

Date: March 18, 1996

Bruce A. Leak, Secretary

CERTIFICATE OF AMENDMENT OF BYLAWS
OF
WEBTV NETWORKS, INC.

April 2, 1996

The undersigned, Bruce A. Leak, hereby certifies that:

1. He is the duly elected and incumbent Secretary of WebTV Networks, Inc. (the "Company").

2. By Written Consent of the Shareholders of the Company dated April 2, 1996, Article II, Section 2.2 of the Bylaws of the Company was amended to read in its entirety as follows:

"Section 2.2 Number. The number of the corporation's directors shall be eight (8) until changed by an amendment of the Articles of Incorporation or by an amendment to this Section 2.2 duly adopted by the shareholders; provided, however, that any amendment of the Articles of Incorporation or of this section reducing the minimum number of directors to a number less than five cannot be adopted if the votes cast against its adoption at a meeting or the shares not consenting in the case of action by written consent are equal to more than 16-2/3 percent of the outstanding shares entitled to vote."

3. The matters set forth in this certificate are true and correct of my own knowledge.

Date: April 2, 1996

Bruce A. Leak, Secretary

EXHIBIT 4.1

STOCK PURCHASE AGREEMENT

BY AND BETWEEN

WEBTV NETWORKS, INC.

AND

DAVIS INTERNET, INC.

DATED NOVEMBER 9, 1995

TABLE OF CONTENTS

STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (this "Agreement") dated November 9, 1995, by and between WEBTV NETWORKS, INC., a California corporation (the "Company") and DAVIS INTERNET, INC., a California corporation ("DC").

W I T N E S S E T H

WHEREAS, the only holders of Common Stock of the Company are Stephen G. Perlman, Bruce A. Leak and Phillip Goldman (collectively, the "Founders");

WHEREAS, subject to the terms and conditions set forth herein, DC desires to purchase from the Company, and the Company desires to issue and sell to DC, shares of the Company's Series A Convertible Preferred Stock, without par value (the "Series A Preferred Stock"), the terms of which are set forth in the Designation of the Preferred Stock attached as Schedule I hereto (the "Designation"), in the amounts and at the purchase prices set forth below;

WHEREAS, pursuant to a Letter Agreement dated September 7, 1995 (the "Letter Agreement"), DC has heretofore purchased 503,511 shares of Series A Preferred Stock for $500,000 and the parties have agreed to enter into this Agreement:

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I.

PURCHASE AND SALE

SECTION 1.1. Purchase and Sale of the Shares. Upon the terms and subject to the conditions of this Agreement, the Company agrees to issue and sell to DC, and DC agrees to purchase from the Company in the amounts and manner set forth below, up to an aggregate of 2,517,556 shares of Series A Preferred Stock (the "Remaining Aggregate Shares"). The Remaining Aggregate Shares plus the 503,511 shares of Series A Preferred Stock previously purchased from the Company by DC (together, the "Aggregate Shares") shall represent, upon consummation of the transactions contemplated hereby, 14.25% of the total number of votes that may be cast in the election of directors (without taking into effect cumulative voting, if any) of the Company if all securities entitled to vote generally in such election were present and voted, assuming full conversion, exchange or exercise of all convertible securities, rights, warrants and

options ("TVP") after giving effect to the equity of the Founders and equity and rights to acquire equity made available to any other employees, consultants and directors pursuant to the Company's 1995 Incentive Stock Plan (the "1995 Plan"), with the Founders to have 70.75% and the stock issued pursuant to the 1995 Plan to represent 15%.

1.1.1. The First Closing. On November 9, 1995 (the "First Closing Date"), (A) if all the conditions precedent set forth in Article III hereof have been either waived by DC or satisfied, upon the terms and subject to the conditions of this Agreement, DC shall purchase 2,517,556 shares of Series A Preferred Stock, representing 100% of the Remaining Aggregate Shares (the "Adjusted First Closing Stock Purchase") for a purchase price of $2,500,000 (the "Adjusted First Closing Purchase Price") or (B) if less than all of the conditions precedent set forth in ARTICLE III hereof, but at least the conditions set forth in Sections 3.1.1., 3.1.2. and 3.1.5.-3.1.11. hereof have either been waived by DC or satisfied, upon the terms and subject to the conditions of this Agreement, DC shall purchase 1,007,022 shares of Series A Preferred Stock, representing 40% of the Remaining Aggregate Shares (the "First Closing Stock Purchase") for a purchase price of $1,000,000 (the "First Closing Purchase Price").

1.1.2. The Conditional Closing. If the Adjusted First Closing Stock Purchase shall not have occurred, on November 30, 1995 (the "Conditional Closing Date"), if all the conditions precedent set forth in Article III hereof have been either waived by DC or satisfied, upon the terms and subject to the conditions of this Agreement, DC shall either (i) if the First Closing Stock Purchase has occurred, purchase 1,510,534 shares of Series A Preferred Stock, representing the remaining 60% of the Remaining Aggregate Shares (the "Conditional Closing Stock Purchase") for a purchase price of $1,500,000 (the "Conditional Closing Purchase Price"), or (ii) if the First Closing Stock Purchase has not occurred, purchase the Remaining Aggregate Shares for the Adjusted First Closing Purchase Price.

1.1.3. The Stock Purchases. The First Closing Date and the Conditional Closing Date, if any, are sometimes referred to herein collectively as the "Closing Dates," and individually as a "Closing Date." The First Closing Stock Purchase or the Adjusted First Closing Stock Purchase, as the case may be, and the Conditional Closing Stock Purchase, if any, are sometimes referred to herein collectively as the "Stock Purchases" and individually as a "Stock Purchase." Each of the First Closing Purchase Price or the Adjusted First Closing Purchase Price, as the case may be, and the Conditional Closing Purchase Price, if any, are sometimes referred to herein as a "Purchase Price."

SECTION 1.2. Closings. The closing with respect to each of the Stock Purchases shall be held at McCutchen, Doyle, Brown & Enersen, Market Post Tower, Suite 1500, 55 South Market Street San Jose, CA, at 10:00 a.m. on the applicable Closing Date. On each Closing Date, (a) DC shall deliver to the Company, by wire transfer of funds to the Company's account, the applicable Purchase Price and (b) the Company shall issue and deliver to DC, free and clear of all pledges, liens, encumbrances, claims and other charges and restrictions thereon of every kind, a certificate or certificates representing the number of validly issued, fully paid and non-

assessable shares of Series A Preferred Stock then being purchased, registered in the name of DC and bearing the legends set forth in Section 1.3 hereof. The Company shall pay any documentary stamp or similar issue or transfer taxes due as a result of the issuance and sale of the shares of the Series A Preferred Stock.

1.2.1. Default at Closing. The Company acknowledges that the Remaining Aggregate Shares are unique and otherwise not available and agrees that if the Company shall fail or refuse to deliver any of the Remaining Aggregate Shares as provided in Sections 1.1.1 or 1.1.2, in addition to any other remedies, DC may invoke any equitable remedies to enforce delivery of the Remaining Aggregate Shares hereunder, including, without limitation, an action or suit for specific performance.

SECTION 1.3. Legends. Each certificate evidencing shares of Series A Preferred Stock shall bear the following legend:

> THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY STATE SECURITIES LAWS AND ANY SALE, TRANSFER, PLEDGE OR OTHER DISPOSITION THEREOF MAY BE MADE ONLY (I) IN A TRANSACTION REGISTERED UNDER SAID ACT AND SUCH STATE SECURITIES LAWS OR (II) IN A TRANSACTION FOR WHICH AN EXEMPTION FROM REGISTRATION UNDER SAID ACT AND SUCH LAWS IS AVAILABLE AND THE CORPORATION HAS RECEIVED AN OPINION OF COUNSEL TO SUCH EFFECT REASONABLY SATISFACTORY TO IT.

SECTION 1.4. Use of Proceeds. The Company will use the proceeds received from the sale of the Aggregate Shares to DC solely for the purposes of conducting the Company's business in accordance with an initial business plan satisfactory in all material respects to DC (the "IBP") and the repayment by the Company of the amounts listed in Schedule II hereto previously advanced to or paid on behalf of the Company by the Founders.

ARTICLE II.

OTHER AGREEMENTS

SECTION 2.1. Board of Directors. So long as DC owns at least 5% of TVP, but in any event from the date hereof until the later to occur of (i) November 9, 1995, or (ii) the Adjusted First Closing Stock Purchase, if any, or the First Closing Stock Purchase, if any, but for purposes of (i) and (ii), not later than November 30, 1995:

2.1.1. Prior to IPO. Prior to an IPO (as defined herein), the Company shall be governed by a Board of Directors consisting of six directors, of which DC shall appoint two (the "DC Board Members") and the Founders shall appoint four, and, if required by the

Required Investor (as defined in Section 3.1.3., hereof), the Board will be increased by an additional member to be appointed by such Required Investor. "IPO" means a sale by the Company of its common stock, without par value (the "Common Stock"), in a bona fide public offering made in accordance with Section 5.6.

2.1.2. Following IPO. Following an IPO, the Company will agree to include in the slate of candidates recommended to stockholders for election to the Board of Directors such number of nominees appointed by DC that is proportional to its percentage ownership of TVP (but in no event fewer than one DC director).

SECTION 2.2. Matters Requiring Consent of DC. So long as DC owns at least 5% of TVP, but in any event from the date hereof until the later to occur of (i) November 9, 1995, or (ii) the Adjusted First Closing Stock Purchase, if any, or the First Closing Stock Purchase, if any, but for purposes of (i) and (ii), not later than November 30, 1995, prior to an IPO, any action by the Company with respect to, but not limited to, any of the following matters shall require the consent of the DC Board Members: (1) any merger, consolidation, other business combination or change of control or sale of all or substantially all of the assets of the Company; (2) acquisition of any business, creation of subsidiaries or entry into any joint venture or partnership; (3) filing for bankruptcy; (4) changes in the structure and/or powers of the Board; and (5) hiring or firing of the chief executive officer or president (or other officer performing similar functions); (6) any grant of an exclusive license to make or have made, modify, use, market, sell or distribute any application, product and/or service utilizing all or substantially all of the Company's technology or the sale, assignment or other transfer of title to all or substantially all of the Company's technology; (7) unless covered by item (6), sale, lease, license or other disposition of assets other than in the ordinary course of business in an amount exceeding $200,000; (8) transactions with affiliates; (9) approval of any future business plan; (10) approval of the arrangement of credit lines, including the amount and terms thereof, and all borrowings (other than ordinary course trade credit), except for indebtedness not in excess of $200,000 at any one time outstanding; (11) hiring or firing of officers; (12) entering into and material changes to the Company's employment agreements with officers and senior management; (13) the undertaking of any action by the Company inconsistent with the Company's business plan and the approval of any material changes to the business plan; and (14) any acquisition of securities or ownership interest in any entity.

SECTION 2.3. Right of First Refusal. So long as DC owns at least 5% of TVP, but in any event from the date hereof until the later to occur of (i) November 9, 1995, or (ii) the Adjusted First Closing Stock Purchase, if any, or the First Closing Stock Purchase, if any, but for purposes of (i) and (ii), not later than November 30, 1995, if the Company proposes to issue, sell or otherwise dispose of any voting securities of the Company, DC shall have a right of first refusal to purchase that number of shares sufficient to allow it to retain its then existing percentage of TVP following the issuance, sale or other disposition of the Company's voting securities, provided that the Company may increase the number of shares in the foregoing offering to accommodate DC's right of first refusal and to avoid any cutback in the number of its

voting securities proposed to be issued to third parties. In addition, to the extent other holders have rights of first refusa l with respect to such issuance, sale or disposition of voting securities, which rights are not exercised, such rights will be assignable in whole or in part to DC; provided, that the rights of first refusal held by the Founders pursuant to that certain Shareholders Agreement dated July 31, 1995, by and among the Company and the Founders are assignable only in accordance with the terms of such agreement. Notwithstanding the foregoing, excluded from the previous provision are shares (1) issued by the Company in an IPO or a subsequent public offering, (2) issued by the Company under the 1995 Plan or otherwise agreed to by DC, (3) issued by the Company in a Board-approved acquisition up to an aggregate amount equal to or less than 5% of TVP, or (4) warrants to the Company's landlords or lenders which represent, or upon exercise would represent, less than 1% of TVP in the aggregate.

SECTION 2.4. Employee Agreements. A form of Invention Assignment Agreement and the existing Employment Agreements between the Company and the Founders (the "Existing Agreements") are attached hereto as Schedule III. So long as DC owns at least 5% of TVP, but in any event from the date hereof until the later to occur of (i) November 9, 1995, or (ii) the Adjusted First Closing Stock Purchase, if any, or the First Closing Stock Purchase, if any, but for purposes of (i) and (ii), not later than November 30, 1995, DC shall have the opportunity to approve, which approval shall not be unreasonably withheld, any material amendments to the Existing Agreements, and prior to the date of any Closing, the Company shall have delivered to DC or its counsel all executed employment agreements, consulting agreements and invention assignment agreements that are then outstanding.

SECTION 2.5. Information Provided to DC. So long as DC owns at least 5% of TVP, but in any event from the date hereof until the later to occur of (i) November 9, 1995, or (ii) the Adjusted First Closing Stock Purchase, if any, or the First Closing Stock Purchase, if any, but for purposes of (i) and (ii), not later than November 30, 1995, the Company shall finish to DC (i) on an annual basis, within 75 days after the end of each fiscal year, a balance sheet, related statements of operations and cash flows presented in accordance with United States Generally Accepted Accounting Principles ("GAAP"), with any required notes thereto, audited by a nationally recognized public accounting firm, and at least 35 days prior to the end of such fiscal year, a Board-approved plan and budget for the next fiscal year; (2) on a quarterly basis, within 30 days after the end of each calendar quarter, an unaudited balance sheet and related statements of operations and cash flows; (3) upon the request of DC, a monthly unaudited balance sheet and related statements of operations and cash flows; and (4) such other information about the Company's affairs as may be reasonably requested by DC. Such annual, quarterly and monthly results shall be prepared in a form which permits comparison to the budget for the corresponding period and, in the case of the annual and quarterly results, comparison to the prior year's results.

SECTION 2.6. Payment of Counsel Fees. If, and only if, the Adjusted First Closing Stock Purchase or the Conditional Closing Stock Purchase shall have occurred on or before November 30, 1995, on the earlier to occur of the Adjusted First Closing Stock Purchase,

if any, or the Conditional Closing Stock Purchase, if any, the Company shall pay on behalf of DC the counsel fees, charges and disbursements of Morgan, Lewis & Bockius LLP to the extent reflected in statements of such counsel rendered to DC in respect of all matters related to this Agreement, the Letter Agreement and all related agreements and transactions; provided that in no case shall the Company be obligated to pay more than $50,000 pursuant to this Section 2.6. Such counsel is an intended third-party beneficiary of this Section 2.6 and may enforce the provisions hereof against the Company directly without pursuing any other remedies available to it.

SECTION 2.7. Key Man Insurance. So long as DC owns at least 5% of TVP, but in any event from the date hereof until the later to occur of (i) November 9, 1995, or (ii) the Adjusted First Closing Stock Purchase, if any, or the First Closing Stock Purchase, if any, but for purposes of (i) and (ii), not later than November 30, 1995, the Company shall purchase and maintain in effect at least until the consummation of an IPO term life insurance insuring the lives of the Founders for $3,000,000 each and naming the Company as the beneficiary.

ARTICLE III.

CONDITIONS TO CLOSINGS

SECTION 3.1. Conditions to DC's Obligations. The obligation of DC to make a Stock Purchase on the applicable Closing Date is subject to the fulfillment, to DC's satisfaction, prior to or on such Closing Date of the following conditions, except to the extent such satisfaction is not required pursuant to Sections 1.1.1. and 1.1.2.:

3.1.1. Technology. All documents which relate to the transfer of Intellectual Property (as defined in Section 4.1.13) by the Founders to the Company shall have been delivered to DC or its counsel, a list of which is set forth in Schedule IV (the "Technology Transfer Documents"). There have been no material developments as of the applicable Closing Date which materially and negatively impact the Company's rights to the Intellectual Property as conveyed by the Technology Transfer Documents.

3.1.2. Executive Search. The Company shall have hired Ramsey Beirne Associates or another comparably recognized executive search firm, to commence a search for a Chief Executive Officer.

3.1.3. Required Investor. The Company shall have received a commitment by Sony Corporation or comparable entity ("Required Investor") to invest at least $1,000,000 in the equity of Company.

3.1.4. Manufacturing and Distribution Agreement. The Company shall have executed a manufacturing and distribution agreement with a Required Investor whereby such entity assumes substantially all of the risk of inventory.

3.1.5. Initial Business Plan. As of a reasonable time before the applicable Closing Date, the Company shall have delivered to DC the IBP, satisfactory in all material respects to DC.

3.1.6. Representations and Warranties. The representations and warranties of the Company made in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of such Closing Date with the same effect as if made at and as of such Closing Date, except to the extent such representations and warranties expressly relate to an earlier time.

3.1.7. Consents and Approvals. The Company shall have obtained or made all consents, approvals, orders, licenses, permits and authorizations of, and registrations, declarations, notices to and filings with, any Governmental Authority (as defined in Section 4.1.1. hereof) or any other Person (as defined in Section 4.1.3. hereof) required to be obtained or made by or with respect to the Company in connection with the execution and delivery of this Agreement and the Letter Agreement or the consummation of the transactions contemplated hereby and thereby.

3.1.8. Full Force and Effect. This Agreement shall be in full force and effect.

3.1.9. Injunctions,etc. No injunction or order of any Governmental Authority shall be in effect as of such Closing Date, and no lawsuit, claim, proceeding or investigation shall be pending or threatened by or before any Governmental Authority as of such Closing Date, which would restrain or prohibit the issuance and sale of the Shares being issued and sold on such Closing Date or the consummation of any of the other transactions contemplated by this Agreement or invalidate or suspend any provision of this Agreement to which it is a party or the Articles and no Governmental Authority shall have imposed a Burdensome Condition upon any transaction contemplated by this Agreement or any other Operative Document.

"Burdensome Condition" means, with respect to any proposed transaction, any action taken, or threatened, by or before any Governmental Authority or other Person (which, with respect to an action threatened by such Person, there would be a material possibility of success if such action were taken) to challenge the legality of such transaction, including (i) the institution of a governmental investigation (formal or informal), (ii) the institution of any litigation, or the threat thereof, seeking to restrain, enjoin or prohibit the consummation of such transaction or part thereof, to place any condition or limitation upon such consummation or to invalidate, suspend or require modification of any provision of any Operative Document, (iii) the issuance of any injunction having any of the consequences described in clause (ii) or (iv) the issuance of any subpoena, civil investigative demand or other request for documents or information relating to such transaction that is unreasonably burdensome in the reasonable judg-ment of the applicable party to such transaction.

3.1.10. Closing Documents. The Company shall have delivered to DC the following:

(a) a certificate of the president or the chief financial officer of the Company, dated such Closing Date, to the effect that the conditions specified to have been satisfied have been satisfied;

(b) incumbency certificates dated such Closing Date for each officer of the Company executing any document delivered in connection with the closing on such Closing Date;

(c) a copy of the Articles in the form of Exhibit B hereto as filed with the Secretary of State of the State of California, certified by the Secretary of the Company on such Closing Date;

(d) certificates of (i) the Secretary of State of the State of California and (ii) the California Franchise Tax Board, each dated a recent date, certifying that the Company is in good standing in the State of California; and

(e) such other certificates or documents as DC or its counsel may reasonably request relating to the transactions contemplated hereby.

3.1.11. Proceedings. All corporate and legal proceedings taken by the Company in connection with the transactions contemplated by this Agreement and all documents and papers relating to such transactions shall be reasonably satisfactory in form and substance to DC and its counsel, and DC shall have received all such certified or other copies of all such documents as it shall have reasonably requested.

SECTION 3.2. Conditions to the Company's Obligations. The obligation of the Company to issue and sell the Remaining Aggregate Shares to DC is subject to the satisfaction (or waiver by the Company) as of the applicable Closing Date of the following conditions:

3.2.1. Representations and Warranties. The representations and warranties of DC made in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of such Closing Date with the same effect as if made at and as of such Closing Date, except to the extent such representations and warranties expressly relate to an earlier time.

3.2.2. Injunctions, etc. No injunction or order of any Governmental Authority shall be in effect as of such Closing Date, and no lawsuit, claim, proceeding or investigation shall be pending or threatened by or before any Governmental Authority as of such Closing Date, which would restrain or prohibit the issuance and sale to such Purchaser of the Shares being issued and sold on such Closing Date or the consummation of any of the other transactions contemplated by this Agreement to which the Company is a party or invalidate or

suspend any provision of this Agreement to which the Company is a party or the Articles and no Governmental Authority shall have imposed a Burdensome Condition upon any transaction contemplated by this Agreement.

3.2.3. Full Force and Effect. This Agreement shall be in full force and effect.

3.2.4. Consents and Approvals. DC shall have obtained or made all consents, approvals, orders, licenses, permits and authorizations of, and registrations, declarations, notices to and filings with, any Governmental Authority or any other Person required to be obtained or made by or with respect to such Purchaser in connection with the execution and delivery of this Agreement nor the consummation of the transactions contemplated thereby.

3.2.5. Closing Documents. DC shall have delivered to the Company the following:

(a) a certificate of an authorized signatory of DC, dated the applicable Closing Date, to the effect that the conditions specified to have been satisfied have been satisfied;

(b) incumbency certificates dated the applicable Closing Date for the officers of DC executing any documents delivered in connection with the closing on the applicable Closing Date; and

(c) such other certificates or documents as the Company or its counsel may reasonably require relating to the transactions contemplated hereby.

3.2.6. Proceedings. All corporate and legal proceedings taken by the Company in connection with the transactions contemplated by this Agreement and all documents and papers relating to such transactions shall be reasonably satisfactory in form and substance to the Company and its counsel, and the Company shall have received all such certified or other copies of all such documents as it shall have reasonably requested.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES

SECTION 4.1. Representations and Warranties of the Company. Except as set forth in the Disclosure Schedule attached hereto (the "Disclosure Schedule"), the Company represents and warrants to DC that on the date hereof and as of each Closing Date:

4.1.1. Organization and Standing of the Company. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of California. The Company has all requisite power and authority and possesses all franchises,

licenses, permits, authorizations and approvals from any Federal, state, local or foreign governmental person, authority, agency, court, regulatory commission or other governmental body, (each, a "Governmental Authority") necessary to enable it to use its corporate name and to own, lease or otherwise hold its properties and assets and to carry on its business as presently conducted and proposed to be conducted. The Company is duly qualified to do business as a foreign corporation in each jurisdiction in which the nature of its business or the ownership, leasing or holding of its properties or assets requires qualification and where the failure to do so would have a Material Adverse Effect. The Company has delivered to DC or its counsel true and complete copies of its Articles of Incorporation, as amended to date, and its Bylaws, as in effect on the date hereof and has made no amendments thereto as of the applicable Closing Date. The share certificate and transfer books and the minute books of the Company (which have been made available for inspection by DC and its representatives) are true and complete.

"Material Adverse Effect" means, with respect to any event, act, condition or occurrence of whatever nature, whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, (a) a material adverse effect upon any of (i) the business, results of operations, assets (whether tangible or intangible), liabilities, obligations or condition (financial or otherwise) of the Company and its subsidiaries, if any, taken as a whole or (ii) the legality, validity, enforceability of this Agreement, or any Contract, (b) the impairment, hindrance or adverse effect in any material respect upon the ability of the Company to perform any of its obligations under this Agreement or to consummate the transactions contemplated hereby, (c) the reasonable likelihood of material criminal liability of any officer, director or key employee of the Company, in such capacity, or (d) a material adverse effect on the value of the outstanding shares of Common Stock or Preferred Stock.

4.1.2. Authority. The Company has all requisite power and authority to enter into this Agreement, to issue and sell the Aggregate Shares sold pursuant to the Letter Agreement and being sold pursuant to this Agreement and to consummate the other transactions contemplated hereby and thereby. The execution and delivery by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company and its stockholders. This Agreement has been duly executed and delivered by the Company and constitutes (assuming due and valid execution by the other party hereto), the Company's legal, valid and binding obligations, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting enforcement of creditors, rights generally and by general equitable principles. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and compliance with the terms hereof will not, conflict with, or result in any violation of or default (with or without notice or lapse of time or both) under, or give rise to a right of termination, cancellation or acceleration of any material obligation or to the loss of any material benefit under, or result in the creation or imposition of any lien (except as provided in

this Agreement) of any nature whatsoever upon any of the properties or assets of the Company under, (a) any loan or credit agreement, note, bond, mortgage, indenture, deed of trust, license, lease, contract, commitment, agreement, understanding or arrangement to which the Company or any Founder is a party or by which the Company or any of its properties or assets is bound, (b) any provision of the Articles or Bylaws or (c) any judgment, order, decree or law, applicable to the Company or any of its properties or assets. Except as set forth on the Disclosure Schedule, no consent, approval, order, license, permit or authorization of, or registration, declaration, notice to or filing with, any Governmental Authority or any other person is required to be obtained or made by or with respect to the Company or any of its affiliates in connection with the execution and delivery of this Agreement, the issuance and sale of the Aggregate Shares or the consummation of the other transactions contemplated thereby.

4.1.3. Capital Stock of the Company. The authorized capital stock of the Company consists of (i) 100,000,000 shares of Common Stock, of which 15,000,000 shares are issued and outstanding and 3,180,188 shares are reserved for issuance under the 1995 Plan, and (ii) 20,000,000 shares of preferred stock, of which 503,511 shares of Series A Preferred Stock are, as of the date of this Agreement, and will be, as of the date of the First Closing Stock Purchase or the Adjusted First Closing Stock Purchase, as the case may be, issued and outstanding; no shares of capital stock will be issued to any Person other than DC prior to any Closing Date, except as contemplated hereby and there are no other shares of capital stock of the Company issued, or reserved for issuance, or outstanding. The outstanding shares of Common Stock are, and the Common Stock to be issued upon conversion of the Series A Preferred Stock will be, duly authorized, validly issued, fully paid and nonassessable. Except as set forth in the Disclosure Schedule, the outstanding shares of Common Stock are not, and the Common Stock to be issued upon conversion of the Series A Preferred Stock will not be, subject to any preemptive, first refusal or other subscription rights, other than as provided for in this Agreement. The issuance of all the Aggregate Shares has been duly and validly authorized. All the Aggregate Shares, when issued in compliance with this Agreement and the Articles and upon receipt of payment therefore, if any, are or will be, as applicable, validly issued, fully paid and nonassessable and are not or will not have been issued in violation of, and will not be subject to, any preemptive, first refusal or other subscription rights (except as provided in this Agreement) and will not result in the anti-dilution provisions of any other security of the Company becoming applicable.

"Person" means any individual, firm, company, corporation, unincorporated association, partnership, trust, joint venture, Governmental Authority or other entity, and shall include any successor (by merger or otherwise) of such entity.

4.1.4. List of Record Holders. The Disclosure Schedule sets forth a true and complete list of the record holders of all Voting Securities (as defined herein) as of the date hereof. To the Company's knowledge, each such holder owns all the securities shown to be owned by such holder in the Disclosure Schedule beneficially, free and clear of all liens (except as provided in this Agreement). Except as disclosed in the Disclosure Schedule and as provided

in this Agreement, there are no outstanding warrants, options, rights, securities, agreements, subscriptions, anti-dilution rights, first refusal rights or other commitments pursuant to which the Company is or may become obligated to issue, deliver or sell any additional shares of capital stock of the Company or to issue, grant, extend or enter into any such warrant, option, right, security, agreement, subscription or other commitment. Except as disclosed in the Disclosure Schedule, there are no outstanding options, rights, securities, agreements or other commitments pursuant to which the Company is or may become obligated to redeem, repurchase or otherwise acquire or retire any shares of capital stock of the Company which are presently outstanding or may be issued in the future.

"Voting Securities" means the Series A Preferred Stock, the Common Stock and any other securities of the Company entitled to vote in the election of directors of the Company, and any other securities (including rights, warrants, options and convertible indebtedness) convertible into, exchangeable for or exercisable for any Common Stock or other securities referred to above (whether or not presently convertible, exchangeable or exercisable).

4.1.5. Existing Registration Rights. Other than the rights granted to DC herein and as set forth on the Disclosure Schedule, there are no outstanding rights which permit the holder thereof to cause the Company to file a registration statement under the Securities Act or which permit the holder thereof to include securities of the Company in a registration statement filed by the Company under the Securities Act, and there are no outstanding agreements or other commitments which otherwise relate to the registration of any securities of the Company under the Securities Act.

4.1.6. Previously Issued Securities. All securities of the Company heretofore issued and sold by the Company were issued and sold in compliance with all applicable Federal and state securities laws. Assuming that the representations and warranties of DC set forth in Section 4.3 are true and correct, the offering, issuance and delivery by the Company of the Aggregate Shares in compliance with this Agreement and the issuance of Common Stock to be issued upon conversion thereof will be exempt from the registration and prospectus delivery requirements of the Securities Act and the qualification requirements of Section 25110 of the California Corporate Securities Law of 1968, as amended.

4.1.7. Equity Interests. The Company does not beneficially own any capital stock or other equity or other interests in any corporation, partnership, trust or other entity, and the Company is not a member of or participant in any partnership, joint venture or similar entity.

4.1.8. Balance Sheet. The Company has delivered to the Purchaser the unaudited balance sheet (the "Balance Sheet") of the Company dated November 8, 1995 certified by the chief executive officer of the Company and shall deliver on each Closing Date, as of the day before such Closing Date, a balance sheet certified by the chief executive officer of the Company. The Balance Sheet is, and each balance sheet delivered on a Closing Date will be, in

accordance with the books and records of the Company and fairly presents, and on each Closing Date will fairly present, in all material respects, the financial condition of the Company as of the date thereof.

4.1.9. Undisclosed Liabilities. Except as set forth on the Disclosure Schedule, to the Company's knowledge, the Company does not have any material liabilities or obligations of any nature, whether accrued, absolute, contingent (individually or in the aggregate), unasserted or otherwise, except (i) as set forth or reflected on the Balance Sheet (or described in any note thereto), (ii) for contracts listed in response to Section 4.1.17. in the Disclosure Schedule or contracts and purchase orders entered into in the ordinary course of business, (iii) for liabilities and obligations under a lease for its principal offices and leases for equipment and (iv) for liabilities and obligations incurred in the ordinary course of business consistent with past practice since the date of the Balance Sheet and not in violation of this Agreement.

4.1.10. Taxes. The Company, and all members of any affiliated group within the meaning of section 1504 of the Code of which the Company is or has been a member (each, an "Affiliated Group"), has filed or caused to be filed in a timely manner (within any applicable extension periods) all Tax Returns and has paid or set up adequate reserves on the books and records of the Company in accordance with GAAP for payment of all Taxes required to be paid with respect to the periods covered by such Tax Returns. All Taxes for taxable periods for which such Tax Returns have not been filed and which should be reserved on the financial statements of the Company in accordance with GAAP have been so reserved as set forth in the Balance Sheet. No Liens (as defined herein) have been filed and no material claims are being asserted or, to the best knowledge of the Company, might be asserted, with respect to any Taxes of the Company. Neither the Company nor any Affiliated Group is delinquent in the payment of any Taxes or other governmental charges. No restrictions on assessment or collection of Taxes have been waived with respect to the Company or any Affiliated Group and neither the Company nor any other Person has consented to the extension of any statute of limitations with respect to the Company or any Affiliated Group relating to Taxes. The Company has received no notice of assessment or proposed assessment of any Taxes claimed to be owed by it or any other Person or entity on its behalf. No Tax Returns filed by or on behalf of the Company are currently being audited or examined, nor has notice been received by the Company of any audit or examination. There are no Tax sharing agreements or arrangements with any Person under which the Company will have any obligation or liability after the First Closing Date.

"Tax" or "Taxes" means all Federal, state, local and foreign taxes, assessments and other governmental charges, including (a) taxes based upon or measured by gross receipts, income, profits, sales, use or occupation and (b) value added, ad valorem, transfer, franchise, withholding, payroll, employment, excise or property taxes, together with (c) all interest, penalties and additions imposed with respect to such amounts and (d) any obligations under any agreements or arrangements with any other Person with respect to such amounts.

"Tax Returns" means all returns (including withholding Tax returns), reports and forms relating to Taxes required to be filed under the Code or under applicable state, local or foreign Tax law.

4.1.11. Assets other than Real Property. The Company has good and marketable title to all assets reflected on the Balance Sheet or acquired after the date thereof through the applicable Closing, except those since sold or otherwise disposed of for fair value in the ordinary course of business consistent with past practice, in each case free and clear of all Liens except Permitted Liens or Liens which are not, in the aggregate, material to the Company. All the tangible personal property owned by the Company is in all material respects in good operating condition and repair, ordinary wear and tear excepted, and all personal property leased by the Company is in all material respects in the condition required of such property by the terms of the lease applicable thereto during the term of such lease and upon the expiration thereof.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement relating to such asset and (c) in the case of securities, any purchase option, call or similar right with respect to such securities.

"Permitted Lien" means (a) Liens for Taxes which are not due and payable or which may after contest be paid without penalty or which are being contested in good faith and by appropriate proceedings (provided that an adequate reserve for the payment of such Taxes has been established by the appropriate Person) and so long as such proceedings shall not involve any substantial risk of the sale, forfeiture or loss of any part of any relevant asset or title thereto or any interest therein; (b) mechanics', materialmen's, carriers', warehousemen's and similar Liens arising by operation of law and arising in the ordinary course of business and securing obligations of a Person that are not overdue for a period of more than 60 days or are being contested in good faith by appropriate proceedings diligently pursued; provided that in the case of any such contest (i) any proceedings commenced for the enforcement of such Liens shall have been duly suspended, and (ii) full provision for the payment of such Liens has been made on the books of such Person if and to the extent required by GAAP; (c) Liens securing repayment of trade payables incurred in the ordinary course of business and (d) other imperfections of title or other encumbrances, if any, which imperfections of title or other encumbrances are nonconsensual and do not, individually or in the aggregate, materially impair the use or value of the relevant asset.

4.1.12. Title to Real Property. As of the date of this Agreement, the Company (i) does not own any real property and (ii) holds a good and valid lease to the premises located at 275 Alma Street, Palo Alto, California.

4.1.13. Intellectual Property.

4.1.13.1. The Disclosure Schedule sets forth a true and complete list of all patents, patent applications, trade names, registered copyrights, registered trademarks and trademark applications wholly or partially owned by or licensed to the Company.

4.1.13.2. The Company owns or has the right to use, execute, reproduce, display, perform, modify, enhance, distribute, prepare Derivative Works (as defined herein) of, and license and sublicense without further payment to any other Person, all Intellectual Property (as defined herein) used in its business as presently conducted and to be used in its business as proposed to be conducted as set forth in the IBP, including, without limitation, all Intellectual Property assigned or licensed to the Company by the Founders, free and clear of all Liens.

4.1.13.3. All patents, copyrights and trademarks of the Company indicated in the Disclosure Schedule have been duly registered and filed with or issued by each appropriate Governmental Authority in the jurisdictions indicated, all necessary affidavits of continuing use have been filed, and all necessary maintenance fees have been paid to continue all such rights in effect.

"Derivative Work" means a work which is based upon one or more preexisting works, such as a revision, enhancement, modification, translation, abridgment, con-densation, expansion, or any other form in which such preexisting works may be recast, transformed or adapted, and which, if prepared without authorization of the owner of the copyright in such preexisting work, would constitute a copyright infringement. A Derivative Work shall also include any compilation that incorporates such a preexisting work.

"Intellectual Property" means intellectual property, including patents, patent applications, patent rights, trademarks, trademark registrations, trademark applications, licenses, service marks, business marks, brand names, trade names, all other names and slogans embodying business or product goodwill (or both), copyright registrations, mask works, copyrights (including copyrights in computer programs, software, including all source code and object code, development documentation, programming tools, drawings, specifications and data), rights in designs, trade secrets, technology, inventions, discoveries and improvements, know-how proprietary rights, formulae, processes, technical information, confidential and proprietary information, and all other intellectual property rights, whether or not subject to statutory registration or protection.

4.1.14. Infringement of Other's Intellectual Property. The conduct of the Company's business as presently conducted and as proposed to be conducted in the IBP, including the use of the Company's name and any trade names, does not violate or conflict with any copyrights, trade secrets, licenses or other Intellectual Property (excluding U.S. or foreign

patents, trademarks, service marks or trade names) of any other Person, including, without limitation, Catapult Entertainment, Inc., General Magic, Inc. and Apple Computer, Inc. (collectively, the "Previous Employers"), and, to the knowledge of the Company, does not violate or conflict with any U.S. or foreign patents, trademarks, service marks or trade names of any other Person, including, without limitation, the Previous Employers. The Company has not received, any communications alleging that the Company has infringed or violated, or that by conducting its business as proposed would infringe or violate, any of the patents, trademarks, service marks, trade names, copyrights, trade secrets or other Intellectual Property or processes of any other person, including the Previous Employers.

4.1.15. Grant of Licenses. The Company has not granted or entered into any options, licenses or agreements of any kind relating to its Intellectual Property. The Company is not bound by or a parry to any options, licenses or agreements of any kind with respect to the Intellectual Property of any other person.

4.1.16. Assignment by Employees. All the employees of the Company who have contributed to or participated in the conception and development of products currently offered by the Company and the products which the Company proposes to offer and in the development of the Intellectual Property of the Company have acted within the scope of their employment in so contributing or participating and have assigned to the Company all inventions, patents, trademarks, copyrights, works of authorship and, to the extent applicable, other Intellectual Property created by such employees and related to the Company's business.

4.1.17. Contracts. Except as set forth in the Disclosure Schedule and other than this Agreement to which it is a party, the Company is not a party to or bound by, nor are any of its properties or assets or is its business bound by or subject to, any written: (1) material agreement or contract not made in the ordinary course of business; (2) employment agreement or employment contract that is not terminable at will by the Company; (3) (i) employee collective bargaining agreement or other contract with any labor union, (ii) plan, program, arrangement or agreement that provides for the payment of severance, termination or similar type of compensation or benefits upon the termination or resignation of any employee of the Company or (iii) plan, program, arrangement or agreement that provides for medical or life insurance benefits for former employees of the Company or for current employees of the Company upon their retirement from, or termination of employment with, the Company; (4) covenant not to compete; (5) agreement, contract or other arrangement with (A) any stockholder of the Company (B) any affiliate of the Company or any affiliate of any stockholder of the Company or (C) any officer, director or employee of the Company (other than employment agreements covered by clause (2) above); (6) license or other agreement relating in whole or in part to Intellectual Property not made in the ordinary course of business (including, but not limited to, any license or other agreement under which the Company has the right to use any Intellectual Property owned or held by any other Person); (7) agreement or contract under which the Company has (i) incurred any Indebtedness or (ii) given any guarantee; (8) mortgage, pledge, security agreement, deed of trust or other document granting a Lien or security interest (including, but not limited to,

Liens upon properties acquired under conditional sales, capital leases or other title retention or security devices); (9) commitment or instrument which (i) has an aggregate future liability in excess of $50,000 and is not terminable by the Company for a cost of less than $50,000 or (ii) is otherwise material to the business of the Company as presently conducted or as proposed to be conducted; or (10) any lease of real property except as set forth in Section 4.1.11.

4.1.18. Enforceability. Each agreement, contract, lease, license, commitment or instrument of the Company set forth in the Disclosure Schedule (collectively, the "Contracts") is in full force and effect and is a legal, valid and binding agreement of the Company and, to the knowledge of the Company, of each other parry thereto, enforceable in accordance with its terms, except as enforceability may be limited by general equitable principles and by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally. The Company has performed or is performing all material obligations required to be performed by it under each Contract and is not (with or without notice or lapse of time or both) in breach or default in any material respect thereunder and, to the knowledge of the Company, no other party to any Contract is (with or without notice or lapse of time or both) in breach or default in any material respect thereunder.

4.1.19. Litigation Decrees. Except as set forth in the Disclosure Schedule, there are no lawsuits, claims, arbitrations or other proceedings or investigations (a) pending or, to the knowledge of the Company, threatened by or against or affecting the Company or any of its properties or assets or (b) to the knowledge of the Company, pending or threatened by or against any of the officers or employees of the Company which relate to or involve the termination of such person's employment with any of such person's former employers. There is no outstanding judgment, order or decree of any Governmental Authority or arbitrator applicable to the Company or any of its properties, assets or businesses which has had or could have a Material Adverse Effect.

4.1.20. Absence of Changes or Events. Since the date of the Balance Sheet, the business of the Company has been conducted in the ordinary course consistent with past practice and there has not been any material adverse change and the Company has not declared or paid or made, or agreed to declare or pay or make, any dividends or other distributions in cash or property to the stockholders of the Company.

4.1.21. Compliance with Applicable Laws. The Company and its properties, assets, operations and businesses are in compliance with all applicable Laws and any filing requirements relating thereto, including all laws and regulations relating to the export of technical data and environmental requirements (including requirements relating to air, water and noise pollution), other than such noncompliance which would not, individually or in the aggregate, have a Material Adverse Effect.

4.1.22. Brokers or Finders. Except as set forth in the Disclosure Schedule, neither the Company nor any of its officers, directors or employees has employed any broker or finder or incurred any liability for any investment banking fees, brokerage fees, commissions or finders fees in connection with the transactions contemplated by this Agreement.

4.1.23. Certain Employee Matters.

(a) Neither the execution and delivery of this Agreement, nor the conduct of the business of the Company as presently conducted, or as proposed to be conducted in the IBP, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract covenant or instrument under which any of the Founders of the Company is now obligated, including any agreement or arrangement between the Founders and the Previous Employers, which conflict, breach or default would have a Material Adverse Effect.

(b) All current and former members of management and key personnel (including (i) all employees involved in the development of software and (ii) the Founders) of and consultants to the Company have executed and delivered to the Company a confidential information and inventions assignment agreement in the form attached hereto as Exhibit A (the "Employee Agreement"). All consultants to the Company have been party to a "work-for-hire" arrangement or proprietary rights agreement with the Company pursuant to which either (i) in accordance with applicable Federal and state law, the Company has been accorded full, effective, exclusive and original ownership of all tangible and intangible property thereby arising, including the copyright thereon or (ii) there has been conveyed to the Company by appropriately executed instruments of assignment full, effective and exclusive ownership of all tangible and intangible property thereby arising, including the copyright thereon.

(c) Neither the Company nor any of its officers or employees has any patents issued or applications pending for any device, process, design or invention of any kind now used or needed by the Company in the furtherance of its business operations as presently conducted or as proposed to be conducted in the IBP, which patents or applications have not been assigned to the Company with such assignment duly recorded in the United States Patent Office.

(d) Since the date of its incorporation, the Company has not experienced any labor disputes, union organization attempts or work stoppages due to labor disagreements. The Company is in compliance in all material respects with all applicable laws respecting employment and employment practices, occupational safety and health standards, terms and conditions of employment and wages and hours, and is not engaged in any unfair labor practice. There is no unfair labor practice charge or complaint against the Company pending or, to the Company's knowledge, threatened before the National Labor Relations Board or any comparable state agency or authority.

4.1.24. Insurance. The Disclosure Schedule sets fort a complete and accurate list and description, including annual premiums and deductibles, of all policies of fire, liability, product liability, workmen's compensation, health and other forms of insurance presently in effect with respect to the Company's business, true and complete copies of which have been delivered to, or made available for review by, DC. No notice of cancellation or termination has been received with respect to any such policy.

4.1.25. Disclosure. The Company has not knowingly failed to disclose to DC any fact, occurrence or event the existence of which is material to the Company and which would have a Material Adverse Effect.

SECTION4.2. Representations and Warranties of DC. Except as set forth in the Disclosure Schedule, DC represents and warrants to the Company that, on the date hereof and as of each Closing Date:

4.2.1. Accredited Investor. It is an "accredited investor" as such term is defined in Regulation D under the Securities Act of 1933, as amended (the "Securities Act").

4.2.2. Investment. It is acquiring the Remaining Aggregate Shares and the underlying Common Stock for investment for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof in violation of the Securities Act or the California Corporate Securities Laws. It understands that the Shares to be purchased and the underlying Common Stock have not been registered or qualified under either the Securities Act or the California Corporate Securities Laws by reason of exemptions from the registration or qualification provisions contained therein, the availability of which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the undersigned's representations as expressed herein.

4.2.3. Rule 144. It acknowledges that the Remaining Aggregate Shares and the underlying Common Stock must be held indefinitely unless subsequently registered or qualified under the Securities Act and applicable state securities laws or unless an exemption from such registration or qualification is available. It is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things, the existence of a public market for the shares, the availability of certain current public information about the issuer, the resale occurring not less than two (2) years after a party has purchased and paid for the security to be sold, the sale being effected through a "broker's transaction" or in transactions directly with a "market maker" and the number of shares being sold during any three (3) month period not exceeding specified limitations.

4.2.4. No Public Market. It understands that no public market now exists for any of the securities issued by the Company and that the Company has made no assurances that a public market will ever exist for the Company's securities.

4.2.5. Receipt of Information. It has received all the information it considers necessary or appropriate to enable it to decide whether to acquire the Remaining Aggregate Shares. It has had an opportunity to become aware of the Company's business affairs and financial condition, has had an opportunity to ask questions and receive answers, review documents and gather information about the Company, and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Remaining Aggregate Shares.

4.2.6. Authorization. This Agreement, when executed and delivered by DC, will constitute (assuming due and valid execution by the other party hereto) a valid and legally binding obligation of DC, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy insolvency, reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and by general equitable principles.

4.2.7. Brokers and Finders. Neither it nor any of its officers, directors or employees has employed any investment banker, broker or finder or incurred any liability for any investment banking fees, brokerage fees, commissions or finders, fees in connection with the transactions contemplated by this Agreement.

ARTICLE V.

AFFIRMATIVE COVENANTS OF THE COMPANY

The Company covenants and agrees as follows:

SECTION 5.1. Accounting System. So long as DC owns at least 5% of TVP, but in any event from the date hereof until the later to occur of (i) November 9, 1995, or (ii) the Adjusted First Closing Stock Purchase, if any, or the First Closing Stock Purchase, if any, but for purposes of (i) and (ii), not later than November 30, 1995, the Company shall and shall cause its Subsidiaries to maintain all their financial records in accordance with GAAP. The Company shall and shall cause its Subsidiaries to maintain sufficient internal controls which (i) are at least comparable to those maintained by similarly situated companies and (ii) in any event are sufficient to allow an audit of the Company in accordance with GAAP. Notwithstanding the foregoing, the provisions of this Section 5.1. shall terminate upon the consummation of an IPO.

SECTION 5.2. Inspection. Until the later to occur of the Adjusted First Closing Stock Purchase or the Conditional Closing Stock Purchase, the Company shall (i) furnish promptly to DC access at the Company's premises to such other documents, reports, financial data and other information as DC may reasonably request, (ii) upon reasonable prior notice and during normal business hours, make available to DC or its representatives or designees for inspection at the Company's premises all properties, assets, books of accounts, corporate records and contracts of the Company, and any other material reasonably requested by DC, for inspection and shall, if requested by DC, use its best efforts to make available to DC, the directors, officers,

employees, customers, independent accountants and vendors of the Company for interviews to verify all information furnished and otherwise to become familiar with the Company and its business, operations, properties and assets and (iii) prior to the First Closing Date, cooperate fully in all other respects to assist DC in becoming familiar with the Company and its business. All information provided by the Company to DC and their respective representatives and designees shall be subject to the terms of its confidentiality agreement with DC.

SECTION 5.3. Insurance. So long as DC owns at least 5% of TV), but in any event from the date hereof until the later to occur of (i) November 9, 1995, or (ii) the Adjusted First Closing Stock Purchase, if any, or the First Closing Stock Purchase, if any, but for purposes of (i) and (ii), not later than November 30, 1995, the Company and its Subsidiaries shall maintain insurance in such amounts, with such deductibles and against such risks and losses as are reasonable for the business and assets of the Company, and the Company shall maintain such other insurance as may be required by law. Notwithstanding the foregoing, the provisions of this Section 5.1. shall terminate upon the consummation of an IPO.

SECTION 5.4. Compliance with Applicable Laws. So long as DC owns at least 5% of TVP, but in any event from the date hereof until the later to occur of (i) November 9, 1995, or (ii) the Adjusted First Closing Stock Purchase, if any, or the First Closing Stock Purchase, if any, but for purposes of (i) and (ii), not later than November 30, 1995, the Company shall and shall cause its Subsidiaries to comply with all applicable statutes, laws, ordinances, rules and regulations of any Governmental Authority (whether now in effect or hereinafter enacted) and any filing requirements relating thereto which shall be necessary in any material respect to the business of the Company. The Company shall and shall cause its Subsidiaries to do all things necessary to preserve, renew and keep in full force and effect and in good standing its corporate existence and authority necessary to continue its business.

SECTION 5.5. Reservation of Shares. The Company shall reserve and keep available out of its authorized but unissued shares of Common Stock a sufficient number of such shares to comply with its obligations to issue such shares to DC under the terms of this Agreement and the Articles.

SECTION 5.6. IPO. The Company agrees that its IPO shall be underwritten on a firm commitment basis by one or more of the underwriters set fort in Schedule III hereto or otherwise acceptable to DC pursuant to a registration statement filed and declared effective by the Securities and Exchange Commission (the "SEC") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), which public offering results in aggregate gross proceeds to the Company of at least $10,000,000 and at a price that reflects a total enterprise value of at least $50,000,000.

ARTICLE VI.

REGISTRATION RIGHTS

SECTION 6.1. Certain Definitions. As used in this Article VI, the following initially capitalized terms shall have the meanings set fort below:

6.1.1. The term "Common Stock" means the Company's common stock, without par value, and any stock or other securities into which or for which such stock may hereafter be changed, converted or exchanged, and any other securities issued to holders of such stock (or such shares into which or for which such shares are so changed, converted or exchanged) upon any reclassification, recapitalization, share combination, share subdivision, share dividend, merger, consolidation or similar transactions or events.

6.1.2. The term "Effective Date" means the date of the First Commercial Shipment.

6.1.3. The term "First Commercial Shipment" means the first commercial shipment of product by the Company to ultimate end-users located in a standard metropolitan statistical area with an aggregate population of at least 1,000,000 persons.

6.1.4. The term "Form S-3" means the Form S-3 form for registration of securities under the Securities Act, or any successor or substitute form.

6.1.5. The term "Holder" means DC or its affiliates or any purchaser therefrom of at least 500,000 shares of the Aggregate Shares who are record holders of Series A Preferred Stock.

6.1.6. The term "Registrable Securities" means any shares of Common Stock issuable upon conversion of shares of the Series A Preferred Stock held by DC or its affiliates.

6.1.7. The term "Registration Expenses" shall mean all expenses incident to the Company's performance of or compliance with its registration obligations set forth in this Agreement, including the following: (i) the fees, disbursements and expenses of the Company's counsel(s) United States and, if applicable, foreign) and accountants in connection with the registration of the Registrable Securities to be disposed of under the Securities Act; (ii) the reasonable fees and disbursements of one counsel (other than counsel to the Company) retained in connection with each such registration by the Requesting Holder; (iii) all expenses incurred in connection with the preparation, printing and filing of the registration statement, any preliminary prospectus or final prospectus, any other offering document and amendments and supplements thereto and the mailing and delivering of copies thereof to any underwriters and dealers; (iv) the cost of printing or producing any agreement(s) among underwriters, underwriting agreement(s), and blue sky or legal investment memoranda, any selling agreements and any other documents in

connection with the offering, sale or delivery of the Registrable Securities to be disposed of; (v) all expenses incurred in connection with the qualification of the Registrable Securities to be disposed of for offering and sale under state securities laws, including the reasonable fees and disbursements of counsel for the underwriters or the Holders of Registrable Securities in connection with such qualification and in connection with any blue sky and legal investments surveys; (vi) the filing fees incident to securing any required review by the NASD of the terms of the sale of the Registrable Securities to be disposed of; (vii) transfer agents', depositories' and registrars' fees and the fees of any other agent appointed in connection with such offering, including the fees and expenses of any "qualified independent underwriter," or other person acting in a similar capacity, pursuant to the requirements of the NASD or otherwise (the "Independent Underwriter"); (viii) all security engraving and
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security printing expenses; and (ix) all fees and expenses payable in connection with the listing of the Registrable Securities on a securities exchange or inter-dealer quotation system, but excluding any underwriting discount, selling commission or transfer tax relating to the sale or disposition of Holders' Registrable Securities and fees and expenses of counsel for any Holder except as set forth in clause (ii) of this Section 6.1.7.

6.1.8. The term "Registration Notice" shall mean written notice
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by a Holder or the Company, as the case may be, that such party desires to begin a Registration Process in accordance with the terms of this Agreement.

6.1.9. The term "Registration Process" shall mean the process of
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registering Common Stock or Registrable Securities, as the case may be, under the Securities Act which, for purposes of this Agreement, shall be deemed to be the period of time from the actual delivery of the Registration Notice until the end of any applicable "hold back" period required by the underwriters or, if there is no such period, then 30 days after the effectiveness of the Registration Statement; provided, however, in the event that (i) a registration
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statement has not been filed with the SEC within 45 days after a Registration Notice, (ii) such registration statement has not been declared effective by the SEC within 75 days after its filing with the SEC or (iii) the Registration Notice or the registration statement has been abandoned or withdrawn by the Requesting Holder or the Company, as the case may be, then the Registration Process shall be deemed concluded at such time; provided, further, with respect
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to an offering on a delayed or continuous basis pursuant to Rule 415 (or any successor rule to similar effect), a Registration Process shall end on the earlier of (x) thirty (30) days following the last sale pursuant to such offering and (y) the end of any "hold back" period with respect to any such offering.

6.1.10. The term "Rule 144" shall mean Rule 144 promulgated under
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the Securities Act, as amended from time to time, or any successor rule to similar effect.

SECTION 6.2. Demand Registrations. The provision of this Section 6.2
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shall commence on the Effective Date and terminate at such time as all Holders are permitted to resell the Registrable Securities held by them without restriction pursuant to Rule 144 promulgated under the Securities Act.

6.2.1. Notice and Registration. Upon a Registration Notice from a Holder to the Company requesting that the Company effect the registration under the Securities Act of at least 20% of the Registrable Securities or any lesser percentage so long as the anticipated proceeds from such offering exceed $20,000,000, which Registration Notice shall specify the intended method or methods of disposition of such Registrable Securities, the Company shall use its best efforts to effect (at the earliest possible date) the registration under the Securities Act of such Registrable Securities for disposition in accordance with the intended method or methods of disposition stated in such Registration Notice (including, but not limited to, an offering on a delayed or continuous basis pursuant to Rule 415, or any successor rule to similar effect, promulgated under the Securities Act); provided that:

(a) a Holder shall have the right to deliver Registration Notices to effect three (3) demand registrations pursuant to this Section 6.2. (each, a "Demand") and no more;

(b) a Holder may not deliver a Registration Notice prior to six months following the effective date of the initial registration statement used for an IPO or during any Registration Process; and

(c) if available, a Demand shall be effected by the Company on such Form S-3. In addition to the Demand rights set forth in Section 6.2.1.(a) above, a Holder who holds 25% or more of the Registrable Securities may request the Company to effect a registration on Form S-3, if available; provided that the number of such registrations is limited to two (2) per twelve month period and that the anticipated proceeds from such offering are at least $1,000,000.

6.2.2. Designation of Investment Bank. In the event that any registration pursuant to this Section 6.2. shall involve, in whole or in part, an underwritten offering, the Company shall have the right to designate one or more nationally recognized investment banking firms, reasonably acceptable to the requesting Holder, as the lead underwriter(s) of such underwritten offering.

6.2.3. Withdrawal of Registration Notice. A Holder shall have the right to withdraw any Registration Notice or, subject to Section 6.2.1. hereof, to change the number of Registrable Securities covered thereby at any time and for any reason.

6.2.4. Effect of Demand. A registration requested by a Holder pursuant to this Section 6.2. shall not be deemed to have been effected for purposes of Section 6.2.1.(a) (i) unless such registration statement has become effective and been maintained effective in accordance with Section 6.5 hereof, (ii) if after it has become effective such registration is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court for any reason other than a material misrepresentation or a material omission by the Holder specified in the Registration Notice or (iii) if the conditions to

closing specified in the purchase agreement or underwriting agreement entered into in connection with such registration are not satisfied other than by reason of some act or omission by any of such persons.

6.2.5. Delay of Registration. Notwithstanding anything in this Section 6.2. to the contrary, the Company shall not be obligated to take any action to effect a Demand pursuant to this Section 6.2. if the Company shall furnish to the requesting Holder, within ten (10) days after the delivery of the Registration Notice relating thereto, a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors it would be seriously detrimental to the Company or its stockholders for a registration statement to be filed in the near future. If the Company has delivered such a certificate to the requesting Holder, then the Company's obligation to effect such Demand under this Section 6.2. shall be deferred for a period not to exceed one hundred twenty (120) days from the date of receipt of the Holder's Registration Notice; provided, however, that the Company may not utilize this right more than once during any twelve month period.

SECTION 6.3. Piggyback Registration. If the Company at any time proposes to register any of its Common Stock or any equity securities exercisable for, convertible into or exchangeable for Common Stock under the Securities Act, whether or not for sale for its own account (the "Company Securities"), in a manner which would permit registration of Registrable Securities for sale to the public under the Securities Act, each such time it will promptly deliver a Registration Notice to each Holder, which Registration Notice will describe the rights of each Holder under this Section 6.3, at least 20 days prior to the anticipated filing date of the registration statement relating to such registration. Such notice shall offer each Holder the opportunity to include in such registration statement such number of Registrable Securities held by such Holder as such Holder may request. Upon the written request of the Holders requesting Registrable Securities to be registered pursuant to such registration statement (collectively, the "Piggyback Securities"), made within 10 days after the receipt of the Company's Registration Notice, which request shall specify the number of Piggyback Securities intended to be disposed of, the Company will use its best efforts to effect, in connection with the registration of the Company Securities, the registration under the Securities Act of all Piggyback Securities, to the extent required to permit the disposition (in accordance with such intended methods thereof) of the Piggyback Securities, provided that:

6.3.1. Relief from Company Obligation. If, at any time after giving such written notice of its intention to register any Company Securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register the Company Securities, the Company may, at its election, give written notice of such determination to the Holder and thereupon the Company shall be relieved of its obligation to register the Piggyback Securities in connection with the registration of such Company Securities (but not from its obligation to pay Registration Expenses to the extent incurred in connection therewith as provided in Section 6.4. hereof), without prejudice, however,

to the right of the Holder immediately to request that such registration be effected as a registration under Section 6.2. hereof to the extent permitted thereby.

6.3.2. Reduction in Piggyback Securities. If the registration referred to in the first sentence of this Section 6.3. is to be an underwritten primary registration on behalf of the Company, and the managing underwriter(s) advise the Company in writing that, in their good faith opinion, inclusion of all the Piggyback Securities in such offering would materially and adversely affect the offering and sale of the Company Securities, including the per share price thereby obtainable, the Company shall only include in such registration: (1) first, all the Company Securities (including any to be sold for the Company's own account), with such priorities among them as the Company may determine and (2) second, up to the full number of Piggyback Securities which, in the good faith opinion of such underwriter(s) can be so sold without materially and adversely affecting such offering (and, if less than the full number of such Piggyback Securities, allocated pro rata among the Holders on the basis of the number of securities requested to be included therein by each such Holder).

6.3.3. Exceptions. The Company shall not be required to effect any registration of Registrable Securities held by any Holder under this Section 6.3. incidental to the registration of any of its securities in connection with mergers, acquisitions, exchange offers, subscription offers, dividend reinvestment plans or stock option or other employee benefit plans.

6.3.4. No Effect on Demand Rights. No registration of Registrable Securities effected under this Section 6.3. shall relieve the Company of its obligation to effect a registration of other Registrable Securities pursuant to Section 6.2. hereof.

6.3.5. Withdrawal of Piggyback Securities. A Holder may withdraw all or any part of the Holder's Piggyback Securities from the proposed registration at any time prior to the later of (i) the registration statement being declared effective by the SEC and (ii) the execution of any underwriting agreement.

6.3.6. Same Terms and Conditions. The Company may require that any Piggyback Securities be included in the offering proposed by the Company on the same terms and conditions as the Company Securities are included therein.

SECTION 6.4. Expenses. The Company will pay all Registration Expenses in connection with (i) each Demand and (ii) all registrations of Holders' Registrable Securities pursuant to Section 6.3. In the event the requesting Holder withdraws a Registration Notice, abandons a registration statement or following an effected Demand does not sell Registrable Securities, then all Registration Expenses in respect of such Registration Notice shall be borne, at the requesting Holder's option, either by the requesting Holder or by the Company (in which case, if borne by the Company and subject to Section 6.2.4. hereof, such withdrawn Registration Notice shall be deemed to be an effected Demand for purposes of Section 6.2. hereof).

SECTION 6.5. Registration and Qualification. If and whenever the Company is required to use its best efforts to effect the registration of any Registrable Securities under the Securities Act as provided in Sections 6.2. or 6.3. hereof, the Company will as promptly as is practicable:

6.5.1. prepare and file with the SEC, as soon as possible, and use its best efforts to cause to become effective, a registration statement under the Securities Act relating to the Registrable Securities to be offered on such form as the requesting Holder, or if not filed pursuant to a Demand, the Company, determines and for which the Company then qualifies;

6.5.2. prepare and file with the SEC such amendments (including post-effective amendments) and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities until the later of such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition set forth in such registration statement or the expiration of one hundred twenty (120) days after such registration statement becomes effective;

6.5.3. furnish to the Holder and to any underwriter of Registrable Securities such number of conformed copies of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits), such number of copies of the prospectus included in such registration statement (including each preliminary prospectus and any summary prospectus), in conformity with the requirements of the Securities Act, such documents incorporated by reference in such registration statement or prospectus, and such other documents, as the Holder or such underwriter may reasonably request, and, if requested, a copy of any and all transmittal letters or other correspondence to, or received from, the SEC or any other governmental agency or regulatory body or other body having jurisdiction (including any domestic or foreign securities exchange) relating to such offering;

6.5.4. make every reasonable effort to obtain the withdrawal of any order suspending the effectiveness of such registration statement at the earliest possible moment;

6.5.5. use its best efforts to register or qualify all Registrable Securities covered by such registration statement under the securities or blue sky laws of any domestic jurisdiction, and to list or qualify for such securities exchanges and other trading markets, as the requesting Holder or any underwriter of such Registrable Securities shall request, and use its best efforts to obtain all necessary registrations, permits and consents required in connection therewith, and do any and all other acts and things which are reasonably requested to enable the Holder or any such underwriter to consummate the disposition in such jurisdictions of the Registrable Securities covered by such registration statement, except that the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation in

any jurisdiction wherein it is not so qualified, or to subject itself to taxation in any such jurisdiction, or to consent to general service of process in any such jurisdiction;

6.5.6. if requested by a requesting Holder, (i) furnish to each Holder an opinion of counsel for the Company addressed to each Holder and dated the date of the closing under the underwriting agreement (if any) (or if such offering is not underwritten, dated the effective date of the registration statement), and (ii) use its best efforts to furnish to each Holder a "comfort" or "special procedures" letter addressed to each Holder and signed by the independent public accountants who have audited the Company's financial statements included in such registration statement in each such case covering substantially the same matters with respect to such registration statement (and the prospectus included therein) as are customarily covered in opinions of issuer's counsel and in accountants' letters delivered to underwriters in underwritten public offerings of securities and such other matters as the Holder may reasonably request and, in the case of such accountants' letter, with respect to events subsequent to the date of such financial statements;

6.5.7. immediately notify the Holders in writing (i) at any time when a prospectus relating to a registration pursuant to Section 6.2. or 6.3. hereof is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (ii) of any request by the SEC or any other regulatory body or other body having jurisdiction for any amendment of or supplement to any registration statement or other document relating to such offering, and in either such case (i) or (ii) at the request of a Holder prepare and furnish to such Holders a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading;

6.5.8. use its best efforts to list all such Registrable Securities covered by such registration statement on each securities exchange and inter-dealer quotation system on which a class of common equity securities of the Company is then listed, and to pay all fees and expenses in connection therewith; and

6.5.9. upon the transfer by a Holder in connection with a registration pursuant to Section 6.2. or 6.3. furnish unlegended certificates representing ownership of the Registrable Securities being sold in such denominations as shall be requested by the Holders or the underwriters.

SECTION 6.6. Underwriting; Due Diligence, etc.

6.6.1. Underwriting Agreement. If requested by the underwriters for any underwritten offering of Registrable Securities pursuant to a registration requested under this Agreement, the Company will enter into an underwriting agreement with such underwriters for such offering, which, in the case of a Demand, shall be in form reasonably acceptable to the requesting Holder and which, in the case of a Company Registration Process, shall be in form reasonably acceptable to the Company, any such agreement to contain such representations and warranties by the Company and such other terms and provisions as are customarily contained in underwriting agreements with respect to secondary distributions, including indemnities and contribution (provided, any indemnities and contribution shall, unless the requesting Holder and the Company agree otherwise, be to the effect and only to the extent provided in Section 7.3. hereof) and the provision of opinions of counsel and accountants' letters to the effect and to the extent provided in Section 6.5.6. hereof; provided, however, the Company may negotiate and agree to differing indemnification obligations with respect to the underwriters, provided such (i) do not adversely affect the Holders with respect to their rights and obligations hereunder and (ii) shall not excuse the Company from entering into (or delaying the execution of) an underwriting agreement on the terms as provided herein. The Holder on whose behalf the Registrable Securities are to be distributed by such underwriters shall be parties to any such underwriting agreement, and the representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of such underwriters, shall also be made to and for the benefit of the Holder. The Company shall use reasonable efforts to prevent any Holder from being required to make any representation or warranty, other than as to its ownership of the Registrable Securities and as to the due authorization, execution and enforceability, with respect to it, of the underwriting agreement. Such underwriter shall be instructed to use its reasonable best efforts to affect a wide distribution of the Registrable Securities being distributed so long as doing so shall not, in any manner, adversely affect the marketing (including timing) or price of such shares. The Company, if requested by the Requesting Holder or the underwriters, will enter into an agreement with the Independent Underwriter on customary terms.

6.6.2. Same Terms. In the event that any registration pursuant to Sections 6.2. or 6.3. shall involve, in whole or in part, an underwritten offering, the Company may require the Registrable Securities requested to be registered pursuant to Sections 6.2. or 6.3. to be included in such underwriting on the same terms and conditions as shall be applicable to the other securities being sold through underwriters under such registration. The representations and warranties in such underwriting agreement by, and the other agreements on the part of, the Company to and for the benefit of such underwriters, shall also be made to and for the benefit of the Holders. The Company shall use reasonable efforts to prevent any Holder from being required to make any representation or warranty, other than as to its or his ownership of the Registrable Securities and as to the due authorization, execution and enforceability, with respect to it or him, of the underwriting agreement. In the event a Holder enters into any underwriting agreement with underwriters in connection with a registration which contains representation and

warranties more extensive than those contained in this Section 6.6.1. above, such an agreement shall not constitute a breach of this Agreement by the Company.

6.6.3. Access to Books and Records. In connection with the preparation and filing of each registration statement registering Registrable Securities under the Securities Act, the Company will give the Holders of Registrable Securities and the underwriters, if any, and their respective counsel and accountants, such reasonable and customary access to its books and records and such opportunities to discuss the business of the Company with its officers and the independent public accountants who have certified the Company's financial statements as shall be necessary, in the reasonable opinion of such Holders and such underwriters or their respective counsel, to conduct a reasonable investigation within the meaning of the Securities Act. The Holders and the underwriters, if any, and their respective counsel and accountants, shall use their reasonable best efforts to coordinate and time their review so as to not unreasonably interfere with the business and operations of the Company.

6.6.4. Offering Not Underwritten. In the event an offering pursuant to this Agreement is not underwritten, the Company, at the request of the requesting Holder, will enter into such agreements with any selling agents or similar persons as are customary; such agreements shall contain terms and provisions analogous to those described herein and, to the extent not so described, customary terms and provisions.

SECTION 6.7. Restrictions on Public Sale: Inconsistent Agreements.

6.7.1. Lock-up. If required by an underwriter of Common Stock in connection with (i) the IPO or (ii) any registration of Registrable Securities pursuant to Sections 6.2. or 6.3., which registration is effected in an underwritten public offering, then, in each such case, the Holders agree not to effect any sale or distribution, including any sale pursuant to Rule 144 (except as part of such registration), of any of the Company's common equity securities or of any security convertible into or exchangeable or exercisable for any equity security of the Company (x) with respect to clause (i), for a period of time following the effective date of the registration statement relating thereto customary in underwritten initial public offerings, which period shall not exceed one hundred eighty (180) days, or (y) with respect to clause (ii) only, as to DC and its affiliates, for a period of time following the effective date of the registration statement relating thereto reasonably acceptable to such persons, which period shall not exceed ninety (90) days and only if the Founders have agreed to a substantially similar provision. Such agreement shall be in writing in the form satisfactory to the Company and such underwriter. The Company may impose a stop-transfer instruction with respect to the shares (or other securities) subject to the foregoing restriction until the end of such period.

6.7.2. No Distribution. The Company agrees (i) without the written consent of the managing underwriters, not to effect any public or private sale or distribution of the Company's common equity securities or any security convertible into or exchangeable or exercisable for any equity security of the Company, including a sale pursuant to Regulation D

under the Securities Act, during the requesting Holder's Registration Process (except (A) as part of such underwritten registration or pursuant to registrations on Form S-8 or any successor form or (B) equity securities issued pursuant to the conversion or exchange of any securities convertible into or exchangeable for the Company's common equity securities and which were outstanding prior to the commencement of such Registration Process), and (ii) to use its reasonable efforts to cause each holder of its privately placed securities purchased from the Company at any time on or after the date of this Agreement to agree not to effect any public sale or distribution of any such securities during such period, including a sale pursuant to Rule 144 (except as part of such underwritten registration, if permitted).

SECTION 6.8. Rule 144. The Company hereby covenants that after the Company shall have filed a registration statement pursuant to the requirements of Section 12 of the Exchange Act or a registration statement pursuant to the requirements of the Securities Act and such registration statement shall have become effective, the Company will file in a timely manner all reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the request of any Holder of Registrable Securities, make publicly available other information so long as necessary to permit sales under Rule 144), and it will take such further action as any Holder of Registrable Securities, all to the extent required from time to time to enable such Holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144. Upon the request of any Holder of Registrable Securities, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements. In addition, the Company hereby agrees that for a period of eighteen months following the date on which a registration statement filed pursuant to Section 2 or 3 hereof shall have become effective, the Company shall not deregister such securities under Section 12 of the Exchange Act (even if then permitted to do so pursuant to the Exchange Act and the rules and regulations promulgated thereunder).

SECTION 6.9. Transferability. A Holder of registration rights may transfer the rights to any transferee who holds, subsequent to such transfer, at least 500,000 shares of Series A Preferred Stock or Common Stock; provided (i) such transferee is reasonably acceptable to the Company, (ii) the Company must first be given written notice of the transfer and (iii) such transferee shall have agreed in writing, in form and substance reasonably satisfactory to the Company, to be bound by the terms of this Article VI to the same extent and in the same manner as the transferor of such shares or securities.

SECTION 6.10. No Inconsistent Agreements. The Company will not hereafter enter into any agreement with respect to its securities which is inconsistent with, or grants rights superior or pari passu to, the rights granted in this Article VI; provided that the Company may grant registration rights to the Founders that are substantially similar to the rights granted in this Article VI, so long as such rights provide that the registration rights granted under this Article VI will be superior to the fights of the Founders in any registration in which a Holder exercises his right to register shares.

SECTION 6.11. Recapitalization, etc. In the event that any capital stock or other securities are issued in respect of, in exchange for, or in substitution of any shares of Preferred Stock by reason of (i) any reorganization, recapitalization, reclassification, merger, consolidation, spin-off, partial or complete liquidation, stock dividend, split-up, sale of assets, distribution to stockholders or combination of the shares of Preferred Stock or (ii) any other change in the Company's capital structure, appropriate adjustments shall be made in the percentages specified in Section 6.2 hereof so as to fairly and equitably preserve, as far as practicable, the original rights and obligations of the parties hereto under this Article VI.

ARTICLE VII.

INDEMNIFICATION

SECTION 7.1. Indemnification Obligations.

7.1.1. Cross Indemnity. From and after the date hereof, the Company and DC (the Company and DC, each an "Indemnifying Party"), shall indemnify and hold harmless the other, and their respective stockholders, subsidiaries, affiliates, officers and directors and their successors and assigns (in the case of DC, the "DC Indemnified Parties") in respect of any and all damages, losses, deficiencies, liabilities, costs and expenses (including reasonable expenses of investigation and litigation and reasonable attorneys' accountants' and other professionals' fees and costs incurred in the investigation or defense thereof or the enforcement of rights hereunder) (collectively "Damages") resulting from or arising out of any (1) misrepresentation or breach of warranty made by or on behalf of the Indemnifying Party in this Agreement, or in any certificate delivered by one party to the other pursuant hereto, or (2) non-fulfillment of any agreement or covenant on the part of the Indemnifying Party hereunder.

7.1.2. Seller Indemnities. From and after the date hereof the Company shall indemnify and hold harmless the DC Indemnified Parties from, against and in respect of any and all Damages arising out of or relating to the Company's issuance, repurchase or redemption of any of the Company's capital stock prior to the date of this Agreement

7.1.3. Remedies not Cumulative. The remedies provided by this Article VII shall be cumulative and non-exclusive and shall not limit, or preclude assertion by any party hereto of, any rights or remedies which may otherwise be available to any party hereto.

7.1.4. No Consequential Damages. Notwithstanding anything to the contrary set forth in Sections 7.1 and 7.2 of this Agreement, DC and the Company hereby acknowledge and agree that neither party shall be liable to the other party for any incidental, indirect, consequential, special or punitive damages of any kind or nature, including without limitation any loss of profits or diminution in value, where such liability is covered by the indemnities set forth in Sections 7.1 and 7.2 of this Agreement, even if the other party has been warned of the possibility of any such loss or damage in advance.

SECTION 7.2 Method of Asserting Claims, etc. All claims for indemnification under this Article VII shall be asserted and resolved as follows:

7.2.1. Third Party Claims. In the event that any claim or demand, or other circumstance or state of facts which could give rise to any claim or demand, for which the Company may be liable to DC hereunder is asserted against or sought to be collected by a third party (an "Asserted Liability"), DC shall promptly notify the Company in writing of such Asserted Liability, specifying the nature of such Asserted Liability and the amount or the estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such claim or demand) (the "Claim Notice"); provided, however, that no delay on the part of DC in giving any such Claim Notice shall relieve the Company of any indemnification obligation hereunder unless the Company is prejudiced by such delay (and then solely to the extent of such delay). The Company shall have 30 days (or less if the nature of the Asserted Liability requires) from its receipt of the Claim Notice (the "Notice Period") to notify DC whether or not the Company desires, at the Company's sole cost and expense and by counsel of its own choosing, which shall be reasonably satisfactory to DC, to defend against such Asserted Liability. If the Company undertakes to defend against such Asserted Liability, the Company shall control the investigation, defense and settlement thereof; provided, however, that without the prior written consent of DC, which consent shall not be unreasonably withheld, (1) the Company shall not permit to exist any Lien upon any of the assets or properties of DC and (2) if any Asserted Liability is settled by the Company, (a) no liability shall be imposed on DC by reason of such Asserted Liability or the settlement thereof, and (b) the Company shall not consent to any settlement which (A) does not contain an unconditional release of the Company, DC and its affiliates and (B) with respect to any non-monetary provision of such settlement would be reasonably likely, in DC's reasonable judgment, to have an adverse effect on the business operations, assets, properties or prospects of DC or any of its subsidiaries or affiliates. Notwithstanding the foregoing, DC shall have the right to pay or settle any Asserted Liability which the Company shall have undertaken to defend so long as DC shall also waive any right to indemnification therefor by the Company. If the Company undertakes to defend against such Asserted Liability, DC shall cooperate fully with the Company and its counsel in the investigation, defense and settlement thereof. If DC desires to participate in any such defense it may do so at its sole cost and expense. If the Company does not undertake within the Notice Period to defend against such Asserted Liability, then the Company shall have the right to participate in any such defense at their sole cost and expense, but DC shall control the investigation, defense and settlement thereof. DC and the Company agree to make available to each other, their counsel and other representatives, all information and documents available to them which relate to such claim or demand. DC and the Company shall render to each other such assistance and cooperation as may reasonably be required to ensure the proper and adequate defense of such claim or demand.

7.2.2. Claims by D.C. In the event that any claim or demand, or other circumstance or set of facts for which the Company may be liable to DC hereunder is asserted based on the breach of any representation or warranty by the Company or any breach of a covenant of the Company under this Agreement which does not involve a claim or demand being asserted against or sought to be collected from DC by a third party (an "Asserted Breach"), DC shall promptly notify the Company in writing of such Asserted Breach, specifying the nature of such Asserted Breach, and the Company will have a period of not less than thirty (30) days after receiving written notice of the alleged breach (the "Cure Period"), to demonstrate to DC that no breach has occurred or to cure the alleged breach. In the event that the Asserted Breach has not been remedied or dispensed with as set forth above during the Cure Period, the Company and DC shall each attempt, in good faith, to resolve the Asserted Breach within fifteen (15) days of the expiration of the Cure Period. If the Company and DC are unable to resolve the Asserted Breach within such fifteen (15) day period, they shall jointly appoint the Company's auditors within five days of the end of such fifteen (15) day period to resolve the dispute within thirty (30) days. The Company and DC shall provide full cooperation to such firm. Such firm's resolution of the dispute shall be conclusive and binding on DC and the Company.

7.2.3. Claims by the Company. All claims for indemnification made by the Company under this Agreement shall be asserted and resolved under the procedures set forth above in Sections 7.2.1 and 7.2.2. by substituting, as appropriate and along with necessary grammatical changes, "DC" for "Company" and "Company" for "DC."

SECTION 7.3. Indemnification and Contribution Related to Article VI

With respect only to the offering of Registrable Securities contemplated by Article VI hereof, and in no way limiting or modifying the other provisions of this Article VII, the following indemnity and contribution provisions shall apply:

7.3.1. Indemnification by Company. In the case of each offering of Registrable Securities made pursuant to this Agreement, the Company agrees to indemnify and hold harmless each Holder of Registrable Securities, each underwriter of Registrable Securities so offered, each person, if any, who controls any of the foregoing persons within the meaning of the Securities Act, and the officers and directors of any of the foregoing from and against any and all claims, liabilities, losses, damages, expenses and judgments, joint or several, to which they or any of them may become subject, under the Securities Act or otherwise, including any amount paid in settlement of any litigation commenced or threatened, and shall promptly reimburse them, as and when incurred, for any legal or other expenses incurred by them in connection with investigating any claims and defending any actions, insofar as such losses, claims, damages, liabilities or actions shall arise out of, or shall be based upon, any untrue statement or alleged untrue statement of a material fact contained in the registration statement (or in any preliminary or final prospectus included therein) or in any offering memorandum or other offering document relating to the offering and sale of such Registrable Securities, or any amendment thereof or supplement thereto, or in any document incorporated by reference therein, or any omission or alleged omission to state therein a material fact required to be stated therein

or necessary to make the statements therein not misleading, or shall arise out of or be based upon any violation or alleged violation by the Company of the Securities Act, any blue sky laws, securities laws or other applicable laws of any state or country in which the Registrable Securities are offered and relating to action or inaction required of the Company in connection with such offering; provided, however, that the Company shall not be liable to a particular Holder of Registrable Securities in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement, or any omission or alleged omission, (i) if such statement or omission shall have been made in reliance upon and in conformity with information relating to such Holder furnished to the Company in writing by or on behalf of such Holder expressly for use in the preparation of the registration statement (or in any preliminary or final prospectus included therein), offering memorandum or other offering document, or any amendment thereof or supplement thereto or a document incorporated by reference in any of the foregoing or (ii) if such statement or omission was corrected in a prospectus delivered to such Holders of Registrable Securities prior to the consummation of the sale in which such loss, claim, damage, liability or action arises out of or is based upon and such corrected prospectus shall not have been delivered or sent to the purchaser within the time required by the Securities Act, provided that the Company delivered the corrected prospectus to such Holders in requisite quantity on a timely basis to permit such delivery or sending. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of a Holder of Registrable Securities and shall survive the transfer of such securities. The foregoing indemnity agreement is in addition to any liability which the Company may otherwise have to each Holder of Registrable Securities, underwriters of the Registrable Securities, any controlling person of any of the foregoing or any officer or director of any of the foregoing.

7.3.2. Indemnification by Holder. In the case of each offering of Registrable Securities made pursuant to this Agreement, each Holder of Registrable Securities included in such offering, by exercising its registration rights hereunder, agrees to indemnify and hold harmless the Company, each person, if any, who controls the Company within the meaning of the Securities Act, and if requested by the underwriters, each underwriter who participates in the offering and each person, who controls any such underwriter within the meaning of the Securities Act, and the officers and directors of any of the foregoing from and against any and all claims, liabilities, losses, damages, expenses and judgments, joint or several, to which they or any of them may become subject, under the Securities Act or otherwise, including any amount paid in settlement of any litigation commenced or threatened, and shall promptly reimburse them, as and when incurred, for any legal or other expenses incurred by them in connection with investigating any claims and defending any actions, insofar as any such losses, claims, damages, liabilities or actions shall arise out of, or shall be based upon, any untrue statement or alleged untrue statement of a material fact contained in the registration statement (or in any preliminary or final prospectus included therein) or in any offering memorandum or other offering document relating to the offering and sale of such Registrable Securities, or any amendment thereof or supplement thereto, or in any document incorporated by reference therein, or any omission or

alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but in each case only to the extent that such untrue statement of a material fact is contained in, or such material fact is omitted from, information relating to such Holder furnished in writing to the Company by or on behalf of such Holder expressly for use in the preparation of such registration statement (or in any preliminary or final prospectus included therein), offering memorandum or other offering document or a document incorporated by reference in any of the foregoing. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Company and shall survive the transfer of such securities. The foregoing indemnity is in addition to any liability which such Holder may otherwise have to the Company, or any of its directors, officers or controlling persons. Notwithstanding the foregoing, in no event shall the liability of a Holder hereunder be greater in amount than the dollar amount of the net proceeds received by it upon the sale of the Registrable Securities pursuant to such offering.

7.3.3. Procedure for Indemnification. Each party indemnified under this Section 7.3 shall, promptly after receipt of notice of any claim or the commencement of any action against such indemnified party in respect of which indemnity may be sought, notify the indemnifying party in writing of the claim or the commencement thereof; provided that the failure of the indemnified party to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to an indemnified party on account of the indemnity agreements contained in this Section 7.3, unless the indemnifying party was materially prejudiced by such failure, and in no event shall relieve the indemnifying party from any other liability which it may have to such indemnified party. If any such claim or action shall be brought against an indemnified party, it shall notify the indemnifying party thereof and the indemnifying party shall be entitled to participate therein, and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable (except to the extent the proviso to this sentence is applicable, in which event it will be so liable) to the indemnified party under this Section 7.3.3. for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided that each indemnified party shall have the right to employ separate counsel to represent it and assume its defense (in which case, the indemnifying party shall not represent it) if, in the reasonable judgment of such indemnified party, (i) upon the advice of counsel, the representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, or (ii) in the event the indemnifying party has not assumed the defense thereof within 10 days of receipt of notice of such claim or commencement of action, and in which case the fees and expenses of one such separate counsel shall be paid by the indemnifying party. If any indemnified party employs such separate counsel it will not enter into any settlement agreement which is not approved by the indemnifying party, such approval not to be unreasonably withheld. If the indemnifying party so assumes the defense thereof, it may not agree to any settlement of any such claim or

action as the result of which any remedy or relief, other than monetary damages for which the indemnifying party shall be responsible hereunder, shall be applied to or against the indemnified party, without the prior written consent of the indemnified party. In any action hereunder as to which the indemnifying party has assumed the defense thereof with counsel satisfactory to the indemnified party, the indemnified party shall continue to be entitled to participate in the defense thereof, with counsel of its own choice, but, except as set forth above, the indemnifying party shall not be obligated hereunder to reimburse the indemnified party for the costs thereof.

If the indemnification provided for in this Section 7.3 shall for any reason be unavailable to an indemnified party in respect of any loss, claim, damage or liability, or any action in respect thereof, referred to therein, then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, in such proportion as shall be appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party on the other with respect to the statements or omissions which resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations. The relative fault shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the indemnifying party on the one hand or the indemnified party on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission, but not by reference to any indemnified party's stock ownership in the Company. In no event, however, shall a Holder of Registrable Securities be required to contribute in excess of the amount of the net proceeds received by such Holder in connection with the sale of Registrable Securities in the offering which is the subject of such loss, claim, damage or liability. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this paragraph shall be deemed to include, for purposes of this paragraph, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section 12(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

ARTICLE VIII.

MISCELLANEOUS

SECTION 8.1. Survival of Agreement: Termination. All representations and warranties made by the Company and DC herein and in the certificates or other documents prepared or delivered in connection with the Closings described herein shall be considered to have been relied upon by DC and the Company,

respectively, and shall survive the last Closing hereunder for a period of two years. All covenants and agreements made by the Company and DC herein and in the certificates or other documents prepared or delivered in connection with the Closings described herein shall be considered to have been relied upon by DC and the Company, respectively, and shall survive any Closing Date, except as otherwise terminated as expressly provided herein.

SECTION 8.2. Assignment. This Agreement and the rights hereunder shall not be assignable or transferable by any party hereto (except by operation of law in connection with a merger or consolidation or in a sale of substantially all the assets of such party) without the prior written consent of the other parties hereto; provided that, prior to the IPO, DC may assign, in its sole discretion, any or all of its rights, interests and obligations under this Agreement to any of its Affiliates provided that such Affiliates do not compete with the Company) or, as expressly permitted by this Agreement, to any transferee of Voting Securities, (other than a transferee who shall acquire such Voting Securities in a public offering or pursuant to Rule 144 under the Securities Act); provided further that such assignment shall not release DC from its obligations hereunder. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

SECTION 8.3. No Third-Party Beneficiaries. Except as otherwise expressly set forth herein, this Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any Person, other than the parties hereto and such assigns, any legal or equitable rights hereunder.

SECTION 8.4. Expenses.

8.4.1. Whether or not the transactions contemplated hereby are consummated, and except as expressly provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs or expenses, except as otherwise provided in this Agreement. In the event the transactions contemplated hereby are consummated, the Company agrees to pay all stamp and other transfer taxes which may be payable in respect of the execution and delivery of this Agreement or the issuance of the Shares.

8.4.2. The provisions of this Section 8.4 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement or the consummation of the transactions contemplated hereby, the invalidity or unenforceability of any term or provision of this Agreement or any investigation made by or on behalf of DC. All amounts due under this Section 8.4 shall be payable on written demand therefor.

SECTION 8.5. Publicity. The Company and DC agree that, except to the extent required by law, including, without limitation, complying with disclosure requirements under federal and state securities laws, all press releases, announcements or other forms of publicity made to the general public referring to DC's investment in, or contractual or other arrangements with, the Company must be approved by DC.

SECTION 8.6. Assurances. The Company shall use its reasonable efforts to obtain and to assist DC and DC shall use its reasonable efforts to obtain and to assist the Company, as the case may be, in obtaining promptly all necessary waivers, consents and approvals from any Governmental Authority or any other Person (including the approval of the stockholders of the Company, if necessary) for any exercise by DC or the Company, as the case may be, of its rights under any of this Agreement and to take such other actions as may reasonably be requested by DC or the Company, as the case may be, to effect the purpose of this Agreement. The period of time provided for any closing of any transactions pursuant to such rights may, at the option of DC or the Company, as the case may be, be extended as necessary in order to obtain any such waivers, consents and approvals.

SECTION 8.7. Entire Agreement. Except for the provisions of paragraph 9 of the Letter Agreement, which are incorporated herein by reference, this Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes any prior written or oral understandings or agreements between the parties.

SECTION 8.8. California Corporate Securities Law. THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION IS UNLAWFUL UNLESS THE SALE OF SECURITIES IS EXEMPT FROM THE QUALIFICATION BY SECTION 25100, 25102, OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

SECTION 8.9. Governing Law. This Agreement shall be governed in accordance with California Law without application of the principle of conflicts of law.

SECTION 8.10. Counterparts. This Agreement may be executed by the parties hereto in separate counterpart, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same contract.

IN WITNESS WHEREOF, the Company and DC have duly executed this Stock Purchase Agreement as of the day and year first above written.

WEBTV NETWORKS, INC.

By: _____
Name:
Title:

DAVIS INTERNET, INC.

By: _____
Name:
Title:

EXHIBIT 4.2

RESTATED SERIES B CONVERTIBLE PREFERRED STOCK PURCHASE AGREEMENT

THIS RESTATED SERIES B CONVERTIBLE PREFERRED STOCK PURCHASE AGREEMENT (the "AGREEMENT") restates the Series B Convertible Preferred Stock Purchase Agreement dated March 20, 1996 (the "EFFECTIVE DATE"), by and between WEBTV NETWORKS, INC., a California corporation (the "COMPANY"), and Brentwood Associates VII, L.P., a Delaware limited partnership ("BRENTWOOD"), as amended by the Amendment to Series B Convertible Preferred Stock Purchase Agreement dated April 10, 1996 (the "AMENDMENT"). This Agreement sets forth the terms and conditions upon which the persons and entities listed on the Schedule of Purchasers attached as Exhibit A hereto (each an "ADDITIONAL PURCHASER" and collectively the "ADDITIONAL PURCHASERS") will participate in the purchase and sale of shares of the Company's Series B Convertible Preferred Stock. The Additional Purchasers and Brentwood are sometimes referred to herein individually as a "PURCHASER" or collectively as the "PURCHASERS."

R E C I T A L S

A. The Company desires to sell to the Purchasers, and the Purchasers desire to purchase from the Company, shares of the Company's Series B Convertible Preferred Stock convertible into shares of the Company's Common Stock.

B. Under the Series B Convertible Preferred Stock Purchase Agreement dated March 20, 1996, the Company issued and sold to Brentwood, and Brentwood purchased from the Company, 3,067,484 shares of the Company's Series B Convertible Preferred Stock for a total purchase price of approximately $5,000,000.

C. The Company desires to issue and sell an aggregate of up to an additional 3,249,222 shares of its Series B Preferred to various additional investors, either through a direct purchase of such shares or through warrants to purchase such shares.

Capitalized terms used herein shall have the meanings given them in Section 8.1 or as elsewhere defined in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein, and subject to the terms and conditions hereinafter set forth, the parties hereby agree as follows:

ARTICLE 1

PURCHASE, SALE AND TERMS OF SHARES

1.1 THE SERIES B CONVERTIBLE PREFERRED STOCK. The Company has authorized the issuance and sale of up to 6,316,706 shares of its Series B Convertible Preferred Stock, without par value (the "SERIES B PREFERRED") at a price of $1.63 per share, to the Purchasers, of which 3,067,484 shares of Series B Preferred has been purchased by Brentwood for a total purchase price of approximately $5,000,000, and of which 2,601,222 shares of Series B Preferred will be issued to the Additional Purchasers for a total purchase price of approximately $4,240,000. The designation, rights, preferences and other terms and conditions relating to the Series B Preferred, as defined below, shall be as set forth in Exhibit B hereto. Any shares of Common Stock issuable upon conversion of the Series B Preferred and such shares when issued, are herein referred to as the "CONVERSION SHARES."

1.2 RESERVATION OF SHARES. The Company will prior to the First Closing (as defined below) authorize and reserve and covenant to continue to reserve a sufficient number of its previously authorized but unissued shares of Common Stock to satisfy the rights of conversion of the holders of the Series B Preferred.

1.3 THE FIRST CLOSING. The Company agrees to issue and sell to each Purchaser, and each Purchaser agrees to purchase the number of shares of Series B Preferred set forth opposite each Purchaser's name on Exhibit A hereto (collectively, the "SHARES") at a cash purchase price of $1.63 per share. The first closing of the purchase and sale of the Series B Preferred hereunder (the "FIRST CLOSING") shall be held at the offices of the Company, 275 Alma Street, Palo Alto, California, on March 20, 1996, at 10:00 A.M., or on such other date and at such time as may be mutually agreed upon (the date of such First Closing being referred to as the "FIRST CLOSING DATE"). At the First Closing, the Company will issue and deliver certificates evidencing the Series B Preferred sold at the First Closing in such denominations as each Purchaser shall specify, against payment by certified bank check or wire transfer of immediately available funds to the account of the Company; provided, that at such First Closing the Purchasers shall be required to purchase in the aggregate a minimum of 2,914,110 Shares for a total minimum purchase price of approximately $4,750,000. The Company's agreements with each of the Purchasers are separate agreements, and the sales of the Series B Preferred to each of the Purchasers are separate sales.

1.4 SALE OF ADDITIONAL SERIES B PREFERRED. The Company shall have until April 15, 1996 to sell any shares of Series B Preferred not sold at the First Closing at the cash purchase price of $1.63 per share. Any such shares sold after the First Closing are referred to herein as "ADDITIONAL SHARES." The Additional Shares shall be considered part of the "Shares" and the Additional Purchasers shall be considered "Purchasers" for purposes of this Agreement, and shall have the same rights and obligations as if they had purchased the shares pursuant to this Agreement at the First Closing, except as provided in this Agreement. Such purchase and sale shall take place at a closing (the "SECOND CLOSING") to be held at the offices of the Company, 275 Alma Street, Palo Alto, California, on April 15, 1996, at 10:00 a.m., or on such other date and at such time as may be agreed upon by the Company but no later than April 17, 1996 (the "SECOND CLOSING DATE"). At the Second Closing, the Company will issue and deliver certificates evidencing the Series B Preferred sold at the Second Closing in such denominations as each Additional Purchaser shall specify, against payment by certified bank check or wire transfer of immediately available funds to the account of the Company

or the cancellation of indebtedness owed by the Company to that Purchaser; provided, that at such Second Closing the Additional Purchasers will be permitted to purchase in the aggregate a maximum of 2,601,222 shares of Series B Preferred for a total maximum aggregate purchase price of approximately $4,240,000. The Company and each Additional Purchaser shall execute and deliver signature pages to this Agreement. Each of the First Closing and Second Closing is referred to as a "CLOSING" hereunder, and each of the First Closing Date and the Second Closing Date is referred to as a "CLOSING DATE."

1.5 REPRESENTATIONS BY THE PURCHASERS.

(a) INVESTMENT. Each Purchaser represents that:

(i) Such Purchaser has been advised that the Series B Preferred has not been registered under the Securities Act nor qualified under any state securities laws on the grounds that no distribution or public offering of the Series B Preferred is to be effected, and that in this connection the Company is relying in part on the representations of such Purchaser set forth herein.

(ii) It is such Purchaser's intention to acquire the Series B Preferred for such Purchaser's own account and that the securities are being and will be acquired for the purpose of investment and not with a view to distribution or resale thereof.

(iii) Such Purchaser is able to bear the economic risk of an investment in the Series B Preferred acquired by such Purchaser pursuant to this Agreement and can afford to sustain a total loss on such investment.

(iv) Such Purchaser is an experienced and sophisticated investor, able to fend for itself in the transactions contemplated by this Agreement, and has such knowledge and experience in financial and business matters that such Purchaser is capable of evaluating the risks and merits of acquiring the Series B Preferred. If not an individual, such Purchaser has not been formed or organized for the specific purpose of acquiring the Series B Preferred. Such Purchaser has had, during the course of this transaction and prior to such Purchaser's purchase of the Series B Preferred, the opportunity to ask questions of, and receive answers from, the Company and its management concerning the Company and the terms and conditions of this Agreement. Such Purchaser hereby acknowledges that such Purchaser or such Purchaser's representatives has received all such information as such Purchaser considers necessary for evaluating the risks and merits of acquiring the Series B Preferred and for verifying the accuracy of any information furnished to such Purchaser or to which such Purchaser had access. Such Purchaser represents and warrants that the nature and amount of the Series B Preferred being purchased is consistent with such Purchaser's investment objectives, abilities and resources.

(v) Notwithstanding any other provision contained in this Agreement, such Purchaser understands that there is no public market for the Series B Preferred and that there may never be such a public market, and that even if such a public market develops such Purchaser may never be able to sell or dispose of the Series B Preferred and may thus have to bear the risk of such Purchaser's investment for a substantial period of time, or forever.

Such Purchaser is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things, the existence of a public market for the shares, the availability of certain current public information about the issuer, the resale occurring not less than two (2) years after a party has purchased and paid for the security to be sold, the sale being effected through a "broker's transaction" or in transactions directly with a "market maker" and the number of shares being sold during any three (3) month period not exceeding specified limitations.

(vi) Such Purchaser, by reason of such Purchaser's business or financial experience and the business or financial experience of such Purchaser's professional advisors (who are unaffiliated with and who are not compensated by the Company or any affiliate or selling agent of the Company, directly or indirectly), has the capacity to protect such Purchaser's own interests in connection with the purchase of the Series B Preferred.

(vii) Such Purchaser acknowledges that the certificates representing the Series B Preferred, when issued, shall contain the following legend:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933; THEY HAVE BEEN ACQUIRED BY THE HOLDER FOR INVESTMENT AND MAY NOT BE PLEDGED, HYPOTHECATED, SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT AS MAY BE AUTHORIZED UNDER THE SECURITIES ACT OF 1933 AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

(viii) Such Purchaser represents that such Purchaser is an "accredited investor" as that term is defined in Rule 501 of Regulation D under the Securities Act.

(b) AUTHORIZATION. Each Purchaser further represents that:

(i) Such Purchaser has duly authorized, executed and delivered this Agreement and all other agreements and instruments executed in connection herewith.

(ii) This Agreement and such other agreements and instruments constitute the valid and binding obligations of such Purchaser, enforceable against such Purchaser in accordance with its respective terms;

(iii) No consent or approval of any Person is required in connection with the execution, delivery and performance of this Agreement and such other agreements and instruments by such Purchaser which has not heretofore been obtained.

(c) BROKER'S OR FINDER'S FEES. Each Purchaser represents that no Person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or valid claim upon or against the Company for any commission, fee or other compensation as a finder or broker because of any act or omission by such Purchaser and such Purchaser agrees to indemnify and hold the Company harmless against any such commissions, fees or other compensation.

1.6 ISSUANCE OF WARRANTS TO PURCHASE SERIES B PREFERRED. In addition to the Additional Shares to be issued and sold hereunder, for valuable consideration, the receipt of which is hereby acknowledged by the Company, the Company hereby agrees to issue warrants to purchase that number of shares of Series B Preferred to the parties set forth below, which warrants shall have an exercise price of $2.50 per share of Series B Preferred, shall be exercisable in part or in whole on or before the expiration of ninety (90) days from the Second Closing Date, and shall be substantially in the form of Exhibit F attached hereto:

Warrant Holder	Number of Shares of Series B Preferred
Vulcan Ventures Incorporated	600,000
APV Technology Partners US, L.P.	9,600
APV Technology Partners, L.P.	38,400
	648,000

ARTICLE 2

CONDITIONS TO PURCHASERS OBLIGATIONS

The obligation of each Purchaser to purchase and pay for the Series B Preferred at the applicable Closing is subject to the following conditions:

2.1 REPRESENTATIONS AND WARRANTIES. Each of the representations and warranties of the Company set forth in Article 3 hereof shall be true in all material respects on the applicable Closing Date.

2.2 LEGAL DUE DILIGENCE. The Purchasers shall have completed all legal due diligence to its sole satisfaction.

2.3 NO MATERIAL ADVERSE CHANGE. From the Effective Date up to the applicable Closing Date, there has not occurred any event or condition of any character which has materially adversely affected the Company's business operations, assets, condition (financial or otherwise), or liabilities.

2.4 CONSENTS, WAIVERS ETC. Prior to the applicable Closing Date, the Company shall have obtained all consents or waivers including those from Davis Internet Inc. ("DC") and the Founders with respect to their respective rights of first refusal to participate in future offerings, among others, necessary to execute and deliver this Agreement, issue the Series B Preferred and to carry out the transactions contemplated hereby and thereby, and all such consents and waivers shall be in full force and effect. All corporate and other action and governmental filings necessary to effectuate the terms of this Agreement, the Series B Preferred and other agreements and instruments executed and delivered by the Company in connection herewith shall have been made or taken, except for any post-sale filing that may be required under applicable federal and state securities laws which will be made within the applicable time period permitted thereunder.

2.5 COVENANTS. All covenants, agreements and conditions contained in this Agreement to be performed on or prior to the applicable Closing Date shall have been performed or complied with in all material respects.

2.6 OPINION OF COMPANY'S COUNSEL. The Purchasers shall have received from McCutchen, Doyle, Brown & Enersen, counsel to the Company, an opinion addressed to them, dated the First Closing Date, in substantially the form of Exhibit C.

2.7 COMPLIANCE CERTIFICATE. The Company shall have delivered to the Purchasers a certificate executed by the President of the Company, dated the applicable Closing Date, and certifying to the fulfillment of the conditions specified in this Section 2.

2.8 BOARD OF DIRECTORS. On or before the First Closing, the Board of Directors shall have been reconstituted to consist of the Founders, Randy Komisar, one DC appointee and Jeff Brody, to be effective upon the First Closing.

2.9 AMENDED ARTICLES. The Certificate of Amendment to the Company's Articles defining the rights of the Series B Preferred shall have been filed with the Secretary of State of the State of California.

2.10 PROPRIETARY INFORMATION AGREEMENTS. Each person presently employed by the Company shall have executed a Proprietary Information Agreement substantially in the form of Exhibit D hereto.

2.11 SUPPLEMENTAL AGREEMENT SIGNED. The Company and DC shall have executed that certain Supplemental Agreement to Stock Purchase Agreement of even date herewith in the form of Exhibit E hereto.

2.12 CONDITIONS TO SECOND CLOSING. Notwithstanding anything to the contrary set forth in this Agreement, on the Second Closing Date, the Company shall have delivered to the Purchasers a copy of a certificate executed by the President of the Company, dated the Second Closing Date, and certifying to the fulfillment of the conditions specified in Sections 2.1 through 2.5, which will constitute the only conditions on the part of the Company to the obligation of each Additional Purchaser to purchase and pay for the Series B Preferred at the Second Closing.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

Except as set forth otherwise in Schedule 3.0 hereto, the Company represents and warrants as of the Effective Date and on the First Closing Date that:

3.1 ORGANIZATION AND STANDING OF THE COMPANY. The Company is a duly organized and validly existing corporation in good standing under the laws of the State of California and has all requisite corporate power and authority for the ownership and operation of its properties and for the carrying on of its business as now conducted and as proposed to be conducted. The Company is duly licensed or qualified and in good standing as a foreign corporation authorized to do business in

all jurisdictions in which the failure to be so qualified would have a material adverse effect upon the business as now conducted.

3.2 CORPORATE ACTION. The Company has the corporate power and will, prior to the First Closing Date, have taken all necessary corporate action required to authorize, execute, deliver and perform this Agreement and any other agreements and instruments executed in connection herewith and therewith, and to issue, sell and deliver the Series B Preferred and the Conversion Shares. When executed and delivered by the Company, this Agreement and any other agreement and instrument executed in connection herewith and therewith will constitute the valid and binding obligations of the Company, enforceable in accordance with their terms.

3.3 GOVERNMENTAL APPROVALS. Except for the filings to be made, if any, to comply with exemptions from registration or qualification under federal and state securities laws, no authorization, consent, approval, license, exemption of or filing or registration with any court or governmental agency or instrumentality is necessary for the offer, issuance, sale, execution or delivery by the Company, or for the performance by it of its obligations under, this Agreement or the Series B Preferred.

3.4 LITIGATION. There is no litigation or governmental proceeding or investigation pending, or, to the Company's knowledge, threatened against the Company affecting any of its properties or assets, or, to the Company's knowledge, against any officer, director or principal shareholder of the Company that might result in any material adverse change in the business, operations, affairs or conditions of the Company or that might call into question the validity of this Agreement or the Series B Preferred, or that might result in any change in equity ownership of the Company, nor, to the Company's knowledge, has there occurred any event or does there exist any condition on the basis of which any litigation, proceeding or investigation might properly be instituted.

3.5 COMPLIANCE WITH OTHER INSTRUMENTS. The Company is in compliance in all respects with the terms and provisions of its Articles of Incorporation, bylaws and in all respects with the terms and provisions of each mortgage, indenture, lease, agreement and other instrument relating to obligations of the Company in excess of $50,000, and of all judgments, decrees, governmental orders, statutes, rules or regulations by which they are bound or to which their properties or assets are subject. Neither the execution and delivery of this Agreement or the Series B Preferred, nor the consummation of any transaction contemplated hereby or thereby, has constituted or resulted in a default or violation of any term or provision in any of the foregoing documents or instruments; and there is no such violation or default or event which, with the passage of time or giving of notice or both, would constitute a violation or default which materially and adversely affects the business of the Company or any of its properties or assets.

3.6 REGISTRATION RIGHTS. Except for DC and each of the Founders, no Person has demand or other rights to cause the Company to file any registration statement under the Securities Act relating to any securities of the Company or any right to participate in an offering of shares under any such registration statement. All registration rights of the Founders are subordinate to those of the Purchasers.

3.7 SECURITIES ACT OF 1933. The Company has complied and will comply with all applicable federal or state securities laws in connection with the issuance and sale of the Series B Preferred.

3.8 NO BROKERS OR FINDERS. The Company owes no commission, fee or other compensation to any Person as a finder or broker as a result of the transactions contemplated by this Agreement.

3.9 CAPITALIZATION; STATUS OF CAPITAL STOCK. The Company represents and warrants that immediately prior to the Second Closing Date the Company will have a total authorized capitalization consisting of (i) 100,000,000 shares of Common Stock, without par value, of which 15,000,000 shares are issued and outstanding and 5,000,000 shares are reserved for issuance under the Company's 1996 Stock Incentive Plan (the "PLAN"), and (ii) 20,000,000 of Preferred Stock, of which 1,510,533 shares of Series A Convertible Preferred Stock are issued and outstanding and of which 3,067,484 shares of Series B Convertible Preferred Stock are issued and outstanding. At the First Closing, the Company had approved options to purchase 2,660,848 shares of Common Stock under the Plan and warrants to purchase 53,000 shares of Common Stock to various individuals who had provided bridge financing to the Company prior to the First Closing. All of the outstanding shares of capital stock of the Company have been duly authorized, are validly issued and are fully paid and nonassessable and all shares issuable upon exercise of outstanding options have been duly authorized and, when issued in accordance with the terms of such options, will be validly issued, fully paid and nonassessable. The Company has reserved sufficient shares of Common Stock for issuance upon conversion of the Series A Convertible Preferred Stock and, prior to the Second Closing, the Company will have reserved an aggregate of up to 3,249,222 shares of Series B Preferred for issuance and an aggregate of up to 6,316,706 shares of Common Stock for issuance upon conversion of such shares of Series B Preferred. The Conversion Shares when issued and delivered upon conversion of the Series B Preferred, will be duly authorized, validly issued and fully paid and nonassessable and the shares of Common Stock issuable upon exercise of the Series A Convertible Preferred Stock, when issued and delivered upon conversion of such Series A Convertible Preferred Stock, will be duly authorized, fully paid and nonassessable. Except as set forth in this Agreement and the Exhibits and Schedules attached hereto, there are no options, warrants or rights to purchase shares of capital stock or other securities authorized, issued or outstanding, nor is the Company obligated in any manner to issue shares of its capital stock or other securities. No holder of any security of the Company is entitled to preemptive or similar statutory or contractual rights, either arising pursuant to any agreement or instrument to which the Company is a party or that are otherwise binding upon the Company. The offer and sale of all shares of capital stock or other securities of the Company issued before the First Closing complied with or were exempt from registration or qualification under all federal and state securities laws.

3.10 FINANCIAL STATEMENTS. The balance sheet of the Company as at February 29, 1996 and the income statement for the eight months ending February 29, 1996, certified by the Chief Financial Officer of the Company (the "FINANCIAL STATEMENTS"), copies of which Financial Statements have heretofore been delivered to or otherwise made available to the Purchasers and are attached hereto as Schedule 3.10, were prepared in accordance with generally accepted accounting principles consistently applied throughout the period involved, and fairly present the financial position and results of operations of the Company at the date specified and reflect all liabilities, contingent or otherwise, at the date thereof.

3.11 ABSENCE OF CHANGES. Since February 29, 1996, no event has occurred or failed to occur that would be required to be disclosed in the footnotes of the Financial Statements for such statements to be prepared in accordance with generally accepted accounting principles, and to the best knowledge of the Company, there has been no other event or condition of any character

specifically relating to the Company which specifically pertains to and materially adversely affects its business, properties or condition, financial or otherwise.

3.12 GOOD AND MARKETABLE TITLE. The Company has good and marketable title to all of its properties and assets which it owns, and a valid leasehold interest in the premises which it currently occupies, free and clear of all liens, claims, security interests, charges and encumbrances, and has the right to use all the assets it presently uses in the operation of its business. The properties and assets of the Company are in all material respects in good operating condition and repair, normal wear and tear excepted.

3.13 SUBSIDIARIES. The Company does not own, control, directly or indirectly, any other corporation, association, partnership or other business entity or own any shares of capital stock or other securities of any other Person.

3.14 TAX MATTERS. The Company has not been required to file any tax return. The provision for taxes of the Company as shown in the Financial Statements is adequate for taxes due or accrued as of the date thereof.

3.15 INSURANCE. The Company has in full force and effect fire and casualty insurance policies, sufficient in amount (subject to reasonable deductibles) to allow it to replace any of its properties or assets that might be damaged or destroyed that are material to the present conduct of its business.

3.16 CERTAIN TRANSACTIONS. Other than the interest arising from a Person's stock ownership of the Company or for compensation as an employee or director of the Company, there are no material transactions between the Company, on the one hand, and its officers, directors or shareholders, or their immediate family members, on the other hand, and no such person is an interested party to any material contract of the Company or holds a direct or indirect ownership interest in any business or corporation which competes with the Company.

3.17 MATERIAL CONTRACTS AND COMMITMENTS. All of the material contracts, agreements and instruments to which the Company is a party, which are listed on Schedule 3.17, are to the Company's knowledge valid, binding and in full force and effect in all material respects, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies. Schedule 3.17 includes all in-bound licenses of technology and/or software from third parties reasonably deemed to be material by the Company or that could not be readily replaced. A true and correct copy of each of such material written contracts and a description of such material oral contracts, together with all amendments, waivers or other changes thereto have been supplied to, or made available for inspection by, the Purchasers' counsel, Venture Law Group. The Company has not received any notice of default of, and to the Company's knowledge there is no default of, any third party under any material contract, agreement or instrument to which the Company is a party.

3.18 PATENTS, COPYRIGHTS AND TRADEMARKS.

(a) Schedule 3.18 sets forth a true and complete list of all patents, patent applications, trade names, registered copyrights, registered trademarks and trademark applications wholly or partially owned by or licensed to the Company.

(b) The Company owns or has the right to use, all Intellectual Property used in or necessary for its business as presently conducted and as proposed to be conducted based on the Business Plan dated February, 1996 (except as to Intellectual Property the Company believes it will be able to acquire from third parties in the ordinary course of business on reasonable terms), including, without limitation, all Intellectual Property assigned or licensed to the Company by the Founders.

(c) To the Company's knowledge, the technology licensed to the Company by Stephen G. Perlman ("PERLMAN") pursuant to that certain License of Technology by Perlman to the Company effective August 21, 1995 and by Phillip Goldman ("GOLDMAN") pursuant to that certain License of Technology by Goldman to the Company effective August 21, 1995 does not infringe any Intellectual Property Rights of any other Persons.

(d) To the Company's knowledge, the Company has not violated, and is not violating, any Intellectual Property Rights of any other Person or entity and has not received any communications to that effect. The Company is not aware of any Person who is infringing upon or violating any of the Intellectual Property Rights of the Company. The Company has not granted any license or option or entered into any material agreement of any kind with respect to the use of its Intellectual Property.

(e) To the Company's knowledge, none of the Company's employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of such employee's best efforts to promote the interests of the Company or that would conflict with the Company's business as proposed to be conducted. Neither the execution nor delivery of this Agreement, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as now conducted or as proposed to be conducted, will, to the Company's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated.

(f) The Company does not believe it is or will be necessary to utilize any inventions of any of its employees (or people it currently intends to hire) made prior to their employment by the Company other than technology rights and the like previously assigned and/or licensed to the Company by Perlman and Goldman, which assignments and/or licenses, as the case may be, transferred to the Company such rights in the Intellectual Property used in or necessary for the Company's business as presently conducted and as proposed to be conducted based on the Business Plan dated February, 1996.

3.19 ENVIRONMENTAL MATTERS. The Company has not, contrary to applicable statutes and regulations, stored or disposed of, on, under or about their premises hazardous materials, and to the Company's knowledge, during the time period any prior owners owned or leased such premises, such prior owners or lessees or third parties did not so store or dispose of on, under or about such premises or transfer to or from the premises any hazardous materials. As used in this Agreement, the term "hazardous materials" shall mean substances defined as "hazardous substances" or "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response and Compensation Liability Act of 1980, as amended, 42 U.S.C., Section 9601, et seq.; The Hazardous

Materials Transportation Act, 49 U.S.C., Section 1801, et seq.; The Resource Conservation Recovery Act, 42 U.S.C., Section 6901, et seq.

3.20 EMPLOYEES AND EMPLOYEE BENEFIT PLANS. To the Company's knowledge, no employee of the Company is in violation of any term of any employment contract, patent disclosure agreement or any other contract or agreement relating to the relationship of any such employee with the Company or any other party. The Company does not have any collective bargaining agreements covering any of its employees. All material employee benefit plans offered by the Company are listed on the Schedule of Exceptions.

3.21 QUALIFIED SMALL BUSINESS STOCK.

(a) As of and immediately following the applicable Closing, the Shares will meet each of the requirements for qualification as "qualified small business stock" set forth in Section 1202(c) of the Internal Revenue Code of 1986, as amended (the "Code"), including without limitation the following: (i) the Company will be a domestic C corporation, (ii) the Company will not have made any purchases of its own stock described in Code Section 1202(c)(3)(B) during the one-year period preceding such Closing, and (iii) the Company's (and any predecessor's) aggregate gross assets, as defined by Code Section 1202(d)(2), at no time between August 10, 1993 and through the First Closing have exceeded or will exceed $50 million, taking into account the assets of any corporations required to be aggregated with the Company in accordance with Code Section 1202(d)(3).

(b) As of the First Closing, at least 80% (by value) of the assets of the Company be used or reasonably expected to be used in the active conduct of one or more qualified trades businesses, within the meaning of Code Section 1202(e)(1)(A), and the Company is an eligible corporation, as defined by Code Section 1202(e)(4).

3.22 DISCLOSURE. No representation, warranty or statement by the Company in this Agreement or in any written statement or certificate required by this Agreement to be furnished to the Purchasers or their counsel pursuant to this Agreement contains or will contain any untrue statement of material fact or omits to state a material fact necessary to make the statements made herein or therein, in light of the circumstances under which they were made, not misleading.

ARTICLE 4

COVENANTS OF THE COMPANY AND THE PURCHASERS

4.1 AFFIRMATIVE COVENANTS OF THE COMPANY. Without limiting any other covenants and provisions hereof, the Company covenants and agrees that, until the earlier of (i) such time as the Purchasers as a whole no longer hold at least 5% of TVP or (ii) the closing of a Qualified Public Offering, it will perform and observe the following covenants and provisions and will not, without approval of a majority of holders of the Series B Preferred, amend or revise any terms of this Section 4.1:

(a) REPORTING REQUIREMENTS. The Company shall furnish to the Purchasers (i) on an annual basis, within 75 days after the end of each fiscal year, a balance sheet, related statements of operations and cash flows presented in accordance with generally accepted accounting principles ("GAAP"), with any required notes thereto, audited by a nationally recognized public accounting

firm, and at least 35 days prior to the end of such fiscal year, a Board-approved plan and budget for the next fiscal year; (ii) on a quarterly basis, within 30 days after the end of each calendar quarter, an unaudited balance sheet and related statements of operations and cash flows; (iii) on a monthly basis, within 30 days after the end of each month, a monthly unaudited balance sheet and related statements of operations and cash flows; and (iv) such other information about the Company's affairs as may be reasonably requested by the Purchasers. Such annual, quarterly and monthly results shall be prepared in a form which permits comparison to the budget for the corresponding period and, in the case of the annual and quarterly results, comparison to the prior year's results.

(b) ACCOUNTING SYSTEM. The Company shall maintain all their financial records in accordance with GAAP. The Company shall maintain sufficient internal controls which (i) are at least comparable to those maintained by similarly situated companies and (ii) in any event are sufficient to allow an audit of the Company in accordance with GAAP.

(c) INSURANCE. The Company shall maintain insurance in such amounts, with such deductibles and against such risks and losses as are reasonable for the business and assets of the Company, and the Company shall maintain such other insurance as may be required by law, and maintain in effect until the consummation of a Qualified Public Offering term life insurance insuring each of the lives of the Founders for $3,000,000 and naming the Company as beneficiary.

(d) COMPLIANCE WITH APPLICABLE LAWS. The Company shall comply with all applicable statutes, laws, ordinances, rules and regulations of any governmental authority (whether now in effect or hereinafter enacted) and any filing requirements relating thereto which shall be necessary in any material respect to the business of the Company. The Company shall do all things necessary to preserve, renew and keep in full force and effect and in good standing its corporate existence and authority necessary to continue its business.

(e) NON-EMPLOYEE DIRECTORS. The Company agrees and confirms that each non-employee member of the Company's Board of Directors serving prior to the First Closing will receive options to each purchase up to 25,000 shares of the Company's Common Stock under the Company's 1996 Stock Incentive Plan.

Notwithstanding anything to the contrary set forth in this Agreement, the Purchasers' rights under this Section 4.1 shall automatically terminate, without any further act by the Company, at such time as (i) the Purchasers as a whole no longer hold at least 5% of TVP or (ii) the closing of a Qualified Public Offering.

4.2 COVENANTS RESPECTING THE BOARD OF DIRECTORS. Without limiting any other covenants and provisions hereof, the Company covenants and agrees that, until the earlier of (i) such time as the Purchasers as a whole no longer hold at least 5% of TVP or (ii) the later of the closing of a Qualified Public Offering or the second anniversary of the First Closing Date, it will perform and observe the following covenants and provisions and will not, without approval of a majority of holders of the Series B Preferred, amend or revise any terms of this Section 4.2:

(a) BOARD OF DIRECTORS The Company agrees that the Company shall be governed by a Board of Directors consisting of seven directors, of which the Founders shall appoint four directors, DC shall appoint one director (to the extent DC is permitted under that certain Stock Purchase

Agreement by and between the Company and DC dated November 9, 1995, as supplemented), Brentwood Associates VII, L.P. shall appoint one director, Vulcan Ventures Incorporated shall appoint one director and, if required by the Company's management, the Board of Directors will be increased by an additional member to be appointed by the Company's management.

(b) BOARD OBSERVER. The Company shall permit one representative designated by the Purchasers holding a majority of the Series B Preferred to participate as an observer at meetings of the Company's Board of Directors. These observership rights shall be in addition to the Board seat to which the Purchasers are entitled under Section 4.2(a) above.

Notwithstanding anything to the contrary set forth in this Agreement, the Purchasers' rights under this Section 4.2 shall automatically terminate, without any further act by the Company, at such time as (i) the Purchasers as a whole no longer hold at least 5% of TVP or (ii) the later of the closing of a Qualified Public Offering or of the second anniversary of the First Closing Date.

4.3 CONFIDENTIALITY. Each Purchaser represents and warrants that any confidential information obtained by any holder of the Series B Preferred or Conversion Shares pursuant to this Agreement shall be treated as confidential and shall not be disclosed to a third party without the consent of the Company or used for any purpose other than allowing the holder of the Series B Preferred or Conversion Shares to exercise his or her rights under this Agreement.

ARTICLE 5

REGISTRATION RIGHTS

5.1 DEMAND REGISTRATIONS. The provisions of this Section 5.1 shall commence on the date of the First Commercial Shipment and terminate at such time as all Holders are permitted to resell the Registrable Securities held by them in a single three month period without restriction pursuant to Rule 144 promulgated under the Securities Act.

(a) NOTICE AND REGISTRATION. Upon a Registration Notice from a Holder to the Company requesting that the Company effect the registration under the Securities Act of at least 40% of the Registrable Securities or any lesser percentage so long as the anticipated proceeds from such offering exceed $20,000,000, which Registration Notice shall specify the intended method or methods of disposition of such Registrable Securities, the Company shall use its best efforts to effect (at the earliest possible date) the registration under the Securities Act of such Registrable Securities for disposition in accordance with the intended method or methods of disposition stated in such Registration Notice (including, but not limited to, an offering on a delayed or continuous basis pursuant to Rule 415, or any successor rule to similar effect, promulgated under the Securities Act; provided that:

(i) a Holder shall have the right to deliver Registration Notices to effect three (3) demand registrations pursuant to this Section 5.1 (each, a "DEMAND") and no more;

(ii) a Holder may not deliver a Registration Notice prior to six months following the effective date of the initial registration statement used for a Qualified Public Offering or during any Registration Process; and

(iii) if available, a Demand shall be effected by the Company on such Form S-3. In addition to the Demand rights set forth in Section 5.1(a)(i) above, a Holder who holds 5% or more of the Registrable Securities may request the Company to effect a registration on Form S-3, if available; provided that the number of such registrations is limited to two (2) per twelve month period and that the anticipated proceeds from such offering are at least $1,000,000.

(b) DESIGNATION OF INVESTMENT BANK. In the event that any registration pursuant to this Section 5.1 shall involve, in whole or in part, an underwritten offering, the Company shall have the right to designate one or more nationally recognized investment banking firms, reasonably acceptable to the requesting Holder, as the lead underwriter(s) of such underwritten offering.

(c) WITHDRAWAL OF REGISTRATION NOTICE. A Holder shall have the right to withdraw any Registration Notice or, subject to Section 5.1(a) hereof, to change the number of Registrable Securities covered thereby at any time and for any reason.

(d) EFFECT OF DEMAND. A registration requested by a Holder pursuant to this Section 5.1 shall not be deemed to have been effected for purposes of Section 5.1(a)(i): (i) unless such registration statement has become effective and been maintained effective in accordance with Section 5.4 hereof, (ii) if after it has become effective such registration is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court for any reason other than a material misrepresentation or a material omission by the Holder specified in the Registration Notice or (iii) if the conditions to closing specified in the purchase agreement or underwriting agreement entered into in connection with such registration are not satisfied other than by reason of some act or omission by any of such persons.

(e) DELAY OF REGISTRATION. Notwithstanding anything in this Section 5.1 to the contrary, the Company shall not be obligated to take any action to effect a Demand pursuant to this Section 5.1 if the Company shall furnish to the requesting Holder, within ten (10) days after the delivery of the Registration Notice relating thereto, a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors it would be seriously detrimental to the Company or its stockholders for a registration statement to be filed in the near future. If the Company has delivered such a certificate to the requesting Holder, then the Company's obligation to effect such Demand under this Section 5.1 shall be deferred for a period not to exceed one hundred twenty (120) days from the date of receipt of the Holder's Registration Notice; provided, however, that the Company may not utilize this right more than once during any twelve month period.

5.2 PIGGYBACK REGISTRATION. If the Company at any time proposes to register any of its Common Stock or any equity securities exercisable for, convertible into or exchangeable for Common Stock under the Securities Act, whether or not for sale for its own account (the "COMPANY SECURITIES"), in a manner which would permit registration of Registrable Securities for sale to the public under the Securities Act, each such time it will promptly deliver a Registration Notice to each Holder, which Registration Notice will describe the rights of each Holder under this Section 5.2, at least 20 days prior to the anticipated filing date of the registration statement relating to such registration. Such notice shall offer each Holder the opportunity to include in such registration statement such number of Registrable Securities held by such Holder as such Holder may request. Upon the written request of the Holders requesting Registrable Securities to be registered pursuant to such registration statement (collectively, the "PIGGYBACK SECURITIES"), made within 10 days after the

receipt of the Company's Registration Notice, which request shall specify the number of Piggyback Securities intended to be disposed of, the Company will use its best efforts to effect, in connection with the registration of the Company Securities, the registration under the Securities Act of all Piggyback Securities, to the extent required to permit the disposition (in accordance with such intended methods thereof) of the Piggyback Securities, provided that:

(a) RELIEF FROM COMPANY OBLIGATION. If, at any time after giving such written notice of its intention to register any Company Securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register the Company Securities, the Company may, at its election, give written notice of such determination to the Holder and thereupon the Company shall be relieved of its obligation to register the Piggyback Securities in connection with the registration of such Company Securities (but not from its obligation to pay Registration Expenses to the extent incurred in connection therewith as provided in Section 5.3 hereof), without prejudice, however, to the right of the Holder immediately to request that such registration be effected as a registration under Section 5.1 hereof to the extent permitted thereby.

(b) REDUCTION IN PIGGYBACK SECURITIES. If the registration referred to in the first sentence of this Section 5.2 is to be an underwritten primary registration on behalf of the Company, and the managing underwriter(s) advise the Company in writing that, in their good faith opinion, inclusion of all the Piggyback Securities together with all other securities of the Company that are entitled to "piggyback" registration rights in such offering would materially and adversely affect the offering and sale of the Company Securities, including the per share price thereby obtainable, the Company shall only include in such registration: (i) first, all the Company Securities being registered for sale for the Company's own account, with such priorities among them as the Company may determine, (ii) second, up to the full number of securities of the Company having "piggyback" registration rights which, in the good faith opinion of such underwriter(s) can be so sold without materially and adversely affecting such offering (and, if less than the full number of such "piggyback" securities, allocated pro rata among the Holders and the other holders of securities of the Company that are entitled to "piggyback" registration rights other than the Founders (the "OTHER NON-FOUNDER HOLDERS") on the basis of the number of securities requested to be included therein by each such Holder and Other Non-Founder Holder) and (iii) finally, up to the full number of securities of the Company that are entitled to "piggyback" registration rights held by the Founders which, in the good faith opinion of such underwriter(s) can be so sold without materially and adversely affecting such offering (and, if less than the full number of such securities, allocated pro rata among the Founders on the basis of the number of securities requested to be included therein by each such Founder).

(c) EXCEPTIONS. The Company shall not be required to effect any registration of Registrable Securities held by any Holder under this Section 5.2 incidental to the registration of any of its securities in connection with mergers, acquisitions, exchange offers, subscription offers, dividend reinvestment plans or stock option or other employee benefit plans.

(d) NO EFFECT ON DEMAND RIGHTS. No registration of Registrable Securities effected under this Section 5.2 shall relieve the Company of its obligation to effect a registration of other Registrable Securities pursuant to Section 5.1 hereof.

(e) WITHDRAWAL OF PIGGYBACK SECURITIES. A Holder may withdraw all or any part of the Holder's Piggyback Securities from the proposed registration at any time prior to the later of (i) the registration statement being declared effective by the SEC and (ii) the execution of any underwriting agreement.

(f) SAME TERMS AND CONDITIONS. The Company may require that any Piggyback Securities be included in the offering proposed by the Company on the same terms and conditions as the Company Securities are included therein.

5.3 EXPENSES. The Company will pay all Registration Expenses in connection with (i) each Demand and (ii) all registrations of Holders' Registrable Securities pursuant to Section 5.2. In the event the requesting Holder withdraws a Registration Notice, abandons a registration statement or following an effected Demand does not sell Registrable Securities, then all Registration Expenses in respect of such Registration Notice shall be borne, at the requesting Holder's option, either by the requesting Holder or by the Company (in which case, if borne by the Company and subject to Section 5.1(d) hereof, such withdrawn Registration Notice shall be deemed to be an effected Demand for purposes of Section 5.1 hereof).

5.4 REGISTRATION AND QUALIFICATION. If and whenever the Company is required to use its best efforts to effect the registration of any Registrable Securities under the Securities Act as provided in Sections 5.1 or 5.2 hereof, the Company will as promptly as is practicable:

(a) prepare and file with the SEC, as soon as possible, and use its best efforts to cause to become effective, a registration statement under the Securities Act relating to the Registrable Securities to be offered on such form as the requesting Holder, or if not filed pursuant to a Demand, the Company, determines and for which the Company then qualifies;

(b) prepare and file with the SEC such amendments (including post-effective amendments) and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities until the later of such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition set forth in such registration statement or the expiration of one hundred twenty (120) days after such registration statement becomes effective;

(c) furnish to the Holder and to any underwriter of Registrable Securities such number of conformed copies of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits), such number of copies of the prospectus included in such registration statement (including each preliminary prospectus and any summary prospectus), in conformity with the requirements of the Securities Act, such documents incorporated by reference in such registration statement or prospectus, and such other documents, as the Holder or such underwriter may reasonably request, and, if requested, a copy of any and all transmittal letters or other correspondence to, or received from, the SEC or any other governmental agency or regulatory body or other body having jurisdiction (including any domestic or foreign securities exchange) relating to such offering;

(d) make every reasonable effort to obtain the withdrawal of any order suspending the effectiveness of such registration statement at the earliest possible moment;

(e) use its best efforts to register or qualify all Registrable Securities covered by such registration statement under the securities or blue sky laws of any domestic jurisdiction, and to list or qualify for such securities exchanges and other trading markets, as the requesting Holder or any underwriter of such Registrable Securities shall request, and use its best efforts to obtain all necessary registrations, permits and consents required in connection therewith, and do any and all other acts and things which are reasonably requested to enable the Holder or any such underwriter to consummate the disposition in such jurisdictions of the Registrable Securities covered by such registration statement, except that the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction wherein it is not so qualified, or to subject itself to taxation in any such jurisdiction, or to consent to general service of process in any such jurisdiction;

(f) if requested by a requesting Holder, (i) furnish to each Holder an opinion of counsel for the Company addressed to each Holder and dated the date of the closing under the underwriting agreement (if any) (or if such offering is not underwritten, dated the effective date of the registration statement), and (ii) use its best efforts to furnish to each Holder a "comfort" or "special procedures" letter addressed to each Holder and signed by the independent public accountants who have audited the Company's financial statements included in such registration statement, in each such case covering substantially the same matters with respect to such registration statement (and the prospectus included therein) as are customarily covered in opinions of issuer's counsel and in accountants' letters delivered to underwriters in underwritten public offerings of securities and such other matters as the Holder may reasonably request and, in the case of such accountants' letter, with respect to events subsequent to the date of such financial statements;

(g) immediately notify the Holders in writing (i) at any time when a prospectus relating to a registration pursuant to Section 5.1 or 5.2 hereof is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (ii) of any request by the SEC or any other regulatory body or other body having jurisdiction for any amendment of or supplement to any registration statement or other document relating to such offering, and in either such case (i) or (ii) at the request of a Holder prepare and furnish to such Holders a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading;

(h) use its best efforts to list all such Registrable Securities covered by such registration statement on each securities exchange and inter-dealer quotation system on which a class of common equity securities of the Company is then listed, and to pay all fees and expenses in connection therewith; and

(i) upon the transfer by a Holder in connection with a registration pursuant to Section 5.1 or 5.2 furnish unlegended certificates representing ownership of the Registrable Securities being sold in such denominations as shall be requested by the Holders or the underwriters.

5.5 UNDERWRITING; DUE DILIGENCE, ETC.

(a) UNDERWRITING AGREEMENT If requested by the underwriters for any underwritten offering of Registrable Securities pursuant to a registration requested under this Agreement, the Company will enter into an underwriting agreement with such underwriters for such offering, which, in the case of a Demand, shall be in form reasonably acceptable to the requesting Holder and which, in the case of a Company Registration Process, shall be in form reasonably acceptable to the Company, any such agreement to contain such representations and warranties by the Company and such other terms and provisions as are customarily contained in underwriting agreements with respect to secondary distributions, including indemnities and contribution (provided, any indemnities and contribution shall, unless the requesting Holder and the Company agree otherwise, be to the effect and only to the extent provided in Section 5.9 hereof) and the provision of opinions of counsel and accountants' letters to the effect and to the extent provided in Section 5.4(f) hereof; provided, however, the Company may negotiate and agree to differing indemnification obligations with respect to the underwriters, provided such (i) do not adversely affect the Holders with respect to their rights and obligations hereunder and (ii) shall not excuse the Company from entering into (or delaying the execution of) an underwriting agreement on the terms as provided herein. The Holder on whose behalf the Registrable Securities are to be distributed by such underwriters shall be parties to any such underwriting agreement, and the representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of such underwriters, shall also be made to and for the benefit of the Holder. The Company shall use reasonable efforts to prevent any Holder from being required to make any representation or warranty, other than as to its ownership of the Registrable Securities and as to the due authorization, execution and enforceability, with respect to it, of the underwriting agreement. Such underwriter shall be instructed to use its reasonable best efforts to affect a wide distribution of the Registrable Securities being distributed so long as doing so shall not, in any manner, adversely affect the marketing (including timing) or price of such shares. The Company, if requested by the Requesting Holder or the underwriters, will enter into an agreement with the Independent Underwriter on customary terms.

(b) SAME TERMS. In the event that any registration pursuant to Sections 5.1 or 5.2 shall involve, in whole or in part, an underwritten offering, the Company may require the Registrable Securities requested to be registered pursuant to Sections 5.1 or 5.2 to be included in such underwriting on the same terms and conditions as shall be applicable to the other securities being sold through underwriters under such registration. The representations and warranties in such underwriting agreement by, and the other agreements on the part of, the Company to and for the benefit of such underwriters, shall also be made to and for the benefit of the Holders. The Company shall use reasonable efforts to prevent any Holder from being required to make any representation or warranty, other than as to its or his ownership of the Registrable Securities and as to the due authorization, execution and enforceability, with respect to it or him, of the underwriting agreement. In the event a Holder enters into any underwriting agreement with underwriters in connection with a registration which contains representation and warranties more extensive than those contained in this Section 5.5 above, such an agreement shall not constitute a breach of this Agreement by the Company.

(c) ACCESS TO BOOKS AND RECORDS. In connection with the preparation and filing of each registration statement registering Registrable Securities under the Securities Act, the Company will give the Holders of Registrable Securities and the underwriters, if any, and their respective counsel and accountants, such reasonable and customary access to its books and records and such opportunities to discuss the business of the Company with its officers and the independent public accountants who have certified the Company's financial statements as shall be necessary, in the reasonable opinion of such Holders and such underwriters or their respective counsel, to conduct a reasonable investigation within the meaning of the Securities Act. The Holders and the underwriters, if any, and their respective counsel and accountants, shall use their reasonable best efforts to coordinate and time their review so as to not unreasonably interfere with the business and operations of the Company.

(d) OFFERING NOT UNDERWRITTEN. In the event an offering pursuant to this Agreement is not underwritten, the Company, at the request of the requesting Holder, will enter into such agreements with any selling agents or similar persons as are customary; such agreements shall contain terms and provisions analogous to those described herein and, to the extent not so described, customary terms and provisions.

5.6 RESTRICTIONS ON PUBLIC SALE; INCONSISTENT AGREEMENTS.

(a) LOCK-UP. If required by an underwriter of Common Stock in connection with (i) the initial Qualified Public Offering or (ii) any registration of Registrable Securities pursuant to Sections 5.1 or 5.2, which registration is effected in an underwritten public offering, then, in each such case, the Holders agree not to effect any sale or distribution, including any sale pursuant to Rule 144 (except as part of such registration), of any of the Company's common equity securities or of any security convertible into or exchangeable or exercisable for any equity security of the Company (x) with respect to clause (i), for a period of time following the effective date of the registration statement relating thereto customary in underwritten initial public offerings, which period shall not exceed one hundred eighty (180) days, or (y) with respect to clause (ii) only for a period of time following the effective date of the registration statement relating thereto reasonably acceptable to the Holders, which period shall not exceed ninety (90) days and only if the Founders have agreed to a substantially similar provision. Such agreement shall be in writing in the form satisfactory to the Company and such underwriter. The Company may impose a stop-transfer instruction with respect to the shares (or other securities) subject to the foregoing restriction until the end of such period.

(b) NO DISTRIBUTION. The Company agrees (i) without the written consent of the managing underwriters, not to effect any public or private sale or distribution of the Company's common equity securities or any security convertible into or exchangeable or exercisable for any equity security of the Company, including a sale pursuant to Regulation D under the Securities Act, during the requesting Holder's Registration Process (except (A) as part of such underwritten registration or pursuant to registrations on Form S-8 or any successor form or (B) equity securities issued pursuant to the conversion or exchange of any securities convertible into or exchangeable for the Company's common equity securities and which were outstanding prior to the commencement of such Registration Process), and (ii) to use its reasonable efforts to cause each holder of its privately placed securities purchased from the Company at any time on or after the date of this Agreement to agree not to effect any public sale or distribution of any such securities during such period, including a sale pursuant to Rule 144 (except as part of such underwritten registration, if permitted).

5.7 RULE 144. The Company hereby covenants that after the Company shall have filed a registration statement pursuant to the requirements of Section 12 of the Exchange Act or a registration statement pursuant to the requirements of the Securities Act and such registration statement shall have become effective, the Company will file in a timely manner all reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the request of any Holder of Registrable Securities, make publicly available other information so long as necessary to permit sales under Rule 144), and it will take such further action as any Holder of Registrable Securities, all to the extent required from time to time to enable such Holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144. Upon the request of any Holder of Registrable Securities, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements. In addition, the Company hereby agrees that for a period of eighteen months following the date on which a registration statement filed pursuant to Section 5.1 or 5.2 hereof shall have become effective, the Company shall not deregister such securities under Section 12 of the Exchange Act (even if then permitted to do so pursuant to the Exchange Act and the rules and regulations promulgated thereunder).

5.8 TRANSFERABILITY. A Holder of registration rights may transfer the rights to any transferee who holds, subsequent to such transfer, at least 500,000 shares of Series B Preferred or Common Stock; provided (i) such transferee is reasonably acceptable to the Company, (ii) the Company must first be given written notice of the transfer and (iii) such transferee shall have agreed in writing, in form and substance reasonably satisfactory to the Company, to be bound by the terms of this Article 5 to the same extent and in the same manner as the transferor of such shares or securities.

5.9 INDEMNIFICATION AND CONTRIBUTION. With respect only to the offering of Registrable Securities contemplated by this Agreement, and in no way limiting or modifying the other provisions of this Agreement, the following indemnity and contribution provisions shall apply:

(a) INDEMNIFICATION BY COMPANY. In the case of each offering of Registrable Securities made pursuant to this Agreement, the Company agrees to indemnify and hold harmless each Holder of Registrable Securities, each underwriter of Registrable Securities so offered, each person, if any, who controls any of the foregoing persons within the meaning of the Securities Act, and the officers and directors of any of the foregoing from and against any and all claims, liabilities, losses, damages, expenses and judgments, joint or several, to which they or any of them may become subject, under the Securities Act or otherwise, including any amount paid in settlement of any litigation commenced or threatened, and shall promptly reimburse them, as and when incurred, for any legal or other expenses incurred by them in connection with investigating any claims and defending any actions, insofar as such losses, claims, damages, liabilities or actions shall arise out of, or shall be based upon, any untrue statement or alleged untrue statement of a material fact contained in the registration statement (or in any preliminary or final prospectus included therein) or in any offering memorandum or other offering document relating to the offering and sale of such Registrable Securities, or any amendment thereof or supplement thereto, or in any document incorporated by reference therein, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or shall arise out of or be based upon any violation or alleged violation by the Company of the Securities Act, any blue sky laws, securities laws or other applicable laws of any state or country in which the Registrable

Securities are offered and relating to action or inaction required of the Company in connection with such offering; provided, however, that the Company shall not be liable to a particular Holder of Registrable Securities in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement, or any omission or alleged omission, (i) if such statement or omission shall have been made in reliance upon and in conformity with information relating to such Holder furnished to the Company in writing by or on behalf of such Holder expressly for use in the preparation of the registration statement (or in any preliminary or final prospectus included therein), offering memorandum or other offering document, or any amendment thereof or supplement thereto or a document incorporated by reference in any of the foregoing or (ii) if such statement or omission was corrected in a prospectus delivered to such Holders of Registrable Securities prior to the consummation of the sale in which such loss, claim, damage, liability or action arises out of or is based upon and such corrected prospectus shall not have been delivered or sent to the purchaser within the time required by the Securities Act, provided that the Company delivered the corrected prospectus to such Holders in requisite quantity on a timely basis to permit such delivery or sending. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of a Holder of Registrable Securities and shall survive the transfer of such securities. The foregoing indemnity agreement is in addition to any liability which the Company may otherwise have to each Holder of Registrable Securities, underwriters of the Registrable Securities, any controlling person of any of the foregoing or any officer or director of any of the foregoing.

(b) INDEMNIFICATION BY HOLDER. In the case of each offering of Registrable Securities made pursuant to this Agreement, each Holder of Registrable Securities included in such offering, by exercising its registration rights hereunder, agrees to indemnify and hold harmless the Company, each person, if any, who controls the Company within the meaning of the Securities Act, and if requested by the underwriters, each underwriter who participates in the offering and each person, who controls any such underwriter within the meaning of the Securities Act, and the officers and directors of any of the foregoing from and against any and all claims, liabilities, losses, damages, expenses and judgments, joint or several, to which they or any of them may become subject, under the Securities Act or otherwise, including any amount paid in settlement of any litigation commenced or threatened, and shall promptly reimburse them, as and when incurred, for any legal or other expenses incurred by them in connection with investigating any claims and defending any actions, insofar as any such losses, claims, damages, liabilities or actions shall arise out of, or shall be based upon, any untrue statement or alleged untrue statement of a material fact contained in the registration statement (or in any preliminary or final prospectus included therein) or in any offering memorandum or other offering document relating to the offering and sale of such Registrable Securities, or any amendment thereof or supplement thereto, or in any document incorporated by reference therein, or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but in each case only to the extent that such untrue statement of a material fact is contained in, or such material fact is omitted from, information relating to such Holder furnished in writing to the Company by or on behalf of such Holder expressly for use in the preparation of such registration statement (or in any preliminary or final prospectus included therein), offering memorandum or other offering document or a document incorporated by reference in any of the foregoing. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Company and shall survive the transfer of such securities. The foregoing indemnity is in addition to any liability which such Holder may otherwise have the Company, or any of its directors, officers or controlling persons.

Notwithstanding the foregoing, in no event shall the liability of a Holder hereunder be greater in amount than the dollar amount of the net proceeds received by it upon the sale of the Registrable Securities pursuant to such offering.

(c) PROCEDURE FOR INDEMNIFICATION. Each party indemnified under this Section 5.9(c) shall, promptly after receipt of notice of any claim or the commencement of any action against such indemnified party in respect of which indemnity may be sought, notify the indemnifying party in writing of the claim or the commencement thereof; provided that the failure of the indemnified party to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to an indemnified party on account of the indemnity agreements contained in this Section 5.9(c), unless the indemnifying party was materially prejudiced by such failure, and in no event shall relieve the indemnifying party from any other liability which it may have to such indemnified party. If any such claim or action shall be brought against an indemnified party, it shall notify the indemnifying party thereof and the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable (except to the extent the proviso to this sentence is applicable, in which event it will be so liable) to the indemnified party under this Section 5.9(c) for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided that each indemnified party shall have the right to employ separate counsel to represent it and assume its defense (in which case, the indemnifying party shall not represent it) if, in the reasonable judgment of such indemnified party, (i) upon the advice of counsel, the representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, or (ii) in the event the indemnifying party has not assumed the defense thereof within 10 days of receipt of notice of such claim or commencement of action, and in which case the fees and expenses of one such separate counsel shall be paid by the indemnifying party. If any indemnified party employs such separate counsel it will not enter into any settlement agreement which is not approved by the indemnifying party, such approval not to be unreasonably withheld. If the indemnifying party so assumes the defense thereof, it may not agree to any settlement of any such claim or action as the result of which any remedy or relief, other than monetary damages for which the indemnifying party shall be responsible hereunder, shall be applied to or against the indemnified party, without the prior written consent of the indemnified party. In any action hereunder as to which the indemnifying party has assumed the defense thereof with counsel satisfactory to the indemnified party, the indemnified party shall continue to be entitled to participate in the defense thereof, with counsel of its own choice, but, except as set forth above, the indemnifying party shall not be obligated hereunder to reimburse the indemnified party for the costs thereof.

If the indemnification provided for in this Section 5.9(c) shall for any reason be unavailable to an indemnified party in respect of any loss, claim, damages or liability, or any action in respect thereof, referred to therein, then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, in such proportion as shall be appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party on the other with respect to the statements or omissions which resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable

considerations. The relative fault shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the indemnifying party on the one hand or the indemnified party on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission, but not by reference to any indemnified party's stock ownership in the Company. In no event, however, shall a Holder of Registrable Securities be required to contribute in excess of the amount of the net proceeds received by such Holder in connection with the sale of Registrable Securities in the offering which is the subject of such loss, claim, damages or liability. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this paragraph shall be deemed to include, for purposes of this paragraph, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section 12(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

ARTICLE 6

RIGHT TO PARTICIPATE IN FINANCINGS

6.1 PARTICIPATION RIGHT. Until the earlier to occur of (i) such time as the Purchasers as a whole no longer hold at least 5% of TVP or (ii) the closing of a Qualified Public Offering, the Company shall not issue, sell or exchange, agree to issue, sell or exchange, or reserve or set aside for issuance, sale or exchange, for cash or cash equivalents (A) any shares of Common Stock, (B) any other equity security of the Company, including, without limitation, shares of Preferred Stock, (C) any option, warrant or other right to subscribe for, purchase or otherwise acquire any equity security of the Company, or (D) any Debt Securities (collectively, the "OFFERED SECURITIES"), unless in each such case the Company shall have offered to sell that number of the Offered Securities to the Purchasers, on the same terms and conditions as the Offered Securities are being sold to other Persons, to enable each Purchaser to retain such Purchaser's then existing equity percentage of the Company calculated on a fully-diluted basis; provided that the Company may increase the number of shares in the foregoing offering to accommodate such Purchaser's right of participation and to avoid any cutback in the number of Offered Securities proposed to be issued to other Persons. The Company shall offer to sell to each Purchaser

(a) that portion of the Offered Securities as the aggregate number of Conversion Shares then held by or issuable to that Purchaser bears to the total number of outstanding shares of Common Stock of the Company, plus all shares of Common Stock issuable upon exercise of warrants or options (whether issued and outstanding, or authorized and not yet granted) or upon conversion of convertible securities of the Company (the "BASIC AMOUNT"); and

(b) any additional portion of the Offered Securities as such Purchaser shall indicate he, she or it will purchase should any other Persons with a right of participation subscribe for less than their Basic Amounts (the "UNDERSUBSCRIBED AMOUNT"), at a price and on the other terms specified by the Company in writing delivered to each Purchaser (the "OFFER"), and the Offer by its terms shall remain open and irrevocable for a period of fifteen (15) days.

6.2 NOTICE OF ACCEPTANCE. Notice of each Purchaser's intention to accept, in whole or in part, an Offer made pursuant to Section 6.1 shall be evidenced by a writing signed by such Purchaser and delivered to the Company prior to the end of the fifteen (15) day period of the Offer, setting forth the portion of such Purchaser's Basic Amount that such Purchaser elects to purchase and, if such Purchaser shall elect to purchase all of its Basic Amount, the Undersubscribed Amount that such Purchaser shall elect to purchase (the "NOTICE OF ACCEPTANCE"). If the Basic Amounts subscribed for by all other Persons with a right of participation are less than the total Basic Amounts of all Persons with a right of participation, then such Purchaser, if such Purchaser has set forth an Undersubscribed Amount in its Notice of Acceptance, shall be entitled to purchase, in addition to the Basic Amount subscribed for, the Undersubscribed Amount such Purchaser has subscribed for; provided that should the Undersubscribed Amounts subscribed for by all Persons with a right of participation exceed the total Undersubscribed Amount, such Purchaser shall be entitled to purchase only that portion of the total Undersubscribed Amount as the Undersubscribed Amount subscribed for by that Purchaser bears to the total Undersubscribed Amounts subscribed for by all Persons with a right of participation, subject to rounding by the Board of Directors to the extent it reasonably deems necessary.

6.3 CONDITIONS TO ACCEPTANCE BY A PURCHASER.

(a) PERMITTED SALES OF REFUSED SECURITIES. In the event that a Notice of Acceptance is not given by the Purchasers in respect of all the Offered Securities, the Company shall have sixty (60) days from the expiration of the period set forth in Section 6.1 to sell all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by any Purchaser (the "REFUSED SECURITIES") to the Person or Persons specified in the Offer, but only upon terms and conditions, including, without limitation, unit price and interest rates, which are not more favorable, in unit price and interest rates, in the aggregate, to such other Person or Persons or less favorable to the Company than those set forth in the Offer.

(b) REDUCTION IN AMOUNT OF OFFERED SECURITIES. In the event the Company shall propose to sell less than all the Refused Securities (any such sale to be in the manner and on the terms specified in Section 6.3(a) above), then the Purchaser may, at that Purchaser's sole option and in that Purchaser's sole discretion, reduce the number of, or other units of the Offered Securities specified in its Notice of Acceptance to an amount that shall be not less than the amount of the Offered Securities that such Purchaser elected to purchase pursuant to Section 6.2 multiplied by a fraction, (i) the numerator of which shall be the amount of Offered Securities the Company actually proposes to sell, and (ii) the denominator of which shall be the amount of all Offered Securities.

(c) CLOSING. Upon the closing of the sale to such other Person or Persons of all or less than all the Offered Securities not being purchased by the Purchasers, the Purchasers shall purchase from the Company, and the Company shall sell to the Purchasers, the number of Offered Securities specified in the Notices of Acceptance, as reduced pursuant to Section 6.3(b) if that Purchaser has so elected, upon the terms and conditions specified in the Offer. The purchase by such Purchaser of any Offered Securities shall be subject in all cases to the execution by such Purchaser of a purchase agreement containing the same terms and conditions as the agreement covering the sale of the Offered Securities to the other Persons.

6.4 FURTHER SALE. In each case, any Offered Securities not purchased by a Purchaser or other Persons in accordance with Section 6.3 may not be sold or otherwise disposed of until they are again offered to each Purchaser under the procedures specified in Sections 6.1, 6.2 and 6.3.

6.5 EXCEPTIONS. The rights of each Purchaser under this Article 6 shall not apply to:

(a) Common Stock issued as a stock dividend to holders of Common Stock or upon any subdivision or combination of shares of Common Stock,

(b) the issuance of any shares of Series B Preferred under this Agreement, as amended, and the issuance of any shares of Common Stock upon conversion of any Series B Preferred or any other convertible security issued as of the date hereof,

(c) the issuance of shares of Common Stock, or options exercisable therefor, under the Company's 1996 Stock Incentive Plan,

(d) shares of Common Stock issued by the Company in a Board-approved acquisition up to an aggregate amount equal to or less than 5% of TVP,

(e) warrants issued to the Company's landlords or lenders which represent, or upon exercise would represent, less than 1% of TVP in the aggregate, or

(f) the issuance of the Company's capital stock in a Qualified Public Offering.

6.6 ASSIGNMENT OF RIGHTS. The Purchasers may assign their rights hereunder only in connection with a transfer of originally issued shares of the Series B Preferred and/or Conversion Shares, which represent more than 5% of TVP; provided (i) the Company must first be given written notice of the transfer and (ii) such transferee shall have agreed in writing, in form and substance reasonably satisfactory to the Company, to be bound by the terms of this Article 6 to the same extent and in the same manner as the transferor of such shares or securities.

ARTICLE 7

RIGHT OF CO-SALE RESPECTING COMMON STOCK

7.1 RIGHT OF CO-SALE. Each Purchaser shall be entitled to certain co-sale rights set forth below in the event that any Founder desires to sell shares of Common Stock; provided, however, that such co-sale rights shall exist and extend only until the earlier to occur of (i) such time as the Purchasers as a whole no longer hold at least 5% of TVP or (ii) the closing of a Qualified Public Offering.

(A) CO-SALE NOTICE MECHANICS. If any Founder (a "SELLING HOLDER") proposes to Transfer to any Person in one transaction or a series of related transactions any of such Selling Holder's shares of Common Stock, then

(i) At least thirty (30) days before the closing date of a sale or transfer of such shares, the Selling Holder shall give written notice (the "CO-SALE NOTICE") simultaneously to the Company and to each Purchaser at each Purchaser's address as shown on the Company's records.

The Co-Sale Notice shall describe in detail the proposed Transfer, including the number of shares of Common Stock proposed to be transferred, the proposed transfer price or consideration to be paid, the address of the Selling Holder proposing to Transfer shares of Common Stock, and the name and address of the proposed transferee (the "TRANSFEREE").

(ii) Each Purchaser shall have the right to sell to the Transferee not more than such Purchaser's Pro Rata Share (as defined below) of the Selling Holder's shares of Common Stock that such Selling Holder proposes to Transfer. The price to be paid to such Purchaser for the shares of Common Stock that it sells shall equal the aggregate consideration paid by the Transferee for all shares of Common Stock purchased by it multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock being sold by such Purchaser (assuming conversion of all such shares that are shares of Preferred Stock into Common Stock at the then applicable conversion rate for such shares of Preferred Stock) and the denominator of which shall be all shares of Common Stock that are being sold by all holders of Common Stock to such Transferee, including the Selling Holder (assuming conversion of all such shares that are shares of Preferred Stock into Common Stock at the then applicable conversion rate for such shares of Preferred Stock).

(iii) A Purchaser shall exercise its right of co-sale by delivering a notice of exercise (the "ELECTION NOTICE") to the Selling Holder (with a copy to the Company) within five (5) days after the date the Co-Sale Notice has been delivered from the Selling Holder to such Purchaser. Such Purchaser shall specify in the Election Notice the number of shares of Common Stock (as provided for in Section 7.1(a)(ii)) it desires to sell. A Purchaser, when exercising a right of co-sale hereunder, shall have a right of over-allotment such that if any other holder with a right of co-sale fails to sell with the Selling Holder and such Purchaser all of its Pro Rata Share hereunder, such Purchaser may, by giving notice to the other parties, elect to sell that number of additional shares of Common Stock equal to its proportional share of the non-selling holder's portion (based on the number of shares of Common Stock (assuming conversion of all Preferred Stock) held by such Purchaser as it bears to the total number of shares of Common Stock (assuming conversion of all Preferred Stock) held by such Purchaser and all other holders exercising their right of co-sale) within the five-day period from the date of delivery of the Co-Sale Notice.

(iv) The number of shares of Common Stock that a Selling Holder may sell to a Transferee shall be: (i) the total number of shares of Common Stock the Transferee is willing to purchase reduced by (ii) the number of shares that the Purchasers as a group elect to sell to the Transferee.

(v) For purposes of this co-sale right, "PRO RATA SHARE" shall mean the ratio of: (i) the total number of outstanding shares of Common Stock held by a Purchaser as of the date of the Co-Sale Notice (on an as-converted basis) to (ii) the total number of shares of Common Stock held by all holders of Common Stock outstanding as of the date of the Co-Sale Notice.

(B) TRANSFER OF SHARES UPON FAILURE TO EXERCISE RIGHT OF CO-SALE. Subject to the co-sale rights of each Purchaser, the Selling Holder may, not later than ninety (90) days following delivery to the Company and each Purchaser of the Co-Sale Notice, conclude a Transfer of any or all of its shares of Common Stock covered by the Co-Sale Notice on terms and conditions not materially more favorable to the transferor in any respect than those described in the Co-Sale Notice. Any proposed Transfer on terms and conditions materially more favorable to the transferor in any respect

than those described in the Co-Sale Notice, as well as any subsequent proposed Transfer by the Selling Holder of any shares of Common Stock, shall again be subject to the right of co-sale and shall require compliance by the Selling Holder with the procedures described in this Article 7.

(C) REFUSAL TO TRANSFER. Any attempt by any Selling Holder to transfer any shares of Common Stock in violation of any provision of this Agreement will be void. The Company will not be required: (i) to transfer on its books any shares of Common Stock that have been sold, gifted or otherwise transferred in violation of this Agreement; or (ii) to treat as an owner of such shares of Common Stock, or to accord the right to vote or pay dividends to any purchaser, donee or other Transferee to whom such shares may have been so transferred.

(D) LIMITATION ON RIGHT OF CO-SALE. The rights of the Purchasers in this Article 7 shall not apply to:

(i) sales of Common Stock in the case of a Qualified Public Offering, or

(ii) sales of Common Stock in the event of a merger of consolidation of the Company with or into any other corporation or corporations, or the merger of any other corporation or corporations into the Company, or

(iii) any Transfer by any of the Founders of up to a total of 250,000 shares of Common Stock (as calculated as of the Effective Date, and as adjusted thereafter for stock splits or recombinations, recapitalizations, and the like), or

(iv) any Transfer in one transaction or a series of transactions by any of the Founders of any amount of Common Stock to their respective spouses or children, or to trusts established for the benefit of that Founder, his spouse or his children.

ARTICLE 8

DEFINITIONS AND ACCOUNTING TERMS

8.1 CERTAIN DEFINED TERMS. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"ANY PUBLIC OFFERING" means and includes the closing of an underwritten public offering pursuant to an effective registration statement under the Securities Act covering the offer and sale of Common Stock for the account of the Company.

"COMMON STOCK" includes (a) the Company's Common Stock, without par value, as authorized on the date of this Agreement, (b) any other capital stock of any class or classes (however designated) of the Company, authorized on or after the date hereof (including the Conversion Shares), the holders of which shall have the right, without limitation as to amount, either to all or to a share of the balance of current dividends and liquidating dividends after the payment of dividends and distributions on any shares entitled to preference, and the holders of which shall ordinarily, in the absence of contingencies, be entitled to vote for the election of directors of the Company (even though the right so to vote has been suspended by the happening of such a contingency), and (c) any

other securities into which or for which any of the securities described in (a) or (b) may be converted or exchanged pursuant to a plan of recapitalization, reorganization, merger, sale of assets or otherwise.

"DEBT SECURITIES" means and includes (i) any debt security of the Company that by its terms is convertible into or exchangeable for any equity security of the Company that is a combination of debt and equity, or (ii) any option, warrant or other right to subscribe for, purchase or otherwise acquire any such debt security of the Company.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended, or any similar federal statute, and the rules and regulations of the SEC (or of any other federal agency then administering the Exchange Act) thereunder, all as the same shall be in effect at the time.

"FIRST COMMERCIAL SHIPMENT" means the first commercial shipment of product by the Company to ultimate end-users located in a standard metropolitan statistical area with an aggregate population of at least 1,000,000 persons.

"FORM S-3" means the Form S-3 form for registration of securities under the Securities Act, or any successor or substitute form.

"FOUNDERS" means each of Stephen G. Perlman, Bruce A. Leak and Phillip Y. Goldman.

"HOLDER" means any Purchaser or its affiliates or any purchaser therefrom of at least 500,000 shares of the Series B Preferred.

"INTELLECTUAL PROPERTY" means intellectual property, including licenses, software (including all source code and object code, development documentation, programming tools, drawings, specifications and data), rights in designs, technology, inventions, discoveries and improvements, know-how, proprietary rights, formulae, processes, technical information, confidential and proprietary information, and all Intellectual Property Rights associated or related to any of the foregoing or useful in connection therewith.

"INTELLECTUAL PROPERTY RIGHTS" means patents, patent applications, patent rights, trademarks, trademark registrations, trademark applications, service marks, business marks, brand names, trade names, all other names and slogans embodying business or product goodwill (or both), copyright registrations, mask works, copyrights (including copyrights in computer programs), trade secrets and all other intellectual property rights.

"PERSON" means an individual, corporation, partnership, joint venture, trust, or unincorporated organization, or a government or any agency or political subdivision thereof.

"QUALIFIED PUBLIC OFFERING" means and includes the closing of an underwritten public offering pursuant to an effective registration statement under the Securities Act, covering the offer and sale of Common Stock for the account of the Company from which the aggregate gross proceeds to the Company (net of underwriting discounts and commissions) exceed $10,000,000 and at a price that reflects a total enterprise value of at least $50,000,000.

"REGISTRABLE SECURITIES" means any shares of Common Stock issuable upon conversion of the Series B Preferred held by any Purchaser or its affiliates.

"REGISTRATION EXPENSES" means all expenses incident to the Company's performance of or compliance with its registration obligations set forth in this Agreement, including the following: (i) the fees, disbursements and expenses of the Company's counsel(s) (United States and, if applicable, foreign) and accountants in connection with the registration of the Registrable Securities to be disposed of under the Securities Act; (ii) the reasonable fees and disbursements of one counsel (other than counsel to the Company) retained in connection with each such registration by the requesting Holder; (iii) all expenses incurred in connection with the preparation, printing and filing of the registration statement, any preliminary prospectus or final prospectus, any other offering document and amendments and supplements thereto and the mailing and delivering of copies thereof to any underwriters and dealers; (iv) the cost of printing or producing any agreement(s) among underwriters, underwriting agreement(s), and blue sky or legal investment memoranda, any selling agreements and any other documents in connection with the offering, sale or delivery of the Registrable Securities to be disposed of; (v) all expenses incurred in connection with the qualification of the Registrable Securities to be disposed of for offering and sale under state securities laws, including the reasonable fees and disbursements of counsel for the underwriters or the Holders of Registrable Securities in connection with such qualification and in connection with any blue sky and legal investments surveys; (vi) the filing fees incident to securing any required review by the NASD of the terms of the sale of the Registrable Securities to be disposed of; (vii) transfer agents', depositories' and registrars' fees and the fees of any other agent appointed in connection with such offering, including the fees and expenses of any "qualified independent underwriter," or other person acting in a similar capacity, pursuant to the requirements of the NASD or otherwise (the "INDEPENDENT UNDERWRITER"); (viii) all security engraving and security printing expenses; and (ix) all fees and expenses payable in connection with the listing of the Registrable Securities on a securities exchange or inter-dealer quotation system, but excluding any underwriting discount, selling commission or transfer tax relating to the sale or disposition of Holders' Registrable Securities and fees and expenses of counsel for any Holder except as set forth in clause (ii) of this paragraph.

"REGISTRATION NOTICE" means written notice by a Holder or the Company, as the case may be, that such party desires to being a Registration Process in accordance with the terms of this Agreement.

"REGISTRATION PROCESS" means the process of registering Common Stock or Registrable Securities, as the case may be, under the Securities Act which, for purposes of this Agreement, shall be deemed to be the period of time from the actual delivery of the Registration Notice until the end of any applicable "hold back" period required by the underwriters or, if there is no such period, then 30 days after the effectiveness of the Registration Statement; provided, however, in the event that (i) a registration statement has not been filed with the SEC within 45 days after a Registration Notice, (ii) such registration statement has not been declared effective by the SEC within 75 days after its filing with the SEC or (iii) the Registration Notice or the registration statement has been abandoned or withdrawn by the requesting Holder or the Company, as the case may be, then the Registration Process shall be deemed concluded at such time; provided, further, with respect to an offering on a delayed or continuous basis pursuant to Rule 415 (or any successor rule to similar effect), a

Registration Process shall end on the earlier of (x) thirty (30) days following the last sale pursuant to such offering and (y) the end of any "hold back" period with respect to any such offering.

"RULE 144" means Rule 144 promulgated under the Securities Act, as amended from time to time, or any successor rule to similar effect.

"SECURITIES ACT" means the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations of the SEC (or of any other federal agency then administering the Securities Act) thereunder, all as the same shall be in effect at the time.

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

"TRANSFER" means to sell, exchange, deliver, assign, dispose of, bequeath, give, pledge, mortgage, hypothecate or otherwise encumber, transfer, or permit to be transferred, whether voluntarily, involuntarily, or by operation of law (including, without limitation, the laws of bankruptcy, insolvency, intestacy, descent, domestic relations, and distribution and succession), any shares of the Company's Common Stock.

"TVP" means the total number of votes that may be cast in the election of directors (without taking into effect cumulative voting, if any) of the Company if all securities entitled to vote generally in such election were present and voted, assuming full conversion, exchange or exercise of all convertible securities, rights, warrants and options of the Company that are issued or granted and outstanding or reserved for issuance or grant by the Company.

8.2 ACCOUNTING TERMS. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, and all other financial data submitted pursuant to this Agreement shall be prepared and calculated in all material respects in accordance with such principles.

ARTICLE 9

MISCELLANEOUS

9.1 NO WAIVER: CUMULATIVE REMEDIES. No failure or delay on the part of any Purchaser or Company in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

9.2 ADDRESSES FOR NOTICES, ETC. All notices, requests, demands and other communications provided for hereunder shall be in writing (including telegraphic communication) and mailed, by certified or registered mail, or telegraphed or delivered to the applicable party at the addresses indicated below:

If to the Company:

WebTV Networks, Inc.
275 Alma Street
Palo Alto, California 94301
Attention: Stephen G. Perlman, President

with a copy to:

McCutchen, Doyle, Brown & Enersen
55 South Market Street, 15th Floor
San Jose, California 95113
Attention: Gordon Yamate, Esq.

If to the Purchasers: As listed on Schedule A

with a copy to: As listed on Schedule A

If to any other holder of the Preferred Stock: at such holder's address for notice as set forth in the register maintained by the Company, or, as to each of the foregoing, at such other address as shall be designated by such Person in a written notice to the other party complying as to delivery with the terms of this Section. All such notices, requests, demands and other communications shall, when mailed or telegraphed, respectively, be effective when deposited in the mails or delivered to the telegraph company, respectively, addressed as aforesaid.

9.3 COSTS, EXPENSES AND TAXES. Upon the First Closing, the Company agrees to pay all reasonable legal fees of the Purchasers' outside legal counsel in connection with the investigation, preparation, execution and delivery of this Agreement, the Series B Preferred and other instruments and documents to be delivered hereunder and the transactions contemplated hereby and thereby up to but not in excess of $15,000.

9.4 BINDING EFFECT, ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the Company and the Purchasers and their respective successors and assigns, except that the Company shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Purchasers, and the rights and interests of the Purchasers shall be assignable without the consent of the Company to any assignee, except that any Purchaser shall not assign its rights and interest in the Company to any person who at such time is or may expect to become a direct competitor of the Company or a person controlled by, under common control with or controlling such competitor.

9.5 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All representations and warranties made in this Agreement, the Series B Preferred, or any other instrument or document delivered in connection herewith or therewith, shall survive the execution and delivery hereof or thereof until the earlier to occur of one year from the Effective Date or the closing of a Qualified Public Offering.

9.6 PRIOR AGREEMENTS. This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings or agreements concerning the subject matter hereof; provided, however, that the original Series B Preferred Stock Purchase Agreement dated March 20,

1996 between the Company and Brentwood together with the Amendment shall be considered an original counterpart to this Agreement This Agreement may only be amended with the approval of the holders of a majority of the outstanding shares of the Series B Preferred being purchased hereunder and the Company.

9.7 SEVERABILITY. The invalidity or unenforceability of any provision hereto shall in no way affect the validity or enforceability of any other provision.

9.8 CALIFORNIA CORPORATE SECURITIES LAW. THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION IS UNLAWFUL UNLESS THE SALE OF SECURITIES IS EXEMPT FROM THE QUALIFICATION BY SECTION 25100, 25102, OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

9.9 GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

9.10 HEADINGS. Article, Section and Subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

9.11 COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart.

9.12 FURTHER ASSURANCES. From and after the date of this Agreement, upon the reasonable request of the Purchasers, or the Company, the other party shall execute and deliver such instruments, documents and other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement and the Series B Preferred.

[intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

WEBTV NETWORKS, INC

By: _____
Stephen G. Perlman, President

By signing below, each of the Founders agrees to be bound by the provisions of Article 7 of this Agreement.

_____
Stephen G. Perlman

_____
Bruce A. Leak

_____
Phillip Goldman

PURCHASERS:

Brentwood Associates VII, L.P.
By: Brentwood VII Ventures
Its General Partner

By: _____

_____
(printed)

[signatures continued on next page]

Vulcan Ventures Incorporated

By:

Its:

(printed)

APV Technology Partners US, L.P.

By:

Its General Partner

By:

(printed)

APV Technology Partners, L.P.

By:

Its General Partner

By:

(printed)

B. Kipling Hagopian, Trustee
under Trust dated 3/25/88

Mary Ann Hagopian Trustee
under Trust dated 3/25/88

[signatures continued on next page]

Roger C. Davisson, Trustee,
Declaration of Trust dated
11/29/94 (Davisson Family Trust)

Marjorie Davisson, Trustee,
Declaration of Trust dated
11/29/94 (Davisson Family Trust)

Stewart A. Schuster, Trustee,
Schuster Revocable Trust dated 2/10/95

Brian G. Atwood

Timothy M. Pennington III,
as Trustee for the Pennington
Family Revocable Trust dated 5/23/84

Melissa J. Pennington,
as Trustee for the Pennington
Family Revocable Trust dated 5/23/84

Edwin Taylor

[signatures continued on next page]

SIGNATURES CONTINUED

Randy Komisar

G. Kevin Doren

EXHIBIT A

SCHEDULE OF PURCHASERS

Additional Purchasers	Number of Shares	Purchase Price (approximate)
Vulcan Ventures Incorporated	2,147,239	$3,500,000
APV Technology Partners US, L.P.	34,356	$ 56,000
APV Technology Partners, L.P.	137,423	$ 224,000
B. Kipling Hagopian and Mary Ann Hagopian, Trustees under Trust dated 3/25/88	46,012	$ 75,000
Roger C. Davisson and Marjorie Davisson, Trustees, Declaration of Trust dated 11/29/94 (Davisson Family Trust)	30,674	$ 50,000
Stewart A. Schuster, Trustee, Schuster Revocable Trust dated 2/10/95	30,674	$ 50,000
Brian G. Atwood	30,674	$ 50,000
Timothy M. Pennington III and Melissa J. Pennington, as Trustees for the Pennington Family Revocable Trust dated 5/23/84	15,337	$ 25,000
Edwin Taylor	36,809	$ 60,000
Randy Komisar	92,024	$ 150,000
	2,601,222	$4,240,000

EXHIBIT 4.3

SERIES C CONVERTIBLE PREFERRED STOCK PURCHASE AGREEMENT

THIS SERIES C CONVERTIBLE PREFERRED STOCK PURCHASE AGREEMENT (the "AGREEMENT") is made September 13, 1996 (the "EFFECTIVE DATE"), by and between WEBTV NETWORKS, INC., a California corporation (the "COMPANY"), and the purchasers listed on Schedule 1 hereto (each, a "PURCHASER," and collectively the "PURCHASERS").

R E C I T A L S

A. The Company desires to sell to the Purchasers and the Purchasers desire to purchase from the Company shares of the Company's Series C Convertible Preferred Stock.

B. Capitalized terms used herein without definition shall have the meanings given them in Section 6.1 of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein, and subject to the terms and conditions hereinafter set forth, the parties hereby agree as follows:

ARTICLE 1

PURCHASE, SALE AND TERMS OF SHARES

1.1 THE SERIES C CONVERTIBLE PREFERRED STOCK. The Company agrees to issue and sell to each Purchaser, and each Purchaser agrees to purchase, severally, that number of shares of the Company's Series C Convertible Preferred Stock, without par value (the "SERIES C PREFERRED"), set forth opposite such Purchaser's name on Schedule 1 hereto at a price of $7.1130 per share, for an aggregate purchase price set forth on Schedule 1 hereto (the shares of Series C Preferred sold hereunder are sometimes referred to as the "SHARES"). The designation, rights, preferences and other terms and conditions relating to the Series C Preferred shall be as set forth in Exhibit A hereto. Any shares of Common Stock issuable upon conversion of the Series C Preferred are herein referred to as the "CONVERSION SHARES."

1.2 RESERVATION OF SHARES. The Company will prior to the Closing (as defined below) authorize and reserve and covenant to continue to reserve a sufficient number of its previously authorized but unissued shares of Common Stock to satisfy the rights of conversion of the holders of the Series C Preferred.

1.3 THE CLOSING. The closing of the purchase and sale of the Shares hereunder (the "CLOSING") shall be held at the offices of the Company, 305 Lytton Avenue, Palo Alto, California, on September 13, 1996, at 3:00 p.m., or on such other date and at such time as may be mutually

agreed upon (the date of such Closing being referred to as the "CLOSING DATE"). At the Closing, the Company will issue and deliver stock certificates evidencing the Shares sold at the Closing to the Purchasers, against payment of the purchase price for the Shares by certified bank check or wire transfer of immediately available funds to the account of the Company.

1.4 REPRESENTATIONS BY THE PURCHASERS.

(a) INVESTMENT. Each Purchaser represents that:

(i) Such Purchaser has been advised that the Shares have not been registered under the Securities Act nor qualified under any state securities laws on the grounds that no distribution or public offering of the Shares is to be effected, and that in this connection the Company is relying in part on the representations of such Purchaser set forth herein.

(ii) It is such Purchaser's intention to acquire the Shares for its own account and that the Shares are being and will be acquired for the purpose of investment and not with a view to distribution or resale thereof.

(iii) Such Purchaser is able to bear the economic risk of an investment in the Shares acquired by such Purchaser pursuant to this Agreement and can afford to sustain a total loss on such investment.

(iv) Such Purchaser is an experienced and sophisticated investor, able to fend for itself in the transactions contemplated by this Agreement, and has such knowledge and experience in financial and business matters that such Purchaser is capable of evaluating the risks and merits of acquiring the Shares. Such Purchaser has not been formed or organized for the specific purpose of acquiring the Shares. Such Purchaser has had, during the course of this transaction and prior to such Purchaser's purchase of the Shares, the opportunity to ask questions of, and receive answers from, the Company and its management concerning the Company and the terms and conditions of this Agreement. Such Purchaser hereby acknowledges that such Purchaser or its representatives has received all such information as such Purchaser considers necessary for evaluating the risks and merits of acquiring the Shares and for verifying the accuracy of any information furnished to such Purchaser or to which such Purchaser had access. Such Purchaser represents and warrants that the nature and amount of the Shares being purchased is consistent with such Purchaser's investment objectives, abilities and resources.

(v) Notwithstanding any other provision contained in this Agreement, such Purchaser understands that there is no public market for the Shares and that there may never be such a public market, and that even if such a public market develops such Purchaser may never be able to sell or dispose of the Shares and may thus have to bear the risk of such Purchaser's investment for a substantial period of time, or forever. Such Purchaser is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things, the availability of certain current public information about the issuer, the resale occurring not less than two (2) years after a party has purchased and paid for the security to be sold, the sale being effected through a "broker's

transaction" or in transactions directly with a "market maker" and the number of shares being sold during any three (3) month period not exceeding specified limitations.

(vi) Such Purchaser, by reason of its business or financial experience, has the capacity to protect its own interests in connection with the purchase of the Shares.

(vii) Such Purchaser acknowledges that the stock certificate representing the Shares, when issued, shall contain a legend in substantially the following form:

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY STATE SECURITIES LAWS AND ANY SALE, TRANSFER, PLEDGE OR OTHER DISPOSITION THEREOF MAY BE MADE ONLY IN A TRANSACTION REGISTERED UNDER SAID ACT AND SUCH STATE SECURITIES LAWS OR IN A TRANSACTION FOR WHICH AN EXEMPTION FROM REGISTRATION UNDER SAID ACT AND SUCH LAWS IS AVAILABLE AND THE CORPORATION HAS RECEIVED AN OPINION OF COUNSEL TO SUCH EFFECT REASONABLY SATISFACTORY TO IT.

(viii) Such Purchaser represents that it is an "accredited investor," as that term is defined in Rule 501 of Regulation D under the Securities Act.

(b) AUTHORIZATION. Such Purchaser further represents that:

(i) Such Purchaser has duly authorized, executed and delivered this Agreement and all other agreements and instruments executed in connection herewith.

(ii) This Agreement and such other agreements and instruments constitute the valid and binding obligations of such Purchaser, enforceable against it in accordance with its respective terms;

(iii) No consent or approval of any Person is required in connection with the execution, delivery and performance of this Agreement and such other agreements and instruments by such Purchaser which has not heretofore been obtained.

(c) BROKER'S OR FINDER'S FEES. Such Purchaser represents that no Person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or valid claim upon or against the Company for any commission, fee or other compensation as a finder or broker because of any act or omission by it, and such Purchaser agrees to indemnify and hold the Company harmless against any such commissions, fees or other compensation.

ARTICLE 2

CONDITIONS TO PURCHASE AND SALE OBLIGATIONS

2.1 CONDITIONS TO PURCHASERS' OBLIGATIONS. The obligation of each Purchaser to purchase and pay for the Shares at the Closing is subject to the following conditions:

(a) REPRESENTATIONS AND WARRANTIES. Each of the representations and warranties of the Company set forth in Article 3 hereof shall be true and correct when made, and shall be true and correct on the Closing Date.

(b) CONSENTS, WAIVERS ETC. Prior to the Closing Date, the Company shall have obtained all consents or waivers including those from the holders of the Series A Preferred Stock and Series B Preferred Stock and the Founders with respect to their respective rights of first refusal to participate in future offerings, among others, necessary to execute and deliver this Agreement, issue the Series C Preferred and to carry out the transactions contemplated hereby and thereby, and all such consents and waivers shall be in full force and effect. All corporate and other action and governmental filings necessary to approve and effectuate the terms of this Agreement, the Series C Preferred and other agreements and instruments executed and delivered by the Company in connection herewith, including without limitation approval of this Agreement by the Company's Board of Directors, shall have been made, obtained or taken, except for any post-sale filing that may be required under applicable federal and state securities laws which will be made within the applicable time period permitted thereunder.

(c) COVENANTS. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the applicable Closing Date shall have been performed or complied with.

(d) OPINION OF COMPANY'S COUNSEL. The Purchasers shall have received from Venture Law Group, A Professional Corporation, counsel to the Company, an opinion addressed to them, dated the Closing Date, in substantially the form of Exhibit B.

(e) COMPLIANCE CERTIFICATE. The Company shall have delivered to the Purchasers, a certificate executed by the President of the Company, dated the Closing Date, and certifying to the fulfillment of the conditions specified in this Section 2.1.

(f) AMENDED ARTICLES. The Certificate of Amendment to the Company's Articles defining the rights of the Series C Preferred (in the form attached hereto as Exhibit A) shall have been filed with the Secretary of State of the State of California.

2.2 CONDITIONS TO THE COMPANY'S OBLIGATIONS. The obligations of the Company to issue and sell the Shares to each Purchaser at the Closing is subject to the following conditions:

(a) REPRESENTATIONS AND WARRANTIES. Each of the representations and warranties of such Purchaser set forth in Section 1.4 hereof shall be true and correct when made, and shall be true and correct on the Closing Date.

(b) CONSENTS, WAIVERS, ETC. Prior to the Closing Date, the Company shall have obtained all consents or waivers including those from the holders of the Series A Preferred Stock and Series B Preferred Stock and the Founders with respect to their respective rights of first refusal to participate in future offerings, among others, necessary to execute and deliver this Agreement, issue the Series C Preferred and to carry out the transactions contemplated hereby and thereby, and all such consents and waivers shall be in full force and effect. All corporate and other action and governmental filings necessary to approve and effectuate the terms of this Agreement, the Series C Preferred and other agreements and instruments executed and delivered by the Company in connection herewith,

including without limitation approval of this Agreement by the Company's Board of Directors, shall have been made, obtained or taken, except for any post-sale filing that may be required under applicable federal and state securities laws which will be made within the applicable time period permitted thereunder.

(c) AMENDED ARTICLES. The Certificate of Amendment to the Company's articles defining the rights of the Series C Preferred (in the form attached hereto as Exhibit A) shall have been filed with the Secretary of State of the State of California.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth otherwise in the Schedule of Exceptions attached hereto as Exhibit C, the Company represents and warrants to the Purchasers that:

3.1 ORGANIZATION AND STANDING OF THE COMPANY. The Company is a duly organized and validly existing corporation in good standing under the laws of the State of California and has all requisite corporate power and authority for the ownership and operation of its properties and for the carrying on of its business as now conducted and as proposed to be conducted. The Company is duly licensed or qualified and in good standing as a foreign corporation authorized to do business in all jurisdictions in which the failure to be so qualified would have a material adverse effect upon the business as now conducted.

3.2 CORPORATE ACTION. The Company has the corporate power and will, prior to the Closing Date, have taken all necessary corporate action required to authorize, execute, deliver and perform this Agreement and any other agreements and instruments executed in connection herewith, and to issue, sell and deliver the Shares and the Conversion Shares. When executed and delivered by the Company, this Agreement and any other agreements and instruments executed in connection herewith will constitute the valid and binding obligations of the Company, enforceable in accordance with their terms except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (b) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (c) to the extent the indemnification provisions contained in Article 5 hereof may be limited by applicable federal or state securities laws.

3.3 GOVERNMENTAL APPROVALS. Except for the filings to be made, if any, to comply with exemptions from registration or qualification under federal and state securities laws, no authorization, consent, approval, license, exemption of or filing or registration with any court or governmental agency or instrumentality is necessary for the offer, issuance, sale, execution or delivery by the Company, or for the performance by it of its obligations under, this Agreement, any other agreements or instruments executed in connection herewith, or the Shares.

3.4 LITIGATION. There is no litigation or governmental proceeding or investigation pending, or, to the Company's knowledge, threatened against the Company affecting any of its properties or assets, or, to the Company's knowledge, against any officer, director or principal shareholder of the Company that might result in any material adverse change in the business,

operations, affairs or conditions of the Company or that might call into question the validity of this Agreement or the Shares, or that might result in any change in equity ownership of the Company.

3.5 COMPLIANCE WITH OTHER INSTRUMENTS. The Company is in compliance in all respects with the terms and provisions of its Articles of Incorporation, bylaws and in all material respects with the terms and provisions of each mortgage, indenture, lease, agreement and other instrument relating to obligations of the Company in excess of $100,000, and of any judgments, decrees, governmental orders, statutes, rules or regulations by which it is bound or to which its properties or assets are subject. Neither the execution and delivery of this Agreement or the Shares, nor the consummation of any transaction contemplated hereby or thereby, has constituted or resulted in a default or violation of any term or provision in any of the foregoing documents or instruments; and there is no such violation or default or event which, with the passage of time or giving of notice or both, would constitute a violation or default which materially and adversely affects the business of the Company or any of its properties or assets.

3.6 REGISTRATION RIGHTS. Except for the holders of the Company's Series A Preferred Stock, Series B Preferred Stock and each of the Founders and as set forth in Article 5 hereof, no Person has demand or other rights to cause the Company to file any registration statement under the Securities Act relating to any securities of the Company or any right to participate in an offering of shares under any such registration statement. All registration rights of the Founders are subordinate to those of the Purchasers hereunder.

3.7 SECURITIES ACT OF 1933. Subject in part to the truth and accuracy of each Purchaser's representations set forth in Section 1.4 of this Agreement, the offer, sale and issuance of the Series C Preferred as contemplated by this Agreement are exempt from the registration requirements of the Securities Act.

3.8 NO BROKERS OR FINDERS. The Company owes no commission, fee or other compensation to any Person as a finder or broker as a result of the transactions contemplated by this Agreement.

3.9 CAPITALIZATION; STATUS OF CAPITAL STOCK. The Company represents and warrants that immediately prior to the Closing Date the Company will have a total authorized capitalization consisting of (i) 100,000,000 shares of Common Stock, without par value, of which 18,808,748 shares are issued and outstanding, and (ii) 20,000,000 of Preferred Stock, of which 1,510,533 shares of Series A Convertible Preferred Stock are issued and outstanding and of which 6,316,706 shares of Series B Convertible Preferred Stock are issued and outstanding. The Company has reserved 5,000,000 shares of Common Stock for issuance under the Company's 1996 Stock Incentive Plan (the "PLAN"), under which options to purchase 4,152,848 shares have been granted, stock grants for 5,775 shares have been made, and 841,377 shares remain available for future grant. Optionees under the Plan are currently in the process of exercising their options for shares of restricted stock that will be subject to repurchase by the Company. The Company has issued warrants to purchase 53,000 shares of Common Stock to certain individuals and has agreed to issue warrants to purchase 86,000 shares of Series B Preferred Stock to an equipment lessor. All of the outstanding shares of capital stock of the Company have been duly authorized, are validly issued and are fully paid and nonassessable and all shares issuable upon exercise of outstanding options and warrants have been duly authorized and, when issued in accordance with the terms of such options and warrants, will be

validly issued, fully paid and nonassessable. The Company has reserved sufficient shares of Common Stock for issuance upon conversion of the Series C Convertible Preferred. The Conversion Shares when issued and delivered upon conversion of the Series C Preferred, will be duly authorized, validly issued and fully paid and nonassessable. Except as set forth in this Agreement and the Exhibits and Schedules attached hereto, there are no options, warrants or rights to purchase shares of capital stock or other securities authorized, issued or outstanding, nor is the Company obligated in any manner to issue shares of its capital stock or other securities. Except as set forth in this Agreement and the Exhibits and Schedules hereto, no holder of any security of the Company is entitled to preemptive or similar statutory or contractual rights, either arising pursuant to any agreement or instrument to which the Company is a party or that are otherwise binding upon the Company. The offer and sale of all shares of capital stock or other securities of the Company issued before the Closing complied with or were exempt from registration or qualification under all federal and state securities laws.

3.10 FINANCIAL STATEMENTS. The Company has furnished to the Purchasers, or will furnish to the Purchasers prior to the Closing, the audited balance sheet of the Company as of March 31, 1996 and the audited statements of operations and cash flows for the eleven month period then ended. The Company has also furnished to the Purchasers, or will furnish to the Purchasers prior to the Closing, the unaudited balance sheet of the Company as of June 30, 1996 and the unaudited statement of operations for the quarter then ended (all of such financial statements are referred to collectively herein as the "FINANCIAL STATEMENTS"). The Financial Statements were prepared in accordance with generally accepted accounting principles ("GAAP") consistently applied throughout the period involved, and fairly present the financial position and results of operations of the Company at the date specified and reflect all liabilities, contingent or otherwise, at the date thereof.

3.11 ABSENCE OF CHANGES. Since June 30, 1996, no event has occurred or failed to occur that would be required to be disclosed in the footnotes of the Financial Statements for such statements to be prepared in accordance with generally accepted accounting principles, and there has been no material adverse change in the business, affairs, operations, properties, assets or condition of the Company.

3.12 GOOD AND MARKETABLE TITLE. The Company has good and marketable title to all of its properties and assets which it owns, and a valid leasehold interest in the premises which it currently occupies, free and clear of all liens, claims, security interests, charges and encumbrances, and has the right to use all the assets it presently uses in the operation of its business. The properties and assets of the Company are in all material respects in good operating condition and repair, normal wear and tear excepted.

3.13 SUBSIDIARIES. The Company does not own, control, directly or indirectly, any other corporation, association, partnership or other business entity or own any shares of capital stock or other securities of any other Person.

3.14 TAX MATTERS. The Company is in the process of preparing its initial tax return. The provision for taxes of the Company as shown in the Financial Statements is adequate for taxes due or accrued as of the date thereof.

3.15 INSURANCE. The Company has in full force and effect fire and casualty insurance policies, sufficient in amount (subject to reasonable deductibles) to allow it to replace any of its properties or assets that might be damaged or destroyed that are material to the present conduct of its business.

3.16 CERTAIN TRANSACTIONS. Other than the interest arising from a Person's stock ownership of the Company or for compensation as an employee or director of the Company, there currently are no material transactions between the Company, on the one hand, and its officers, directors or shareholders, or their immediate family members, on the other hand, and no such person is an interested party to any material contract of the Company or holds a direct or indirect ownership interest in any business or corporation which competes with the Company.

3.17 MATERIAL CONTRACTS AND COMMITMENTS. Except as set forth in this Agreement and the Exhibits and Schedules attached hereto, there are no contracts, agreements or instruments to which the Company is a party or by which it is bound that may involve (a) obligations (contingent or otherwise) of, or payments to the Company in excess of $100,000, or (b) the license of any patent, trademark, service mark, trade name, copyright, trade secret or other proprietary right to or from the Company (other than licenses which are immaterial or could be readily replaced), or (c) provisions restricting the development or distribution of the Company's products or services. All such contracts, agreements and instruments are, to the Company's knowledge valid, binding and in full force and effect in all material respects, subject to (a) applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, and (b) laws relating to the availability of specific performance, injunctive relief, or other equitable remedies. The Company has not received any notice of default of, and to the Company's knowledge there is no default of, any third party under any material contract, agreement or instrument to which the Company is a party.

3.18 PATENTS, COPYRIGHTS AND TRADEMARKS.

To the Company's knowledge, the Company owns or has the right to use, all Intellectual Property used in or necessary for its business as presently conducted and as proposed to be conducted based on the Business Plan (except as to Intellectual Property the Company believes it will be able to acquire from third parties in the ordinary course of business on reasonable terms), including, without limitation, all Intellectual Property assigned or licensed to the Company by the Founders. To the Company's knowledge, the Company has not violated, and is not violating, any Intellectual Property Rights of any other Person or entity and has not received any communications to that effect. The Company is not aware of any Person who is infringing upon or violating any of the Intellectual Property Rights of the Company. Except as set forth in this Agreement and the Exhibits and Schedules attached hereto, the Company has not granted any license or option or entered into any material agreement of any kind with respect to the use of its Intellectual Property. To the Company's knowledge, none of the Company's employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of such employee's best efforts to promote the interests of the Company or that would conflict with the Company's business as proposed to be conducted. Neither the execution nor delivery of this Agreement, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as now conducted or as proposed to be conducted, will, to

the Company's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees (or people it currently intends to hire) made prior to their employment by the Company other than technology rights and the like previously assigned and/or licensed to the Company by Steven G. Perlman and Phillip Goldman, which assignments and/or licenses, as the case may be, transferred to the Company such rights in the Intellectual Property used in or necessary for the Company's business as presently conducted and as proposed to be conducted based on the Business Plan dated February, 1996.

3.19 ENVIRONMENTAL MATTERS. The Company has not, contrary to applicable statutes and regulations, stored or disposed of, on, under or about their premises hazardous materials, and to the Company's knowledge, during the time period any prior owners owned or leased such premises, such prior owners or lessees or third parties did not so store or dispose of on, under or about such premises or transfer to or from the premises any hazardous materials. As used in this Agreement, the term "hazardous materials" shall mean substances defined as "hazardous substances" or "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response and Compensation Liability Act of 1980, as amended, 42 U.S.C., Section 9601, et seq.; The Hazardous Materials Transportation Act, 49 U.S.C., Section 1801, et seq.; The Resource Conservation Recovery Act, 42 U.S.C., Section 6901, et seq.

3.20 EMPLOYEES AND EMPLOYEE BENEFIT PLANS. To the Company's knowledge, no employee of the Company is in violation of any term of any employment contract, patent disclosure agreement or any other contract or agreement relating to the relationship of any such employee with the Company or any other party. The Company does not have any collective bargaining agreements covering any of its employees.

3.21 DISCLOSURE. No representation, warranty or statement by the Company in this Agreement or in any written statement or certificate required by this Agreement to be furnished to the Purchasers or their counsel pursuant to this Agreement contains or will contain any untrue statement of material fact or omits to state a material fact necessary to make the statements made herein or therein, in light of the circumstances under which they were made, not misleading.

ARTICLE 4

COVENANTS OF THE COMPANY AND THE PURCHASERS

4.1 AFFIRMATIVE COVENANTS OF THE COMPANY. Without limiting any other covenants and provisions hereof, the Company covenants and agrees that, until the earlier of (i) such time as the Purchasers no longer hold at least 5% of TVP, or (ii) the closing of a Qualified Public Offering, it will perform and observe the following covenants and provisions and will not, without approval of a majority of holders of the Series C Preferred, amend or revise any terms of this Section 4.1:

(a) REPORTING REQUIREMENTS. The Company shall furnish to each Purchaser holding at least 700,000 shares of the Company's capital stock (i) on an annual basis, within 75 days after the end of each fiscal year, a balance sheet, related statements of operations and cash flows presented in accordance with GAAP, with any required notes thereto, audited by a nationally recognized public accounting firm, and at least 35 days prior to the end of such fiscal year, a Board-approved plan and

budget for the next fiscal year; (ii) on a quarterly basis, within 30 days after the end of each calendar quarter, an unaudited balance sheet and related statements of operations and cash flows; (iii) on a monthly basis, within 30 days after the end of each month, a monthly unaudited balance sheet and related statements of operations and cash flows; and (iv) such other information about the Company's affairs as may be reasonably requested by the Purchasers. Such annual, quarterly and monthly results shall be prepared in a form which permits comparison to the budget for the corresponding period and, in the case of the annual and quarterly results, comparison to the prior year's results.

(b) INSURANCE. The Company shall maintain insurance in such amounts, with such deductibles and against such risks and losses as are reasonable for the business and assets of the Company, and the Company shall maintain such other insurance as may be required by law, and maintain in effect until the consummation of a Qualified Public Offering term life insurance insuring each of the lives of the Founders for $3,000,000 and naming the Company as beneficiary.

(c) PROPRIETARY INFORMATION AGREEMENTS. The Company agrees to obtain from each person employed by the Company having access to confidential information of the Company and/or any party with whom the Company conducts business a Proprietary Information Agreement substantially in the form furnished to the Purchasers and their counsel.

4.2 CONFIDENTIALITY. Each Purchaser severally represents and warrants that any confidential information obtained from this Agreement shall be treated as confidential and shall not be disclosed to a third party without the consent of the Company or used for any purpose other than allowing such Purchaser to exercise its rights under this Agreement.

ARTICLE 5

REGISTRATION RIGHTS

5.1 DEMAND REGISTRATIONS. The provisions of this Section 5.1 shall commence on the date of the First Commercial Shipment and terminate at such time as all Holders are permitted to resell the Registrable Securities held by them in a single three month period without restriction pursuant to Rule 144 promulgated under the Securities Act.

(a) NOTICE AND REGISTRATION. Upon a Registration Notice from one or more Holders to the Company requesting that the Company effect the registration under the Securities Act of at least 40% of the Registrable Securities or any lesser percentage so long as the anticipated proceeds from such offering exceed $20,000,000, which Registration Notice shall specify the intended method or methods of disposition of such Registrable Securities, the Company shall use its best efforts to effect (at the earliest possible date) the registration under the Securities Act of such Registrable Securities for disposition in accordance with the intended method or methods of disposition stated in such Registration Notice (including, but not limited to, an offering on a delayed or continuous basis pursuant to Rule 415, or any successor rule to similar effect, promulgated under the Securities Act; provided that:

(i) except as provided otherwise in Section 5.1(a)(iii), a Holder shall have the right to deliver Registration Notices to effect three (3) demand registrations pursuant to this Section 5.1 (each, a "DEMAND") and no more;

(ii) a Holder may not deliver a Registration Notice prior to six months following the effective date of the initial registration statement used for a Qualified Public Offering or during any Registration Process; and

(iii) if available, a Demand shall be effected by the Company on such Form S-3. In addition to the Demand rights set forth in Section 5.1(a)(i) above, a Holder who holds 5% or more of the Registrable Securities may request the Company to effect a registration on Form S-3, if available; provided that the number of such registrations is limited to two (2) per twelve month period and that the anticipated proceeds from such offering are at least $1,000,000.

(b) DESIGNATION OF INVESTMENT BANK. In the event that any registration pursuant to this Section 5.1 shall involve, in whole or in part, an underwritten offering, the Company shall have the right to designate one or more nationally recognized investment banking firms, reasonably acceptable to the requesting Holder, as the lead underwriter(s) of such underwritten offering.

(c) WITHDRAWAL OF REGISTRATION NOTICE. A Holder shall have the right to withdraw any Registration Notice or, subject to Section 5.1(a) hereof, to change the number of Registrable Securities covered thereby at any time and for any reason.

(d) EFFECT OF DEMAND. A registration requested by a Holder pursuant to this Section 5.1 shall not be deemed to have been effected for purposes of Section 5.1(a)(i): (i) unless such registration statement has become effective and been maintained effective in accordance with Section 5.4 hereof, (ii) if after it has become effective such registration is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court for any reason other than a material misrepresentation or a material omission by the Holder specified in the Registration Notice or (iii) if the conditions to closing specified in the purchase agreement or underwriting agreement entered into in connection with such registration are not satisfied other than by reason of some act or omission by any of such persons.

(e) DELAY OF REGISTRATION. Notwithstanding anything in this Section 5.1 to the contrary, the Company shall not be obligated to take any action to effect a Demand pursuant to this Section 5.1 if the Company shall furnish to the requesting Holder, within ten (10) days after the delivery of the Registration Notice relating thereto, a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors it would be seriously detrimental to the Company or its stockholders for a registration statement to be filed in the near future. If the Company has delivered such a certificate to the requesting Holder, then the Company's obligation to effect such Demand under this Section 5.1 shall be deferred for a period not to exceed one hundred twenty (120) days from the date of receipt of the Holder's Registration Notice; provided, however, that the Company may not utilize this right more than once during any twelve month period.

5.2 PIGGYBACK REGISTRATION. If the Company at any time proposes to register any of its Common Stock or any equity securities exercisable for, convertible into or exchangeable for

Common Stock under the Securities Act, whether or not for sale for its own account (the "COMPANY SECURITIES"), in a manner which would permit registration of Registrable Securities for sale to the public under the Securities Act, each such time it will promptly deliver a Registration Notice to each Holder, which Registration Notice will describe the rights of each Holder under this Section 5.2, at least 20 days prior to the anticipated filing date of the registration statement relating to such registration. Such notice shall offer each Holder the opportunity to include in such registration statement such number of Registrable Securities held by such Holder as such Holder may request. Upon the written request of the Holders requesting Registrable Securities to be registered pursuant to such registration statement (collectively, the "PIGGYBACK SECURITIES"), made within 10 days after the receipt of the Company's Registration Notice, which request shall specify the number of Piggyback Securities intended to be disposed of, the Company will use its best efforts to effect, in connection with the registration of the Company Securities, the registration under the Securities Act of all Piggyback Securities, to the extent required to permit the disposition (in accordance with such intended methods thereof) of the Piggyback Securities, provided that:

(a) RELIEF FROM COMPANY OBLIGATION. If, at any time after giving such written notice of its intention to register any Company Securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register the Company Securities, the Company may, at its election, give written notice of such determination to the Holder and thereupon the Company shall be relieved of its obligation to register the Piggyback Securities in connection with the registration of such Company Securities (but not from its obligation to pay Registration Expenses to the extent incurred in connection therewith as provided in Section 5.3 hereof), without prejudice, however, to the right of the Holder immediately to request that such registration be effected as a registration under Section 5.1 hereof to the extent permitted thereby.

(b) REDUCTION IN PIGGYBACK SECURITIES. If the registration referred to in the first sentence of this Section 5.2 is to be an underwritten primary registration on behalf of the Company, and the managing underwriter(s) advise the Company in writing that, in their good faith opinion, inclusion of all the Piggyback Securities together with all other securities of the Company that are entitled to "piggyback" registration rights in such offering would materially and adversely affect the offering and sale of the Company Securities, including the per share price thereby obtainable, the Company shall only include in such registration: (i) first, all the Company Securities being registered for sale for the Company's own account, with such priorities among them as the Company may determine, (ii) second, up to the full number of securities of the Company having "piggyback" registration rights which, in the good faith opinion of such underwriter(s) can be so sold without materially and adversely affecting such offering (and, if less than the full number of such "piggyback" securities, allocated pro rata among the Holders and the other holders of securities of the Company that are entitled to "piggyback" registration rights other than the Founders (the "OTHER NON-FOUNDER HOLDERS") on the basis of the number of securities requested to be included therein by each such Holder and Other Non-Founder Holder) and (iii) finally, up to the full number of securities of the Company that are entitled to "piggyback" registration rights held by the Founders which, in the good faith opinion of such underwriter(s) can be so sold without materially and adversely affecting such offering (and, if less than the full number of such securities, allocated pro rata among the Founders on the basis of the number of securities requested to be included therein by each such Founder).

(c) EXCEPTIONS. The Company shall not be required to effect any registration of Registrable Securities held by any Holder under this Section 5.2 incidental to the registration of any of its securities in connection with mergers, acquisitions, exchange offers, subscription offers, dividend reinvestment plans or stock option or other employee benefit plans.

(d) NO EFFECT ON DEMAND RIGHTS. No registration of Registrable Securities effected under this Section 5.2 shall relieve the Company of its obligation to effect a registration of other Registrable Securities pursuant to Section 5.1 hereof.

(e) WITHDRAWAL OF PIGGYBACK SECURITIES. A Holder may withdraw all or any part of the Holder's Piggyback Securities from the proposed registration at any time prior to the later of (i) the registration statement being declared effective by the SEC and (ii) the execution of any underwriting agreement.

(f) SAME TERMS AND CONDITIONS. The Company may require that any Piggyback Securities be included in the offering proposed by the Company on the same terms and conditions as the Company Securities are included therein.

5.3 EXPENSES. The Company will pay all Registration Expenses in connection with (i) each Demand and (ii) all registrations of Holders' Registrable Securities pursuant to Section 5.2. In the event the requesting Holder withdraws a Registration Notice, abandons a registration statement or following an effected Demand does not sell Registrable Securities, then all Registration Expenses in respect of such Registration Notice shall be borne, at the requesting Holder's option, either by the requesting Holder or by the Company (in which case, if borne by the Company and subject to Section 5.1(d) hereof, such withdrawn Registration Notice shall be deemed to be an effected Demand for purposes of Section 5.1 hereof).

5.4 REGISTRATION AND QUALIFICATION. If and whenever the Company is required to use its best efforts to effect the registration of any Registrable Securities under the Securities Act as provided in Sections 5.1 or 5.2 hereof, the Company will as promptly as is practicable:

(a) prepare and file with the SEC, as soon as possible, and use its best efforts to cause to become effective, a registration statement under the Securities Act relating to the Registrable Securities to be offered on such form as the requesting Holder, or if not filed pursuant to a Demand, the Company, determines and for which the Company then qualifies;

(b) prepare and file with the SEC such amendments (including post-effective amendments) and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities until the later of such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition set forth in such registration statement or the expiration of one hundred twenty (120) days after such registration statement becomes effective;

(c) furnish to the Holder and to any underwriter of Registrable Securities such number of conformed copies of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits), such number of copies of the prospectus included in such registration statement (including each preliminary prospectus and any summary prospectus), in

conformity with the requirements of the Securities Act, such documents incorporated by reference in such registration statement or prospectus, and such other documents, as the Holder or such underwriter may reasonably request, and, if requested, a copy of any and all transmittal letters or other correspondence to, or received from, the SEC or any other governmental agency or regulatory body or other body having jurisdiction (including any domestic or foreign securities exchange) relating to such offering;

(d) make every reasonable effort to obtain the withdrawal of any order suspending the effectiveness of such registration statement at the earliest possible moment;

(e) use its best efforts to register or qualify all Registrable Securities covered by such registration statement under the securities or blue sky laws of any domestic jurisdiction, and to list or qualify for such securities exchanges and other trading markets, as the requesting Holder or any underwriter of such Registrable Securities shall request, and use its best efforts to obtain all necessary registrations, permits and consents required in connection therewith, and do any and all other acts and things which are reasonably requested to enable the Holder or any such underwriter to consummate the disposition in such jurisdictions of the Registrable Securities covered by such registration statement, except that the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction wherein it is not so qualified, or to subject itself to taxation in any such jurisdiction, or to consent to general service of process in any such jurisdiction;

(f) if requested by a requesting Holder, (i) furnish to each Holder an opinion of counsel for the Company addressed to each Holder and dated the date of the closing under the underwriting agreement (if any) (or if such offering is not underwritten, dated the effective date of the registration statement), and (ii) use its best efforts to furnish to each Holder a "comfort" or "special procedures" letter addressed to each Holder and signed by the independent public accountants who have audited the Company's financial statements included in such registration statement, in each such case covering substantially the same matters with respect to such registration statement (and the prospectus included therein) as are customarily covered in opinions of issuer's counsel and in accountants' letters delivered to underwriters in underwritten public offerings of securities and such other matters as the Holder may reasonably request and, in the case of such accountants' letter, with respect to events subsequent to the date of such financial statements;

(g) immediately notify the Holders in writing (i) at any time when a prospectus relating to a registration pursuant to Section 5.1 or 5.2 hereof is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (ii) of any request by the SEC or any other regulatory body or other body having jurisdiction for any amendment of or supplement to any registration statement or other document relating to such offering, and in either such case (i) or (ii) at the request of a Holder prepare and furnish to such Holders a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or

necessary to make the statements therein, in light of the circumstances under which they are made, not misleading;

(h) use its best efforts to list all such Registrable Securities covered by such registration statement on each securities exchange and inter-dealer quotation system on which a class of common equity securities of the Company is then listed, and to pay all fees and expenses in connection therewith; and

(i) upon the transfer by a Holder in connection with a registration pursuant to Section 5.1 or 5.2 furnish unlegended certificates representing ownership of the Registrable Securities being sold in such denominations as shall be requested by the Holders or the underwriters.

5.5 UNDERWRITING; DUE DILIGENCE, ETC.

(a) UNDERWRITING AGREEMENT. If requested by the underwriters for any underwritten offering of Registrable Securities pursuant to a registration requested under this Agreement, the Company will enter into an underwriting agreement with such underwriters for such offering, which, in the case of a Demand, shall be in form reasonably acceptable to the requesting Holder and which, in the case of a Company Registration Process, shall be in form reasonably acceptable to the Company, any such agreement to contain such representations and warranties by the Company and such other terms and provisions as are customarily contained in underwriting agreements with respect to secondary distributions, including indemnities and contribution (provided, any indemnities and contribution shall, unless the requesting Holder and the Company agree otherwise, be to the effect and only to the extent provided in Section 5.9 hereof) and the provision of opinions of counsel and accountants' letters to the effect and to the extent provided in Section 5.4(f) hereof; provided, however, the Company may negotiate and agree to differing indemnification obligations with respect to the underwriters, provided such (i) do not adversely affect the Holders with respect to their rights and obligations hereunder and (ii) shall not excuse the Company from entering into (or delaying the execution of) an underwriting agreement on the terms as provided herein. The Holder on whose behalf the Registrable Securities are to be distributed by such underwriters shall be parties to any such underwriting agreement, and the representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of such underwriters, shall also be made to and for the benefit of the Holder. The Company shall use reasonable efforts to prevent any Holder from being required to make any representation or warranty, other than as to its ownership of the Registrable Securities and as to the due authorization, execution and enforceability, with respect to it, of the underwriting agreement. Such underwriter shall be instructed to use its reasonable best efforts to affect a wide distribution of the Registrable Securities being distributed so long as doing so shall not, in any manner, adversely affect the marketing (including timing) or price of such shares. The Company, if requested by the Requesting Holder or the underwriters, will enter into an agreement with the Independent Underwriter on customary terms.

(b) SAME TERMS. In the event that any registration pursuant to Sections 5.1 or 5.2 shall involve, in whole or in part, an underwritten offering, the Company may require the Registrable Securities requested to be registered pursuant to Sections 5.1 or 5.2 to be included in such underwriting on the same terms and conditions as shall be applicable to the other securities being sold through underwriters under such registration. The representations and warranties in such underwriting agreement by, and the other agreements on the part of, the Company to and for the

benefit of such underwriters, shall also be made to and for the benefit of the Holders. The Company shall use reasonable efforts to prevent any Holder from being required to make any representation or warranty, other than as to its or his ownership of the Registrable Securities and as to the due authorization, execution and enforceability, with respect to it or him, of the underwriting agreement. In the event a Holder enters into any underwriting agreement with underwriters in connection with a registration which contains representation and warranties more extensive than those contained in this Section 5.5 above, such an agreement shall not constitute a breach of this Agreement by the Company.

(c) ACCESS TO BOOKS AND RECORDS. In connection with the preparation and filing of each registration statement registering Registrable Securities under the Securities Act, the Company will give the Holders of Registrable Securities and the underwriters, if any, and their respective counsel and accountants, such reasonable and customary access to its books and records and such opportunities to discuss the business of the Company with its officers and the independent public accountants who have certified the Company's financial statements as shall be necessary, in the reasonable opinion of such Holders and such underwriters or their respective counsel, to conduct a reasonable investigation within the meaning of the Securities Act. The Holders and the underwriters, if any, and their respective counsel and accountants, shall use their reasonable best efforts to coordinate and time their review so as to not unreasonably interfere with the business and operations of the Company.

(d) OFFERING NOT UNDERWRITTEN. In the event an offering pursuant to this Agreement is not underwritten, the Company, at the request of the requesting Holder, will enter into such agreements with any selling agents or similar persons as are customary; such agreements shall contain terms and provisions analogous to those described herein and, to the extent not so described, customary terms and provisions.

5.6 RESTRICTIONS ON PUBLIC SALE; INCONSISTENT AGREEMENTS.

(a) LOCK-UP. If required by an underwriter of Common Stock in connection with (i) the initial Qualified Public Offering or (ii) any registration of Registrable Securities pursuant to Sections 5.1 or 5.2, which registration is effected in an underwritten public offering, then, in each such case, the Holders agree not to effect any sale or distribution, including any sale pursuant to Rule 144 (except as part of such registration), of any of the Company's common equity securities or of any security convertible into or exchangeable or exercisable for any equity security of the Company (x) with respect to clause (i), for a period of time following the effective date of the registration statement relating thereto customary in underwritten initial public offerings, which period shall not exceed one hundred eighty (180) days, or (y) with respect to clause (ii) only for a period of time following the effective date of the registration statement relating thereto reasonably acceptable to the Holders, which period shall not exceed ninety (90) days and only if the Founders have agreed to a substantially similar provision. Such agreement shall be in writing in the form satisfactory to the Company and such underwriter. The Company may impose a stop-transfer instruction with respect to the shares (or other securities) subject to the foregoing restriction until the end of such period.

(b) NO DISTRIBUTION. The Company agrees (i) without the written consent of the managing underwriters, not to effect any public or private sale or distribution of the Company's common equity securities or any security convertible into or exchangeable or exercisable for any

equity security of the Company, including a sale pursuant to Regulation D under the Securities Act, during the requesting Holder's Registration Process (except (A) as part of such underwritten registration or pursuant to registrations on Form S-8 or any successor form or (B) equity securities issued pursuant to the conversion or exchange of any securities convertible into or exchangeable for the Company's common equity securities and which were outstanding prior to the commencement of such Registration Process), and (ii) to use its reasonable efforts to cause each holder of its privately placed securities purchased from the Company at any time on or after the date of this Agreement to agree not to effect any public sale or distribution of any such securities during such period, including a sale pursuant to Rule 144 (except as part of such underwritten registration, if permitted).

5.7 RULE 144. The Company hereby covenants that after the Company shall have filed a registration statement pursuant to the requirements of Section 12 of the Exchange Act or a registration statement pursuant to the requirements of the Securities Act and such registration statement shall have become effective, the Company will file in a timely manner all reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the request of any Holder of Registrable Securities, make publicly available other information so long as necessary to permit sales under Rule 144), and it will take such further action as any Holder of Registrable Securities, all to the extent required from time to time to enable such Holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144. Upon the request of any Holder of Registrable Securities, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements. In addition, the Company hereby agrees that for a period of eighteen months following the date on which a registration statement filed pursuant to Section 5.1 or 5.2 hereof shall have become effective, the Company shall not deregister such securities under Section 12 of the Exchange Act (even if then permitted to do so pursuant to the Exchange Act and the rules and regulations promulgated thereunder).

5.8 TRANSFERABILITY. A Holder of registration rights may transfer the rights to any transferee who holds, subsequent to such transfer, at least 500,000 shares of Series C Preferred or Common Stock; provided (i) such transferee is reasonably acceptable to the Company, (ii) the Company must first be given written notice of the transfer and (iii) such transferee shall have agreed in writing, in form and substance reasonably satisfactory to the Company, to be bound by the terms of this Article 5 to the same extent and in the same manner as the transferor of such shares or securities.

5.9 INDEMNIFICATION AND CONTRIBUTION. With respect only to the offering of Registrable Securities contemplated by this Agreement, and in no way limiting or modifying the other provisions of this Agreement, the following indemnity and contribution provisions shall apply:

(a) INDEMNIFICATION BY COMPANY. In the case of each offering of Registrable Securities made pursuant to this Agreement, the Company agrees to indemnify and hold harmless each Holder of Registrable Securities, each underwriter of Registrable Securities so offered, each person, if any, who controls any of the foregoing persons within the meaning of the Securities Act, and the officers and directors of any of the foregoing from and against any and all claims, liabilities, losses, damages, expenses and judgments, joint or several, to which they or any of them may become subject, under the Securities Act or otherwise, including any amount paid in settlement of any litigation

commenced or threatened, and shall promptly reimburse them, as and when incurred, for any legal or other expenses incurred by them in connection with investigating any claims and defending any actions, insofar as such losses, claims, damages, liabilities or actions shall arise out of, or shall be based upon, any untrue statement or alleged untrue statement of a material fact contained in the registration statement (or in any preliminary or final prospectus included therein) or in any offering memorandum or other offering document relating to the offering and sale of such Registrable Securities, or any amendment thereof or supplement thereto, or in any document incorporated by reference therein, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or shall arise out of or be based upon any violation or alleged violation by the Company of the Securities Act, any blue sky laws, securities laws or other applicable laws of any state or country in which the Registrable Securities are offered and relating to action or inaction required of the Company in connection with such offering; provided, however, that the Company shall not be liable to a particular Holder of Registrable Securities in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement, or any omission or alleged omission, (i) if such statement or omission shall have been made in reliance upon and in conformity with information relating to such Holder furnished to the Company in writing by or on behalf of such Holder expressly for use in the preparation of the registration statement (or in any preliminary or final prospectus included therein), offering memorandum or other offering document, or any amendment thereof or supplement thereto or a document incorporated by reference in any of the foregoing or (ii) if such statement or omission was corrected in a prospectus delivered to such Holders of Registrable Securities prior to the consummation of the sale in which such loss, claim, damage, liability or action arises out of or is based upon and such corrected prospectus shall not have been delivered or sent to the purchaser within the time required by the Securities Act, provided that the Company delivered the corrected prospectus to such Holders in requisite quantity on a timely basis to permit such delivery or sending. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of a Holder of Registrable Securities and shall survive the transfer of such securities. The foregoing indemnity agreement is in addition to any liability which the Company may otherwise have to each Holder of Registrable Securities, underwriters of the Registrable Securities, any controlling person of any of the foregoing or any officer or director of any of the foregoing.

(b) INDEMNIFICATION BY HOLDER. In the case of each offering of Registrable Securities made pursuant to this Agreement, each Holder of Registrable Securities included in such offering, by exercising its registration rights hereunder, agrees to indemnify and hold harmless the Company, each person, if any, who controls the Company within the meaning of the Securities Act, and if requested by the underwriters, each underwriter who participates in the offering and each person, who controls any such underwriter within the meaning of the Securities Act, and the officers and directors of any of the foregoing from and against any and all claims, liabilities, losses, damages, expenses and judgments, joint or several, to which they or any of them may become subject, under the Securities Act or otherwise, including any amount paid in settlement of any litigation commenced or threatened, and shall promptly reimburse them, as and when incurred, for any legal or other expenses incurred by them in connection with investigating any claims and defending any actions, insofar as any such losses, claims, damages, liabilities or actions shall arise out of, or shall be based upon, any untrue statement or alleged untrue statement of a material fact contained in the registration statement (or in any preliminary or final prospectus included therein) or in any offering memorandum or other offering document relating to the offering and sale of such Registrable

Securities, or any amendment thereof or supplement thereto, or in any document incorporated by reference therein, or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but in each case only to the extent that such untrue statement of a material fact is contained in, or such material fact is omitted from, information relating to such Holder furnished in writing to the Company by or on behalf of such Holder expressly for use in the preparation of such registration statement (or in any preliminary or final prospectus included therein), offering memorandum or other offering document or a document incorporated by reference in any of the foregoing. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Company and shall survive the transfer of such securities. The foregoing indemnity is in addition to any liability which such Holder may otherwise have the Company, or any of its directors, officers or controlling persons. Notwithstanding the foregoing, in no event shall the liability of a Holder hereunder be greater in amount than the dollar amount of the net proceeds received by it upon the sale of the Registrable Securities pursuant to such offering.

(c) PROCEDURE FOR INDEMNIFICATION. Each party indemnified under this Section 5.9 shall, promptly after receipt of notice of any claim or the commencement of any action against such indemnified party in respect of which indemnity may be sought, notify the indemnifying party in writing of the claim or the commencement thereof; provided that the failure of the indemnified party to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to an indemnified party on account of the indemnity agreements contained in this Section 5.9, unless the indemnifying party was materially prejudiced by such failure, and in no event shall relieve the indemnifying party from any other liability which it may have to such indemnified party. If any such claim or action shall be brought against an indemnified party, it shall notify the indemnifying party thereof and the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable (except to the extent the proviso to this sentence is applicable, in which event it will be so liable) to the indemnified party under this Section 5.9 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided that each indemnified party shall have the right to employ separate counsel to represent it and assume its defense (in which case, the indemnifying party shall not represent it) if, in the reasonable judgment of such indemnified party, (i) upon the advice of counsel, the representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, or (ii) in the event the indemnifying party has not assumed the defense thereof within 10 days of receipt of notice of such claim or commencement of action, and in which case the fees and expenses of one such separate counsel shall be paid by the indemnifying party. If any indemnified party employs such separate counsel it will not enter into any settlement agreement which is not approved by the indemnifying party, such approval not to be unreasonably withheld. If the indemnifying party so assumes the defense thereof, it may not agree to any settlement of any such claim or action as the result of which any remedy or relief, other than monetary damages for which the indemnifying party shall be responsible hereunder, shall be applied to or against the indemnified party, without the prior written consent of the indemnified party. In any action hereunder as to which the indemnifying party has assumed the defense thereof with counsel satisfactory to the indemnified party, the indemnified party shall continue to be entitled to participate in the defense thereof, with counsel of its own choice, but,

except as set forth above, the indemnifying party shall not be obligated hereunder to reimburse the indemnified party for the costs thereof.

If the indemnification provided for in this Section 5.9 shall for any reason be unavailable to an indemnified party in respect of any loss, claim, damages or liability, or any action in respect thereof, referred to therein, then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, in such proportion as shall be appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party on the other with respect to the statements or omissions which resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations. The relative fault shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the indemnifying party on the one hand or the indemnified party on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission, but not by reference to any indemnified party's stock ownership in the Company. In no event, however, shall a Holder of Registrable Securities be required to contribute in excess of the amount of the net proceeds received by such Holder in connection with the sale of Registrable Securities in the offering which is the subject of such loss, claim, damages or liability. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this paragraph shall be deemed to include, for purposes of this paragraph, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section 12(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

ARTICLE 6

DEFINITIONS AND ACCOUNTING TERMS

6.1 CERTAIN DEFINED TERMS. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"COMMON STOCK" includes (a) the Company's Common Stock, without par value, as authorized on the date of this Agreement, (b) any other capital stock of any class or classes (however designated) of the Company, authorized on or after the date hereof (including the Conversion Shares), the holders of which shall have the right, without limitation as to amount, either to all or to a share of the balance of current dividends and liquidating dividends after the payment of dividends and distributions on any shares entitled to preference, and the holders of which shall ordinarily, in the absence of contingencies, be entitled to vote for the election of directors of the Company (even though the right so to vote has been suspended by the happening of such a contingency), and (c) any other securities into which or for which any of the securities described in (a) or (b) may be converted or exchanged pursuant to a plan of recapitalization, reorganization, merger, sale of assets or otherwise.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended, or any similar federal statute, and the rules and regulations of the SEC (or of any other federal agency then administering the Exchange Act) thereunder, all as the same shall be in effect at the time.

"FIRST COMMERCIAL SHIPMENT" means the first commercial shipment of product by the Company to ultimate end-users located in a standard metropolitan statistical area with an aggregate population of at least 1,000,000 persons.

"FORM S-3" means the Form S-3 form for registration of securities under the Securities Act, or any successor or substitute form.

"FOUNDERS" means each of Stephen G. Perlman, Bruce A. Leak and Phillip Y. Goldman.

"HOLDER" means a Purchaser or any purchaser or transferee therefrom holding at least 250,000 shares of the Series C Preferred.

"INTELLECTUAL PROPERTY" means intellectual property, including licenses, software (including all source code and object code, development documentation, programming tools, drawings, specifications and data), rights in designs, technology, inventions, discoveries and improvements, know-how, proprietary rights, formulae, processes, technical information, confidential and proprietary information, and all Intellectual Property Rights associated or related to any of the foregoing or useful in connection therewith.

"INTELLECTUAL PROPERTY RIGHTS" means patents, patent applications, patent rights, trademarks, trademark registrations, trademark applications, service marks, business marks, brand names, trade names, all other names and slogans embodying business or product goodwill (or both), copyright registrations, mask works, copyrights (including copyrights in computer programs), trade secrets and all other intellectual property rights.

"PERSON" means an individual, corporation, partnership, joint venture, trust, or unincorporated organization, or a government or any agency or political subdivision thereof.

"QUALIFIED PUBLIC OFFERING" means and includes the closing of an underwritten public offering pursuant to an effective registration statement under the Securities Act, covering the offer and sale of Common Stock for the account of the Company from which the aggregate gross proceeds to the Company (net of underwriting discounts and commissions) exceed $10,000,000 and at a price that reflects a total enterprise value of at least $50,000,000.

"REGISTRABLE SECURITIES" means any shares of Common Stock issuable upon conversion of the Series C Preferred held by any Holder.

"REGISTRATION EXPENSES" means all expenses incident to the Company's performance of or compliance with its registration obligations set forth in this Agreement, including the following: (i) the fees, disbursements and expenses of the Company's counsel(s) (United States and, if applicable, foreign) and accountants in connection with the registration of the Registrable Securities to be disposed of under the Securities Act; (ii) the reasonable fees and disbursements of one counsel (other than counsel to the Company) retained in connection with each such registration by the requesting Holder; (iii) all expenses incurred in connection with the preparation, printing and filing of the

registration statement, any preliminary prospectus or final prospectus, any other offering document and amendments and supplements thereto and the mailing and delivering of copies thereof to any underwriters and dealers; (iv) the cost of printing or producing any agreement(s) among underwriters, underwriting agreement(s), and blue sky or legal investment memoranda, any selling agreements and any other documents in connection with the offering, sale or delivery of the Registrable Securities to be disposed of; (v) all expenses incurred in connection with the qualification of the Registrable Securities to be disposed of for offering and sale under state securities laws, including the reasonable fees and disbursements of counsel for the underwriters or the Holders of Registrable Securities in connection with such qualification and in connection with any blue sky and legal investments surveys; (vi) the filing fees incident to securing any required review by the NASD of the terms of the sale of the Registrable Securities to be disposed of; (vii) transfer agents', depositories' and registrars' fees and the fees of any other agent appointed in connection with such offering, including the fees and expenses of any "qualified independent underwriter," or other person acting in a similar capacity, pursuant to the requirements of the NASD or otherwise (the "INDEPENDENT UNDERWRITER"); (viii) all security engraving and security printing expenses; and (ix) all fees and expenses payable in connection with the listing of the Registrable Securities on a securities exchange or inter-dealer quotation system, but excluding any underwriting discount, selling commission or transfer tax relating to the sale or disposition of Holders' Registrable Securities and fees and expenses of counsel for any Holder except as set forth in clause (ii) of this paragraph.

"REGISTRATION NOTICE" means written notice by a Holder or the Company, as the case may be, that such party desires to begin a Registration Process in accordance with the terms of this Agreement.

"REGISTRATION PROCESS" means the process of registering Common Stock or Registrable Securities, as the case may be, under the Securities Act which, for purposes of this Agreement, shall be deemed to be the period of time from the actual delivery of the Registration Notice until the end of any applicable "hold back" period required by the underwriters or, if there is no such period, then 30 days after the effectiveness of the Registration Statement; provided, however, in the event that (i) a registration statement has not been filed with the SEC within 45 days after a Registration Notice, (ii) such registration statement has not been declared effective by the SEC within 75 days after its filing with the SEC or (iii) the Registration Notice or the registration statement has been abandoned or withdrawn by the requesting Holder or the Company, as the case may be, then the Registration Process shall be deemed concluded at such time; provided, further, with respect to an offering on a delayed or continuous basis pursuant to Rule 415 (or any successor rule to similar effect), a Registration Process shall end on the earlier of (x) thirty (30) days following the last sale pursuant to such offering and (y) the end of any "hold back" period with respect to any such offering.

"RULE 144" means Rule 144 promulgated under the Securities Act, as amended from time to time, or any successor rule to similar effect.

"SECURITIES ACT" means the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations of the SEC (or of any other federal agency then administering the Securities Act) thereunder, all as the same shall be in effect at the time.

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

"TRANSFER" means to sell, exchange, deliver, assign, dispose of, bequeath, give, pledge, mortgage, hypothecate or otherwise encumber, transfer, or permit to be transferred, whether voluntarily, involuntarily, or by operation of law (including, without limitation, the laws of bankruptcy, insolvency, intestacy, descent, domestic relations, and distribution and succession), any shares of the Company's Common Stock.

"TVP" means the total number of votes that may be cast in the election of directors (without taking into effect cumulative voting, if any) of the Company if all securities entitled to vote generally in such election were present and voted, assuming full conversion, exchange or exercise of all convertible securities, rights, warrants and options of the Company that are issued or granted and outstanding or reserved for issuance or grant by the Company.

6.2 ACCOUNTING TERMS. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, and all other financial data submitted pursuant to this Agreement shall be prepared and calculated in all material respects in accordance with such principles.

ARTICLE 7

MISCELLANEOUS

7.1 NO WAIVER: CUMULATIVE REMEDIES. No failure or delay on the part of a Purchaser or the Company in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

7.2 ADDRESSES FOR NOTICES, ETC. All notices, requests, demands and other communications provided for hereunder shall be in writing (including facsimile communication) and mailed, by certified or registered mail, or faxed or delivered to the applicable party at the addresses indicated below:

If to the Company:

WebTV Networks, Inc.
305 Lytton Avenue
Palo Alto, California 94301
Attention: Chief Financial Officer

with a copy to:

Venture Law Group
A Professional Corporation
2800 Sand Hill Road
Menlo Park, CA 94025
Attention: Joshua Pickus

If to a Purchaser: to the address set forth on the signature page hereof.

Any party to this Agreement may change its address by a written notice to the other party complying as to delivery with the terms of this Section. All such notices, requests, demands and other communications shall, when mailed or telegraphed, respectively, be effective when deposited in the mails or delivered to the telegraph company, respectively, addressed as aforesaid.

7.3 BINDING EFFECT, ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the Company and the Purchasers and their respective successors and assigns, except that neither the Company nor a Purchaser shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the other, provided that, the rights and interests of the Company and/or a Purchaser (the "ASSIGNING PARTY") shall be assignable without the consent of the other party, as the case may be, to any assignee who controls, is controlled by or under common control with, the Assigning Party, including control being exercised through the ownership or control, directly or indirectly, of fifty percent (50%) or more of the voting power of the shares entitled to vote for the election of directors or other governing authority, as of the date of this Agreement or hereafter (an "AFFILIATE"), provided that such person or entity shall be considered an Affiliate of the Assigning Party only during the times such ownership or control exists. Notwithstanding the foregoing, a Purchaser shall not assign its rights and interest in the Company or this Agreement to any Affiliate of such Purchaser who at such time is or may expect to become a direct competitor of the Company or an entity controlled by, under common control with or controlling such competitor. In addition, nothing contained in this Section 7.3 shall permit a Purchaser to assign any rights or interests in this Agreement which are not by their terms expressly assignable, except that a Purchaser may assign its entire right to purchase the Shares hereunder (together with all other rights under this Agreement) to an Affiliate who is otherwise permitted to be an assignee in the immediately preceding sentence.

7.4 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All representations and warranties made in this Agreement, the Series C Preferred, or any other instrument or document delivered in connection herewith or therewith, shall survive the execution and delivery hereof or thereof until the earlier to occur of one year from the Effective Date or the closing of a Qualified Public Offering.

7.5 PRIOR AGREEMENTS; AMENDMENT. This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings or agreements concerning the subject matter hereof. This Agreement may only be amended with the approval of the holders of a majority of the outstanding shares of the Series C Preferred being purchased hereunder and the Company.

7.6 SEVERABILITY. The invalidity or unenforceability of any provision hereto shall in no way affect the validity or enforceability of any other provision.

7.7 CALIFORNIA CORPORATE SECURITIES LAW. THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION IS UNLAWFUL UNLESS THE SALE OF SECURITIES IS EXEMPT FROM THE QUALIFICATION BY SECTION 25100, 25102, OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

7.8 GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

7.9 HEADINGS. Article, Section and Subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

7.10 COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart.

7.11 FURTHER ASSURANCES. From and after the date of this Agreement, upon the reasonable request of a Purchaser, or the Company, the other party shall execute and deliver such instruments, documents and other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement and the Series C Preferred.

[intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

WEBTV NETWORKS, INC.

By: ----------

PURCHASER

By: ----------

Its: ----------

Address: ----------

[SIGNATURE PAGE TO SERIES C CONVERTIBLE STOCK PURCHASE AGREEMENT]

EXHIBIT A

CERTIFICATE OF AMENDMENT

OF

ARTICLES OF INCORPORATION

EXHIBIT B

LEGAL OPINION

OF

VENTURE LAW GROUP, A PROFESSIONAL CORPORATION

EXHIBIT C

SCHEDULE OF EXCEPTIONS

Exhibit 4.4

SERIES D CONVERTIBLE PREFERRED STOCK PURCHASE AGREEMENT

THIS SERIES D CONVERTIBLE PREFERRED STOCK PURCHASE AGREEMENT (the "Agreement") is made March 7, 1997 (the "Effective Date"), by and between WEBTV NETWORKS, INC., a California corporation (the "Company"), and SEAGATE TECHNOLOGY, INC., a Delaware Corporation (the "Purchaser").

R E C I T A L S

A. The Company desires to sell to the Purchaser and the Purchaser desires to purchase from the Company shares of the Company's Series D Convertible Preferred Stock.

B. Capitalized terms used herein without definition shall have the meanings given them in Section 7.1 of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein, and subject to the terms and conditions hereinafter set forth, the parties hereby agree as follows:

ARTICLE 1

PURCHASE, SALE AND TERMS OF SHARES

1.1 The Series D Convertible Preferred Stock. The Company agrees to issue sell to the Purchaser, and the Purchaser agrees to purchase, 1,343,570 shares of the Company's Series D Convertible Preferred Stock, without par value (the "Series D Preferred"), at a price of $10.42 per share (the "Per Share Price"), for an aggregate purchase price of Thirteen Million Nine Hundred Ninety Nine Thousand Nine Hundred Ninety Nine Dollars and Forty Cents ($13,999,999.40) (the shares of Series D Preferred sold hereunder are sometimes referred to as the "Shares"). If, within ninety (90) days of the date of this Agreement, an agreement is signed providing for a Financing Event to occur at a per share price above the Per Share Price, the Per Share Price shall be adjusted upwards to a price which is eighty five percent (85%) of the per share price in such Financing Event. Upon execution by the Company of an agreement providing for such a Financing Event, the Purchaser and the Company each agree to promptly make any filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "H-S-R Act") which is required as a result of the foregoing increase in the Per Share Price. Immediately following the expiration or early termination of the waiting period under the H-S-R Act with respect to such filing, the Purchaser agrees to pay the additional amount owed to the Company as a result of the foregoing increase in the Per Share Price; provided that the Company shall refund such additional amount to the Purchaser if the Financing Event giving rise to such filing under the H-S-R Act is not consummated. If the Purchaser pays such additional amount, the Company will, at the Purchaser's request, seek to cause the Company's Articles of Incorporation to be amended so that the Liquidation Preference of the Series D Preferred reflects the amount ultimately paid by the Purchaser for the Series D Preferred. The designation, rights, preferences and other terms and conditions relating to the Series D Preferred shall be as set forth in Exhibit A hereto. Any shares of Common Stock issuable upon conversion of the Series D Preferred are herein referred to as the "Conversion Shares."

1.2 Reservation of Shares. The Company will prior to the Closing (as defined herein) authorize and reserve and hereby covenants to continue to reserve a sufficient number of its previously authorized but unissued shares of Common Stock to satisfy the rights of conversion of the holders of the Series D Preferred.

1.3 The Closing. The closing of the purchase and sale of Shares hereunder (the "Closing") shall be held at the offices of Venture Law Group, A Professional Corporation, 2800 Sand Hill Road, Menlo Park, California, on March 7, 1997, at 7:00 a.m., or on such other date and at such time as may be mutually agreed upon (the date of such Closing being referred to as the "Closing Date"). At the Closing, the Company will issue and deliver a stock certificate evidencing the Shares sold at the Closing to the Purchaser, against payment of the purchase price for such Shares by certified bank check or wire transfer of immediately available funds to the account of the Company.

1.4 Representations by the Purchaser.

(a) Investment. The Purchaser represents that:

(i) The Purchaser has been advised that the Shares have not been registered under the Securities Act nor qualified under any state securities laws on the grounds that no distribution or public offering of the Shares is to be effected, and that in this connection the Company is relying in part on the representations of the Purchaser set forth herein.

(ii) It is the Purchaser's intention to acquire the Shares for its own account and that the Shares are being and will be acquired for the purpose of investment and not with a view to distribution or resale thereof.

(iii) The Purchaser is able to bear the economic risk of an investment in the Shares acquired by the Purchaser pursuant to this Agreement and can afford to sustain a total loss on such investment.

(iv) The Purchaser is an experienced and sophisticated investor, able to fend for itself in the transactions contemplated by this Agreement, and has such knowledge and experience in financial and business matters that it is capable of evaluating the risks and merits of acquiring the Shares. The Purchaser has not been formed or organized for the specific purpose of acquiring the Shares. The Purchaser has had, during the course of this transaction and prior to the Purchaser's purchase of the Shares, the opportunity to ask questions of, and receive answers from, the Company and its management concerning the Company and the terms and conditions of this Agreement. The Purchaser hereby acknowledges that the Purchaser or its representatives have received all such information as the Purchaser considers necessary for evaluating the risks and merits of acquiring the Shares and for verifying the accuracy of any information furnished to the Purchaser or to which the Purchaser had access. The Purchaser represents and warrants that the nature and amount of the Shares being purchased is consistent with the Purchaser's investment objectives, abilities and resources.

(v) Notwithstanding any other provision contained in this Agreement, subject to the registration rights set forth in Article 5 hereof, the Purchaser understands that there is no public market for the Shares and that there may never be such a public market, and that

even if such a public market develops the Purchaser may never be able to sell or dispose of the Shares and may thus have to bear the risk of the Purchaser's investment for a substantial period of time, or forever. The Purchaser is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things, the availability of certain current public information about the issuer, the resale occurring not less than two (2) years after a party has purchased and paid for the security to be sold, the sale being effected through a "broker's transaction" or in transactions directly with a "market maker" and the number of shares being sold during any three (3) month period not exceeding specified limitations.

(vi) The Purchaser, by reason of its business or financial experience, has the capacity to protect its own interests in connection with the purchase of the Shares.

(vii) The Purchaser acknowledges that the stock certificate representing the Shares, when issued, shall contain a legend in substantially the following form:

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY STATE SECURITIES LAWS AND ANY SALE, TRANSFER, PLEDGE OR OTHER DISPOSITION THEREOF MAY BE MADE ONLY IN A TRANSACTION REGISTERED UNDER SAID ACT AND SUCH STATE SECURITIES LAWS OR IN A TRANSACTION FOR WHICH AN EXEMPTION FROM REGISTRATION UNDER SAID ACT AND SUCH LAWS IS AVAILABLE AND THE CORPORATION HAS RECEIVED AN OPINION OF COUNSEL TO SUCH EFFECT REASONABLY SATISFACTORY TO IT.

(viii) The Purchaser represents that it is an "accredited investor," as that term is defined in Rule 501 of Regulation D under the Securities Act.

(b) Authorization. The Purchaser further represents that:

(i) The Purchaser has duly authorized, executed and delivered this Agreement and all other agreements and instruments executed in connection herewith.

(ii) This Agreement and such other agreements and instruments constitute the valid and binding obligations of the Purchaser, enforceable against it in accordance with its respective terms, except (A) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (B) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (C) to the extent the indemnification provisions contained in Article 5 hereof may be limited by applicable federal or state securities laws..

(iii) No consent or approval of any Person is required in connection with the execution, delivery and performance of this Agreement and such other agreements and instruments by the Purchaser which has not been obtained.

(c) Broker's or Finder's Fees. The Purchaser represents that no Person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or

valid claim upon or against the Company for any commission, fee or other compensation as a finder or broker because of any act or omission by it, and the Purchaser agrees to indemnify and hold the Company harmless against any such commissions, fees or other compensation.

ARTICLE 2

CONDITIONS TO PURCHASE AND SALE OBLIGATIONS

2.1 Conditions to the Purchaser's Obligations at the Closing. The obligation of the Purchaser to purchase and pay for the Shares to be delivered at the Closing is subject to the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of the Company set forth in Article 3 hereof shall be true and correct when made, and shall be true and correct on the Closing Date.

(b) Consents, Waivers, etc. Prior to the Closing Date, the Company shall have obtained all consents or waivers necessary to execute and deliver this Agreement, issue the Series D Preferred and to carry out the transactions to be consummated at the Closing and all such consents and waivers shall be in full force and effect. All corporate and other action and governmental filings and approvals necessary to approve and effectuate the terms of this Agreement and any other agreements and instruments to be executed and delivered by the Company in connection with the Closing shall have been made, obtained or taken, except for any post-sale filing that may be required under applicable federal and state securities laws which will be made within the applicable time periods permitted thereunder.

(c) Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the Closing Date shall have been performed or complied with.

(d) Opinion of Company's Counsel. The Purchasers shall have received from Venture Law Group, A Professional Corporation, counsel to the Company, an opinion addressed to them, dated the Closing Date, in substantially the form of Exhibit B hereto.

(e) Compliance Certificate. The Company shall have delivered to the Purchaser a certificate executed by the Company, dated the Closing Date, and certifying to the fulfillment of the conditions specified in this Section 2.1.

(f) Documents and Proceedings. All documents and proceedings in connection with the Closing shall have been approved by the Purchaser and its counsel.

2.2 Conditions to the Company's Obligations at the Closing. The obligation of the Company to issue and sell the Shares to be delivered to the Purchaser at the Closing is subject to the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of the Purchaser set forth in Section 1.4 hereof shall be true and correct when made, and shall be true and correct on the Closing Date.

(b) Consents, Waivers, etc. Prior to the Closing Date, the Company shall have obtained all consents or waivers necessary to execute and deliver this Agreement, issue the Series D Preferred and to carry out the transactions to be consummated at the Closing, and all such consents and waivers shall be in full force and effect. All corporate and other action and governmental filings and approvals necessary to approve and effectuate the terms of this Agreement and any other agreements and instruments to be executed and delivered by the Company in connection with the Closing shall have been made, obtained or taken, except for any post-sale filing that may be required under applicable federal and state securities laws which will be made within the applicable time periods permitted thereunder.

(c) Documents and Proceedings. All documents and proceedings in connection with the Closing shall have been approved by the Company and its counsel.

(d) Voting Agreement. The Purchaser shall have executed and delivered to the Company the Voting Agreement attached as Exhibit C hereto (the "Voting Agreement").

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as otherwise set forth in the Disclosure Schedule attached hereto as Exhibit D (the "Disclosure Schedule"), the Company represents and warrants to the Purchaser that:

3.1 Organization and Standing of the Company. The Company is a duly organized and validly existing corporation in good standing under the laws of the State of California and has all requisite corporate power and authority for the ownership and operation of its properties and for the carrying on of its business as now conducted. The Company is duly licensed or qualified and in good standing as a foreign corporation authorized to do business in all jurisdictions in which the failure to be so qualified would have a material adverse effect upon the Company.

3.2 Corporate Action. The Company has the corporate power and will, prior to the Closing Date, have taken all necessary corporate action required to authorize, execute, deliver and perform this Agreement and any other agreements and instruments executed in connection herewith, and to issue, sell and deliver the Shares and the Conversion Shares. When executed and delivered by the Company, this Agreement and any other agreements and instruments executed in connection herewith will constitute the valid and binding obligations of the Company, enforceable in accordance with their terms except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (b) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (c) to the extent the indemnification provisions contained in Article 5 hereof may be limited by applicable federal or state securities laws.

3.3 Governmental Approvals. Except for the filings already made and the filings to be made, if any, to comply with exemptions from registration or qualification under federal and state securities laws, no authorization, consent, approval, license, exemption of or filing or registration with any court or governmental agency or instrumentality is necessary for the offer, sale, or issuance of the Shares, the execution or delivery by the Company, or for the performance by it of its

obligations under, this Agreement, or any other agreements or instruments executed in connection herewith.

3.4 Litigation. There is no litigation or governmental proceeding or investigation pending, or, to the Company's knowledge, threatened against the Company affecting any of its properties or assets that might result in any material adverse change in the business, assets, liabilities, financial condition, results of operations or prospects of the Company or that might call into question the validity of this Agreement or the Shares, or that might result in any change in equity ownership of the Company. All pending, or to the Company's knowledge, threatened litigation (other than routine bill collection matters) is set forth on the Disclosure Schedule.

3.5 Compliance with Other Instruments. The Company is in compliance in all respects with the terms and provisions of its Articles of Incorporation, bylaws and in all material respects with the terms and provisions of each mortgage, indenture, lease, agreement and other instrument relating to obligations of the Company in excess of $250,000, and of any judgments, decrees, governmental orders, statutes, rules or regulations by which it is bound or to which its properties or assets are subject. Neither the execution and delivery of this Agreement or other agreements or instruments executed in connection herewith, nor the consummation of any transaction contemplated hereby or thereby, has constituted or resulted in a default or violation of any term or provision in any of the foregoing documents or instruments; and there is no such violation or default or event which, with the passage of time or giving of notice or both, would, individually or in the aggregate, constitute a violation or default that would reasonably be expected to materially and adversely affect the business, assets, liabilities, financial condition or results of operations of the Company.

3.6 Registration Rights. Except for the holders of the Company's outstanding Preferred Stock, certain lessors of equipment to the Company, the Founders and as set forth in Article 5 hereof, no Person has demand or other rights to cause the Company to file any registration statement under the Securities Act relating to any securities of the Company or any right to participate in an offering of shares under any such registration statement. All registration rights of the Founders are subordinate to those of the Purchaser hereunder. All such registration rights (other than those set forth herein) and the agreements relating thereto are identified on the Disclosure Schedule.

3.7 Securities Act of 1933. Subject in part to the truth and accuracy of the Purchaser's representations set forth in Section 1.4 of this Agreement, the offer, sale and issuance of the Series D Preferred as contemplated by this Agreement are exempt from the registration requirements of the Securities Act.

3.8 No Brokers or Finders. No Person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or valid claim upon or against the Purchaser for any commission, fee or other compensation as a finder or broker because of any act or omission by it, and the Company agrees to indemnify and hold the Purchaser harmless against any such commissions, fees or other compensation.

3.9 Capitalization; Status of Capital Stock. The Company represents and warrants that immediately prior to the Closing Date the Company will have a total authorized capitalization consisting of (i) 100,000,000 shares of Common Stock, without par value, of which 18,866,348 shares are issued and outstanding, and (ii) 25,000,000 shares of Preferred Stock, of which 1,510,533

shares of Series A Convertible Preferred Stock are issued and outstanding, 6,316,705 shares of Series B Convertible Preferred Stock are issued and outstanding and 4,819,538 shares of Series C Convertible Preferred Stock are issued and outstanding. The Company has reserved 8,000,000 shares of Common Stock for issuance under the Company's 1996 Stock Incentive Plan (the "Plan"), under which options to purchase 6,382,323 shares have been granted, stock grants for 5,000 shares have been made, 3,861,323 shares have been issued upon exercise of options, 30,200 shares have been returned to the Plan, options for 2,490,775 shares are currently outstanding, and 1,642,877 shares remain available for future grant under the Plan. The Company has issued warrants to purchase 53,000 shares of Common Stock to certain individuals and warrants to purchase 86,000 shares of Series B Convertible Preferred Stock and 36,553 shares of Series C Convertible Preferred Stock, respectively, to equipment lessors. All of the outstanding shares of capital stock of the Company have been duly authorized, are validly issued and are fully paid and nonassessable and all shares issuable upon exercise of outstanding options and warrants have been duly authorized and, when issued in accordance with the terms of such options and warrants, will be validly issued, fully paid and nonassessable and issued in compliance with federal and state securities laws. The Company has reserved sufficient shares of Common Stock for issuance upon conversion of the Series D Preferred. The Conversion Shares, when issued and delivered upon conversion of the Series D Preferred, will be duly authorized, validly issued and fully paid and nonassessable. Except as set forth in this Agreement and the Disclosure Schedule, there are no options, warrants or rights to purchase shares of capital stock or other securities authorized, issued or outstanding, nor is the Company obligated in any manner to issue shares of its capital stock or other securities. Except as set forth in this Agreement and the Disclosure Schedule, no holder of any security of the Company is entitled to preemptive or similar statutory or contractual rights, either arising pursuant to any agreement or instrument to which the Company is a party or that are otherwise binding upon the Company. The offer and sale of all shares of capital stock or other securities of the Company issued before the Closing complied with or were exempt from registration or qualification under all federal and state securities laws. As of and immediately following the Closing, each share of Series A Convertible Preferred Stock outstanding will be convertible into 1.1 shares of Common Stock and each share of Series B Convertible Preferred Stock, Series C Convertible Preferred Stock and Series D Preferred outstanding will be convertible into one share of Common Stock.

3.10 Financial Statements. The Company has furnished to the Purchasers, or will furnish to the Purchasers prior to the date of this Agreement, the unaudited balance sheet of the Company as of December 31, 1996 and the unaudited statements of operations and cash flows for the nine month period then ended (all of such financial statements are referred to collectively herein as the "Financial Statements"). The Financial Statements were prepared in accordance with generally accepted accounting principles ("GAAP") consistently applied throughout the period involved, and fairly present the financial position and results of operations of the Company at the date specified and reflect all liabilities, contingent or otherwise, at the date thereof.

3.11 Absence of Changes; No Undisclosed Liabilities. Since December 31, 1996, no event has occurred or failed to occur that would be required to be disclosed in the footnotes of the Financial Statements for such statements to be prepared in accordance with generally accepted accounting principles, and there has been no fact, event or change that would reasonably be expected to result in a material adverse change in the business, assets, liabilities, financial condition or results of operations of the Company. Except to the extent reflected in the Financial Statements, the Company does not have any material liabilities or obligations of any nature, whether absolute,

contingent or otherwise, other than obligations which have arisen after December 31, 1996 in the ordinary course of business.

3.12 Good and Marketable Title. The Company has good and marketable title to all of its properties and assets which it owns, and a valid leasehold interest in the premises which it currently occupies, free and clear of all liens, claims, security interests, charges and encumbrances, and has the right to use all the assets it presently uses in the operation of its business. The properties and assets of the Company are in all material respects in good operating condition and repair, normal wear and tear excepted.

3.13 Subsidiaries. The Company does not own, control, directly or indirectly, any other corporation, association, partnership or other business entity or own any shares of capital stock or other securities of any other Person.

3.14 Tax Matters. The Company has filed all federal, state and local tax returns and reports required to be filed by it. All taxes shown to be due and payable on such returns have been paid or will be paid prior to the time they become delinquent. The provision for taxes of the Company as shown in the Financial Statements is adequate for taxes due or accrued as of the date thereof.

3.15 Insurance. The Company has in full force and effect fire and casualty insurance policies, sufficient in amount (subject to reasonable deductibles) to allow it to replace any of its properties or assets that might be damaged or destroyed that are material to the present conduct of its business.

3.16 Certain Transactions. Other than the interest arising from a Person's stock ownership of the Company or for compensation as an employee or director of the Company, there currently are no material transactions between the Company, on the one hand, and its officers, directors or shareholders, or their immediate family members, on the other hand.

3.17 Material Contracts and Commitments. Except as set forth in this Agreement and the Disclosure Schedule, there are no contracts, agreements or instruments to which the Company is a party or by which it is bound that may involve (a) obligations (contingent or otherwise) of, or payments to the Company in excess of $250,000, or (b) the license of any patent, trademark, service mark, trade name, copyright, trade secret or other proprietary right to or from the Company (other than licenses which are immaterial, could be readily replaced, or were entered into in the ordinary course of business for content or services to be included in the WebTV Service). All such contracts, agreements and instruments are, to the Company's knowledge valid, binding and in full force and effect in all material respects, subject to (a) applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, and (b) laws relating to the availability of specific performance, injunctive relief, or other equitable remedies. The Company has not received any notice of default of, and to the Company's knowledge there is no default of, any third party under any material contract, agreement or instrument to which the Company is a party.

3.18 Patents, Copyrights and Trademarks.

The Company owns or has the right to use, all Intellectual Property used in or necessary for its business as now conducted (except as to Intellectual Property the Company believes it will be able to acquire from third parties in the ordinary course of business on reasonable terms), including, without limitation, all Intellectual Property assigned or licensed to the Company by the Founders. The Company has not violated, and is not violating, any Intellectual Property Rights of any other Person or entity and has not received any communications to that effect. The Company is not aware of any Person who is infringing upon or violating any of the Intellectual Property Rights of the Company. Except as set forth in this Agreement and the Disclosure Schedule, the Company has not granted any license or option or entered into any material agreement of any kind with respect to the use of its Intellectual Property. To the Company's knowledge, none of the Company's employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of such employee's best efforts to promote the interests of the Company or that would conflict with the Company's business as now conducted. Neither the execution nor delivery of this Agreement, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as now conducted, will, to the Company's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated. In addition to and not as a modification of the foregoing, the Company does not believe it is or will be necessary to utilize any inventions of any of its employees (or people it currently intends to hire) made prior to their employment by the Company other than technology rights and the like previously assigned and/or licensed to the Company by Stephen Perlman, Phillip Goldman and Bruce Leak, which assignments and/or licenses, as the case may be, transferred to the Company such rights in the Intellectual Property used in or necessary for the Company's business as now conducted. All current and former employees of the Company have executed the Proprietary Information Agreement referred to in Section 4.1(c) hereof.

3.19 Environmental Matters. The Company has not, contrary to applicable statutes and regulations, stored or disposed of, on, under or about their premises hazardous materials, and to the Company's knowledge, during the time period any prior owners owned or leased such premises, such prior owners or lessees or third parties did not so store or dispose of on, under or about such premises or transfer to or from the premises any hazardous materials. As used in this Agreement, the term "hazardous materials" shall mean substances defined as "hazardous substances" or "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response and Compensation Liability Act of 1980, as amended, 42 U.S.C., Section 9601, et seq.; The Hazardous Materials Transportation Act, 49 U.S.C., Section 1801, et seq.; The Resource Conservation Recovery Act, 42 U.S.C., Section 6901, et seq.

3.20 Employees and Employee Benefit Plans. To the Company's knowledge, no employee of the Company is in violation of any term of any employment contract, patent disclosure agreement or any other contract or agreement relating to the relationship of any such employee with the Company or any other party. The Company does not have any collective bargaining agreements

covering any of its employees. The Company is not party to or bound by any deferred compensation agreements, bonus plans, incentive plans, profit sharing plans, retirement agreements, or other employee benefit plans subject to the Employer Retirement Income Security Act of 1974.

3.21 Disclosure. No representation, warranty or statement by the Company in this Agreement or in any written statement or certificate required by this Agreement to be furnished to the Purchasers or their counsel pursuant to this Agreement contains or will contain any untrue statement of material fact or omits to state a material fact necessary to make the statements made herein or therein, in light of the circumstances under which they were made, not misleading.

ARTICLE 4

COVENANTS OF THE COMPANY AND THE PURCHASER

4.1 Affirmative Covenants of the Company. Without limiting any other covenants and provisions hereof, the Company covenants and agrees that, until the earlier of (i) such time as the Purchaser no longer holds at least two percent (2%) of TVP, or (ii) the closing of a Qualified Public Offering, it will perform and observe the following covenants and provisions and will not, without approval of the holders of a majority of the Shares, amend or revise any terms of this Section 4.1:

(a) Reporting Requirements. The Company shall furnish to the Purchaser so long as the Purchaser holds at least 700,000 shares of the Company's capital stock (as adjusted for any recapitalization, stock dividend, stock split, reverse stock split or similar event (each a "Recapitalization")) (i) on an annual basis, within 75 days after the end of each fiscal year, a balance sheet, related statements of operations and cash flows presented in accordance with GAAP, with any required notes thereto, audited by a nationally recognized public accounting firm, and at least 35 days prior to the end of such fiscal year, a Board-approved plan and budget for the next fiscal year; (ii) on a quarterly basis, within 30 days after the end of each calendar quarter, an unaudited balance sheet and related statements of operations and cash flows; (iii) on a monthly basis, within 30 days after the end of each month, a monthly unaudited balance sheet and related statements of operations and cash flows; and (iv) such other information about the Company's affairs as may be reasonably requested by the Purchaser. Such annual, quarterly and monthly results shall be prepared in a form which permits comparison to the budget for the corresponding period and, in the case of the annual and quarterly results, comparison to the prior year's results.

(b) Insurance. The Company shall maintain insurance in such amounts, with such deductibles and against such risks and losses as are reasonable for the business and assets of the Company, and the Company shall maintain such other insurance as may be required by law, and maintain in effect until the consummation of a Qualified Public Offering term life insurance insuring each of the lives of the Founders for $3,000,000 and naming the Company as beneficiary.

(c) Proprietary Information Agreements. The Company agrees to obtain from each person employed by the Company having access to confidential information of the Company and/or any party with whom the Company conducts business a Proprietary Information Agreement substantially in the form furnished to the Purchaser and its counsel.

4.2 Confidentiality. The Purchaser severally represents and warrants that any confidential information obtained from this Agreement shall be treated as confidential and shall not be disclosed to a third party without the consent of the Company or used for any purpose other than allowing such Purchaser to exercise its rights under this Agreement. Notwithstanding the foregoing, "confidential information" shall not include (a) any information that becomes generally known to the public through no fault of the Purchaser, or (b) any information required to be disclosed by law; provided that prior to making any disclosure which the Purchaser believes to be required by law, the Purchaser shall notify the Company and afford the Company an opportunity to contest such disclosure.

ARTICLE 5

REGISTRATION RIGHTS

5.1 Demand Registrations; S-3 Registrations. The provisions of this Section 5.1 shall commence on the date of the this Agreement and terminate at such time as all Holders are permitted to resell the Registrable Securities held by them in a single three month period without restriction pursuant to Rule 144 promulgated under the Securities Act.

(a) Notice and Registration. Upon a Registration Notice from one or more Holders to the Company requesting that the Company effect the registration under the Securities Act of at least 40% of the Registrable Securities or any lesser percentage so long as the anticipated proceeds from such offering exceed $20,000,000, which Registration Notice shall specify the intended method or methods of disposition of such Registrable Securities, the Company shall use its best efforts to effect (at the earliest possible date) the registration under the Securities Act of such Registrable Securities for disposition in accordance with the intended method or methods of disposition stated in such Registration Notice (including, but not limited to, an offering on a delayed or continuous basis pursuant to Rule 415, or any successor rule to similar effect, promulgated under the Securities Act; provided that:

(i) except as provided otherwise in Section 5.1(a)(iii), a Holder shall have the right to deliver Registration Notices to effect three (3) demand registrations pursuant to this Section 5.1 (each, a "Demand") and no more;

(ii) a Holder may not deliver a Registration Notice prior to six months following the effective date of the initial registration statement used for a Qualified Public Offering or during any Registration Process; and

(iii) In addition to the Demand rights set forth in Section 5.1(a)(i) above, a Holder who holds 5% or more of the Registrable Securities may request the Company to effect a registration on Form S-3, if available; provided that the number of such registrations is limited to two (2) per twelve month period and that the anticipated proceeds from such offering are at least $1,000,000.

(b) Designation of Investment Bank. In the event that any registration pursuant to this Section 5.1 shall involve, in whole or in part, an underwritten offering, the Company shall have the right to designate one or more nationally recognized investment banking

firms, reasonably acceptable to the requesting Holder, as the lead underwriter(s) of such underwritten offering.

(c) Withdrawal of Registration Notice. A Holder shall have the right to withdraw any Registration Notice or, subject to Section 5.1(a) hereof, to change the number of Registrable Securities covered thereby at any time and for any reason.

(d) Effect of Demand. A registration requested by a Holder pursuant to this Section 5.1 shall not be deemed to have been effected for purposes of Section 5.1(a)(i): (i) unless such registration statement has become effective and been maintained effective in accordance with Section 5.4 hereof, (ii) if after it has become effective such registration is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court for any reason other than a material misrepresentation or a material omission by the Holder specified in the Registration Notice or (iii) if the conditions to closing specified in the purchase agreement or underwriting agreement entered into in connection with such registration are not satisfied other than by reason of some act or omission by any of such persons.

(e) Delay of Registration. Notwithstanding anything in this Section 5.1 to the contrary, the Company shall not be obligated to take any action to effect a Demand pursuant to this Section 5.1 if the Company shall furnish to the requesting Holder, within ten (10) days after the delivery of the Registration Notice relating thereto, a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors it would be seriously detrimental to the Company or its stockholders for a registration statement to be filed in the near future. If the Company has delivered such a certificate to the requesting Holder, then the Company's obligation to effect such Demand under this Section 5.1 shall be deferred for a period not to exceed one hundred twenty (120) days from the date of receipt of the Holder's Registration Notice; provided, however, that the Company may not utilize this right more than once during any twelve month period.

5.2 Piggyback Registration. If the Company at any time proposes to register any of its Common Stock or any equity securities exercisable for, convertible into or exchangeable for Common Stock under the Securities Act, whether or not for sale for its own account (the "Company Securities"), in a manner which would permit registration of Registrable Securities for sale to the public under the Securities Act, each such time it will promptly deliver a Registration Notice to each Holder, which Registration Notice will describe the rights of each Holder under this Section 5.2, at least 20 days prior to the anticipated filing date of the registration statement relating to such registration. Such notice shall offer each Holder the opportunity to include in such registration statement such number of Registrable Securities held by such Holder as such Holder may request. Upon the written request of the Holders requesting Registrable Securities to be registered pursuant to such registration statement (collectively, the "Piggyback Securities"), made within 10 days after the receipt of the Company's Registration Notice, which request shall specify the number of Piggyback Securities intended to be disposed of, the Company will use its best efforts to effect, in connection with the registration of the Company Securities, the registration under the Securities Act of all Piggyback Securities, to the extent required to permit the disposition (in accordance with such intended methods thereof) of the Piggyback Securities, provided that:

(a) Relief from Company Obligation. If, at any time after giving such written notice of its intention to register any Company Securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register the Company Securities, the Company may, at its election, give written notice of such determination to the Holder and thereupon the Company shall be relieved of its obligation to register the Piggyback Securities in connection with the registration of such Company Securities (but not from its obligation to pay Registration Expenses to the extent incurred in connection therewith as provided in Section 5.3 hereof), without prejudice, however, to the right of the Holder immediately to request that such registration be effected as a registration under Section 5.1 hereof to the extent permitted thereby.

(b) Reduction in Piggyback Securities. If the registration referred to in the first sentence of this Section 5.2 is to be an underwritten primary registration on behalf of the Company, and the managing underwriter(s) advise the Company in writing that, in their good faith opinion, inclusion of all the Piggyback Securities together with all other securities of the Company that are entitled to "piggyback" registration rights in such offering would materially and adversely affect the offering and sale of the Company Securities, including the per share price thereby obtainable, the Company shall only include in such registration: (i) first, all the Company Securities being registered for sale for the Company's own account, with such priorities among them as the Company may determine, (ii) second, up to the full number of securities of the Company having "piggyback" registration rights which, in the good faith opinion of such underwriter(s) can be so sold without materially and adversely affecting such offering (and, if less than the full number of such "piggyback" securities, allocated pro rata among the Holders and the other holders of securities of the Company that are entitled to "piggyback" registration rights other than the Founders (the "Other Non-Founder Holders") on the basis of the number of securities requested to be included therein by each such Holder and Other Non-Founder Holder) and (iii) finally, up to the full number of securities of the Company that are entitled to "piggyback" registration rights held by the Founders which, in the good faith opinion of such underwriter(s) can be so sold without materially and adversely affecting such offering (and, if less than the full number of such securities, allocated pro rata among the Founders on the basis of the number of securities requested to be included therein by each such Founder).

(c) Exceptions. The Company shall not be required to effect any registration of Registrable Securities held by any Holder under this Section 5.2 incidental to the registration of any of its securities in connection with mergers, acquisitions, exchange offers, subscription offers, dividend reinvestment plans or stock option or other employee benefit plans.

(d) No Effect on Demand Rights. No registration of Registrable Securities effected under this Section 5.2 shall relieve the Company of its obligation to effect a registration of other Registrable Securities pursuant to Section 5.1 hereof.

(e) Withdrawal of Piggyback Securities. A Holder may withdraw all or any part of the Holder's Piggyback Securities from the proposed registration at any time prior to the later of (i) the registration statement being declared effective by the SEC and (ii) the execution of any underwriting agreement.

(f) Same Terms and Conditions. The Company may require that any Piggyback Securities be included in the offering proposed by the Company on the same terms and conditions as the Company Securities are included therein.

5.3 Expenses. The Company will pay all Registration Expenses in connection with (i) each Demand and (ii) all registrations of Holders' Registrable Securities pursuant to Section 5.2. In the event the requesting Holder withdraws a Registration Notice, abandons a registration statement or following an effected Demand does not sell Registrable Securities, then all Registration Expenses in respect of such Registration Notice shall be borne, at the requesting Holder's option, either by the requesting Holder or by the Company (in which case, if borne by the Company and subject to Section 5.1(d) hereof, such withdrawn Registration Notice shall be deemed to be an effected Demand for purposes of Section 5.1 hereof).

5.4 Registration and Qualification. If and whenever the Company is required to use its best efforts to effect the registration of any Registrable Securities under the Securities Act as provided in Sections 5.1 or 5.2 hereof, the Company will as promptly as is practicable:

(a) prepare and file with the SEC, as soon as possible, and use its best efforts to cause to become effective, a registration statement under the Securities Act relating to the Registrable Securities to be offered on such form as the requesting Holder, or if not filed pursuant to a Demand, the Company, determines and for which the Company then qualifies;

(b) prepare and file with the SEC such amendments (including post-effective amendments) and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities until the later of such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition set forth in such registration statement or the expiration of one hundred twenty (120) days after such registration statement becomes effective;

(c) furnish to the Holder and to any underwriter of Registrable Securities such number of conformed copies of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits), such number of copies of the prospectus included in such registration statement (including each preliminary prospectus and any summary prospectus), in conformity with the requirements of the Securities Act, such documents incorporated by reference in such registration statement or prospectus, and such other documents, as the Holder or such underwriter may reasonably request, and, if requested, a copy of any and all transmittal letters or other correspondence to, or received from, the SEC or any other governmental agency or regulatory body or other body having jurisdiction (including any domestic or foreign securities exchange) relating to such offering;

(d) make every reasonable effort to obtain the withdrawal of any order suspending the effectiveness of such registration statement at the earliest possible moment;

(e) use its best efforts to register or qualify all Registrable Securities covered by such registration statement under the securities or blue sky laws of any domestic jurisdiction,

and to list or qualify for such securities exchanges and other trading markets, as the requesting Holder or any underwriter of such Registrable Securities shall request, and use its best efforts to obtain all necessary registrations, permits and consents required in connection therewith, and do any and all other acts and things which are reasonably requested to enable the Holder or any such underwriter to consummate the disposition in such jurisdictions of the Registrable Securities covered by such registration statement, except that the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction wherein it is not so qualified, or to subject itself to taxation in any such jurisdiction, or to consent to general service of process in any such jurisdiction;

(f) if requested by a requesting Holder, (i) furnish to each Holder an opinion of counsel for the Company addressed to each Holder and dated the date of the closing under the underwriting agreement (if any) (or if such offering is not underwritten, dated the effective date of the registration statement), and (ii) use its best efforts to furnish to each Holder a "comfort" or "special procedures" letter addressed to each Holder and signed by the independent public accountants who have audited the Company's financial statements included in such registration statement, in each such case covering substantially the same matters with respect to such registration statement (and the prospectus included therein) as are customarily covered in opinions of issuer's counsel and in accountants' letters delivered to underwriters in underwritten public offerings of securities and such other matters as the Holder may reasonably request and, in the case of such accountants' letter, with respect to events subsequent to the date of such financial statements;

(g) immediately notify the Holders in writing (i) at any time when a prospectus relating to a registration pursuant to Section 5.1 or 5.2 hereof is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (ii) of any request by the SEC or any other regulatory body or other body having jurisdiction for any amendment of or supplement to any registration statement or other document relating to such offering, and in either such case (i) or (ii) at the request of a Holder prepare and furnish to such Holders a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading;

(h) use its best efforts to list all such Registrable Securities covered by such registration statement on each securities exchange and inter-dealer quotation system on which a class of common equity securities of the Company is then listed, and to pay all fees and expenses in connection therewith; and

(i) upon the transfer by a Holder in connection with a registration pursuant to Section 5.1 or 5.2 furnish unlegended certificates representing ownership of the Registrable

Securities being sold in such denominations as shall be requested by the Holders or the underwriters.

5.5 Underwriting; Due Diligence, etc.

(a) Underwriting Agreement. If requested by the underwriters for any underwritten offering of Registrable Securities pursuant to a registration requested under this Agreement, the Company will enter into an underwriting agreement with such underwriters for such offering, which, in the case of a Demand, shall be in form reasonably acceptable to the requesting Holder and which, in the case of a Company Registration Process, shall be in form reasonably acceptable to the Company, any such agreement to contain such representations and warranties by the Company and such other terms and provisions as are customarily contained in underwriting agreements with respect to secondary distributions, including indemnities and contribution (provided, any indemnities and contribution shall, unless the requesting Holder and the Company agree otherwise, be to the effect and only to the extent provided in Section 5.9 hereof) and the provision of opinions of counsel and accountants' letters to the effect and to the extent provided in Section 5.4(f) hereof; provided, however, the Company may negotiate and agree to differing indemnification obligations with respect to the underwriters, provided such (i) do not adversely affect the Holders with respect to their rights and obligations hereunder and (ii) shall not excuse the Company from entering into (or delaying the execution of) an underwriting agreement on the terms as provided herein. The Holder on whose behalf the Registrable Securities are to be distributed by such underwriters shall be parties to any such underwriting agreement, and the representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of such underwriters, shall also be made to and for the benefit of the Holder. The Company shall use reasonable efforts to prevent any Holder from being required to make any representation or warranty, other than as to its ownership of the Registrable Securities and as to the due authorization, execution and enforceability, with respect to it, of the underwriting agreement. Such underwriter shall be instructed to use its reasonable best efforts to effect a wide distribution of the Registrable Securities being distributed so long as doing so shall not, in any manner, adversely affect the marketing (including timing) or price of such shares. The Company, if requested by the Requesting Holder or the underwriters, will enter into an agreement with the Independent Underwriter on customary terms.

(b) Same Terms. In the event that any registration pursuant to Sections 5.1 or 5.2 shall involve, in whole or in part, an underwritten offering, the Company may require the Registrable Securities requested to be registered pursuant to Sections 5.1 or 5.2 to be included in such underwriting on the same terms and conditions as shall be applicable to the other securities being sold through underwriters under such registration. The representations and warranties in such underwriting agreement by, and the other agreements on the part of, the Company to and for the benefit of such underwriters, shall also be made to and for the benefit of the Holders. The Company shall use reasonable efforts to prevent any Holder from being required to make any representation or warranty, other than as to its ownership of the Registrable Securities and as to the due authorization, execution and enforceability, with respect to it, of the underwriting agreement. In the event a Holder enters into any underwriting agreement with underwriters in connection with a registration which contains representations and warranties more extensive than

those contained in this Section 5.5 above, such an agreement shall not constitute a breach of this Agreement by the Company.

(c) Access to Books and Records. In connection with the preparation and filing of each registration statement registering Registrable Securities under the Securities Act, the Company will give the Holders of Registrable Securities and the underwriters, if any, and their respective counsel and accountants, such reasonable and customary access to its books and records and such opportunities to discuss the business of the Company with its officers and the independent public accountants who have certified the Company's financial statements as shall be necessary, in the reasonable opinion of such Holders and such underwriters or their respective counsel, to conduct a reasonable investigation within the meaning of the Securities Act. The Holders and the underwriters, if any, and their respective counsel and accountants, shall use their reasonable best efforts to coordinate and time their review so as to not unreasonably interfere with the business and operations of the Company.

(d) Offering Not Underwritten. In the event an offering pursuant to this Agreement is not underwritten, the Company, at the request of the requesting Holder, will enter into such agreements with any selling agents or similar persons as are customary; such agreements shall contain terms and provisions analogous to those described herein and, to the extent not so described, customary terms and provisions.

5.6 Restrictions on Public Sale; Inconsistent Agreements.

(a) Lock-up. If required by an underwriter of Common Stock in connection with (i) the initial Qualified Public Offering or (ii) any registration of Registrable Securities pursuant to Sections 5.1 or 5.2, which registration is effected in an underwritten public offering, then, in each such case, the Holders agree not to effect any sale or distribution, including any sale pursuant to Rule 144 (except as part of such registration), of any of the Company's common equity securities or of any security convertible into or exchangeable or exercisable for any equity security of the Company (x) with respect to clause (i), for a period of time following the effective date of the registration statement relating thereto customary in underwritten initial public offerings, which period shall not exceed one hundred eighty (180) days (or such longer period as the Founders and all other holders of five percent (5%) or more of TVP shall accept), or (y) with respect to clause (ii) only for a period of time following the effective date of the registration statement relating thereto reasonably acceptable to the Holders, which period shall not exceed ninety (90) days (or such longer period as the Founders and all other holders of five percent (5%) of TVP shall accept). Such agreement shall be in writing in the form satisfactory to the Company and such underwriter. The Company may impose a stop-transfer instruction with respect to the shares (or other securities) subject to the foregoing restriction until the end of such period.

(b) No Distribution. The Company agrees (i) without the written consent of the managing underwriters, not to effect any public or private sale or distribution of the Company's common equity securities or any security convertible into or exchangeable or exercisable for any equity security of the Company, including a sale pursuant to Regulation D under the Securities Act, during the requesting Holder's Registration Process (except (A) as part of such underwritten registration or pursuant to registrations on Form S-8 or any successor form

or (B) equity securities issued pursuant to the conversion or exchange of any securities convertible into or exchangeable for the Company's common equity securities and which were outstanding prior to the commencement of such Registration Process), and (ii) to use its reasonable efforts to cause each holder of its privately placed securities purchased from the Company at any time on or after the date of this Agreement to agree not to effect any public sale or distribution of any such securities during such period, including a sale pursuant to Rule 144 (except as part of such underwritten registration, if permitted).

5.7 Rule 144. The Company hereby covenants that after the Company shall have filed a registration statement pursuant to the requirements of Section 12 of the Exchange Act or a registration statement pursuant to the requirements of the Securities Act and such registration statement shall have become effective, the Company will file in a timely manner all reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the request of any Holder of Registrable Securities, make publicly available other information so long as necessary to permit sales under Rule 144), and it will take such further action as any Holder of Registrable Securities, all to the extent required from time to time to enable such Holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144. Upon the request of any Holder of Registrable Securities, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements. In addition, the Company hereby agrees that for a period of eighteen months following the date on which a registration statement filed pursuant to Section 5.1 or 5.2 hereof shall have become effective, the Company shall not deregister such securities under Section 12 of the Exchange Act (even if then permitted to do so pursuant to the Exchange Act and the rules and regulations promulgated thereunder).

5.8 Transferability. A Holder of registration rights may transfer the rights to any transferee who holds, subsequent to such transfer, at least 250,000 shares (as adjusted for any Recapitalizations) of Series D Preferred or Common Stock issued up conversion thereof or other securities exercisable for or convertible into Registrable Securities; provided (a) the Company must first be given written notice of the transfer, and (b) such transferee shall have agreed in writing, in form and substance reasonably satisfactory to the Company, to be bound by the terms of this Article 5 to the same extent and in the same manner as the transferor of such shares or securities.

5.9 Indemnification and Contribution. With respect only to the offering of Registrable Securities contemplated by this Agreement, and in no way limiting or modifying the other provisions of this Agreement, the following indemnity and contribution provisions shall apply:

(a) Indemnification by Company. In the case of each offering of Registrable Securities made pursuant to this Agreement, the Company agrees to indemnify and hold harmless each Holder of Registrable Securities, each underwriter of Registrable Securities so offered, each person, if any, who controls any of the foregoing persons within the meaning of the Securities Act, and the officers and directors of any of the foregoing from and against any and all claims, liabilities, losses, damages, expenses and judgments, joint or several, to which they or any of them may become subject, under the Securities Act or otherwise, including any amount paid in settlement of any litigation commenced or threatened, and shall promptly reimburse them, as and when incurred, for any legal or other expenses incurred by them in connection with

investigating any claims and defending any actions, insofar as such losses, claims, damages, liabilities or actions shall arise out of, or shall be based upon, any untrue statement or alleged untrue statement of a material fact contained in the registration statement (or in any preliminary or final prospectus included therein) or in any offering memorandum or other offering document relating to the offering and sale of such Registrable Securities, or any amendment thereof or supplement thereto, or in any document incorporated by reference therein, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or shall arise out of or be based upon any violation or alleged violation by the Company of the Securities Act, any blue sky laws, securities laws or other applicable laws of any state or country in which the Registrable Securities are offered and relating to action or inaction required of the Company in connection with such offering; provided, however, that the Company shall not be liable to a particular Holder of Registrable Securities in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement, or any omission or alleged omission, (i) if such statement or omission shall have been made in reliance upon and in conformity with information relating to such Holder furnished to the Company in writing by or on behalf of such Holder expressly for use in the preparation of the registration statement (or in any preliminary or final prospectus included therein), offering memorandum or other offering document, or any amendment thereof or supplement thereto or a document incorporated by reference in any of the foregoing or (ii) if such statement or omission was corrected in a prospectus delivered to such Holders of Registrable Securities prior to the consummation of the sale in which such loss, claim, damage, liability or action arises out of or is based upon and such corrected prospectus shall not have been delivered or sent to the purchaser within the time required by the Securities Act, provided that the Company delivered the corrected prospectus to such Holders in requisite quantity on a timely basis to permit such delivery or sending. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of a Holder of Registrable Securities and shall survive the transfer of such securities. The foregoing indemnity agreement is in addition to any liability which the Company may otherwise have to each Holder of Registrable Securities, underwriters of the Registrable Securities, any controlling person of any of the foregoing or any officer or director of any of the foregoing.

(b) Indemnification by Holder. In the case of each offering of Registrable Securities made pursuant to this Agreement, each Holder of Registrable Securities included in such offering, by exercising its registration rights hereunder, agrees to indemnify and hold harmless the Company, each person, if any, who controls the Company within the meaning of the Securities Act, and if requested by the underwriters, each underwriter who participates in the offering and each person, who controls any such underwriter within the meaning of the Securities Act, and the officers and directors of any of the foregoing from and against any and all claims, liabilities, losses, damages, expenses and judgments, joint or several, to which they or any of them may become subject, under the Securities Act or otherwise, including any amount paid in settlement of any litigation commenced or threatened, and shall promptly reimburse them, as and when incurred, for any legal or other expenses incurred by them in connection with investigating any claims and defending any actions, insofar as any such losses, claims, damages, liabilities or actions shall arise out of, or shall be based upon, any untrue statement or alleged untrue statement of a material fact contained in the registration statement (or in any preliminary or final

prospectus included therein) or in any offering memorandum or other offering document relating to the offering and sale of such Registrable Securities, or any amendment thereof or supplement thereto, or in any document incorporated by reference therein, or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but in each case only to the extent that such untrue statement of a material fact is contained in, or such material fact is omitted from, information relating to such Holder furnished in writing to the Company by or on behalf of such Holder expressly for use in the preparation of such registration statement (or in any preliminary or final prospectus included therein), offering memorandum or other offering document or a document incorporated by reference in any of the foregoing. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Company and shall survive the transfer of such securities. The foregoing indemnity is in addition to any liability which such Holder may otherwise have to the Company, or any of its directors, officers or controlling persons. Notwithstanding the foregoing, in no event shall the liability of a Holder hereunder be greater in amount than the dollar amount of the net proceeds received by it upon the sale of the Registrable Securities pursuant to such offering.

(c) Procedure for Indemnification. Each party indemnified under this Section 5.9 shall, promptly after receipt of notice of any claim or the commencement of any action against such indemnified party in respect of which indemnity may be sought, notify the indemnifying party in writing of the claim or the commencement thereof; provided that the failure of the indemnified party to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to an indemnified party on account of the indemnity agreements contained in this Section 5.9, unless the indemnifying party was materially prejudiced by such failure, and in no event shall relieve the indemnifying party from any other liability which it may have to such indemnified party. If any such claim or action shall be brought against an indemnified party, it shall notify the indemnifying party thereof and the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable (except to the extent the proviso to this sentence is applicable, in which event it will be so liable) to the indemnified party under this Section 5.9 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided that each indemnified party shall have the right to employ separate counsel to represent it and assume its defense (in which case, the indemnifying party shall not represent it) if, in the reasonable judgment of such indemnified party, (i) upon the advice of counsel, the representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, or (ii) in the event the indemnifying party has not assumed the defense thereof within 10 days of receipt of notice of such claim or commencement of action, and in which case the fees and expenses of one such separate counsel shall be paid by the indemnifying party. If any indemnified party employs such separate counsel it will not enter into any settlement agreement which is not approved by the indemnifying party, such approval not to be unreasonably withheld. If the indemnifying party so assumes the defense thereof, it may not agree to any settlement of any such claim or action as

the result of which any remedy or relief, other than monetary damages for which the indemnifying party shall be responsible hereunder, shall be applied to or against the indemnified party, without the prior written consent of the indemnified party. In any action hereunder as to which the indemnifying party has assumed the defense thereof with counsel satisfactory to the indemnified party, the indemnified party shall continue to be entitled to participate in the defense thereof, with counsel of its own choice, but, except as set forth above, the indemnifying party shall not be obligated hereunder to reimburse the indemnified party for the costs thereof.

If the indemnification provided for in this Section 5.9 shall for any reason be unavailable to an indemnified party in respect of any loss, claim, damages or liability, or any action in respect thereof, referred to therein, then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, in such proportion as shall be appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party on the other with respect to the statements or omissions which resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations. The relative fault shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the indemnifying party on the one hand or the indemnified party on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission, but not by reference to any indemnified party's stock ownership in the Company. In no event, however, shall a Holder of Registrable Securities be required to contribute in excess of the amount of the net proceeds received by such Holder in connection with the sale of Registrable Securities in the offering which is the subject of such loss, claim, damages or liability. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this paragraph shall be deemed to include, for purposes of this paragraph, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section 12(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

ARTICLE 6

DEFINITIONS AND ACCOUNTING TERMS

6.1 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any similar federal statute, and the rules and regulations of the SEC (or of any other federal agency then administering the Exchange Act) thereunder, all as the same shall be in effect at the time.

"Financing Event" shall mean (a) the sale of equity or debt securities by the Company for capital raising purposes, or (b) a merger, consolidation or reorganization involving the Company.

"Form S-3" means the Form S-3 form for registration of securities under the Securities Act, or any successor or substitute form.

"Founders" means each of Stephen G. Perlman, Bruce A. Leak and Phillip Y. Goldman.

"Holder" means the Purchaser or any purchaser or transferee therefrom holding at least 250,000 Shares or Registrable Securities (as adjusted for any Recapitalizations).

"Independent Underwriter" shall have the meaning given under "Registration Expenses" below.

"Intellectual Property" means intellectual property, including licenses, software (including all source code and object code, development documentation, programming tools, drawings, specifications and data), rights in designs, technology, inventions, discoveries and improvements, know-how, proprietary rights, formulae, processes, technical information, confidential and proprietary information, and all Intellectual Property Rights associated or related to any of the foregoing or useful in connection therewith.

"Intellectual Property Rights" means patents, patent applications, patent rights, trademarks, trademark registrations, trademark applications, service marks, business marks, brand names, trade names, all other names and slogans embodying business or product goodwill (or both), copyright registrations, mask works, copyrights (including copyrights in computer programs), trade secrets and all other intellectual property rights.

"Person" means an individual, corporation, partnership, joint venture, trust, or unincorporated organization, or a government or any agency or political subdivision thereof.

"Qualified Public Offering" means and includes the closing of an underwritten public offering pursuant to an effective registration statement under the Securities Act, covering the offer and sale of Common Stock for the account of the Company from which the aggregate gross proceeds to the Company (net of underwriting discounts and commissions) exceed $20,000,000 and at a price that reflects a total enterprise value of at least $50,000,000.

"Registrable Securities" means any shares of Common Stock issuable upon conversion of the Series D Preferred held by any Holder.

"Registration Expenses" means all expenses incident to the Company's performance of or compliance with its registration obligations set forth in this Agreement, including the following: (i) the fees, disbursements and expenses of the Company's counsel(s) (United States and, if applicable, foreign) and accountants in connection with the registration of the Registrable Securities to be disposed of under the Securities Act; (ii) the reasonable fees and disbursements of one counsel (other than counsel to the Company) retained in connection with each such registration by the requesting Holder; (iii) all expenses incurred in connection with the preparation, printing and filing of the registration statement, any preliminary prospectus or final prospectus, any other offering document and amendments and supplements thereto and the mailing and delivering of copies thereof to any underwriters and dealers; (iv) the cost of printing

or producing any agreement(s) among underwriters, underwriting agreement(s), and blue sky or legal investment memoranda, any selling agreements and any other documents in connection with the offering, sale or delivery of the Registrable Securities to be disposed of; (v) all expenses incurred in connection with the qualification of the Registrable Securities to be disposed of for offering and sale under state securities laws, including the reasonable fees and disbursements of counsel for the underwriters or the Holders of Registrable Securities in connection with such qualification and in connection with any blue sky and legal investments surveys; (vi) the filing fees incident to securing any required review by the NASD of the terms of the sale of the Registrable Securities to be disposed of; (vii) transfer agents', depositories' and registrars' fees and the fees of any other agent appointed in connection with such offering, including the fees and expenses of any "qualified independent underwriter," or other person acting in a similar capacity, pursuant to the requirements of the NASD or otherwise (the "Independent Underwriter"); (viii) all security engraving and security printing expenses; and (ix) all fees and expenses payable in connection with the listing of the Registrable Securities on a securities exchange or inter-dealer quotation system, but excluding any underwriting discount, selling commission or transfer tax relating to the sale or disposition of Holders' Registrable Securities and fees and expenses of counsel for any Holder except as set forth in clause (ii) of this paragraph.

"Registration Notice" means written notice by a Holder or the Company, as the case may be, that such party desires to begin a Registration Process in accordance with the terms of this Agreement.

"Registration Process" means the process of registering Common Stock or Registrable Securities, as the case may be, under the Securities Act which, for purposes of this Agreement, shall be deemed to be the period of time from the actual delivery of the Registration Notice until the end of any applicable "hold back" period required by the underwriters or, if there is no such period, then 30 days after the effectiveness of the Registration Statement; provided that in the event that (i) a registration statement has not been filed with the SEC within 45 days after a Registration Notice, (ii) such registration statement has not been declared effective by the SEC within 75 days after its filing with the SEC or (iii) the Registration Notice or the registration statement has been abandoned or withdrawn by the requesting Holder or the Company, as the case may be, then the Registration Process shall be deemed concluded at such time; provided, further, with respect to an offering on a delayed or continuous basis pursuant to Rule 415 (or any successor rule to similar effect), a Registration Process shall end on the earlier of (x) thirty (30) days following the last sale pursuant to such offering and (y) the end of any "hold back" period with respect to any such offering.

"Rule 144" means Rule 144 promulgated under the Securities Act, as amended from time to time, or any successor rule to similar effect.

"Securities Act" means the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations of the SEC (or of any other federal agency then administering the Securities Act) thereunder, all as the same shall be in effect at the time.

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

"Transfer" means to sell, exchange, deliver, assign, dispose of, bequeath, give, pledge, mortgage, hypothecate or otherwise encumber, transfer, or permit to be transferred, whether voluntarily, involuntarily, or by operation of law (including, without limitation, the laws of bankruptcy, insolvency, intestacy, descent, domestic relations, and distribution and succession), any shares of the Company's Common Stock.

"TVP" means the total number of votes that may be cast in the election of directors (without taking into effect cumulative voting, if any) of the Company if all securities entitled to vote generally in such election were present and voted, assuming full conversion, exchange or exercise of all convertible securities, rights, warrants and options of the Company that are issued or granted and outstanding or reserved for issuance or grant by the Company.

6.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, and all other financial data submitted pursuant to this Agreement shall be prepared and calculated in all material respects in accordance with such principles.

ARTICLE 7

MISCELLANEOUS

7.1 No Waiver: Cumulative Remedies. No failure or delay on the part of the Purchaser or the Company in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

7.2 Addresses for Notices, etc. All notices, requests, demands and other communications provided for hereunder shall be in writing (including facsimile communication) and mailed, by certified or registered mail or by recognized express courier, or faxed, or delivered to the applicable party, at the addresses indicated below:

If to the Company:

WebTV Networks, Inc.
305 Lytton Avenue
Palo Alto, California 94301
Attention: Albert A. Pimentel, Chief Financial Officer

with a copy to:

Venture Law Group
A Professional Corporation
2800 Sand Hill Road
Menlo Park, CA 94025
Attention: Joshua Pickus

If to the Purchaser:

Seagate Technology, Inc.
920 Disc Drive
Scotts Valley, CA 95066
Attention: Donald A. Waite, Chief Financial Officer
Thomas F. Mulvaney, General Counsel

with a copy to:

Wilson Sonsini Goodrich & Rosati, Professional Corporation
650 Page Mill Road
Palo Alto, CA 94304
Attention: Larry W. Sonsini

Any party to this Agreement may change its address by a written notice to the other party complying as to delivery with the terms of this Section. All such notices, requests, demands and other communications shall, when mailed or faxed, be deemed deliverable when deposited in the mails or with a recognized express courier, if mailed, or when confirmation of transmission is received, if faxed, addressed as aforesaid.

7.3 Binding Effect, Assignment. This Agreement shall be binding upon and inure to the benefit of the Company and the Purchaser and their respective successors and assigns, except that neither the Company nor the Purchaser shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the other; provided that (a) the rights and interests of the Company and/or the Purchaser (the "Assigning Party") shall be assignable without the consent of the other party, as the case may be, to any assignee who controls, is controlled by or under common control with, the Assigning Party, including control being exercised through the ownership or control, directly or indirectly, of fifty percent (50%) or more of the voting power of the shares entitled to vote for the election of directors or other governing authority, as of the date of this Agreement or hereafter (an "Affiliate"), provided that such person or entity shall be considered an Affiliate of the Assigning Party only during the times such ownership or control exists; (b) the rights of the Purchaser under Section 5 may be assigned in accordance with Section 5.8 hereof, and (c) the rights of the Purchaser under Section 4.1(a) may be assigned to a holder of at least 700,000 shares of the Company's capital stock (as adjusted for any Recapitalizations). Notwithstanding the foregoing, the Purchaser shall not assign its rights and interest in the Company (including the Shares) or this Agreement to any Person (including any Affiliate) who at such time is a competitor of the Company or an entity controlled by, under common control with or controlling such competitor. In addition, nothing contained in this Section 7.3 shall permit a Purchaser to assign any rights or interests in this Agreement which are not by their terms expressly assignable, except that a Purchaser may assign its entire right to purchase the Shares hereunder (together with all other rights under this Agreement) to an Affiliate who is otherwise permitted to be an assignee in the immediately preceding sentence.

7.4 Survival of Representations and Warranties. All representations and warranties made in this Agreement, or any other instrument or document delivered in connection herewith, shall survive the execution and delivery hereof or thereof until the earlier to occur of two years from the Effective Date or the closing of a Qualified Public Offering.

7.5 Prior Agreements; Amendment. This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings or agreements concerning the subject matter hereof. This Agreement may only be amended with the approval of the Purchaser and the Company.

7.6 Severability. The invalidity or unenforceability of any provision hereto shall in no way affect the validity or enforceability of any other provision.

7.7 California Corporate Securities Law. THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION IS UNLAWFUL UNLESS THE SALE OF SECURITIES IS EXEMPT FROM THE QUALIFICATION BY SECTION 25100, 25102, OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

7.8 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

7.9 Headings. Article, Section and Subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

7.10 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart.

7.11 Further Assurances. From and after the date of this Agreement, upon the reasonable request of the Purchaser, or the Company, the other party shall execute and deliver such instruments, documents and other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement and the Series D Preferred.

7.12 Waiver of Conflicts. Each party to this Agreement acknowledges that Venture Law Group, counsel for the Company, has in the past performed and may continue to perform legal services for the Purchaser in matters unrelated to the transactions described in this Agreement. Accordingly, each party to this Agreement hereby (1) acknowledges that they have had an opportunity to ask for information relevant to this disclosure; (2) acknowledges that Venture Law Group represented the Company in the transaction contemplated by this Agreement and has not represented the Purchaser or any individual shareholder or employee of the Company in connection with such transaction; and (3) gives its informed consent to Venture Law Group's representation of the Purchaser in such unrelated matters and to Venture Law Group's representation of the Company in connection with this Agreement and the transactions contemplated hereby.

[intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

WEBTV NETWORKS, INC.

By: _____

_____

Its: _____

SEAGATE TECHNOLOGY, INC.

By: _____

_____

Its: _____

[SIGNATURE PAGE TO SERIES D CONVERTIBLE PREFERRED STOCK PURCHASE AGREEMENT]

Exhibit A

Certificate of Amendment

of

Articles of Incorporation

Exhibit B

Legal Opinion

of

Venture Law Group, A Professional Corporation

Exhibit C

Voting Agreement

Exhibit D

Disclosure Schedule

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AS AMENDED, OR ANY STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO O THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AS AMENDED, OR ANY STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL (WHICH MAY BE COMPANY COUNSEL) REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY APPLICABLE STATE SECURITIES LAWS.

WARRANT AGREEMENT

To Purchase Shares of the Series C Preferred Stock of

WEB TV NETWORKS

Dated as of January 6, 1997 (the "Effective Date")

WHEREAS, WEB TV NETWORKS, a California corporation (the "Company") has entered into a Master Lease Agreement dated as of January 6, 1997, Equipment Schedule No. VL-1 dated as of January 6, 1996, and related Summary Equipment Schedules (collectively, the "Leases") with Comdisco, Inc., a Delaware corporation (the "Warrantholder"); and

WHEREAS, the Company desires to grant to Warrantholder, in consideration for such Leases, the right to purchase shares of its Series C Preferred Stock;

NOW, THEREFORE, in consideration of the Warrantholder executing and delivering such Leases and in consideration of mutual covenants and agreements contained herein, the Company and Warrantholder agree as follows:

1. GRANT OF THE RIGHT TO PURCHASE PREFERRED STOCK.

The Company hereby grants to the Warrantholder, and the Warrantholder is entitled, upon the terms and subject to the conditions hereinafter set forth, to subscribe to and purchase, from the Company, 19,682 fully paid and non-assessable shares of the Company's Series C Preferred Stock ("Preferred Stock") at a purchase price of $7.113 per share (the "Exercise Price"). The number and purchase price of such shares are subject to adjustment as provided in Section 8 hereof.

2. TERM OF THE WARRANT AGREEMENT.

Except as otherwise provided for herein, the term of this Warrant Agreement and the right to purchase Preferred Stock as granted herein shall commence on the Effective Date and shall be exercisable for a period of (i) seven (7) years or (ii) five (5) years from the effective date of the Company's initial public offering, whichever is longer.

3. EXERCISE OF THE PURCHASE RIGHTS.

The purchase rights set forth in this Warrant Agreement are exercisable by the Warrantholder, in whole or in part, at any time, or from time to time, prior to the expiration of the term set forth in Section 2 above, by tendering to the Company at its principal office a notice of exercise in the form attached hereto as Exhibit I (the "Notice of Exercise"), duly completed and executed. Promptly upon receipt of the Notice of Exercise and the payment of the purchase price in accordance with the terms set forth below, and in no event later than twenty-one (21) days thereafter, the Company shall issue to the Warrantholder a certificate

for the number of shares of Preferred Stock purchased and shall execute the acknowledgment of exercise in the form attached hereto as Exhibit II (the "Acknowledgment of Exercise") indicating the number of shares which remain subject to future purchases, if any.

The Exercise Price may be paid at the Warrantholder's election either (i) by cash or check, or (ii) by surrender of Warrants ("Net Issuance") as determined below. If the Warrantholder elects the Net Issuance method, the Company will issue Preferred Stock in accordance with the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where: X = the number of shares of Preferred Stock to be issued to the Warrantholder.

Y = the number of shares of Preferred Stock requested to be exercised under this Warrant Agreement.

A = the fair market value of one (1) share of Preferred Stock.

B = the Exercise Price.

For purposes of the above calculation, current fair market value of Preferred Stock shall mean with respect to each share of Preferred Stock:

(i) if the exercise is in connection with an initial public offering of the Company's Common Stock, and if the Company's Registration Statement relating to such public offering has been declared effective by the SEC, then the fair market value per share shall be the product of (x) the initial "Price to Public" specified in the final prospectus with respect to the offering and (y) the number of shares of Common Stock into which each share of Preferred Stock is convertible at the time of such exercise;

(ii) if this Warrant is exercised after, and not in connection with the Company's initial public offering, and:

(a) if traded on a securities exchange, the fair market value shall be deemed to be the product of (x) the average of the closing prices over a twenty-one (21) day period ending three days before the day the current fair market value of the securities is being determined and (y) the number of shares of Common Stock into which each share of Preferred Stock is convertible at the time of such exercise; or

(b) if actively traded over-the-counter, the fair market value shall be deemed to be the product of (x) the average of the closing bid and asked prices quoted on the NASDAQ system (or similar system) over the twenty-one (21) day period ending three days before the day the current fair market value of the securities is being determined and (y) the number of shares of Common Stock into which each share of Preferred Stock is convertible at the time of such exercise;

(iii) if at any time the Common Stock is not listed on any securities exchange or quoted in the NASDAQ System or the over-the-counter market, the current fair market value of Preferred Stock shall be the product of (x) the highest price per share which the Company could obtain from a willing buyer (not a current employee or director) for shares of Common Stock sold by the Company, from authorized but unissued shares, as determined in good faith by its Board of Directors and (y) the number of shares of Common Stock into which each share of Preferred Stock is convertible at the time of such exercise, unless the Company shall become subject to a merger, acquisition or other consolidation pursuant to which the Company is not the surviving party, in which case the fair market

value of Preferred Stock shall be deemed to be the value received by the holders of the Company's Preferred Stock on a common equivalent basis pursuant to such merger or acquisition.

Upon partial exercise by either cash or Net Issuance, the Company shall promptly issue an amended Warrant Agreement representing the remaining number of shares purchasable hereunder. All other terms and conditions of such amended Warrant Agreement shall be identical to those contained herein, including, but not limited to the Effective Date hereof.

4. RESERVATION OF SHARES.

(a) Authorization and Reservation of Shares. During the term of this Warrant Agreement, the Company will at all times have authorized and reserved a sufficient number of shares of its Preferred Stock to provide for the exercise of the rights to purchase Preferred Stock as provided for herein.

(b) Registration or Listing. If any shares of Preferred Stock required to be reserved hereunder require registration with or approval of any governmental authority under any Federal or State law (other than any registration under the Securities Act of 1933, as amended ("1933 Act"), as then in effect, or any similar Federal statute then enforced, or any state securities law, required by reason of any transfer involved in such conversion), or listing on any domestic securities exchange, before such shares may be issued upon conversion, the Company will, at its expense and as expeditiously as possible, use its best efforts to cause such shares to be duly registered, listed or approved for listing on such domestic securities exchange, as the case may be.

5. NO FRACTIONAL SHARES OR SCRIP.

No fractional shares or scrip representing fractional shares shall be issued upon the exercise of the Warrant, but in lieu of such fractional shares the Company shall make a cash payment therefor upon the basis of the Exercise Price then in effect.

6. NO RIGHTS AS SHAREHOLDER.

This Warrant Agreement does not entitle the Warrantholder to any voting rights or other rights as a shareholder of the Company prior to the exercise of the Warrant.

7. WARRANTHOLDER REGISTRY.

The Company shall maintain a registry showing the name and address of the registered holder of this Warrant Agreement.

8. ADJUSTMENT RIGHTS.

The purchase price per share and the number of shares of Preferred Stock purchasable hereunder are subject to adjustment, as follows:

(a) Merger and Sale of Assets. If at any time there shall be a capital reorganization of the shares of the Company's stock (other than a combination, reclassification, exchange or subdivision of shares otherwise provided for herein), or a merger or consolidation of the Company with or into another corporation whether or not the Company is the surviving corporation, or the sale of all or substantially all of the Company's properties and assets to any other person (hereinafter referred to as a "Merger Event"), then, as a part of such Merger Event, lawful provision shall be made so that the Warrantholder shall thereafter be entitled to receive, upon exercise of the Warrant, the number of shares of preferred stock or other securities of the successor corporation resulting from such Merger Event, equivalent in value to that which would have been issuable if Warrantholder had exercised this Warrant immediately prior to the Merger Event. In any such case, appropriate adjustment (as determined in good faith by the Company's Board of Directors) shall be made in

the application of the provisions of this Warrant Agreement with respect to the rights and interest of the Warrantholder after the Merger Event to the end that the provisions of this Warrant Agreement (including adjustments of the Exercise Price and number of shares of Preferred Stock purchasable) shall be applicable to the greatest extent possible.

(b) Reclassification of Shares. If the Company at any time shall, by combination, reclassification, exchange or subdivision of securities or otherwise, change any of the securities as to which purchase rights under this Warrant Agreement exist into the same or a different number of securities of any other class or classes, this Warrant Agreement shall thereafter represent the right to acquire such number and kind of securities as would have been issuable as the result of such change with respect to the securities which were subject to the purchase rights under this Warrant Agreement immediately prior to such combination, reclassification, exchange, subdivision or other change.

(c) Subdivision or Combination of Shares. If the Company at any time shall combine or subdivide its Preferred Stock, the Exercise Price shall be proportionately decreased in the case of a subdivision, or proportionately increased in the case of a combination.

(d) Stock Dividends. If the Company at any time shall pay a dividend payable in, or make any other distribution (except any distribution specifically provided for in the foregoing subsections (a) or (b)) of the Company's stock, then the Exercise Price shall be adjusted, from and after the record date of such dividend or distribution, to that price determined by multiplying the Exercise Price in effect immediately prior to such record date by a fraction (i) the numerator of which shall be the total number of all shares of the Company's stock outstanding immediately prior to such dividend or distribution, and (ii) the denominator of which shall be the total number of all shares of the Company's stock outstanding immediately after such dividend or distribution. The Warrantholder shall thereafter be entitled to purchase, at the Exercise Price resulting from such adjustment, the number of shares of Preferred Stock (calculated to the nearest whole share) obtained by multiplying the Exercise Price in effect immediately prior to such adjustment by the number of shares of Preferred Stock issuable upon the exercise hereof immediately prior to such adjustment and dividing the product thereof by the Exercise Price resulting from such adjustment.

(e) Right to Purchase Additional Stock. If, the Warrantholder's total cost of equipment leased pursuant to the Leases exceeds $2,000,000, Warrantholder shall have the right to purchase from the Company, at the Exercise Price (adjusted as set forth herein), an additional number of shares, which number shall be determined by (i) multiplying the amount by which the Warrantholder's total equipment cost exceeds $2,000,000 by 7%, and (ii) dividing the product thereof by the Exercise Price per share referenced above.

(f) Antidilution Rights. Additional antidilution rights applicable to the Preferred Stock purchasable hereunder are as set forth in the Company's Articles of Incorporation, as amended through the Effective Date, a true and complete copy of which is attached hereto as Exhibit __ (the "Charter"). The Company shall promptly provide the Warrantholder with any restatement, amendment, modification or waiver of the Charter.

(g) Notice of Adjustments. If: (i) the Company shall declare any dividend or distribution upon its stock, whether in cash, property, stock or other securities; (ii) there shall be any Merger Event; (iiii) there shall be an initial public offering; or (iv) there shall be any voluntary dissolution, liquidation or winding up of the Company; then, in connection with each such event, the Company shall send to the Warrantholder: (A) at least twenty (20) days' prior written notice of the date on which the books of the Company shall close for such dividend, distribution (specifying the date on which the holders of Preferred Stock shall be entitled thereto) or for determining rights to vote in respect of such Merger Event, dissolution, liquidation or winding up; (B) in the case of any such Merger Event, dissolution, liquidation or winding up, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Preferred Stock shall be entitled to exchange their Preferred Stock for securities or other property deliverable upon such Merger Event, dissolution, liquidation or winding up); and (C) in the case of a public offering, the

Company shall give the Warrantholder at least twenty (20) days written notice prior to the effective date thereof.

Each such written notice shall set forth, in reasonable detail, (i) the event requiring the adjustment, (ii) the amount of the adjustment, (iii) the method by which such adjustment was calculated, (iv) the Exercise Price, and (v) the number of shares subject to purchase hereunder after giving effect to such adjustment, and shall be given by first class mail, postage prepaid, addressed to the Warrantholder, at the address as shown on the books of the Company.

(g) Timely Notice. Failure to timely provide such notice required by subsection (f) above shall entitle Warrantholder to retain the benefit of the applicable notice period notwithstanding anything to the contrary contained in any insufficient notice received by Warrantholder. The notice period shall begin on the date Warrantholder actually receives a written notice containing all the information specified above.

9. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY.

(a) Reservation of Preferred Stock. The Preferred Stock issuable upon exercise of the Warrantholder's rights has been duly and validly reserved and, when issued in accordance with the provisions of this Warrant Agreement, will be validly issued, fully paid and non-assessable, and will be free of any taxes, liens, charges or encumbrances of any nature whatsoever; provided, however, that the Preferred Stock issuable pursuant to this Warrant Agreement may be subject to restrictions on transfer under state and/or Federal securities laws. The Company has made available to the Warrantholder true, correct and complete copies of its Charter and Bylaws, as amended. The issuance of certificates for shares of Preferred Stock upon exercise of the Warrant Agreement shall be made without charge to the Warrantholder for any issuance tax in respect thereof, or other cost incurred by the Company in connection with such exercise and the related issuance of shares of Preferred Stock. The Company shall not be required to pay any tax which may be payable in respect of any transfer involved and the issuance and delivery of any certificate in a name other than that of the Warrantholder.

(b) Due Authority. The execution and delivery by the Company of this Warrant Agreement and the performance of all obligations of the Company hereunder, including the issuance to Warrantholder of the right to acquire the shares of Preferred Stock, have been duly authorized by all necessary corporate action on the part of the Company, and the Leases and this Warrant Agreement are not inconsistent with the Company's Charter or Bylaws, do not contravene any law or governmental rule, regulation or order applicable to it, do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound, and the Leases and this Warrant Agreement constitute legal, valid and binding agreements of the Company, enforceable in accordance with their respective terms.

(c) Consents and Approvals. No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of any state, Federal or other governmental authority or agency is required with respect to the execution, delivery and performance by the Company of its obligations under this Warrant Agreement, except for the filing of notices pursuant to Regulation D under the 1933 Act and any filing required by applicable state securities law, which filings will be effective by the time required thereby.

(d) Issued Securities. All issued and outstanding shares of Common Stock, Preferred Stock or any other securities of the Company have been duly authorized and validly issued and are fully paid and nonassessable. All outstanding shares of Common Stock, Preferred Stock and any other securities were issued in full compliance with all Federal and state securities laws. In addition:

(i) The authorized capital of the Company consists of (A) 100,000,000 shares of Common Stock, of which 18,866,348 shares are issued and outstanding, and (B) 20,000,000 shares of preferred stock, of which 12,797,824 shares are issued and outstanding and are convertible into 12,797,824 shares of Common Stock.

(ii) The Company has reserved 8,000,000 shares of Common Stock for issuance under its Incentive Stock Option Plan, under which 2,055,975 options are outstanding and 3,861,348 options have been exercised. There are warrants outstanding to purchase 53,000 shares of Common Stock and 86,000 shares of Preferred Stock. There are no other options, warrants, conversion privileges or other rights presently outstanding to purchase or otherwise acquire any authorized but unissued shares of the Company's capital stock or other securities of the Company.

(iii), No shareholder of the Company has preemptive rights to purchase new issuances of the Company's capital stock under the Company's Articles of Incorporation

(e) Insurance. The Company has in full force and effect insurance policies, with extended coverage, insuring the Company and its property and business against such losses and risks, and in such amounts, as are customary for corporations engaged in a similar business and similarly situated and as otherwise may be required pursuant to the terms of any other contract or agreement.

(f) Other Commitments to Register Securities. Except as set forth in this Warrant Agreement, the Company is not, pursuant to the terms of any other agreement currently in existence, under any obligation to register under the 1933 Act any of its presently outstanding securities or any of its securities which may hereafter be issued.

(g) Exempt Transaction. Subject to the accuracy of the Warrantholder's representations in Section 10 hereof, the issuance of the Preferred Stock upon exercise of this Warrant will constitute a transaction exempt from (i) the registration requirements of Section 5 of the 1933 Act, in reliance upon Section 4(2) thereof, and (ii) the qualification requirements of the applicable state securities laws.

(h) Compliance with Rule 144. At the written request of the Warrantholder, who proposes to sell Preferred Stock issuable upon the exercise of the Warrant in compliance with Rule 144 promulgated by the Securities and Exchange Commission, the Company shall furnish to the Warrantholder, within ten days after receipt of such request, a written statement confirming the Company's compliance with the filing requirements of the Securities and Exchange Commission as set forth in such Rule, as such Rule may be amended from time to time.

10. REPRESENTATIONS AND COVENANTS OF THE WARRANTHOLDER.

This Warrant Agreement has been entered into by the Company in reliance upon the following representations and covenants of the Warrantholder:

(a) Investment Purpose. The right to acquire Preferred Stock or the Preferred Stock issuable upon exercise of the Warrantholder's rights contained herein will be acquired for investment and not with a view to the sale or distribution of any part thereof, and the Warrantholder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

(b) Private Issue. The Warrantholder understands (i) that the Preferred Stock issuable upon exercise of this Warrant is not registered under the 1933 Act or qualified under applicable state securities laws on the ground that the issuance contemplated by this Warrant Agreement will be exempt from the registration and qualifications requirements thereof, and (ii) that the Company's reliance on such exemption is predicated on the representations set forth in this Section 10.

(c) Disposition of Warrantholder's Rights. In no event will the Warrantholder make a disposition of any of its rights to acquire Preferred Stock or Preferred Stock issuable upon exercise of such rights unless and until (i) it shall have notified the Company of the proposed disposition, and (ii) if requested by the Company, it shall have furnished the Company with an opinion of counsel (which counsel may either be inside or outside counsel to the Warrantholder) satisfactory to the Company and its counsel to the effect that (A) appropriate action necessary for compliance with the 1933 Act has been

taken, or (B) an exemption from

the registration requirements of the 1933 Act is available. Notwithstanding the foregoing, the restrictions imposed upon the transferability of any of its rights to acquire Preferred Stock or Preferred Stock issuable on the exercise of such rights do not apply to transfers from the beneficial owner of any of the aforementioned securities to its nominee or from such nominee to its beneficial owner, and shall terminate as to any particular share of Preferred Stock when (1) such security shall have been effectively registered under the 1933 Act and sold by the holder thereof in accordance with such registration or (2) such security shall have been sold without registration in compliance with Rule 144 under the 1933 Act, or (3) a letter shall have been issued to the Warrantholder at its request by the staff of the Securities and Exchange Commission or a ruling shall have been issued to the Warrantholder at its request by such Commission stating that no action shall be recommended by such staff or taken by such Commission, as the case may be, if such security is transferred without registration under the 1933 Act in accordance with the conditions set forth in such letter or ruling and such letter or ruling specifies that no subsequent restrictions on transfer are required. Whenever the restrictions imposed hereunder shall terminate, as hereinabove provided, the Warrantholder or holder of a share of Preferred Stock then outstanding as to which such restrictions have terminated shall be entitled to receive from the Company, without expense to such holder, one or more new certificates for the Warrant or for such shares of Preferred Stock not bearing any restrictive legend.

(d) Financial Risk. The Warrantholder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment, and has the ability to bear the economic risks of its investment.

(e) Risk of No Registration. The Warrantholder understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the 1934 Act (the "1934 Act"), or file reports pursuant to Section 15(d), of the 1934 Act", or if a registration statement covering the securities under the 1933 Act is not in effect when it desires to sell (i) the rights to purchase Preferred Stock pursuant to this Warrant Agreement, or (ii) the Preferred Stock issuable upon exercise of the right to purchase, it may be required to hold such securities for an indefinite period. The Warrantholder also understands that any sale of its rights of the Warrantholder to purchase Preferred Stock or Preferred Stock which might be made by it in reliance upon Rule 144 under the 1933 Act may be made only in accordance with the terms and conditions of that Rule.

(f) Accredited Investor. Warrantholder is an "accredited investor" within the meaning of the Securities and Exchange Rule 501 of Regulation D, as presently in effect.

11. TRANSFERS. Subject to the terms and conditions contained in Section 10 hereof, this Warrant Agreement and all rights hereunder are transferable in whole or in part by the Warrantholder and any successor transferee, provided, however, in no event shall the number of transfers of the rights and interests in all of the Warrants exceed three (3) transfers. The transfer shall be recorded on the books of the Company upon receipt by the Company of a notice of transfer in the form attached hereto as Exhibit III (the "Transfer Notice"), at its principal offices and the payment to the Company of all transfer taxes and other governmental charges imposed on such transfer.

12. MISCELLANEOUS.

(a) Effective Date. The provisions of this Warrant Agreement shall be construed and shall be given effect in all respects as if it had been executed and delivered by the Company on the date hereof. This Warrant Agreement shall be binding upon any successors or assigns of the Company.

(b) Attorney's Fees. In any litigation, arbitration or court proceeding between the Company and the Warrantholder relating hereto, the prevailing party shall be entitled to attorneys' fees and expenses and all costs of proceedings incurred in enforcing this Warrant Agreement.

(c) Governing Law. This Warrant Agreement shall be governed by and construed for all purposes under and in accordance with the laws of the State of Illinois.

(d) Counterparts. This Warrant Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(e) Notices. Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery, facsimile transmission (provided that the original is sent by personal delivery or mail as hereinafter set forth) or seven (7) days after deposit in the United States mail, by registered or certified mail, addressed (i) to the Warrantholder at 6111 North River Road, Rosemont, Illinois 60018, attention: James Lab, Venture Group, cc: Legal Department, attn: General Counsel, (and/or, if by facsimile, (847) 518-5465 and (847)518-5088) and (ii) to the Company at 305 Lytton Avenue, Palo Alto, CA 94301, attention: Chief Financial Officer (and/or if by facsimile, (415) 326-5276 or at such other address as any such party may subsequently designate by written notice to the other party.

(f) Remedies. In the event of any default hereunder, the non-defaulting party may proceed to protect and enforce its rights either by suit in equity and/or by action at law, including but not limited to an action for damages as a result of any such default, and/or an action for specific performance for any default where Warrantholder will not have an adequate remedy at law and where damages will not be readily ascertainable. The Company expressly agrees that it shall not oppose an application by the Warrantholder or any other person entitled to the benefit of this Agreement requiring specific performance of any or all provisions hereof or enjoining the Company from continuing to commit any such breach of this Agreement.

(g) No Impairment of Rights. The Company will not, by amendment of its Charter or through any other means, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of the Warrantholder against impairment.

(h) Survival. The representations, warranties, covenants and conditions of the respective parties contained herein or made pursuant to this Warrant Agreement shall survive the execution and delivery of this Warrant Agreement.

(i) Severability. In the event any one or more of the provisions of this Warrant Agreement shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Warrant Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision, which comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

(j) Amendments. Any provision of this Warrant Agreement may be amended by a written instrument signed by the Company and by the Warrantholder.

(k) Additional Documents. The Company, upon execution of this Warrant Agreement, shall provide the Warrantholder with certified resolutions with respect to the representations, warranties and covenants set forth in subparagraphs (a) through (d), (f) and (g) of Section 9 above. The Company shall also supply such other documents as the Warrantholder may from time to time reasonably request.

IN WITNESS WHEREOF, the parties hereto have caused this Warrant Agreement to be executed by its officers thereunto duly authorized as of the Effective Date.

Company: WEB TV NETWORKS

By: /S/ ALBERT PIMENTEL

Title: SR. VICE PRES. & CFO

Warrantholder: COMDISCO, INC.

By: /S/ JAMES P. LABE

Title: PRESIDENT

EXHIBIT I

NOTICE OF EXERCISE

To: _____

(1) The undersigned Warrantholder hereby elects to purchase _____ shares of the Series ____ Preferred Stock of _____, pursuant to the terms of the Warrant Agreement dated the _____ day of _____, 19__ (the "Warrant Agreement") between _____ and the Warrantholder, and tenders herewith payment of the purchase price for such shares in full, together with all applicable transfer taxes, if any.

(2) In exercising its rights to purchase the Series ____ Preferred Stock of _____, the undersigned hereby confirms and acknowledges the investment representations and warranties made in Section 10 of the Warrant Agreement.

(3) Please issue a certificate or certificates representing said shares of Series ____ Preferred Stock in the name of the undersigned or in such other name as is specified below.

_____
(Name)

_____
(Address)

Warrantholder: COMDISCO, INC.

By: _____

Title: _____

Date: _____

EXHIBIT II

ACKNOWLEDGMENT OF EXERCISE

The undersigned _____, hereby acknowledge receipt of the "Notice of Exercise" from Comdisco, Inc., to purchase ____ shares of the Series ____ Preferred Stock of _____, pursuant to the terms of the Warrant Agreement, and further acknowledges that _____ shares remain subject to purchase under the terms of the Warrant Agreement.

Company:

By: _____

Title: _____

Date: _____

EXHIBIT III

TRANSFER NOTICE

(To transfer or assign the foregoing Warrant Agreement execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant Agreement and all rights evidenced thereby are hereby transferred and assigned to

_____
(Please Print)

whose address is_____

_____

Dated _____

Holder's Signature _____

Holder's Address _____

_____

Signature Guaranteed: _____

NOTE: The signature to this Transfer Notice must correspond with the name as it appears on the face of the Warrant Agreement, without alteration or enlargement or any change whatever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant Agreement.

THIS WARRANT AND THE SECURITIES WHICH MAY BE ACQUIRED UPON ITS EXERCISE HAVE BEEN, OR WILL BE, ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR ANY APPLICABLE STATE SECURITIES LAWS. THIS WARRANT AND SUCH SECURITIES MAY NOT BE SOLD OR TRANSFERRED UNLESS SUCH SALE OR TRANSFER IS IN ACCORDANCE WITH THE REGISTRATION AND QUALIFICATION REQUIREMENTS OF SUCH ACT AND APPLICABLE LAWS UNLESS (I) THE COMPANY RECEIVES AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO IT STATING THAT SUCH SALE OR TRANSFER IS EXEMPT FROM THE REGISTRATION AND QUALIFICATION REQUIREMENTS OF SUCH ACT AND APPLICABLE LAWS OR (II) SUCH SALE OR TRANSFER IS IN ACCORDANCE WITH RULE 144 ENACTED PURSUANT TO THE 1933 ACT OR (III) SOME OTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF SUCH ACT AND APPLICABLE LAWS IS AVAILABLE WITH RESPECT THERETO.

PREFERRED STOCK PURCHASE WARRANT

Number of Shares:86,000
Series B Preferred Stock

WEBTV NETWORKS, INC.

Void after June 30, 2002

1. ISSUANCE. This Warrant is issued to LIGHTHOUSE CAPITAL PARTNERS II, L.P. by WEBTV NETWORKS, INC., a California corporation (hereinafter with its successors called the "Company").

2. PURCHASE PRICE; NUMBER OF SHARES. The registered holder of this Warrant (the "Holder"), commencing on the date hereof, is entitled upon surrender of this Warrant with the subscription form annexed hereto duly executed, at the principal office of the Company, to purchase from the Company the following securities (collectively, the "Shares"):

A. at a price per share of $2.50 (the "Lot A Purchase Price"), 46,000 fully paid and nonassessable shares of Series B Preferred Stock, without par value, of the Company (the "Preferred Stock").

B. at a price per share of $5.00 (the "Lot B Purchase Price"), 20,000 fully paid and nonassessable shares of Preferred Stock; provided, that the right to purchase shares pursuant to this SECTION 2.B shall be exercisable on or after the date on which the aggregate "Lessor's Cost" under that certain Master Equipment Lease Agreement, dated as of June 14, 1996, by and between the Company and Holder (the "Master Lease"), exceeds $1,000,000 (the "First Commitment Increase").

C. at a price per share of $7.1130 (the "Lot C Purchase Price"), 20,000 fully paid and nonassessable shares of Preferred Stock; provided, that the right to purchase shares pursuant to this SECTION 2.C shall be exercisable on or after the date on which the aggregate "Lessor's Cost" under the Master Lease exceeds $1,500,000 (the "Second Commitment Increase").

(The Lot A Purchase Price, Lot B Purchase Price and Lot C Purchase Price are sometimes referred to herein collectively as the "Purchase Price").

Until such time as this Warrant is exercised in full or expires, the Purchase Price and the securities issuable upon exercise of this Warrant are subject to adjustment as hereinafter provided. The person or persons on whose name or names any certificate representing shares of Preferred Stock is issued hereunder shall be deemed to have become the holder of record of the shares represented thereby as at the close of business on the date this Warrant is exercised with respect to such shares, whether or not the transfer books of the Company shall be closed.

3. PAYMENT OF PURCHASE PRICE. Subject to SECTION 4, the Purchase Price is due upon surrender of the Warrant and may be paid (i) in cash or by certified bank or cashier's check, (ii) by the surrender by the Holder to the Company of any promissory notes or other obligations issued by the Company, with all such notes and obligations so surrendered being credited against the Purchase Price in an amount equal to the principal amount thereof plus accrued interest to the date of surrender, or (iii) by any combination of the foregoing.

4. NET ISSUE ELECTION. The Holder may elect to receive, without the payment by the Holder of any additional consideration, shares of Preferred Stock equal to the value of this Warrant or any portion hereof by the surrender of this Warrant or such portion to the Company, with the net issue election notice annexed hereto duly executed, at the principal office of the Company. Thereupon, the Company shall issue to the Holder such number of fully paid and nonassessable shares of Preferred Stock as is computed using the following formula:

$$X = \frac{Y\,(A-B)}{A}$$

where: X = the number of shares of Preferred Stock to be issued to the Holder pursuant to this SECTION 4.

Y = the number of shares of Preferred Stock covered by this Warrant in respect of which the net issue election is made pursuant to this SECTION 4.

A = the fair market value of one share of Preferred Stock, as determined in good faith by the Company's Board of Directors, as at the time the net issue election is made pursuant to this SECTION 4.

B = the Purchase Price in effect under this Warrant at the time the net issue election is made pursuant to this SECTION 4.

5. PARTIAL EXERCISE. This Warrant may be exercised in part, and the Holder shall be entitled to receive a new warrant for the unexpired period of the Warrant, which shall be dated as of the date of this Warrant, covering the number of shares in respect of which this Warrant shall not have been exercised.

6. FRACTIONAL SHARES. In no event shall any fractional share of Preferred Stock be issued upon any exercise of this Warrant. If, upon exercise or partial exercise of this Warrant, the Holder would, except as provided in this SECTION 6, be entitled to receive a fractional share of Preferred Stock, then the Company shall issue the next lower number of full shares of Preferred Stock and shall pay the Holder cash in the amount equal to the product of such fraction multiplied by the fair market value of one share of the Preferred Stock on the date of exercise, as determined in good faith by the Company's Board of Directors.

7. EXPIRATION DATE; AUTOMATIC EXERCISE. This Warrant shall expire at the close of business on June 30, 2002, and shall be void thereafter. Notwithstanding the foregoing, this Warrant shall automatically be deemed to be exercised in full pursuant to the provisions of SECTION 4 hereof, without any further action on behalf of the Holder, immediately prior to the time this Warrant would otherwise expire pursuant to the preceding sentence.

8. RESERVED SHARES; VALID ISSUANCE. The Company covenants that it will at all times from and after the date hereof reserve and keep available such number of its authorized shares of Preferred Stock and Common Stock, without par value, of the Company (the "Common Stock"), free from all preemptive or similar rights therein, as will be sufficient to permit, respectively, the exercise of this Warrant in full and the conversion into shares of Common Stock of all shares of Preferred Stock receivable upon such exercise. The Company further covenants that such shares as may be issued pursuant to such exercise and/or conversion will, upon issuance and payment of the sum payable upon such issuance or compliance with SECTION 4, as the case may be, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof.

9. STOCK SPLITS AND DIVIDENDS. If after the date hereof the Company shall subdivide the Preferred Stock, by split-up or otherwise, or combine the Preferred Stock, or issue additional shares of Preferred Stock in payment of a stock dividend on the Preferred Stock, the number of shares of Preferred Stock issuable on the exercise of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination, and the Purchase Price shall forthwith be proportionately decreased in the case of a subdivision or stock dividend, or proportionately increased in the case of a combination.

10. ADJUSTMENTS FOR DILUTING ISSUANCES. The other antidilution rights applicable to the Preferred Stock and the Common Stock of the Company are set forth in the Articles of Incorporation, as amended from time to time (the "Articles"), a true and complete copy in its current form which is attached hereto as EXHIBIT A. Such rights shall not be restated, amended or modified in any material manner which affects the Holder differently than the holders of the Preferred Stock without such Holder's prior written consent, which shall not be unreasonably withheld. The Company shall promptly provide the Holder hereof with any restatement, amendment or modification to the Articles promptly after the same has been made.

11. MERGERS AND RECLASSIFICATIONS. If after the date hereof the Company shall enter into any Reorganization (as hereinafter defined), then, as a condition of such Reorganization, lawful provisions shall be made, and duly executed documents evidencing the same from the Company or its successor shall be delivered to the Holder, so that the Holder shall thereafter have the right to purchase, at a total price not to exceed that payable upon the exercise of this Warrant in full, the kind and amount of shares of stock and other securities and property receivable upon such Reorganization by a holder of the number of shares of Preferred Stock which might have been purchased by the Holder immediately prior to such Reorganization, and in any such case appropriate provisions shall be made with respect to the rights and interest of the Holder to the end that the provisions hereof (including without limitation, provisions for the adjustment of the Purchase Price and the number of shares issuable hereunder and the provisions relating to the net issue election) shall thereafter be applicable in relation to any shares of stock or other securities and property thereafter deliverable upon exercise hereof. For the purposes of this SECTION 11, the term "Reorganization" shall include without limitation any reclassification, capital reorganization or change of the Preferred Stock (other than as a result of a subdivision, combination or stock dividend provided for in SECTION 9 hereof), or any consolidation of the Company with, or merger of the Company into, another corporation or other business organization (other than a merger in which the Company is the surviving corporation and which does not result in any reclassification or change of the outstanding Preferred Stock), or any sale or conveyance to another corporation or other business organization of all or substantially all of the assets of the Company.

12. CERTIFICATE OF ADJUSTMENT. Whenever the Purchase Price is adjusted, as herein provided, the Company shall, upon request, promptly deliver to the Holder a certificate of the Company's chief financial officer setting forth the Purchase Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

13. NOTICES OF RECORD DATE, ETC. In the event of:

(a) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or any right to subscribe for, purchase, sell or otherwise acquire or dispose of any shares of stock of any class or any other securities or property, or to receive any other right;

(b) any reclassification of the capital stock of the Company, capital reorganization of the Company, consolidation or merger involving the Company, or sale or conveyance of all or substantially all of its assets; or

(c) any voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then in each such event the Company will provide or cause to be provided to the Holder a written notice thereof. Such notice shall be provided at least twenty (20) days prior to the date specified in such notice on which any such action is to be taken.

14. REPRESENTATIONS, WARRANTIES AND COVENANTS. This Warrant is issued and delivered by the Company and accepted by each Holder on the basis of the following representations, warranties and covenants made by the Company:

A. The Company has all necessary authority to issue, execute and deliver this Warrant and to perform its obligations hereunder. This Warrant has been duly authorized issued, executed and delivered by the Company and is the valid and binding obligation of the Company, enforceable in accordance with its terms.

B. The shares of Preferred Stock issuable upon the exercise of this Warrant have been duly authorized and reserved for issuance by the Company and, when issued in accordance with the terms hereof, will be validly issued, fully paid and nonassessable.

C. The issuance, execution and delivery of this Warrant do not, and the issuance of the shares of Preferred Stock upon the exercise of this Warrant in accordance with the terms hereof will not, (i) violate or contravene the Company's Articles or by-laws, or any law, statute, regulation, rule, judgment or order applicable to the Company, (ii) violate, contravene or result in a breach or default under any contract, agreement or instrument to which the Company is a party or by which the Company or any of its assets are bound or (iii) require the consent or approval of or the filing of any notice or registration with any person or entity (other than the Company's shareholders and Board of Directors, which consents or approvals have been obtained).

D. As long as this Warrant is, or any shares of Preferred Stock issued upon exercise of this Warrant or any shares of Common Stock issued upon conversion of such shares of Preferred Stock are, issued and outstanding, the Company will provide to the Holder the financial and other information described in that certain Lease Line Schedule No. 01 to Master Equipment Lease Agreement No. 140 between the Company and Lighthouse Capital Partners, L.P. dated as of June 14, 1996.

E. So long as this Warrant has not terminated, Holder shall be entitled to receive such financial and other information as the Holder would be entitled to receive under the Restated Series B Convertible Preferred Stock Purchase Agreement, dated as of March 20, 1996, if Holder were a holder of that number of shares issuable upon full exercise of this Warrant.

F. As of October 24, 1996, the authorized capital stock of the Company consists of (i) 100,000,000 shares of Common Stock, of which 18,866,348 shares are issued and outstanding and 86,000 shares are reserved for issuance upon the exercise of this Warrant and the conversion of the Preferred Stock

issued upon such exercise, (ii) 1,510,533 shares of Series A Preferred Stock, all of which are issued and outstanding shares, (iii) 6,567,484 shares of Series B Preferred Stock, of which 6,316,706 are issued and outstanding shares and 86,000 shares are reserved for issuance upon the exercise of this Warrant, (iv) 4,920,568 shares of Series C Preferred Stock, of which 4,819,538 are issued and outstanding shares and (v) there are 53,000 shares of Common Stock reserved for issuance upon the exercise of certain other warrants.

15. REGISTRATION RIGHTS. The Company hereby grants to the Holder registration rights contained in Sections 5.2 through 5.9 of the Company's Restated Series B Convertible Preferred Stock Purchase Agreement, dated as of March 20, 1996 (the "Registration Rights Agreement"), so that (i) the shares of Common Stock issuable upon conversion of the shares of Preferred Stock issuable upon exercise of this Warrant shall be "Registrable Securities," and (ii) the Holder shall be a "Holder," for all purposes of Sections 5.2 through 5.9 of the Registration Rights Agreement. Such registration rights shall not be restated, amended or modified in any material manner which affects the Holder differently than other holders of an equivalent number of shares of Preferred Stock.

16. AMENDMENT. The terms of this Warrant may be amended, modified or waived only with the written consent of the Holder.

17. REPRESENTATIONS AND COVENANTS OF THE HOLDER. This Preferred Stock Purchase Warrant has been entered into by the Company in reliance upon the following representations and covenants of the Holder, which by its execution hereof the Holder hereby confirms:

A. INVESTMENT PURPOSE. The right to acquire Preferred Stock or the Preferred Stock issuable upon exercise of the Holder's rights contained herein will be acquired for investment and not with a view to the sale or distribution of any part thereof, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

B. ACCREDITED INVESTOR. Holder is an "accredited investor" within the meaning of the Securities and Exchange Rule 501 of Regulation D, as presently in effect.

C. PRIVATE ISSUE. The Holder understands (i) that the Preferred Stock issuable upon exercise of the Holder's rights contained herein is not registered under the 1933 Act or qualified under applicable state securities laws on the ground that the issuance contemplated by this Warrant will be exempt from the registration and qualifications requirements thereof, and (ii) that the Company's reliance on such exemption is predicated on the representations set forth in this SECTION 17.

D. FINANCIAL RISK. The Holder is an experienced and sophisticated investor, able to fend for itself in the transactions contemplated by this Warrant, and has such knowledge and experience in financial and business matters that such Holder is capable of evaluating the risks and merits of acquiring the Warrant and the Preferred Stock. The nature and amount of the Preferred Stock subject to the Warrant is consistent with such Holder's investment objectives, abilities and resources. The Holder is able to bear the economic risk of an investment in the Preferred Stock and can afford to sustain a total loss on such investment. Such Holder has not been formed or organized for the specific purpose of acquiring the Preferred Stock. Such Holder has had, during the course of this transaction and prior to the issuance of the Warrant, the opportunity to ask questions of, and receive answers from, the Company and its management concerning the Company and the terms and conditions of this Warrant. Such Holder hereby acknowledges that such Holder or such Holder's representatives has received all such information as such Holder considers necessary for evaluating the risks and merits of acquiring the Preferred Stock and for verifying the accuracy of any information furnished to such Holder or to which such Holder had access.

E. NO MARKET. The Holder understands that there is no public market for the Preferred Stock and that there may never be such a public market, and that even if such a public market develops such

Holder may never be able to sell or dispose of the Preferred Stock and may thus have to bear the risk of such Holder's investment for a substantial period of time, or forever. Such Holder is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things, the existence of a public market for the shares, the availability of certain current public information about the issuer, the resale occurring not less than two (2) years after a party has purchased and paid for the security to be sold, the sale being effected through a "broker's transaction" or in transactions directly with a "market maker" and the number of shares being sold during any three (3) month period not exceeding specified limitations.

F. LEGENDS. Such Holder acknowledge that the certificates representing the Preferred Stock, when issued, shall contain the following legends:

(a) THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933; THEY HAVE BEEN ACQUIRED BY THE HOLDER FOR INVESTMENT AND MAY NOT BE PLEDGED, HYPOTHECATED, SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT AS MAY BE AUTHORIZED UNDER THE SECURITIES ACT OF 1933 AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

(b) Any legend required by applicable state securities laws.

G. BROKER'S OR FINDER'S FEES. Each Holder represents that no Person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or valid claim upon or against the Company for any commission, fee or other compensation as a finder or broker because of any act or omission by such Holder and such Holder agrees to indemnify and hold this Company harmless against any such commissions, fees or other compensation.

H. RIGHTS OF WARRANT HOLDERS. The Holder as such shall not be entitled to vote or receive dividends or be deemed the holder of securities of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder any of the rights of a shareholder of the Company.

18. NOTICES, TRANSFERS, ETC.

A. Any notice or written communication required or permitted to be given to the Holder may be given by certified mail or delivered to the Holder at the address most recently provided by the Holder to the Company.

B. Subject to compliance with applicable federal and state securities laws, this Warrant may be transferred by the Holder with respect to any or all of the shares purchasable hereunder. Upon surrender of this Warrant to the Company, together with the assignment notice annexed hereto duly executed, for transfer of this Warrant as an entirety by the Holder, the Company shall issue a new warrant of the same denomination to the assignee. Upon surrender of this Warrant to the Company, together with the assignment hereof properly endorsed, by the Holder for transfer with respect to a portion of the shares of Preferred Stock purchasable hereunder, the Company shall issue a new warrant to the assignee, in such denomination as shall be requested by the Holder hereof, and shall issue to such Holder a new warrant covering the number of shares in respect of which this Warrant shall not have been transferred. Notwithstanding the foregoing, the Holder shall not transfer this Warrant or any portion thereof to a competitor of the Company.

C. In case this Warrant shall be mutilated, lost, stolen or destroyed, the Company shall issue a new warrant of like tenor and denomination and deliver the same (i) in exchange and substitution for and upon surrender and cancellation of any mutilated Warrant and delivery of an indemnity agreement reasonably satisfactory to the Company, or (ii) in lieu of any Warrant lost, stolen or destroyed, upon receipt of an affidavit

of the Holder or other evidence reasonably satisfactory to the Company of the loss, theft or destruction of such Warrant and delivery of an indemnity agreement reasonably satisfactory to the Company.

19. NO IMPAIRMENT. The Company will not, by amendment of its Articles or through any reclassification, capital reorganization, consolidation, merger, sale or conveyance of assets, dissolution, liquidation, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance of performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder.

20. GOVERNING LAW. The provisions and terms of this Warrant shall be governed by and construed in accordance with the internal laws of the State of California.

21. SUCCESSORS AND ASSIGNS. This Warrant shall be binding upon the Company's successors and assigns and shall inure to the benefit of the Holder's successors, legal representatives and permitted assigns.

22. BUSINESS DAYS. If the last or appointed day for the taking of any action required or the expiration of any rights granted herein shall be a Saturday or Sunday or a legal holiday in California, then such action may be taken or right may be exercised on the next succeeding day which is not a Saturday or Sunday or such a legal holiday.

23. QUALIFYING PUBLIC OFFERING. If the Company shall effect a firm commitment underwritten public offering of shares of Common Stock which results in the conversion of the Preferred Stock into Common Stock pursuant to the Company's Articles in effect immediately prior to such offering, then, effective upon such conversion, this Warrant shall change from the right to purchase shares of Preferred Stock to the right to purchase shares of Common Stock, and the Holder shall thereupon have the right to purchased, at a total price equal to that payable upon the exercise of this Warrant in full, the number of shares of Common Stock which would have been receivable by the Holder upon the exercise of this Warrant for shares of Preferred Stock immediately prior to such conversion of such shares of Preferred Stock into shares of Common Stock, and in such event appropriate provisions shall be made with respect to the rights and interest of the Holder to the end that the provisions hereof (including, without limitation, the provisions for the adjustment of the Purchase Price and of the number of shares purchasable upon exercise of this Warrant and the provisions relating to the net issue election) shall thereafter be applicable to any shares of Common Stock deliverable upon the exercise hereof.

THIS SPACE IS INTENTIONALLY BLANK

24. VALUE; REPORTING. The Company and the Holder agree that the value of this Warrant on the date of grant is $100 and shall use reasonable efforts to cooperate in the preparation of reports regarding the Warrant for tax purposes.

Dated as of: June 30, 1996 WEBTV NETWORKS, INC.

[CORPORATE SEAL] By: /S/

Name: Valerie Gardner
Title: Chief Financial Officer

Attest:

- ----------

SUBSCRIPTION

To:_____ Date:_____

The undersigned hereby subscribes for _____ shares of Preferred Stock covered by this Warrant. The certificate(s) for such shares shall be issued in the name of the undersigned or as otherwise indicated below:

_____
Signature

_____
Name for Registration

_____
Mailing Address

NET ISSUE ELECTION NOTICE

To: _____ Date: _____

The undersigned hereby elects under SECTION 4 to surrender the right to purchase _____ shares of Preferred Stock pursuant to this Warrant. The certificate(s) for such shares issuable upon such net issue election shall be issued in the name of the undersigned or as otherwise indicated below:

_____
Signature

_____
Name for Registration

_____
Mailing Address

ASSIGNMENT

For value received _____ hereby sells, assigns and transfers unto _____

_____

[Please print or typewrite name and address of Assignee]

_____

the within Warrant, and does hereby irrevocably constitute and appoint _____ _____ its attorney to transfer the within Warrant on the books of the within named Company with full power of substitution on the premises.

Dated: _____

_____

In the Presence of:

_____

EXHIBIT A

AMENDED AND RESTATED ARTICLES OF INCORPORATION

SEE ATTACHED PAGES.

THIS WARRANT HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR ANY STATE SECURITIES LAWS. NO SALE OR DISPOSITION MAY BE EFFECTED WITHOUT (i) EFFECTIVE REGISTRATION STATEMENTS RELATED THERETO, (ii) AN OPINION OF COUNSEL OR OTHER EVIDENCE, REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH REGISTRATIONS ARE NOT REQUIRED, (iii) RECEIPT OF NO-ACTION LETTERS FROM THE APPROPRIATE GOVERNMENTAL AUTHORITIES, OR (iv) OTHERWISE COMPLYING WITH THE PROVISIONS OF SECTION 7 OF THIS WARRANT.

WEBTV NETWORKS, INC.

WARRANT TO PURCHASE 16,871 SHARES OF SERIES C PREFERRED STOCK

THIS CERTIFIES THAT, for value received, MMC/GATX PARTNERSHIP NO. I and its assignees are entitled to subscribe for and purchase 16,871 shares of the fully paid and nonassessable Series C Preferred Stock (as adjusted pursuant to Section 4 hereof, the "Shares") of WEBTV NETWORKS, INC., a California corporation (the "Company"), at the price of $7.113 per share (such price and such other price as shall result, from time to time, from the adjustments specified in Section 4 hereof is herein referred to as the "Warrant Price"), subject to the provisions and upon the terms and conditions hereinafter set forth. As used herein, (a) the term "Series Preferred" shall mean the Company's presently authorized Series C Preferred Stock, and any stock into or for which such Series C Preferred Stock may hereafter be converted or exchanged, (b) the term "Date of Grant" shall mean February 7, 1997, and (c) the term "Other Warrants" shall mean any other warrants issued by the Company in connection with the transaction with respect to which this Warrant was issued, and any warrant issued upon transfer or partial exercise of this Warrant. The term "Warrant" as used herein shall be deemed to include Other Warrants unless the context clearly requires otherwise.

1. Term. The purchase right represented by this Warrant is exercisable, in whole or in part, at any time and from time to time from the Date of Grant through the later of (i) ten (10) years after the Date of Grant or (ii) five (5) years after the closing of the Company's initial public offering of its Common Stock effected pursuant to a Registration Statement on Form S-1 (or its successor) filed under the Securities Act of 1933, as amended (the "Act").

2. Method of Exercise; Payment; Issuance of New Warrant. Subject to Section 1 hereof, the purchase right represented by this Warrant may be exercised by the holder hereof, in whole or in part and from time to time, at the election of the holder hereof, by (a) the surrender of this Warrant (with the notice of exercise substantially in the form attached hereto as Exhibit A duly completed and executed) at the principal office of the Company and by the payment to the Company, by certified or bank check, or by wire transfer to an account designated by the Company (a "Wire Transfer") of an amount equal to the then applicable Warrant Price multiplied by the number of Shares then being purchased, or (b) if in connection with a registered public offering of the Company's securities, the surrender of this Warrant (with the notice of exercise form attached hereto as Exhibit A-1 duly completed and executed) at the principal office of the Company together with notice of arrangements reasonably satisfactory to the Company for payment to the Company either by certified or bank check or by Wire Transfer from the proceeds of the sale of shares to be sold by the holder in such public offering of an amount equal to the then applicable Warrant Price

per share multiplied by the number of Shares then being purchased or (c) exercise of the right provided for in Section 10.3 hereof. The person or persons in whose name(s) any certificate(s) representing shares of Series Preferred shall be issuable upon exercise of this Warrant shall be deemed to have become the holder(s) of record of, and shall be treated for all purposes as the record holder(s) of, the shares represented thereby (and such shares shall be deemed to have been issued) immediately prior to the close of business on the date or dates upon which this Warrant is exercised. In the event of any exercise of the rights represented by this Warrant, certificates for the shares of stock so purchased shall be delivered to the holder hereof as soon as possible and in any event within thirty (30) days after such exercise and, unless this Warrant has been fully exercised or expired, a new Warrant representing the portion of the Shares, if any, with respect to which this Warrant shall not then have been exercised shall also be issued to the holder hereof as soon as possible and in any event within such thirty-day period.

3. Stock Fully Paid; Reservation of Shares. All Shares that may be issued upon the exercise of the rights represented by this Warrant will, upon issuance pursuant to the terms and conditions herein, be fully paid and nonassessable, and free from all taxes, liens and charges with respect to the issue thereof. During the period within which the rights represented by this Warrant may be exercised, the Company will at all times have authorized, and reserved for the purpose of the issue upon exercise of the purchase rights evidenced by this Warrant, a sufficient number of shares of its Series Preferred to provide for the exercise of the rights represented by this Warrant and a sufficient number of shares of its Common Stock to provide for the conversion of the Series Preferred into Common Stock.

4. Adjustment of Warrant Price and Number of Shares. The number and kind of securities purchasable upon the exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time upon the occurrence of certain events, as follows:

(a) Reclassification or Merger. In case of any reclassification or change of securities of the class issuable upon exercise of this Warrant (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), or in case of any merger of the Company with or into another corporation (other than a merger with another corporation in which the Company is the acquiring and the surviving corporation and which does not result in any reclassification or change of outstanding securities issuable upon exercise of this Warrant), or in case of any sale of all or substantially all of the assets of the Company, the Company, or such successor or purchasing corporation, as the case may be, shall duly execute and deliver to the holder of this Warrant a new Warrant (in form and substance satisfactory to the holder of this Warrant), so that the holder of this Warrant shall have the right to receive, at a total purchase price not to exceed that payable upon the exercise of the unexercised portion of this Warrant, and in lieu of the shares of Series Preferred theretofore issuable upon exercise of this Warrant, the kind and amount of shares of stock, other securities, money and property receivable upon such reclassification, change or merger by a holder of the number of shares of Series Preferred then purchasable under this Warrant. Such new Warrant shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 4 and, in the case of a new Warrant issuable after conversion of the authorized shares of the Series Preferred into shares of Common Stock or after the amendment of the terms of the antidilution protection of the Series Preferred, shall provide for antidilution protection that shall be as nearly equivalent as may be practicable to the antidilution provisions applicable to the Series Preferred on the Date of Grant. The provisions of this subparagraph (a) shall similarly apply to successive reclassifications, changes, mergers and transfers.

(b) Subdivision or Combination of Shares. If the Company at any time while this Warrant remains outstanding and unexpired shall subdivide or combine its outstanding shares of Series Preferred, the Warrant Price shall be proportionately decreased in the case of a subdivision or increased in the case of a combination, effective at the close of business on the date the subdivision or combination becomes effective.

(c) Stock Dividends and Other Distributions. If the Company at any time while this Warrant is outstanding and unexpired shall (i) pay a dividend with respect to Series Preferred payable in Series Preferred, or (ii) make any other distribution with respect to Series Preferred (except any distribution specifically provided for in Sections 4(a) and 4(b)), of Series Preferred, then the Warrant Price shall be adjusted, from and after the date of determination of shareholders entitled to receive such dividend or distribution, to that price determined by multiplying the Warrant Price in effect immediately prior to such date of determination by a fraction (i) the numerator of which shall be the total number of shares of Series Preferred outstanding immediately prior to such dividend or distribution, and (ii) the denominator of which shall be the total number of shares of Series Preferred outstanding immediately after such dividend or distribution.

(d) Adjustment of Number of Shares. Upon each adjustment in the Warrant Price, the number of Shares of Series Preferred purchasable hereunder shall be adjusted, to the nearest whole share, to the product obtained by multiplying the number of Shares purchasable immediately prior to such adjustment in the Warrant Price by a fraction, the numerator of which shall be the Warrant Price immediately prior to such adjustment and the denominator of which shall be the Warrant Price immediately thereafter.

(e) Antidilution Rights. The other antidilution rights applicable to the Shares of Series Preferred purchasable hereunder are set forth in the Company's Articles of Incorporation, as amended through the Date of Grant, a true and complete copy of which is attached hereto as Exhibit B (the "Charter"). Such antidilution rights shall not be restated, amended, modified or waived in any manner that is adverse to the holder hereof without such holder's prior written consent. The Company shall promptly provide the holder hereof with any restatement, amendment, modification or waiver of the Charter promptly after the same has been made.

5. Notice of Adjustments. Whenever the Warrant Price or the number of Shares purchasable hereunder shall be adjusted pursuant to Section 4 hereof, the Company shall make a certificate signed by its chief financial officer setting forth, in reasonable detail, the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated, and the Warrant Price and the number of Shares purchasable hereunder after giving effect to such adjustment, and shall cause copies of such certificate to be mailed (without regard to Section 13 hereof, by first class mail, postage prepaid) to the holder of this Warrant. In addition, whenever the conversion price or conversion ratio of the Series Preferred shall be adjusted, the Company shall make a certificate signed by its chief financial officer setting forth, in reasonable detail, the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated, and the conversion price or ratio of the Series Preferred after giving effect to such adjustment, and shall cause copies of such certificate to be mailed (without regard to Section 13 hereof, by first class mail, postage prepaid) to the holder of this Warrant.

6. Fractional Shares. No fractional shares of Series Preferred will be issued in connection with any exercise hereunder, but in lieu of such fractional shares the Company shall make a cash payment

therefor based on the fair market value of the Series Preferred on the date of exercise as reasonably determined in good faith by the Company's Board of Directors.

7. Compliance with Act; Disposition of Warrant or Shares of Series Preferred.

(a) Compliance with Act. The holder of this Warrant, by acceptance hereof, agrees that this Warrant, and the shares of Series Preferred to be issued upon exercise hereof and any Common Stock issued upon conversion thereof are being acquired for investment and that such holder will not offer, sell or otherwise dispose of this Warrant, or any shares of Series Preferred to be issued upon exercise hereof or any Common Stock issued upon conversion thereof except under circumstances which will not result in a violation of the Act or any applicable state securities laws. Upon exercise of this Warrant, unless the Shares being acquired are registered under the Act and any applicable state securities laws or an exemption from such registration is available, the holder hereof shall confirm in writing that the shares of Series Preferred so purchased (and any shares of Common Stock issued upon conversion thereof) are being acquired for investment and not with a view toward distribution or resale in violation of the Act and shall confirm such other matters related thereto as may be reasonably requested by the Company. This Warrant and all shares of Series Preferred issued upon exercise of this Warrant and all shares of Common Stock issued upon conversion thereof (unless registered under the Act and any applicable state securities laws) shall be stamped or imprinted with a legend in substantially the following form:

"THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. NO SALE OR DISPOSITION MAY BE EFFECTED WITHOUT (i) EFFECTIVE REGISTRATION STATEMENTS RELATED THERETO, (ii) AN OPINION OF COUNSEL OR OTHER EVIDENCE, REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH REGISTRATIONS ARE NOT REQUIRED, (iii) RECEIPT OF NO-ACTION LETTERS FROM THE APPROPRIATE GOVERNMENTAL AUTHORITIES, OR (iv) OTHERWISE COMPLYING WITH THE PROVISIONS OF SECTION 7 OF THE WARRANT UNDER WHICH THESE SECURITIES WERE ISSUED, DIRECTLY OR INDIRECTLY."

Said legend shall be removed by the Company, upon the request of a holder, at such time as the restrictions on the transfer of the applicable security shall have terminated. In addition, in connection with the issuance of this Warrant, the holder specifically represents to the Company by acceptance of this Warrant as follows:

(1) The holder is aware of the Company's business affairs and financial condition, and has acquired information about the Company sufficient to reach an informed and knowledgeable decision to acquire this Warrant. The holder is acquiring this Warrant for its own account for investment purposes only and not with a view to, or for the resale in connection with, any "distribution" thereof in violation of the Act. The holder is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under the Act.

(2) The holder understands that this Warrant has not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the holder's investment intent as expressed herein.

(3) The holder further understands that this Warrant must be held indefinitely unless subsequently registered under the Act and qualified under any applicable state securities laws, or unless exemptions from registration and qualification are otherwise available. The holder is aware of the provisions of Rule 144, promulgated under the Act.

(b) Disposition of Warrant or Shares. With respect to any offer, sale or other disposition of this Warrant or any shares of Series Preferred acquired pursuant to the exercise of this Warrant prior to registration of such Warrant or shares, the holder hereof agrees to give written notice to the Company prior thereto, describing briefly the manner thereof, together with a written opinion of such holder's counsel, or other evidence, if reasonably requested by the Company, to the effect that such offer, sale or other disposition may be effected without registration or qualification (under the Act as then in effect or any federal or state securities law then in effect) of this Warrant or such shares of Series Preferred or Common Stock and indicating whether or not under the Act certificates for this Warrant or such shares of Series Preferred to be sold or otherwise disposed of require any restrictive legend as to applicable restrictions on transferability in order to ensure compliance with such law. Promptly upon receiving such written notice and reasonably satisfactory opinion or other evidence, if so requested, the Company, as promptly as practicable but no later than fifteen (15) days after receipt of the written notice, shall notify such holder that such holder may sell or otherwise dispose of this Warrant or such shares of Series Preferred or Common Stock, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this Section 7(b) that the opinion of counsel for the holder or other evidence is not reasonably satisfactory to the Company, the Company shall so notify the holder promptly with details thereof after such determination has been made. Notwithstanding the foregoing, this Warrant or such shares of Series Preferred or Common Stock may, as to such federal laws, be offered, sold or otherwise disposed of in accordance with Rule 144 or 144A under the Act, provided that the Company shall have been furnished with such information as the Company may reasonably request to provide a reasonable assurance that the provisions of Rule 144 or 144A have been satisfied. Each certificate representing this Warrant or the shares of Series Preferred thus transferred (except a transfer pursuant to Rule 144 or 144A) shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with such laws, unless in the aforesaid opinion of counsel for the holder, such legend is not required in order to ensure compliance with such laws. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions.

(c) Applicability of Restrictions. Neither any restrictions of any legend described in this Warrant nor the requirements of Section 7(b) above shall apply to any transfer of, or grant of a security interest in, this Warrant (or the Series Preferred or Common Stock obtainable upon exercise thereof) or any part hereof (i) to a partner of the holder if the holder is a partnership, (ii) to a partnership of which the holder is a partner, or (iii) to any affiliate of the holder if the holder is a corporation; provided, however, in any such transfer, if applicable, the transferee shall on the Company's request agree in writing to be bound by the terms of this Warrant as if an original signatory hereto.

8. Rights as Shareholders; Information. No holder of this Warrant, as such, shall be entitled to vote or receive dividends or be deemed the holder of Series Preferred or any other securities of the Company which may at any time be issuable on the exercise hereof for any purpose, nor shall anything contained herein be construed to confer upon the holder of this Warrant, as such, any of the rights of a shareholder of the Company or any right to vote for the election of directors or upon any matter submitted to shareholders at any meeting thereof, or to receive notice of meetings, or to receive dividends or subscription rights or otherwise until this Warrant shall have been exercised and the Shares purchasable

upon the exercise hereof shall have become deliverable, as provided herein. Notwithstanding the foregoing, the Company will transmit to the holder of this Warrant such information, documents and reports as are generally distributed to the holders of any class or series of the securities of the Company concurrently with the distribution thereof to the shareholders.

9. Registration Rights. The Company grants registration rights to the holder of this Warrant for any Common Stock of the Company obtained upon conversion of the Series Preferred, comparable to the registration rights granted to the investors in that certain Series C Convertible Preferred Stock Purchase Agreement dated as of September 16, 1996 (the "Registration Rights Agreement"), with the following exceptions and clarifications:

(1) The holder will have no demand registration rights.

(2) The holder will be subject to the same provisions regarding indemnification as contained in the Registration Rights Agreement.

(3) The registration rights are freely assignable by the holder of this Warrant.

10. Additional Rights.

10.1 [Intentionally omitted.]

10.2 Mergers. The Company shall provide the holder of this Warrant with at least thirty (30) days' notice of the terms and conditions of any of the following potential transactions: (i) the sale, lease, exchange, conveyance or other disposition of all or substantially all of the Company's property or business, or (ii) its merger into or consolidation with any other corporation (other than a wholly-owned subsidiary of the Company), or any transaction (including a merger or other reorganization) or series of related transactions, in which more than 50% of the voting power of the Company is disposed of. The Company will cooperate with the holder in arranging the sale of this Warrant in connection with any such transaction.

10.3 Right to Convert Warrant into Stock: Net Issuance.

(a) Right to Convert. In addition to and without limiting the rights of the holder under the terms of this Warrant, the holder shall have the right to convert this Warrant or any portion thereof (the "Conversion Right") into shares of Series Preferred (or Common Stock if the Series Preferred has been automatically converted into Common Stock) as provided in this Section 10.3 at any time or from time to time during the term of this Warrant. Upon exercise of the Conversion Right with respect to a particular number of shares subject to this Warrant (the "Converted Warrant Shares"), the Company shall deliver to the holder (without payment by the holder of any exercise price or any cash or other consideration) (X) that number of shares of fully paid and nonassessable Series Preferred (or Common Stock if the Series Preferred has been automatically converted into Common Stock) equal to the quotient obtained by dividing the value of this Warrant (or the specified portion hereof) on the Conversion Date (as defined in subsection (b) hereof), which value shall be determined by subtracting (A) the aggregate Warrant Price of the Converted Warrant Shares immediately prior to the exercise of the Conversion Right from (B) the aggregate fair market value of the Converted Warrant Shares issuable upon exercise of this Warrant (or the specified portion hereof) on the Conversion Date (as herein defined) by (Y) the fair market value of one

share of Series Preferred (or Common Stock if the Series Preferred has been automatically converted into Common Stock) on the Conversion Date (as herein defined).

Expressed as a formula, such conversion (assuming the Series Preferred has been automatically converted into Common Stock) shall be computed as follows:

$$X = \frac{B - A}{Y}$$

Where: X = the number of shares of Common Stock that may be issued to holder

Y = the fair market value of one share of Common Stock

A = the aggregate Warrant Price (i.e., Converted Warrant Shares x Warrant Price)

B = the aggregate fair market value (i.e., fair market value x Converted Warrant Shares)

No fractional shares shall be issuable upon exercise of the Conversion Right, and, if the number of shares to be issued determined in accordance with the foregoing formula is other than a whole number, the Company shall pay to the holder an amount in cash equal to the fair market value of the resulting fractional share on the Conversion Date (as hereinafter defined). For purposes of Section 9 of this Warrant, shares issued pursuant to the Conversion Right shall be treated as if they were issued upon the exercise of this Warrant.

(b) Method of Exercise. The Conversion Right may be exercised by the holder by the surrender of this Warrant at the principal office of the Company together with a written statement specifying that the holder thereby intends to exercise the Conversion Right and indicating the number of shares subject to this Warrant which are being surrendered (referred to in Section 10.3(a) hereof as the Converted Warrant Shares) in exercise of the Conversion Right. Such conversion shall be effective upon receipt by the Company of this Warrant together with the aforesaid written statement, or on such later date as is specified therein (the "Conversion Date"), and, at the election of the holder hereof, may be made contingent upon the closing of the sale of the Company's Common Stock to the public in a public offering pursuant to a Registration Statement under the Act (a "Public Offering"). Certificates for the shares issuable upon exercise of the Conversion Right and, if applicable, a new warrant evidencing the balance of the shares remaining subject to this Warrant, shall be issued as of the Conversion Date and shall be delivered to the holder within thirty (30) days following the Conversion Date. Any conversion from Series Preferred to Common Stock shall be in the ratio of one (1) share of Common Stock for each share of Series Preferred (as adjusted herein and in the Charter). On the Date of Grant, each share of the Series Preferred represented by this Warrant is convertible into one share of Common Stock.

(c) Determination of Fair Market Value. For purposes of this Section 10.3, "fair market value" of a share of Series Preferred (or Common Stock if the Series Preferred has been automatically converted into Common Stock) as of a particular date (the "Determination Date") shall mean:

(i) If the Conversion Right is exercised in connection with and contingent upon a Public Offering, and if the Company's Registration Statement relating to such Public Offering ("Registration Statement") has been declared effective by the SEC, then the initial "Price to Public" specified in the final prospectus with respect to such offering.

(ii) If the Conversion Right is not exercised in connection with and contingent upon a Public Offering, then as follows:

(A) If traded on a securities exchange, the fair market value of the Common Stock shall be deemed to be the average of the closing prices of the Common Stock on such exchange over the 30-day period ending five business days prior to the Determination Date, and the fair market value of the Series Preferred shall be deemed to be such fair market value of the Common Stock multiplied by the number of shares of Common Stock into which each share of Series Preferred is then convertible;

(B) If traded over-the-counter, the fair market value of the Common Stock shall be deemed to be the average of the closing bid prices of the Common Stock over the 30-day period ending five business days prior to the Determination Date, and the fair market value of the Series Preferred shall be deemed to be such fair market value of the Common Stock multiplied by the number of shares of Common Stock into which each share of Series Preferred is then convertible; and

(C) If there is no public market for the Common Stock, then fair market value shall be determined by mutual agreement of the holder of this Warrant and the Company.

10.4 Exercise Prior to Expiration. To the extent this Warrant is not previously exercised as to all of the Shares subject hereto, and if the fair market value of one share of the Series Preferred is greater than the Warrant Price then in effect, this Warrant shall be deemed automatically exercised pursuant to Section 10.3 above (even if not surrendered) immediately before its expiration. For purposes of such automatic exercise, the fair market value of one share of the Series Preferred upon such expiration shall be determined pursuant to Section 10.3(c). To the extent this Warrant or any portion thereof is deemed automatically exercised pursuant to this Section 10.4, the Company agrees to promptly notify the holder hereof of the number of Shares, if any, the holder hereof is to receive by reason of such automatic exercise.

11. Representations and Warranties. The Company represents and warrants to the holder of this Warrant as follows:

(a) This Warrant has been duly authorized and executed by the Company and is a valid and binding obligation of the Company enforceable in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and the rules of law or principles at equity governing specific performance, injunctive relief and other equitable remedies;

(b) The Shares have been duly authorized and reserved for issuance by the Company and, when issued in accordance with the terms hereof, will be validly issued, fully paid and non-assessable;

(c) The rights, preferences, privileges and restrictions granted to or imposed upon the Series Preferred and the holders thereof are as set forth in the Charter, as amended to the Date of the Grant,

a true and complete copy of which has been delivered to the original holder of this Warrant and is attached hereto as Exhibit B;

(d) The shares of Common Stock issuable upon conversion of the Shares have been duly authorized and reserved for issuance by the Company and, when issued in accordance with the terms of the Charter will be validly issued, fully paid and nonassessable;

(e) The execution and delivery of this Warrant are not, and the issuance of the Shares upon exercise of this Warrant in accordance with the terms hereof will not be, inconsistent with the Company's Charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to the Company, and do not and will not conflict with or contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument of which the Company is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration or filing with or the taking of any action in respect of or by, any Federal, state or local government authority or agency or other person, except for the filing of notices pursuant to federal and state securities laws, which filings will be effected by the time required thereby; and

(f) There are no actions, suits, audits, investigations or proceedings pending or, to the knowledge of the Company, threatened against the Company in any court or before any governmental commission, board or authority which, if adversely determined, will have a material adverse effect on the ability of the Company to perform its obligations under this Warrant.

12. Modification and Waiver. This Warrant and any provision hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the same is sought.

13. Notices. Any notice, request, communication or other document required or permitted to be given or delivered to the holder hereof or the Company shall be delivered, or shall be sent by certified or registered mail, postage prepaid, to each such holder at its address as shown on the books of the Company or to the Company at the address indicated therefor on the signature page of this Warrant.

14. Binding Effect on Successors. This Warrant shall be binding upon any corporation succeeding the Company by merger, consolidation or acquisition of all or substantially all of the Company's assets, and all of the obligations of the Company relating to the Series Preferred issuable upon the exercise or conversion of this Warrant shall survive the exercise, conversion and termination of this Warrant and all of the covenants and agreements of the Company shall inure to the benefit of the successors and assigns of the holder hereof. The Company will, at the time of the exercise or conversion of this Warrant, in whole or in part, upon request of the holder hereof but at the Company's expense, acknowledge in writing its continuing obligation to the holder hereof in respect of any rights (including, without limitation, any right to registration of the Shares) to which the holder hereof shall continue to be entitled after such exercise or conversion in accordance with this Warrant;

provided, that the failure of the holder hereof to make any such request shall not affect the continuing obligation of the Company to the holder hereof in respect of such rights.

15. Lost Warrants or Stock Certificates. The Company covenants to the holder hereof that, upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant or any stock certificate and, in the case of any such loss, theft or destruction, upon receipt of

an indemnity reasonably satisfactory to the Company, or in the case of any such mutilation upon surrender and cancellation of such Warrant or stock certificate, the Company will make and deliver a new Warrant or stock certificate, of like tenor, in lieu of the lost, stolen, destroyed or mutilated Warrant or stock certificate.

16. Descriptive Headings. The descriptive headings of the several paragraphs of this Warrant are inserted for convenience only and do not constitute a part of this Warrant. The language in this Warrant shall be construed as to its fair meaning without regard to which party drafted this Warrant.

17. Governing Law. This Warrant shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of California.

18. Survival of Representations, Warranties and Agreements. All representations and warranties of the Company and the holder hereof contained herein shall survive the Date of Grant, the exercise or conversion of this Warrant (or any part hereof) or the termination or expiration of rights hereunder. All agreements of the Company and the holder hereof contained herein shall survive indefinitely until, by their respective terms, they are no longer operative.

19. Remedies. In case any one or more of the covenants and agreements contained in this Warrant shall have been breached, the holders hereof (in the case of a breach by the Company), or the Company (in the case of a breach by a holder), may proceed to protect and enforce their or its rights either by suit in equity and/or by action at law, including, but not limited to, an action for damages as a result of any such breach and/or an action for specific performance of any such covenant or agreement contained in this Warrant.

20. No Impairment of Rights. The Company will not, by amendment of its Charter or through any other means, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holder of this Warrant against impairment.

21. Severability. The invalidity or unenforceability of any provision of this Warrant in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction, or affect any other provision of this Warrant, which shall remain in full force and effect.

22. Recovery of Litigation Costs. If any legal action or other proceeding is brought for the enforcement of this Warrant, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Warrant, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

23. Entire Agreement; Modification. This Warrant constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and undertakings of the parties, whether oral or written, with respect to such subject matter.

WEBTV NETWORKS, INC.

By /S/ ARTHUR PIMENTEL

Title: SR. VICE PRESIDENT & CFO
Address: 305 Lytton Avenue
Palo Alto, California 94301

EXHIBIT A

NOTICE OF EXERCISE

To: WEBTV NETWORKS, INC.

1. The undersigned hereby:

[ ] elects to purchase _____ shares of Series C Preferred Stock of WEBTV NETWORKS, INC. pursuant to the terms of the attached Warrant, and tenders herewith payment of the purchase price of such shares in full, or

[ ] elects to exercise its net issuance rights pursuant to Section 10.3 of the attached Warrant with respect to _____ Shares of Series C Preferred Stock.

2. Please issue a certificate or certificates representing said shares in the name of the undersigned or in such other name or names as are specified below:

(Name)

(Address)

3. The undersigned represents that the aforesaid shares are being acquired for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares, all except as in compliance with applicable securities laws.

(Signature)

- ---
(Date)

EXHIBIT A-1

NOTICE OF EXERCISE

To: WEBTV NETWORKS, INC. (the "Company")

1. Contingent upon and effective immediately prior to the closing (the "Closing") of the Company's public offering contemplated by the Registration Statement on Form S_____, filed _____, 19____, the undersigned hereby:

[ ] elects to purchase ____ shares of Series C Preferred Stock of the Company (or such lesser number of shares as may be sold on behalf of the undersigned at the Closing) pursuant to the terms of the attached Warrant, or

[ ] elects to exercise its net issuance rights pursuant to Section 10.3 of the attached Warrant with respect to ____ Shares of Series C Preferred Stock.

2. Please deliver to the custodian for the selling shareholders a stock certificate representing such _____ shares.

3. The undersigned has instructed the custodian for the selling shareholders to deliver to the Company $_____ or, if less, the net proceeds due the undersigned from the sale of shares in the aforesaid public offering. If such net proceeds are less than the purchase price for such shares, the undersigned agrees to deliver the difference to the Company prior to the Closing.

(Signature)

- ---
(Date)

EXHIBIT B

CHARTER

EXHIBIT 4.8

WEBTV NETWORKS, INC.
1996 STOCK INCENTIVE PLAN

1. PURPOSE OF PLAN

This Plan is designed and intended to enable the Company to attract, retain and motivate directors, officers and key employees of, and consultants to, the Company by providing for or increasing the proprietary interest of such persons in the Company and thereby providing an incentive to such persons to promote the long-term interests and financial success of the Company.

2. DEFINITIONS.

Capitalized terms shall have the meanings set forth below or defined elsewhere in this Plan:

(a) "Affiliate": Any "parent corporation" or "subsidiary corporation" of the Company, as such terms are defined in Section 424(e) and (f), respectively, of the Code.

(b) "Agreement": An option agreement or restricted stock agreement evidencing an Award, in such form as adopted by the Committee pursuant to Section 10(b) of the Plan.

(c) "Award": An award of an Option or Restricted Stock, or any combination thereof, under the Plan.

(d) "Board of Directors": The Board of Directors of the Company.

(e) "Code": The Internal Revenue Code of 1986, as amended, together with all regulations.

(f) "Committee": The Compensation Committee of the Board of Directors or such other committee appointed by the Board of Directors which meets the requirements set forth in Section 10 hereof.

(g) "Company": WebTV Networks, Inc., a California corporation.

(h) "Effective Date": The date on which the Plan shall become effective as set forth in Section 11 hereof.

(i) "Exchange Act": The Securities Exchange Act of 1934, as amended, together with all regulations and rules issued thereunder.

(j) "Exercise Price": In the case of an Option, the price per Share at which the Shares subject to such Option may be purchased upon exercise of such Option.

(k) "Fair Market Value": As applied to a specific date, the fair market value of the Shares on such date as determined in good faith by the Committee in the following manner:

(i) If the Shares are then listed on any national or regional stock exchange, the Fair Market Value shall be the mean between the high and low sales price on the date in question, or if there are no reported sales on such date, on the last preceding date on which sales were reported;

(ii) If the Shares are not so listed, then the Fair Market Value shall be the mean between the bid and ask prices quoted by a market maker or other recognized specialist in the Shares at the close of the date in question;

(iii) In the absence of either of the foregoing, the Fair Market Value shall be determined by the Committee in its absolute discretion after giving consideration to the book value, the earnings history and the prospects of the Company in light of market conditions generally.

The Fair Market Value determined in such manner shall be final, binding and conclusive on all parties.

(l) "ISO": A stock option intended to meet the requirements of an "incentive stock option," as defined in Section 422 of the Code or any statutory provision that may replace such section.

(m) "NQSO": A stock option not intended to be an ISO and designated a non-qualified stock option by the Committee.

(n) "Option": Any stock option, either an ISO or an NQSO, granted under the Plan.

(o) "Participant": An officer or other key employee or director of the Company, or any Parent or Subsidiary, or a consultant to the Company, or any Parent or Subsidiary, who has been granted an Award under the Plan.

(p) "Parent": A "parent corporation" as defined in Section 424(e) of the Code, including any parent corporation which becomes such after the Effective Date of the Plan.

(q) "Plan": This WebTV Networks, Inc. 1996 Stock Incentive Plan, as it may be amended from time to time.

(r) "Restricted Stock": Shares which have been awarded to a Participant under Section 8 hereof.

(s) "SEC": Securities and Exchange Commission.

(t) "Shares": Shares of the Company's authorized but unissued or reacquired common stock, or such other class or kind of shares or securities as may be applicable pursuant to the provisions of Section 4(b) hereof.

(u) "Subsidiary": A "subsidiary corporation" as defined in Section 424(f) of the Code, including any subsidiary corporation which becomes such after the Effective Date of the Plan.

(v) "Voluntary Transfer" and "Involuntary Transfer": See Section 13(b)(iv).

3. ELIGIBILITY

(a) In General. Directors, officers and key employees of the Company, and consultants to the Company, as selected by the Committee from time to time, shall be eligible to receive Awards under the Plan. A consultant or director (unless such consultant or director is also an employee) may not be granted an ISO. Subject to the terms and restrictions set forth in the Plan, a Participant may hold more than one Award. For purposes of the Plan, Participants who are consultants may be individuals or other legal entities.

(b) More Than 10% Shareholders. No Option shall be granted to any person who at the time of grant owns stock with more than 10% of the total combined voting power of all classes of stock of the Company, its Parent or any Subsidiary, computed pursuant to Sections 422(b)(6) and 424(d) of the Code, unless at the time the Option is granted, its exercise price is at least 110% of the Fair Market Value of the Shares subject to the Option, and the Option is not exercisable after the expiration of five (5) years from the date of its grant. No Restricted Stock shall be awarded to any person who at the time of the Award owns stock with more than 10% of the total combined voting power of all classes of stock of the Company, its Parent or any Subsidiary, computed pursuant to Section 260.140.42(b)(2) of the Rules of the California Corporations Commissioner, unless at the time of the Award or at the time that the purchase of the Restricted Stock is consummated the purchase price of the Restricted Stock is equal to 100% of the Fair Market Value of such Shares.

4. SHARES SUBJECT TO PLAN

(a) Maximum Shares. The maximum number of Shares that may be subject to Awards and which are reserved for the Plan is 8,000,000, which can be delivered pursuant to Awards of Options or Restricted Stock. If an Award expires or terminates for any reason without having been fully exercised, the unpurchased Shares shall be added to the Shares available for Awards. The unpurchased Shares shall not increase the maximum number of Shares which may be subject to Awards.

(b) Adjustment of Shares and Prices. In the event that Shares are changed into or exchanged for a different kind or number of shares of stock or securities of the Company as the result of any stock dividend, stock split, combination of shares, exchange of shares, merger, consolidation, reorganization, recapitalization or other change in capital structure, then

the number of Shares subject to this Plan and to Awards granted hereunder and the Exercise Price for such Shares shall be equitably adjusted by the Committee to prevent the dilution or enlargement of Awards. Any new stock or securities into which the Shares are changed or for which they are exchanged shall be substituted for the Shares subject to this Plan and to Awards granted hereunder; provided, however, that fractional shares may be deleted from the adjustment or substitution. Notwithstanding the foregoing, no adjustment shall be authorized or made pursuant to this section to the extent that such authority or adjustment would cause any ISO to fail to comply with Section 422 of the Code. Any shares of stock or other securities received as a result of any of the foregoing by a Participant with respect to Restricted Stock shall be subject to the same restrictions and the certificate(s) or other instruments representing or evidencing such shares or securities shall be legended and deposited with the Company in the manner provided in Section 8 hereof.

5. GRANTING OF OPTIONS

(a) Grants. The Committee shall have full and complete authority and discretion, except as expressly limited by the Plan, to grant Awards and to provide the terms and conditions (which need not be identical among Participants) thereof. Notwithstanding the foregoing, if at any time any class of equity securities of the Company is registered under Section 12(b) or 12(g) of the Exchange Act, then after such registration, the Committee shall not have the authority to grant Options to non-employee directors, except pursuant to provisions of the Plan as then in effect that satisfy the requirements for making "formula grants or awards" in accordance with Rule 16b-3 of the Exchange Act. At the time of grant of the Option the Committee shall determine and set forth in the Agreement the number of Shares subject to the Option; the manner, time and rate of exercise of such Option; whether such Option is to be issued as an ISO or an NQSO; the restrictions, if any, to be placed upon such Option or upon Shares which may be issued upon exercise of such Option; and the Exercise Price of any Option, which (subject to Sections 3(b) and 7(ii)), may not be less than 85% of the Fair Market Value per Share at the date of grant of such Option; except that:

(i) No Option shall be exercisable prior to the date the Plan is approved by the Company's shareholders pursuant to Section 11;

(ii) No Option shall be granted more than 10 years from the Effective Date of the Plan and no Option shall be exercisable more than 10 years from the date such Option is granted;

(iii) Unless an accelerated version of the following vesting schedule is provided in the Agreement by the Committee in its sole discretion, each Option shall become exercisable for that number of Shares equal to at least 20% of the Shares subject to the Option each year; such that on or after the first anniversary of the grant of the Option, the Option shall be exercisable for at least 20% of the shares subject to the Option, on or after the second anniversary of the grant of the Option, the Option shall be exercisable for at least 40% of the shares subject to the Option, and so

on; provided, however, that Options granted to the Company's officers, directors or consultants may become fully exercisable, subject to reasonable conditions such as continued employment, at any time or during any period as determined by the Committee, including periods that extend for more than five (5) years; and

(iv) Notwithstanding any vesting schedule provided in the Agreement for any Option, the Agreement may provide that the Option is exercisable in full (and not in part) at any time without regard to such vesting schedule so long as the Shares issued pursuant to the exercise of the "nonvested" portion of the Option are issued as Unvested Shares (as defined in Section 8(c) below) having a vesting schedule (covering the lapse of the Company's right to repurchase the Unvested Shares at their original purchase price) that most closely approximates and mirrors the vesting schedule applicable to the Shares underlying the "nonvested" portion of the Option. For example, if, at the date of exercise of the Option in full (the "Exercise Date"), the Participant would otherwise have been permitted to exercise the Option as to 40% of the Shares covered thereby, with the balance of the Shares underlying the Option vesting as to one-third (1/3) of such shares on an annual basis during the succeeding three (3) year period, the Unvested Shares issued upon exercise in full of the Option will be subject to the Company's right to repurchase such Unvested Shares at their original purchase price, which repurchase right shall lapse as to one-third (1/3) of the Unvested Shares on each anniversary of the Exercise Date, so that on and after the first anniversary of the Exercise Date, the Company shall have the right to repurchase 40% of the Shares (or two-thirds (2/3) of the Unvested Shares) at their original purchase price, on and after the second anniversary of the Exercise Date, the Company shall have the right to repurchase 20% of the Shares (or one-third (1/3) of the Unvested Shares), and so on, with all such repurchase restrictions lapsing on the third (3rd) anniversary of the Exercise Date. Where the vesting schedule provided in the Agreement for an Option is based on annual vesting, the Company may, in making the exercise right described in the subparagraph (iv) available to Participants, provide in the Agreement that the repurchase restrictions applicable to the Unvested Shares will lapse on a monthly basis rather than on an annual basis, depending upon the event giving rise to the Company's repurchase right.

6. EXERCISE OF OPTIONS

(a) General Exercise Rights. An Option granted under the Plan shall be exercisable during the lifetime of the Participant to whom such Option was granted only by such Participant, and except as provided in Section 6(c) hereof, no such Option may be exercised unless at the time such Participant exercises such Option, such Participant is an employee of, or consultant to, the Company or a member of the Board of Directors, and has continuously since

the grant thereof been an employee of, or consultant to, the Company or a member of the Board of Directors. Transfer of employment between Company and its Affiliates shall not be considered an interruption or termination of employment for any purposes of this Plan. Neither shall a leave of absence at the request, or with the approval, of the Company or its Affiliates be deemed an interruption or termination of the employment term, the consulting arrangement or service as a member of the Board of Directors, so long as the period of such leave does not exceed 90 days, or, if longer, so long as the Participant's right to re-employment with the Company or reinstatement as a consultant or member of the Board of Directors is guaranteed by contract or statute. If the Participant is a member of the Board of Directors and is also an employee of the Company and is awarded an ISO, and the Participant's employment with the Company is subsequently terminated, then the ISO shall cease to be treated as an "incentive stock option" for purposes of Sections 421 and 422 of the Code. An Option shall also contain such conditions upon exercise (including, without limitation, conditions limiting the time of exercise to specified periods) as may be required to satisfy applicable regulatory requirements, including, without limitation, Rule 16b-3 (or any successor rule) promulgated by the SEC.

(b) Notice of Exercise. To exercise an Option, a Participant must give written notice to the Company in form satisfactory to the Company specifying the number of whole shares that the Participant elects to purchase. The Company shall specify a closing date, which shall not be more than 30 days after the date of the Participant's notice, for the payment of the Exercise Price and the issuance of the Shares being purchased. If any purchase of Shares requires the consent of or a filing with or notice to the SEC or any other applicable federal or state agency charged with the administration of applicable securities laws, the time period specified for the closing shall be extended for such periods as the necessary consent, filing or notice period is pending. The date of exercise shall be the date on which the written notice is received by the Company. On or before the closing date, the Participant must deliver to the Company in form satisfactory to the Company all documents required under the Plan, the Agreement and applicable laws and regulations with regard to the purchase of Shares, together with full payment of the Exercise Price and payment in cash of such amount as may be required to pay any and all applicable withholding taxes. The Company shall issue and deliver to the Participant on the specified closing date or at the earliest practicable date after the specified closing date one or more certificates for the number of Shares purchased, which certificates shall contain the legends set forth in Section 8(d) below. In the event the Option shall be exercised pursuant to Section 6(c)(i) hereof, by any person or persons other than the Participant, such notice shall be accompanied by appropriate proof of the right of such person or persons to exercise the Option.

(c) Exercise After Termination of Employment, Consulting Arrangement or Directorship. Except as otherwise determined by the Committee at the date of grant of the Option and as is provided in the applicable Agreement evidencing the Option, upon termination of a Participant's employment with the Company or a Subsidiary or Parent, such Participant (or in the case of death, the person(s) to whom the Option is transferred by will or the laws of descent and distribution) may exercise such Option during the following periods of time (but in no event after the expiration date of such Option) to the extent that such Participant was entitled to exercise such Option at the date of such termination:

(i) In the case of termination as a result of death or disability of the Participant, the Option shall remain exercisable to the extent it was exercisable at the date of termination for six (6) months after the date of termination, but in any event no later than the date of expiration of the Option exercise period; if the disability qualifies as a "disability" within the meaning of Section 22(e)(3) of the Code, then such Option will continue to be treated as an ISO, but if the disability does not so qualify, the Participant must exercise the Option within three (3) months after the date of termination to be entitled to ISO treatment, or the Option will be treated as a NQSO;

(ii) In the case of the termination of employment, a directorship or the consulting arrangement, where such termination is based upon or for "cause," as determined by the Board of Directors, the Option shall remain exercisable for five (5) days after the date of termination, but in any event no later than the date of expiration of the Option exercise period; and

(iii) In case of termination for any reason other than those set forth in subparagraphs (i) and (ii) above, the Option shall remain exercisable three (3) months after the date of termination, but in any event no later than the date of expiration of the Option exercise period.

To the extent the Option is not exercised within the foregoing periods of time, the Option shall automatically terminate at the end of the applicable period of time. Notwithstanding the foregoing provisions, failure to exercise an ISO within the periods of time prescribed under Section 421 and 422 of the Code shall cause an ISO to cease to be treated as an "incentive stock option" for purposes of Sections 421 and 422 of the Code.

(d) Payment of Option Exercise Price. Payment of the exercise price shall be made either (i) in cash (including check, bank draft or money order), (ii) with the consent of the Committee and subject to Section 6(f) hereof, by delivering the Participant's duly executed promissory note, (iii) with the consent of the Committee and subject to Section 6(e), by delivering Shares already owned by the Participant, or (iv) by a combination of these forms of payment.

(e) Payment with Stock. With the consent of the Committee, the Participant may deliver Shares already owned by the Participant, valued at Fair Market Value as of the closing date in full or partial payment of the Exercise Price of the Shares subject to any Option; provided, however, that no Shares already owned by the Participant which is "statutory option stock" as defined in Section 424(c)(3) of the Code may be delivered in payment for the Exercise Price if the applicable holding period requirements for such Shares under Section 422(a)(1) or 423(a)(1) of the Code have not been met at the time of exercise.

(f) Payment with Loan. The Committee may in its sole discretion assist a Participant in the exercise of one or more Options granted to such Participant under the Plan by

(i) authorizing a loan to the Participant from the Company, or (ii) authorizing a guaranty by the Company or any Affiliates of a third party loan to the Participant. The terms of any loan or guaranty (including the interest rate and terms of repayment) shall be established by the Committee in its sole discretion. Any such loan by the Company shall be with full recourse against the Participant to whom the loan is granted, shall be secured in whole or in part by the Shares so purchased, and shall bear interest at a rate not less than the minimum interest rate required at the time of purchase of the Shares in order to avoid having imputed interest or original issue discount under Sections 483 or 1272 of the Code. In addition, any such loan by the Company shall, at the option of the Company, become immediately due and payable in full upon termination of the Participant's employment or position as an officer or director with the Company or any Affiliate for any reason, or upon a sale of any Shares acquired with such loan to the extent of the cash and fair market value of any property received by the Participant in such sale. The Committee may make arrangements for the application of payroll deductions from compensation payable to the Participant to amounts owing to the Company under any such loan. Until any loan by the Company under this Section 6(f) is fully paid in cash, the Shares shall be pledged to the Company as security for such loan, and the Company shall retain physical possession of the stock certificates evidencing the Shares so purchased together with a duly executed stock power for such Shares. No loan shall be made hereunder unless counsel for the Company shall be satisfied that the loan and the issuance of Shares funded thereby will be in compliance with all applicable federal, state and local laws.

(g) Rights as a Shareholder. A Participant shall have no rights as a shareholder with respect to any Shares issuable on exercise of any Option until the date of the issuance of a stock certificate to the Participant for such Shares. No adjustment shall be made for dividends (ordinary or extraordinary, whether in cash, securities or other property) or distributions or other rights for which the record date is prior to the date such stock certificate is issued, except as provided in Section 4(b) hereof.

(h) Effect of Dissolution, Merger, Etc. In the event of a reorganization, merger or consolidation of the Company with one or more corporations, as a result of which the Company is not the surviving corporation, or upon a sale of substantially all of the property of the Company to another corporation, or upon the dissolution or liquidation of the Company, this Plan shall terminate, and any outstanding Options shall terminate, unless provision be made in connection with such transaction for the assumption of such Options, or the substitution for such Options of new incentive awards covering the stock of a successor employer corporation, or a parent or subsidiary thereof, with appropriate adjustments as to number and kind of shares and prices. To the extent not inconsistent with any applicable law, the Company shall use its best efforts to give at least 15 days advance notice of any such proposed transaction to each Participant who has outstanding unexercised Options, which notice shall describe the transaction in general terms, and notify the Participant of any action which the Company and the surviving corporation, if other than the Company, have decided to take with respect to that Participant's Options.

7. SPECIAL PROVISIONS FOR ISOs

Any provision of the Plan to the contrary notwithstanding, the following special provisions shall apply to all ISOs granted under the Plan:

(i) The Option must be expressly designated as an ISO by the Committee and in the Agreement;

(ii) The Exercise Price of any ISO shall not be less than the Fair Market Value per Share on the date such ISO is granted;

(iii) Any ISO shall not be transferable by the Participant to whom such ISO is granted other than by will or the laws of descent and distribution and shall be exercisable during such Participant's lifetime only by such Participant;

(iv) The aggregate Fair Market Value (determined as of the time any ISO is granted) of any Company stock with respect to which any ISOs granted to a Participant are exercisable for the first time by such Participant during any calendar year (under this Plan and all other stock option plans of the Company and any of its Affiliates and any predecessor of any such corporations) shall not exceed $100,000 as required under Section 422(d) of the Code (to the extent the $100,000 limit is exceeded, the $100,000 in options, measured as described above, granted earliest in time will be treated as ISOs and the remainder shall be NQSOs); and

(v) Any other terms and conditions as may be required in order that the ISO qualifies as an "incentive stock option" under Section 422 of the Code or successor provision.

8. RESTRICTED STOCK

(a) Restricted Stock Awards. Subject to Section 4(a), the Committee may, in its discretion, grant one or more Restricted Stock Awards to any Participant. Each Restricted Stock Award Agreement shall specify the number of Shares to be issued to the Participant, the date of such issuance, the price to be paid for such Shares by the Participant (which shall be at least 85% of the Fair Market Value of the Shares at the time of such award or at the time the purchase is consummated (except as provided in Section 3(b) above) and the restrictions imposed on such Shares. Shares of Restricted Stock shall be evidenced by a stock certificate registered only in the name of the Participant, which stock certificate shall be held by the Company until the restrictions on such Shares shall have lapsed and the repurchase rights granted to the Company in Section 13 below are no longer in effect.

(b) Restrictions.

(i) Restricted Stock may not be sold, assigned, transferred, pledged or otherwise disposed of or encumbered, either voluntarily or involuntarily, until such Shares have vested.

(ii) Participants receiving Restricted Stock shall be entitled to dividend and voting rights for the shares issued even though they are not vested, provided that such rights shall terminate immediately as to any forfeited Restricted Stock.

(c) Vesting. The Company shall have the right to repurchase certain Shares of Restricted Stock at their original purchase price in accordance with the general repurchase provisions set forth in Section 13(a)(i) below, which repurchase right shall lapse as to no less than 20% of such Shares on each anniversary of the date the Shares were purchased; so that on or after the first anniversary of the Restricted Stock Award, the Company shall have the right to repurchase 80% of such Shares at their original purchase price, on or after the second anniversary, the Company shall have the right to repurchase 60% of such Shares at their original purchase price, and so on, provided that all of such restrictions shall lapse no later than the fifth anniversary of the Restricted Stock Award. In addition to the restrictions set forth in the foregoing sentence, the Shares of Restricted Stock held by an officer, director or consultant of the Company may be subject to such additional or greater restrictions as determined by the Committee and imposed at the time of grant of the Restricted Stock Award. Shares of Restricted Stock that are subject to repurchase at their original purchase price hereunder shall be "Unvested Shares."

(d) Legend on Certificates. Each certificate evidencing Restricted Stock awarded under the Plan shall be registered in the name of the Participant and deposited by the Participant, together with a stock power endorsed in blank, with the Company and shall bear the following (or a similar) legend:

> THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OF DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED.
>
> THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH AN AGREEMENT BETWEEN THE COMPANY AND THE SHAREHOLDER, A COPY OF WHICH IS ON FILE IN THE PRINCIPAL OFFICE OF WEBTV NETWORKS, INC.

(e) Section 83(b) Elections. Within 30 days after the issuance of shares of Restricted Stock to a Participant under the Plan, the Participant shall decide whether or not to file an election pursuant to Section 83(b) of the Code and Treasury Regulation Section 1.83-2 (and state law counterparts) with respect to such Restricted Stock. If the Participant does file such an election, the Participant shall promptly furnish the Company with a copy of such election.

9. RESTRICTIONS OF TRANSFERS; GOVERNMENT REGULATIONS

(a) Awards Not Transferable. No Award nor any right or interest of a Participant under the Plan in any instrument evidencing any Award under the Plan may be assigned, encumbered, or transferred, except, in the event of the death of a Participant, by will or by the laws of descent and distribution.

(b) Government Regulations. This Plan, the granting of Awards under this Plan, and the issuance of or transfer of Shares (and/or the payment of money) pursuant thereto are subject to all applicable federal and state laws, rules and regulations and to such approvals by any regulatory or governmental agency (including without limitation "no action" positions of the SEC) which may, in the option of counsel for the Company, be necessary or advisable in connection therewith. Without limiting the applicability of the foregoing, no Awards may be granted under this Plan, and no Shares shall be issued by the Company, nor cash payments made by the Company, pursuant to or in connection with any such Award, unless and until, in each such case, all legal requirements applicable to the issuance or payment have, in the opinion of counsel to the Company, been complied with, including without limitation the delivery to the Company of written representations regarding the Participant's investment intent. In connection with any stock issuance or transfer, the person acquiring the Shares shall, if requested by the Company, give assurances satisfactory to counsel to the Company in respect of such matters as the Company may deem desirable to assure compliance with all applicable legal requirements.

10. ADMINISTRATION OF PLAN

(a) The Committee. The Plan shall be administered by the Committee, which shall act upon majority vote.

(i) Subject to 10(a)(ii) below, the Committee shall consist of two or more members of the Board of Directors.

(ii) If at any time any class of equity securities of the Company is registered pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934, then, to the extent possible, the Committee shall consist of two or more directors, each of whom shall, while serving on the Committee, be a "disinterested person" as defined in Rule 16b-3 (or any successor provisions) promulgated by the SEC and an "outside director" as referred to under Section 162(m) of the Code.

(b) Committee Action. A majority of the members of the Committee at the time in office shall constitute a quorum for the transaction of business, and any determination or action may be taken at a meeting by a majority vote or may be taken without a meeting by a

written resolution signed by all members of the Committee. All decisions and determinations of the Committee shall be final, conclusive and binding upon all Participants and upon all other persons claiming any rights under the Plan with respect to any Restricted Stock or Options. Members of the Board of Directors and members of the Committee, and each of them, shall be free from all liability, joint or several, for their acts, omissions and conduct, and for the acts, omissions and conduct of their duly appointed agents, in the administration of the Plan, except for those acts or omissions which constitute willful misconduct.

(c) Committee Authority. To clarify the Committee's powers and duties, but not to limit them, the Committee shall have full authority and power to:

(i) Interpret the provisions of the Plan and make rules and regulations for the administration of the Plan which are consistent with the Plan;

(ii) Decide all questions of eligibility for Plan participation and for the grant of Awards;

(iii) Adopt forms of Agreements and other documents consistent with the Plan;

(iv) Engage agents to perform legal, accounting and other professional services as it may deem proper for administrating the Plan; and

(v) Take other actions reasonably required or appropriate to administer the Plan or to carry out the Committee activities contemplated by the Plan.

(d) Indemnification. In addition to other rights of indemnification as they may have as directors or as members of the Committee, the members of the Committee shall be indemnified by the Company against reasonable expenses, including court costs and reasonable attorney fees, actually incurred in connection with the defense of any action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan or any Option, and against all amounts paid by them in settlement or in satisfaction of a judgment in any such action, suit or proceeding, except where such indemnification is expressly prohibited by applicable law.

11. EFFECTIVE DATE

The Effective Date of the Plan shall be the date of its approval by the Board of Directors, subject to the receipt within one year of that date of the approval of the holders of a majority of the shares of common stock of the Company, either at a meeting or by written consent. All Awards pursuant to the Plan prior to the receipt of shareholder approval shall be

effective when made but shall be subject to receipt of such approval. If such approval is not received, all Awards shall automatically terminate.

12. AMENDMENT AND TERMINATION

(a) The Plan.

(i) Amendment. The Board of Directors may amend the Plan from time to time in its sole discretion; provided, however, that no amendment shall, without the approval of the shareholders of the Company in accordance with the laws of the State of California and Section 422 of the Code and Rule 16b-3 under the Exchange Act: (a) change the class of persons eligible to receive Awards or otherwise materially modify the requirements as to eligibility for participation in the Plan; (b) increase the aggregate number of Shares with respect to which Awards may be made under the Plan; or (c) materially increase the benefits accruing to Participants under the Plan; or (d) remove the administration of the Plan from the Committee or render any member of the Committee eligible to receive an Award under the Plan while serving thereon. Any purported amendment in violation of these restrictions shall be void and of no effect. Furthermore, no amendment shall impair the rights of any Participant under any Award theretofore made under the Plan, without the Participant's consent.

(ii) Termination. The Plan shall terminate automatically on the tenth (10th) anniversary of the Effective Date, and the Board of Directors may suspend or terminate the Plan at any earlier time. Upon termination of the Plan, no additional Awards shall be granted under the Plan; provided, however, that the terms of the Plan and Agreements shall continue in full force and effect with respect to outstanding Restricted Stock and outstanding and unexercised Options granted under the Plan and Shares issued under the Plan.

(b) Awards. Subject to the terms and conditions and limitations of the Plan, the Committee may in the exercise of its sole discretion modify or renew outstanding Awards granted under the Plan, or accept the surrender of outstanding Awards (to the extent not theretofore exercised) and authorize the granting of new Awards in substitution therefor (to the extent not theretofore exercised). Without limiting the generality of the foregoing, the Committee may in its discretion at any time accelerate the time at which any Option is exercisable or the date on which any Restricted Stock vests, subject to compliance with the requirements of Rule 16b-3 (or successor provisions) promulgated by the SEC. Notwithstanding the foregoing, however, no modification of an Award shall, without the consent of the Participant, impair any rights or obligations under any Awards theretofore granted under the Plan.

13. REPURCHASE RIGHTS OF COMPANY

(a) Repurchase Rights on Termination of Employment, Consulting Arrangement or Directorship.

(i) Repurchase Rights of Company. In the event of the voluntary or involuntary termination of the Participant's employment or directorship or the termination of any

contract for services with the Participant if the Participant is a consultant, with the Company, a Subsidiary or a Parent, for any reasons, whether with or without cause, the Company shall have the right to repurchase all of the Shares (1) acquired upon exercise of any Option by the Participant, his assigns, heirs, legatees or legal representatives and (2) issued pursuant to a Restricted Stock Award, together with any shares of stock issued by the Company as a dividend or other distribution on, in exchange for or upon conversion of such Shares (collectively, the "Subject Shares"). Within 60 days after the termination (with respect to Subject Shares held or owned on the date of termination) or within 60 days after exercise of any Option after the date of termination (with respect to Subject Shares acquired after the date of termination), the Company may give written notice to the Participant, or if appropriate, his assigns, heirs, legatees or legal representatives, setting forth the Company's decision to exercise its repurchase right, the repurchase price of the Subject Shares and a date for closing not later than 15 days from the date of the written notice. The repurchase price per share shall be the Fair Market Value per share of the Subject Shares on the date of repurchase; provided, however, that as to Subject Shares that are Unvested Shares as defined in Section 8(c) above, the repurchase price may be the price per share set forth in that Section.

(ii) Assignment of Repurchase Rights. If the Company decides not to exercise its right of repurchase under Section 13(a)(i) above, the Company shall have the right to assign its right to repurchase the Subject Shares. Within 60 days after the termination (with respect to Subject Shares held or owned on the date of termination) or within 60 days after the exercise of any Option after the date of termination (with respect to Subject Shares acquired after the date of termination), the Company may give written notice to the Participant, or if appropriate, his assigns, heirs, legatees or legal representatives, setting forth the Company's decision to assign its repurchase right. Within 15 days after the Company decides to assign its repurchase right, the assignee may give written notice to the Company setting forth the decision to exercise the repurchase right. The Company shall in turn within 7 days of notice from the assignee give written notice to the Participant, or if appropriate, his assigns, heirs, legatees or legal representatives, setting forth the assignee's decision to exercise the repurchase right, the repurchase price of the Subject Shares and a date for closing not later than 7 days from the date of the written notice from the Company.

(b) Repurchase Rights on Transfer, Etc.

(i) Except as provided in the Plan, neither a Participant nor his assigns, heirs, legatees or legal representatives shall make any Voluntary Transfer of any interest in the Subject Shares except in compliance with this Section 13(b), and all Subject Shares shall be subject to this Section 13(b) in the event of any Involuntary Transfer. The Company shall have the right to repurchase all of the Subject Shares in the case of an Involuntary Transfer and in the case of a Voluntary Transfer, all of the Subject Shares that are part of the proposed transfer (in either case referred to as the "Offered Shares"). Prior to a Voluntary Transfer, and no later than 15 days after an Involuntary Transfer, the Participant, or his assigns, heirs, legatees or legal representatives, shall give written notice to the Company of such proposed or actual transfer. The written notice shall include a description of the Voluntary Transfer, the price (if any) and the other terms (including complete terms of payment) of the proposed transfer. Within 30 days of

the Company's receipt of the notice, the Company may give written notice to the Participant, or his assigns, heirs, legatees or legal representatives, stating whether the Company elects to exercise its repurchase rights, and, if so, the repurchase price of the Offered Shares, and a date for closing not later than 15 days from the date of the written notice.

(ii) In the case of a Voluntary Transfer consisting of a proposed sale solely for cash, based on a bona fide firm and present offer from a party unrelated to the Participant, his assigns, heirs, legatees or legal representatives, which offer is made primarily for investment purposes and not for the purpose of acquiring information concerning the Company or seeking any competitive advantage, and is not contingent on financing or otherwise, the repurchase price for the Company as to the Offered Shares shall be a cash amount equal to the price at which the sale is proposed to be made. In the case of any other kind of Voluntary Transfer or of any Involuntary Transfer, the repurchase price per share for the Offered Shares shall be the Fair Market Value as of the date of the Participant's written notice of the transfer or, if earlier, the date of the event triggering the Voluntary or Involuntary Transfer. Except with respect to a bona fide sale solely for cash, as described in the first sentence of this Section 13(b)(ii), if the Company's repurchase rights under Section 13(a) are in effect at the time notice of a Voluntary Transfer is given or at the time an Involuntary Transfer occurs, then notwithstanding the provisions of this Section 13(b)(ii) the repurchase price shall be determined as set forth in Section 13(a).

(iii) In the case of a Voluntary Transfer, if the Company (or its designee(s) under Section 13(c)(ii)) elects to repurchase none of the Offered Shares referred to in the Participant's written notice to the Company, the Participant may, within a period of 120 days from the date of delivery of notice to the Company, dispose of all of the Offered Shares, but only to the person or persons named in the notice at the price and on the terms set forth in the notice. In any case, whether a Voluntary Transfer or an Involuntary Transfer, if the Company (or its designee(s)) does not elect to exercise its right to repurchase the Offered Shares, then the shares shall continue to be subject to repurchase under this Section 13(b) in the hands of the transferee.

(iv) A "Voluntary Transfer" means any transfer of any interest in the Subject Shares which did not arise by operation of law (or which arises by operation of law in enforcing an agreement entered into by the holder of the Subject Shares); and includes, without limitation, a sale for cash, obligations or any other property, a gift, a hypothecation, the exercise of a right of foreclosure or a power of sale granted in connection with a hypothecation, a transfer pursuant to an order specifically enforcing an agreement entered into by the holder of the Subject Shares, a transfer to any person other than the Participant pursuant to an agreement of separate maintenance or the termination of the marriage of the Participant by divorce or dissolution, and, in the case of a nonindividual shareholder, any distribution to its shareholders, partners, beneficiaries or other holders of beneficial interests and any change in ownership resulting from a merger or other reorganization. An "Involuntary Transfer" means any transfer of any interest in the Subject Shares which is not a Voluntary Transfer; and includes, without limitation, the transfers resulting from death of an individual shareholder, involuntary dissolution of a nonindividual shareholder, an adjudication of bankruptcy or insolvency of a shareholder, the appointment of a guardian and/or conservator of the shareholder and any sale to satisfy a

judgment (except a judgment specifically enforcing an agreement entered into by the holder of the Subject Shares).

(c) Stock Repurchase Procedures

(i) The closing for the repurchase of any Shares under this Section 13 shall take place at the Company's principal offices. At the closing, the holder of the certificate(s) for the shares being transferred shall deliver the certificate(s) evidencing the shares to the Company, together with a duly executed stock power, and the Company or employee shall deliver the purchase price. The purchase price shall be payable in full in cash or by check.

(ii) The right of the Company to repurchase the Subject Shares or the Offered Shares shall be assignable in whole or in part by the Company to one or more persons or entities. Every designee shall have the right to exercise the repurchase rights in the designee's own name for the designee's own account and in the same manner provided for the Company; provided, however, that in the case of a Voluntary Transfer only, the designee(s) may exercise the repurchase rights with respect to fewer than all of the Offered Shares, so long as not fewer than all of the Offered Shares will be purchased by the Company and/or its designee(s) acting together.

(iii) If any repurchase of shares requires the consent of or a filing with or notice to the SEC or any other applicable federal or state agency charged with the administration of applicable securities laws, the time period for the closing shall be extended for such periods as the necessary consent, filing or notice period is pending.

(iv) The Company and the Participant may waive (but not unilaterally extend) any of the time periods for the exercise of any repurchase rights.

(d) Termination of Repurchase Rights. The repurchase rights described in this Section 13 shall terminate and no longer be of effect with respect to any termination of the Participant's employment (whether as an employee, consultant or advisor) or directorship occurring after:

(i) The mutual agreement of the Company and the Participant or other holder of the Shares; or

(ii) The effectiveness of a registration statement under the Securities Act of 1933 offering the Shares to the general public in a bona fide, firm commitment underwriting, but only as to such Shares which are not Unvested Shares.

(e) Certificates. So long as the repurchase rights granted to the Company are in effect as to any Subject Shares, the certificates for the Subject Shares shall be held by the Company.

14. MISCELLANEOUS

(a) Employment. Neither the establishment of the Plan nor any amendments thereto, nor the granting of any Options under the Plan, shall in any way modify or affect, or evidence any intention or understanding as to, the terms of employment of any Participant with the Company, or any Subsidiary or Parent, including the duration of such employment. Under no circumstances shall this Plan or the existence of this Plan restrict the Company's right to terminate the employment of any Participant. No person shall have a right to be granted Options or, having been granted Options, to be selected again.

(b) Multiple Options. Subject to the terms and restrictions set forth in the Plan, a Participant may hold more than one Option or more than one type of Option.

(c) Written Notice. Any notices required under the Plan shall be in writing and shall be given on the forms, if any, provided or specified by the Committee. Written notice shall be effective upon actual receipt by the person to whom such notice is to be given; provided, however, that in the case of notices to Participants and their assigns, heirs, legatees and legal representatives, notice shall be effective upon delivery if delivered personally or three business days after mailing, registered first class postage prepaid to the last known address of the person to whom notice is given. Written notice shall be given to the Committee and the Company at the following address or such other address as may be specified from time to time:

WebTV Networks, Inc.

305 Lytton Avenue

Palo Alto, CA 94301

(d) Applicable Law; Severability. The Plan shall be governed by and construed in all respects in accordance with the laws of the State of California and, with respect to ISOs, shall be interpreted and administered in accordance with Section 422 of the Code. If any provision regarding an ISO is susceptible of more than one interpretation, it shall be interpreted in a manner consistent with the Option being treated as an ISO for federal income tax purposes. If any provisions of the Plan shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall continue to be fully effective. To the extent there is any conflict between the Plan and any Agreement adopted pursuant to the Plan, the terms of this Plan shall govern.

(e) Withholding Taxes. The Company shall have the right to withhold from amounts due Participants, or to collect from Participants directly, the amount which the Company deems necessary to satisfy any taxes required by law to be withheld at any time by reason of participation in the Plan, and the obligations of the Company under the Plan shall be conditional on payment of such taxes. The Participant may, prior to the due date of any taxes, pay such amounts to the Company in cash, or with the consent of the Committee, in Shares (which shall be valued at their Fair Market Value on the date of payment). There is no obligation under this Plan that any Participant be advised of the existence of the tax or the amount required to be withheld. Without limiting the generality of the foregoing, in any case where it determines

that a tax is or will be required to be withheld in connection with the issuance or transfer or vesting of Shares under this Plan, the Company may, pursuant to such rules as the Committee may establish, reduce the number of such Shares so issued or transferred by such number of Shares as the Company may deem appropriate in its sole discretion to accomplish such withholding or make such other arrangements as it deems satisfactory. Notwithstanding any other provision of this Plan, the Committee may impose such conditions on the payment of any withholding obligation as may be required to satisfy applicable regulatory requirements, including, without limitation, Rule 16b-3 (or successor provisions) promulgated by the SEC.

(f) No Advice. The Company shall not be responsible for providing any Participant with legal, business or tax advice. Any legal or tax liabilities incurred by a Participant as a result of Participant's participation in the Plan shall be the sole responsibility of the Participant. Participants should consult their own attorneys and tax advisers with respect to questions regarding participation in the Plan.

(g) Construction. Definitions shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

INCENTIVE STOCK OPTION AGREEMENT
UNDER THE WEBTV NETWORKS, INC.
1996 STOCK INCENTIVE PLAN

THIS INCENTIVE STOCK OPTION AGREEMENT (the "Agreement"), effective as of (EffectiveDate), is entered into between WebTV Networks, Inc., a California corporation (the "Company") whose executive offices are located at 305 Lytton Avenue, Palo Alto, CA 94301 and (Optionee) (the "Optionee"), an officer or other employee of the Company, whose address is set forth on the signature page hereto.

R E C I T A L S

A. The Board of Directors of the Company has adopted, and the shareholders of the Company have approved, the WebTV Networks, Inc. 1996 Stock Incentive Plan, as amended (the "Plan"), to promote the long-term interests of the Company by providing officers and other employees of, and consultants to, the Company and members of the Board of Directors of the Company with an incentive to promote the financial success of the Company. Capitalized terms used in this Agreement without definition shall have the meanings set forth in the Plan, a copy of which is attached hereto as Exhibit C.

B. On (BoardAprvlDate) the Committee awarded to the Optionee an option to purchase shares of the Common Stock of the Company and the Optionee has elected to accept such option, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is agreed between the parties as follows:

SECTION 1. GRANT OF OPTION. In consideration of the services performed or to be performed by the Optionee, the Company hereby grants the Optionee an Option under the Plan to purchase (SharesSpelled) ((NoShares)) shares of Common Stock of the Company (the "Shares"), upon the following terms and conditions:

(a) The Option is granted under and pursuant to the Plan and the Option is subject to all of the provisions thereof.

(b) The Option is intended to be issued as an ISO.

(c) The Exercise Price of the Option is $(PricePerShare) per share.

(d) The Option is not exercisable after the tenth anniversary of the date first set forth above, subject to such shorter periods for exercising the Option as set forth in Section 6(c) of the Plan.

(e) The Option is not transferable otherwise than by the laws of testate and intestate descent and distribution, and the Option is exercisable during the lifetime of the Optionee only by the Optionee.

SECTION 2. EXERCISE.

(a) VESTING SCHEDULE. The Option shall vest as to 1/4th of the Shares upon the expiration of the first year of the Optionee's continuous employment with the Company, so that at any time after such first year, the optionee shall be entitled to exercise the Option as to 1/4th of the Shares. Thereafter, the Option shall continue to vest as to 1/36th of the balance of the Shares for each full month of continuous employment of the Optionee by the Company. Notwithstanding the foregoing, the Option will immediately cease to vest on the date that the Optionee's continuous employment with the Company ceases. If the Optionee's continuous employment ceases prior to the end of the first full year of employment, the Option shall not vest for such year, and if the Optionee's continuous employment ceases prior to the end of a full month, the Option shall not vest for such month. Calculation of the first year and monthly vesting thereafter shall be determined based on the actual date of employment so that if an employee became employed on the 25th day of a month, the one month period would end on the 24th day of the following month. Where there is no corresponding day of the following month for the applicable measurement date (i.e., no 31st day in the following month), the last day of the following month shall be used to measure the full month.

(b) EXERCISE. Subject to Section 1(d) hereof and all other provisions of this Agreement and the Plan applicable to the exercise of the Option, the Option shall be exercisable only with respect to such portion of the Option as has become vested pursuant to Section 2(a) above and only with respect to whole Shares.

(c) CHANGE OF OWNERSHIP. The Option is subject to Section 6(h) of the Plan regarding the proposed effect of dissolution, merger, etc., as defined in the Plan.

(d) TERMINATION OF EMPLOYMENT. The Optionee or, in the event of the Optionee's death, the Optionee's heirs, legatees or legal representatives, as the case may be, shall have the right to exercise the Optionee's Option with respect to the same number of Shares that the Optionee would have been able to exercise hereunder on the date immediately preceding the date the Optionee's employment was terminated (without regard to any severance pay, vacation pay or other payments upon termination) in accordance with the Plan.

(e) EXERCISE PROCEDURE. The Option or any part thereof shall be exercised by giving written notice of exercise to the Secretary of the Company on or before the applicable date specified in Section 6(c) of the Plan. Such notice shall state the Optionee's election to exercise the Option, the number of whole Shares in respect of which the Option is being exercised, and the notice must be signed by the Optionee or other person exercising the Option. Such exercise shall either be evidenced by the delivery of the notice accompanied by payment of the full Exercise Price and all applicable withholding taxes and an Assignment Separate from Certificate duly executed (with date and number in blank) in the form attached as Exhibit A to this Agreement, in which event the Company shall issue any certificate(s) representing the Shares to which the Optionee is entitled as a result of the exercise as soon as practicable after the notice has been received; or the Company shall fix a date (the "CLOSING DATE") (not more than 30 days from the date such notice has been received by the Company) for the payment of the full Exercise Price and all applicable withholding taxes and the delivery of the Assignment Separate from Certificate duly executed (with date and number in blank) in the form attached as Exhibit A to this Agreement, against the issuance by the Company of any certificate(s) representing Shares to which the Optionee is entitled to receive as a result of the exercise. If any issuance or transfer of the Shares to be purchased requires the consent of or a filing

with or notice to the Securities and Exchange Commission or any other applicable agency charged with the administration of applicable securities laws, the Closing Date shall be extended for such period as the necessary request for consent or approval to issue or transfer is pending. Neither the Optionee nor the Optionee's heirs, legatees, or legal representatives may exercise the Option granted under this Agreement more than once in any given calendar quarter without the consent of the Committee, except in the case of the exercise of an Option following the Optionee's death or termination of employment with the Company or an exercise made in contemplation of a transaction described in Section 2(c) above. The date on which the Optionee's written notice is received by the Secretary of the Company shall be the date of exercise of the Option as to such number of Shares. On or before the Closing Date, the Optionee must deliver to the Secretary of the Company in form satisfactory to the Committee all documents required under the Plan, this Agreement and applicable laws and regulations with regard to the purchase of Common Stock (including investment and/or residency representations as may be required by the Committee). Payment of the Exercise Price shall be made either (i) in cash (including check, bank draft or money order), (ii) with the consent of the Committee by delivering Shares already owned by the Optionee, or (iii) by a combination of these forms of payment.

SECTION 3. COMPANY'S REPURCHASE OPTION. The Shares which have been issued to Optionee upon exercise of the Option under the provisions of Section 2 of this Agreement shall be subject to repurchase by the Company in accordance with Section 13 of the Plan.

SECTION 4. DEPOSIT OF STOCK CERTIFICATES.

(a) As security for the Optionee's faithful performance of the terms of this Agreement and to insure the availability for delivery of the Optionee's Shares upon exercise of the Company's repurchase rights under the Plan, the Optionee hereby agrees that (i) the certificates evidencing the Shares and any additions and substitutions to said Shares may be retained and held by the Company in accordance with the terms of this Section 4 and (ii) the Optionee will deliver and deposit with the Company on the Closing Date the Assignment Separate from Certificate duly executed (with date and number of shares in blank) as set forth in Section 2(e) above.

(b) The Optionee further hereby irrevocably constitutes and appoints the Company as his or her attorney-in-fact and agent to execute with respect to the foregoing securities all documents and/or agreements necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated. Subject to the provisions of this Section 4, the Optionee shall be entitled to exercise all rights and privileges of a shareholder of the Company while the certificates representing the Shares are held by the Company.

(c) In the event the Company shall elect to exercise its repurchase rights under the Agreement and the Plan, the Company shall give to the Optionee a written notice as provided in the Plan, and the Company is hereby irrevocably authorized and directed to close the transaction contemplated by such notice.

(d) Upon the closing of any repurchase of all or any portion of the Shares, the Company will (i) date the stock assignment form or forms necessary for the transfer in question, (ii) fill in the number of Shares being repurchased, (iii) cancel the certificate or certificates evidencing the Shares being repurchased, against the simultaneous delivery to the Optionee of the purchase price (by certified or bank cashier's check) for the number of Shares being purchased

pursuant to the exercise of the Company's repurchase rights, and (iv) retain the certificate or certificates evidencing the Shares not being repurchased in accordance with the terms of this Section 4.

(e) Upon the termination of all restrictions imposed upon the Shares under the Plan and this Agreement, the Company will deliver to the Optionee a certificate or certificates representing the number of Shares not repurchased by the Company or its assignee(s) pursuant to exercise of the Company's repurchase rights under the Plan.

SECTION 5. RESTRICTIONS ON SALE OR TRANSFER. The Optionee shall not sell or transfer at any time any Shares except as permitted in the Plan. Notwithstanding any permitted sale or transfer of the Shares under the Plan, no permitted sale or transfer shall be effective as against the Company until such time as the transferee has furnished the Company with an executed copy of Exhibit B attached hereto.

SECTION 6. CESSATION OF SHAREHOLDER RIGHTS. If the Company makes available, at the time and place and in the amount and form provided in this Agreement, the consideration for the Shares to be repurchased in accordance with the provisions of Section 3 of this Agreement, then from and after such time the person from whom such Shares are to be repurchased shall no longer have any rights as a holder of such Shares (other than the right to receive payment of such consideration in accordance with this Agreement). Such Shares shall be deemed to have been repurchased in accordance with the applicable provisions of this Agreement, whether or not the certificate(s) therefor have been delivered as required by this Agreement.

SECTION 7. LEGENDS. All certificates representing the Shares issued to the Optionee upon exercise of the Option shall, where applicable, have endorsed thereon legends in substantially the following form:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SHARES UNDER SAID ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT REGISTRATION IS NOT REQUIRED.

THE TRANSFERABILITY OF THIS CERTIFICATE AND THE SHARES OF STOCK REPRESENTED HEREBY ARE SUBJECT TO THE TERMS AND CONDITIONS (INCLUDING FORFEITURE) CONTAINED IN THE WEBTV NETWORKS, INC. 1996 STOCK INCENTIVE PLAN AND AN INCENTIVE STOCK OPTION AGREEMENT ENTERED INTO BETWEEN THE REGISTERED OWNER AND WEBTV NETWORKS, INC. COPIES OF SUCH PLAN AND AGREEMENT ARE ON FILE IN THE PRINCIPAL OFFICES OF THE COMPANY.

and any legend required to be placed thereon by the California Commissioner of Corporations, if any, and any applicable state securities law.

SECTION 8. INVESTMENT REPRESENTATIONS.

(a) This Agreement is made with the Optionee in reliance upon the Optionee's representation to the Company, which by his or her acceptance hereof he or she confirms, that the Option and the Shares which he or she will receive will be acquired for investment for an indefinite period for his or her own account, not as a nominee or agent, and not with a view to the sale or distribution of any part thereof, and that he or she has no present intention of selling, granting participation in, or otherwise distributing the same, but subject, nevertheless, to any requirement of law that the disposition of his or her property shall at all times be within his or her control. By executing this Agreement, the Optionee further represents (i) that he or she does not have any contract, understanding or agreement with any person to sell, transfer or grant participation, to such person or to any third person, with respect to the Option or any of the Shares issuable pursuant to the Option, (ii) that his or her current residence address is as set forth on the signature page hereto, and (iii) that all communications between the parties concerning the Shares issuable pursuant to the Option have taken place within the State of California.

(b) The Optionee understands that the Shares will not be registered under the Securities Act of 1933, as amended (the "SECURITIES ACT") on the ground that the sale provided for in this Agreement is exempt pursuant to Section 4(2) of the Securities Act, and that the Company's reliance on such exemption is predicated on his or her representations set forth herein.

(c) The Optionee agrees that in no event will he or she make a disposition of any of the Shares, unless and until (i) he or she shall have notified the Company of the proposed disposition and shall have furnished the Company with a statement of the circumstances surrounding the proposed disposition, and (ii) he or she shall have furnished the Company with an opinion of counsel satisfactory to the Company to the effect that (A) such disposition will not require registration of such Common Stock under the Securities Act, or (B) that appropriate action necessary for compliance with the Securities Act has been taken, or (iii) the Company shall have waived, expressly and in writing, its rights under clauses (i) and (ii) of this Section 8(c).

(d) In connection with the investment representations made herein, the Optionee represents that he or she has heretofore discussed or had the opportunity to discuss the Company's plans, operations and financial condition with the Company's officers and has heretofore received all such information as he or she deems necessary and appropriate to enable him or her to evaluate the financial risks inherent in his or her investment. The Optionee further represents that he or she has received satisfactory and complete information concerning the business and financial condition of the Company in response to all inquiries in respect thereof, and by reason of the Optionee's business or financial experience or the business or financial experience of the Optionee's professional advisors who are unaffiliated with and who are not compensated by the Company or any affiliate or selling agent of the Company, directly or indirectly, the Optionee has the capacity to protect his or her own interest in connection with the transactions contemplated by this Agreement.

(e) The Optionee understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "EXCHANGE ACT") or if a registration statement covering the Shares (or a filing pursuant to the

exemption from registration under Regulation A of the Securities Act) under the Securities Act is not in effect when he or she desires to sell the Shares, he or she may be required to hold the Shares for an indeterminate period. The Optionee also acknowledges that he or she understands that any sale of the Shares which might be made by him or her in reliance upon Rule 144 under the Securities Act may be made only in limited amounts in accordance with the terms and conditions of that Rule 144.

SECTION 9. INITIAL PUBLIC OFFERING. The Optionee hereby agrees that in the event of an initial public offering of stock made by the Company under the Securities Act, the Optionee shall not offer, sell, contract to sell, pledge, hypothecate, grant any option to purchase or make any short sale of, or otherwise dispose of any shares of stock of the Company or any rights to acquire stock of the Company for one hundred eighty (180) days, or such shorter period as may be determined by the Board of Directors of the Company, from the effective date of the registration statement to be filed in connection with such initial public offering.

SECTION 10. MODIFICATIONS. No modification of this Agreement shall be valid unless made in writing and signed by the parties to this Agreement.

SECTION 11. ENTIRE AGREEMENT. This Agreement and the Plan constitute the entire agreement between the Company and the Optionee regarding the Option and the Shares issuable thereunder and supersedes all prior or contemporaneous discussions between them. In the event of a conflict between the terms of this Agreement and the Plan, the Plan shall be controlling. Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, all remaining parts, terms and provisions of this Agreement shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties to this Agreement or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. The headings of each paragraph of this Agreement are provided for the convenience of the parties and are not to be given legal effect or significance.

SECTION 12. INCOME TAXES. Neither the Company nor the Committee nor any of their representatives or agents has made any representations or warranties to the Optionee with respect to the income tax or other consequences of the transactions contemplated by this Agreement, and the Optionee is in no manner relying on the Company, the Committee or any of their representatives or agents for an assessment of such tax or other consequences.

SECTION 13. WRITTEN NOTICE. Any written notice under this Agreement shall be given in the manner and shall be effective on the date provided in Section 14(c) of the Plan.

SECTION 14. EMPLOYMENT OR OTHER RELATIONSHIP. Neither the establishment of the Plan nor any amendments thereto, nor the granting of this Option shall be construed as in any way modifying or affecting, or evidencing any intention or understanding with respect to, the terms of employment of the Optionee with the Company. An Optionee may be terminated at any time by the Company and such termination may be with or without cause subject to applicable agreements. No person shall have a right to be granted Options or, having been selected as the recipient of a grant thereof, to be so selected again.

SECTION 15. MISCELLANEOUS. This Agreement shall bind and inure to the benefit of the Company and its successors and assigns, and the Optionee and any heir, legatee, or legal

representative of the Optionee as provided in Section 2(d) hereof. This Agreement shall be interpreted under and governed by the laws of the State of California. The sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and federal courts located in the County of Santa Clara, California.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Company and the Optionee to be effective as of the date first set forth above.

Optionee: WebTV Networks, Inc.

_____ By: _____
(Optionee) Its: _____

Address:
_____

_____

_____

Optionee's employment by the Company commenced on: (EmpStartDate)

This option begins vesting on (if other than above): (VCD)

SPOUSAL CONSENT

The undersigned has read and is familiar with the preceding Agreement and hereby consents and agrees to be bound by all the terms of the Agreement (including the Plan), together with any and all amendments thereto, as if the undersigned had executed the Agreement and/or such amendments. Without limiting the foregoing, the undersigned specifically agrees that the Company may rely on any authorization, instruction, election or amendment made under the Agreement by the Optionee alone and that all of his or her right, title or interest, if any, in the Common Stock purchased by the Optionee under the Agreement, whether arising by operation of community property law, by property settlement or otherwise, shall be subject to all of such terms.

Dated: _____

_____
(Printed Name)

_____
(Signature)

EXHIBIT A

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers _____ (_____) shares of the Common Stock of WEBTV NETWORKS, INC., a California corporation (the "Company"), standing in the undersigned's name on the books of the Company represented by Certificate No. _____ to the Company and herewith and hereby irrevocably constitutes and appoints _____ Attorney to transfer said stock on the books of the Company with full power of substitution in the premises.

Dated: _____

_____
(Optionee)

EXHIBIT B

ACKNOWLEDGMENT OF AND AGREEMENT TO BE BOUND
BY THE 1996 STOCK INCENTIVE PLAN OF
WEBTV NETWORKS, INC.

The undersigned, as transferee of shares of WEBTV NETWORKS, INC., hereby acknowledges that he or she has read and reviewed the terms of the Incentive Stock Option Agreement attached hereto (the "Agreement") and the 1996 Stock Incentive Plan of WEBTV NETWORKS, INC. and hereby agrees to be bound by the terms and conditions thereof, as if the undersigned had executed the Agreement as an original party thereto.

Dated: _____

_____
(Printed Name)

_____
(Signature)

Address:
_____

_____

_____

EXHIBIT C

1996 STOCK INCENTIVE PLAN

[attached]

INCENTIVE STOCK OPTION AGREEMENT
UNDER THE WEBTV NETWORKS, INC.
1996 STOCK INCENTIVE PLAN
(Option Awarded as a Bonus)

THIS INCENTIVE STOCK OPTION AGREEMENT (the "Agreement"), effective as of ((EffectiveDate)), is entered into between WebTV Networks, Inc., a California corporation (the "Company") whose executive offices are located at 305 Lytton Avenue, Palo Alto, CA 94301 and ((Optionee)) (the "Optionee"), an officer or other employee of the Company, whose address is set forth on the signature page hereto.

R E C I T A L S

A. The Board of Directors of the Company has adopted, and the shareholders of the Company have approved, the WebTV Networks, Inc. 1996 Stock Incentive Plan, as amended (the "Plan"), to promote the long-term interests of the Company by providing officers and other employees of, and consultants to, the Company and members of the Board of Directors of the Company with an incentive to promote the financial success of the Company. Capitalized terms used in this Agreement without definition shall have the meanings set forth in the Plan, a copy of which is attached hereto as Exhibit C.

B. On ((BoardAprvlDate)) the Committee awarded to the Optionee an option to purchase shares of the Common Stock of the Company and the Optionee has elected to accept such option, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is agreed between the parties as follows:

Section 1. Grant of Option. In consideration of the services performed or to be performed by the Optionee, the Company hereby grants the Optionee an Option under the Plan to purchase ((SharesSpelled)) (((NoShares))) shares of Common Stock of the Company (the "Shares"), upon the following terms and conditions:

(a) The Option is granted under and pursuant to the Plan and the Option is subject to all of the provisions thereof.

(b) The Option is intended to be issued as an ISO.

(c) The Exercise Price of the Option is $((PricePerShare)) per share.

(d) The Option is not exercisable after the tenth anniversary of the date first set forth above, subject to such shorter periods for exercising the Option as set forth in Section 6(c) of the Plan.

(e) The Option is not transferable otherwise than by the laws of testate and intestate descent and distribution, and the Option is exercisable during the lifetime of the Optionee only by the Optionee.

Section 2. Exercise.

(a) Vesting Schedule. The Option shall vest as to 1/4th of the Shares upon the expiration of one (1) year from the "Vesting Commencement Date" set forth at the end of this Agreement, so that at any time after such one (1) year period (provided, that this Option is not sooner terminated as set forth below), the Optionee shall be entitled to exercise the Option as to 1/4th of the Shares. Thereafter, the Option shall continue to vest as to 1/36th of the balance of the Shares for each full month of continuous employment of the Optionee by the Company. Notwithstanding the foregoing, the Option will immediately cease to vest on the date that the Optionee's continuous employment with the Company ceases. If the Optionee's continuous employment ceases prior to the expiration of the one (1) year period year set forth in the first sentence of this Section 2(a), the Option shall not vest for such period, and if the Optionee's continuous employment ceases prior to the end of a full month, the Option shall not vest for such month. Calculation of the one year and monthly vesting thereafter shall be determined based on the actual date of employment so that if an employee became employed on the 25th day of a month, the one month period would end on the 24th day of the following month. Where there is no corresponding day of the following month for the applicable measurement date (i.e., no 31st day in the following month), the last day of the following month shall be used to measure the full month.

(b) Exercise. Subject to Section 1(d) hereof and all other provisions of this Agreement and the Plan applicable to the exercise of the Option, the Option shall be exercisable only with respect to such portion of the Option as has become vested pursuant to Section 2(a) above and only with respect to whole Shares.

(c) Change of Ownership. The Option is subject to Section 6(h) of the Plan regarding the proposed effect of dissolution, merger, etc., as defined in the Plan.

(d) Termination of Employment. The Optionee or, in the event of the Optionee's death, the Optionee's heirs, legatees or legal representatives, as the case may be, shall have the right to exercise the Optionee's Option with respect to the same number of Shares that the Optionee would have been able to exercise hereunder on the date immediately preceding the date the Optionee's employment was terminated (without regard to any severance pay, vacation pay or other payments upon termination) in accordance with the Plan.

(e) Exercise Procedure. The Option or any part thereof shall be exercised by giving written notice of exercise to the Secretary of the Company on or before the applicable date specified in Section 6(c) of the Plan. Such notice shall state the Optionee's election to exercise the Option, the number of whole Shares in respect of which the Option is being exercised, and the notice must be signed by the Optionee or other person exercising the Option. Such exercise shall either be evidenced by the delivery of the notice accompanied by payment of the full Exercise Price and all applicable withholding taxes and an Assignment Separate from Certificate duly executed (with date and number in blank) in the form attached as Exhibit A to this Agreement, in which event the Company shall issue any certificate(s) representing the Shares to which the Optionee is entitled as a result of the exercise as soon as practicable after the notice

has been received; or the Company shall fix a date (the "Closing Date") (not more than 30 days from the date such notice has been received by the Company) for the payment of the full Exercise Price and all applicable withholding taxes and the delivery of the Assignment Separate from Certificate duly executed (with date and number in blank) in the form attached as Exhibit A to this Agreement, against the issuance by the Company of any certificate(s) representing Shares to which the Optionee is entitled to receive as a result of the exercise. If any issuance or transfer of the Shares to be purchased requires the consent of or a filing with or notice to the Securities and Exchange Commission or any other applicable agency charged with the administration of applicable securities laws, the Closing Date shall be extended for such period as the necessary request for consent or approval to issue or transfer is pending. Neither the Optionee nor the Optionee's heirs, legatees, or legal representatives may exercise the Option granted under this Agreement more than once in any given calendar quarter without the consent of the Committee, except in the case of the exercise of an Option following the Optionee's death or termination of employment with the Company or an exercise made in contemplation of a transaction described in Section 2(c) above. The date on which the Optionee's written notice is received by the Secretary of the Company shall be the date of exercise of the Option as to such number of Shares. On or before the Closing Date, the Optionee must deliver to the Secretary of the Company in form satisfactory to the Committee all documents required under the Plan, this Agreement and applicable laws and regulations with regard to the purchase of Common Stock (including investment and/or residency representations as may be required by the Committee). Payment of the Exercise Price shall be made either (i) in cash (including check, bank draft or money order), (ii) with the consent of the Committee by delivering Shares already owned by the Optionee, or (iii) by a combination of these forms of payment.

Section 3. Company's Repurchase Option. The Shares which have been issued to Optionee upon exercise of the Option under the provisions of Section 2 of this Agreement shall be subject to repurchase by the Company in accordance with Section 13 of the Plan.

Section 4. Deposit of Stock Certificates.

(a) As security for the Optionee's faithful performance of the terms of this Agreement and to insure the availability for delivery of the Optionee's Shares upon exercise of the Company's repurchase rights under the Plan, the Optionee hereby agrees that (i) the certificates evidencing the Shares and any additions and substitutions to said Shares may be retained and held by the Company in accordance with the terms of this Section 4 and (ii) the Optionee will deliver and deposit with the Company on the Closing Date the Assignment Separate from Certificate duly executed (with date and number of shares in blank) as set forth in Section 2(e) above.

(b) The Optionee further hereby irrevocably constitutes and appoints the Company as his or her attorney-in-fact and agent to execute with respect to the foregoing securities all documents and/or agreements necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated. Subject to the provisions of this Section 4, the Optionee shall be entitled to exercise all rights and privileges of a shareholder of the Company while the certificates representing the Shares are held by the Company.

(c) In the event the Company shall elect to exercise its repurchase rights under the Agreement and the Plan, the Company shall give to the Optionee a written notice as provided in the Plan, and the Company is hereby irrevocably authorized and directed to close the transaction contemplated by such notice.

(d) Upon the closing of any repurchase of all or any portion of the Shares, the Company will (i) date the stock assignment form or forms necessary for the transfer in question, (ii) fill in the number of Shares being repurchased, (iii) cancel the certificate or certificates evidencing the Shares being repurchased, against the simultaneous delivery to the Optionee of the purchase price (by certified or bank cashier's check) for the number of Shares being purchased pursuant to the exercise of the Company's repurchase rights, and (iv) retain the certificate or certificates evidencing the Shares not being repurchased in accordance with the terms of this Section 4.

(e) Upon the termination of all restrictions imposed upon the Shares under the Plan and this Agreement, the Company will deliver to the Optionee a certificate or certificates representing the number of Shares not repurchased by the Company or its assignee(s) pursuant to exercise of the Company's repurchase rights under the Plan.

Section 5. Restrictions on Sale or Transfer. The Optionee shall not sell or transfer at any time any Shares except as permitted in the Plan. Notwithstanding any permitted sale or transfer of the Shares under the Plan, no permitted sale or transfer shall be effective as against the Company until such time as the transferee has furnished the Company with an executed copy of Exhibit B attached hereto.

Section 6. Cessation of Shareholder Rights. If the Company makes available, at the time and place and in the amount and form provided in this Agreement, the consideration for the Shares to be repurchased in accordance with the provisions of Section 3 of this Agreement, then from and after such time the person from whom such Shares are to be repurchased shall no longer have any rights as a holder of such Shares (other than the right to receive payment of such consideration in accordance with this Agreement). Such Shares shall be deemed to have been repurchased in accordance with the applicable provisions of this Agreement, whether or not the certificate(s) therefor have been delivered as required by this Agreement.

Section 7. Legends. All certificates representing the Shares issued to the Optionee upon exercise of the Option shall, where applicable, have endorsed thereon legends in substantially the following form:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SHARES UNDER SAID ACT OR AN OPINION OF COUNSEL

SATISFACTORY TO THE ISSUER THAT REGISTRATION IS NOT REQUIRED.

THE TRANSFERABILITY OF THIS CERTIFICATE AND THE SHARES OF STOCK REPRESENTED HEREBY ARE SUBJECT TO THE TERMS AND CONDITIONS (INCLUDING FORFEITURE) CONTAINED IN THE WEBTV NETWORKS, INC. 1996 STOCK INCENTIVE PLAN AND AN INCENTIVE STOCK OPTION AGREEMENT ENTERED INTO BETWEEN THE REGISTERED OWNER AND WEBTV NETWORKS, INC. COPIES OF SUCH PLAN AND AGREEMENT ARE ON FILE IN THE PRINCIPAL OFFICES OF THE COMPANY.

and any legend required to be placed thereon by the California Commissioner of Corporations, if any, and any applicable state securities law.

Section 8. Investment Representations.

(a) This Agreement is made with the Optionee in reliance upon the Optionee's representation to the Company, which by his or her acceptance hereof he or she confirms, that the Option and the Shares which he or she will receive will be acquired for investment for an indefinite period for his or her own account, not as a nominee or agent, and not with a view to the sale or distribution of any part thereof, and that he or she has no present intention of selling, granting participation in, or otherwise distributing the same, but subject, nevertheless, to any requirement of law that the disposition of his or her property shall at all times be within his or her control. By executing this Agreement, the Optionee further represents (i) that he or she does not have any contract, understanding or agreement with any person to sell, transfer or grant participation, to such person or to any third person, with respect to the Option or any of the Shares issuable pursuant to the Option, (ii) that his or her current residence address is as set forth on the signature page hereto, and (iii) that all communications between the parties concerning the Shares issuable pursuant to the Option have taken place within the State of California.

(b) The Optionee understands that the Shares will not be registered under the Securities Act of 1933, as amended (the "Securities Act") on the ground that the sale provided for in this Agreement is exempt pursuant to Section 4(2) of the Securities Act, and that the Company's reliance on such exemption is predicated on his or her representations set forth herein.

(c) The Optionee agrees that in no event will he or she make a disposition of any of the Shares, unless and until (i) he or she shall have notified the Company of the proposed disposition and shall have furnished the Company with a statement of the circumstances surrounding the proposed disposition, and (ii) he or she shall have furnished the Company with an opinion of counsel satisfactory to the Company to the effect that (A) such disposition will not require registration of such Common Stock under the Securities Act, or (B) that appropriate action necessary for compliance with the Securities Act has been taken, or (iii) the Company shall have waived, expressly and in writing, its rights under clauses (i) and (ii) of this Section 8(c).

(d) In connection with the investment representations made herein, the Optionee represents that he or she has heretofore discussed or had the opportunity to discuss the Company's plans, operations and financial condition with the Company's officers and has heretofore received all such information as he or she deems necessary and appropriate to enable him or her to evaluate the financial risks inherent in his or her investment. The Optionee further represents that he or she has received satisfactory and complete information concerning the business and financial condition of the Company in response to all inquiries in respect thereof, and by reason of the Optionee's business or financial experience or the business or financial experience of the Optionee's professional advisors who are unaffiliated with and who are not compensated by the Company or any affiliate or selling agent of the Company, directly or indirectly, the Optionee has the capacity to protect his or her own interest in connection with the transactions contemplated by this Agreement.

(e) The Optionee understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or if a registration statement covering the Shares (or a filing pursuant to the exemption from registration under Regulation A of the Securities Act) under the Securities Act is not in effect when he or she desires to sell the Shares, he or she may be required to hold the Shares for an indeterminate period. The Optionee also acknowledges that he or she understands that any sale of the Shares which might be made by him or her in reliance upon Rule 144 under the Securities Act may be made only in limited amounts in accordance with the terms and conditions of that Rule 144.

Section 9. Initial Public Offering. The Optionee hereby agrees that in the event of an initial public offering of stock made by the Company under the Securities Act, the Optionee shall not offer, sell, contract to sell, pledge, hypothecate, grant any option to purchase or make any short sale of, or otherwise dispose of any shares of stock of the Company or any rights to acquire stock of the Company for one hundred eighty (180) days, or such shorter period as may be determined by the Board of Directors of the Company, from the effective date of the registration statement to be filed in connection with such initial public offering.

Section 10. Modifications. No modification of this Agreement shall be valid unless made in writing and signed by the parties to this Agreement.

Section 11. Entire Agreement. This Agreement and the Plan constitute the entire agreement between the Company and the Optionee regarding the Option and the Shares issuable thereunder and supersedes all prior or contemporaneous discussions between them. In the event of a conflict between the terms of this Agreement and the Plan, the Plan shall be controlling. Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, all remaining parts, terms and provisions of this Agreement shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties to this Agreement or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. The headings of each paragraph of this Agreement are provided for the convenience of the parties and are not to be given legal effect or significance.

Section 12. Income Taxes. Neither the Company nor the Committee nor any of their representatives or agents has made any representations or warranties to the Optionee with respect to the income tax or other consequences of the transactions contemplated by this Agreement, and the Optionee is in no manner relying on the Company, the Committee or any of their representatives or agents for an assessment of such tax or other consequences.

Section 13. Written Notice. Any written notice under this Agreement shall be given in the manner and shall be effective on the date provided in Section 14(c) of the Plan.

Section 14. Employment or Other Relationship. Neither the establishment of the Plan nor any amendments thereto, nor the granting of this Option shall be construed as in any way modifying or affecting, or evidencing any intention or understanding with respect to, the terms of employment of the Optionee with the Company. An Optionee may be terminated at any time by the Company and such termination may be with or without cause subject to applicable agreements. No person shall have a right to be granted Options or, having been selected as the recipient of a grant thereof, to be so selected again.

Section 15. Miscellaneous. This Agreement shall bind and inure to the benefit of the Company and its successors and assigns, and the Optionee and any heir, legatee, or legal representative of the Optionee as provided in Section 2(d) hereof. This Agreement shall be interpreted under and governed by the laws of the State of California. The sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and federal courts located in the County of Santa Clara, California.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Company and the Optionee to be effective as of the date first set forth above.

Optionee: WebTV Networks, Inc.

_____ By: _____
(Optionee) Its: _____

Address:
_____
_____
_____

Optionee's employment by the Company commenced on: (EmpStartDate)

This option begins vesting on (if other than above): (VCD)

Spousal Consent

The undersigned has read and is familiar with the preceding Agreement and hereby consents and agrees to be bound by all the terms of the Agreement (including the Plan), together with any and all amendments thereto, as if the undersigned had executed the Agreement and/or such amendments. Without limiting the foregoing, the undersigned specifically agrees that the Company may rely on any authorization, instruction, election or amendment made under the Agreement by the Optionee alone and that all of his or her right, title or interest, if any, in the Common Stock purchased by the Optionee under the Agreement, whether arising by operation of community property law, by property settlement or otherwise, shall be subject to all of such terms.

Dated: _____

_____
(Printed Name)

_____
(Signature)

Exhibit A

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers _____ (_____) shares of the Common Stock of WEBTV NETWORKS, INC., a California corporation (the "Company"), standing in the undersigned's name on the books of the Company represented by Certificate No. _____ to the Company and herewith and hereby irrevocably constitutes and appoints _____ Attorney to transfer said stock on the books of the Company with full power of substitution in the premises.

Dated: _____

_____
(Optionee)

Exhibit B

ACKNOWLEDGMENT OF AND AGREEMENT TO BE BOUND
BY THE 1996 STOCK INCENTIVE PLAN OF
WEBTV NETWORKS, INC.

The undersigned, as transferee of shares of WEBTV NETWORKS, INC., hereby acknowledges that he or she has read and reviewed the terms of the Incentive Stock Option Agreement attached hereto (the "Agreement") and the 1996 Stock Incentive Plan of WEBTV NETWORKS, INC. and hereby agrees to be bound by the terms and conditions thereof, as if the undersigned had executed the Agreement as an original party thereto.

Dated: _____

_____
(Printed Name)

_____
(Signature)

Address:
_____
_____
_____

Exhibit C

1996 STOCK INCENTIVE PLAN

[attached]

NONQUALIFIED STOCK OPTION AGREEMENT
UNDER THE WEBTV NETWORKS, INC.
1996 STOCK INCENTIVE PLAN
(Consultants)

THIS NONQUALIFIED STOCK OPTION AGREEMENT (the "Agreement"), effective as of (Effective Date), is entered into between WebTV Networks, Inc., a California corporation (the "Company") whose executive offices are located at 305 Lytton Avenue, Palo Alto, CA 94301, and (Optionee) (the "Optionee"), whose address is set forth on the signature page hereto.

R E C I T A L S

A. The Board of Directors of the Company has adopted, and the shareholders of the Company have approved, the WebTV Networks, Inc. 1996 Stock Incentive Plan, as amended (the "Plan"), to promote the long-term interests of the Company by providing officers and other employees of, and consultants to, the Company and members of the Board of Directors of the Company with an incentive to promote the financial success of the Company. Capitalized terms used in this Agreement without definition shall have the meanings set forth in the Plan, a copy of which is attached hereto as Exhibit C.

B. On (BoardAprvlDate) the Committee awarded to the Optionee an option to purchase shares of the Common Stock of the Company and the Optionee has elected to accept such option, on the terms and conditions hereinafter set forth.

C. The Company has delivered to the Optionee a copy of the Plan.

NOW, THEREFORE, it is agreed between the parties as follows:

Section 1. Grant of Option. In consideration of the services performed or to be performed by the Optionee, the Company hereby grants the Optionee an Option under the Plan to purchase (SharesSpelled) (NoShares) shares of Common Stock of the Company (the "Shares"), upon the following terms and conditions:

(a) The Option is granted under and pursuant to the Plan and the Option is subject to all of the provisions thereof.

(b) The Option is intended to be issued as a NQSO.

(c) The Exercise Price of the Option is $PricePerShare per share.

(d) The Option is not exercisable after the expiration of three (3) months following the later of completion of the consulting services by Optionee or the receipt of option documentation by Optionee from the Company.

(e) The Option is not transferable otherwise than by the laws of testate and intestate descent and distribution, and the Option is exercisable during the lifetime of the Optionee only by the Optionee.

Section 2. Exercise.

(a) Fully-Vested Option. The Option granted to the Optionee under this Agreement is fully-vested, and the Optionee shall be entitled to exercise the Option as to all or any of the Shares, but only with respect to whole Shares.

(b) Change of Ownership. The Option is subject to Section 6(h) of the Plan regarding the proposed effect of dissolution, merger, etc., as defined in the Plan.

(c) Exercise Procedure. The Option or any part thereof shall be exercised by giving written notice of exercise to the Secretary of the Company on or before the applicable date specified in Section 6(c) of the Plan. Such notice shall state the Optionee's election to exercise the Option, the number of whole Shares in respect of which the Option is being exercised, and the notice must be signed by the Optionee or other person exercising the Option. Such exercise shall either be evidenced by the delivery of the notice accompanied by payment of the full Exercise Price and all applicable withholding taxes and an Assignment Separate from Certificate duly executed (with date and number in blank) in the form attached as Exhibit A to this Agreement to the Company, in which event the Company shall issue any certificate(s) representing the Shares to which the Optionee is entitled as a result of the exercise as soon as practicable after the notice has been received; or the Company shall fix a date (the "Closing Date") (not more than 30 days from the date such notice has been received by the Company) for the payment of the full Exercise Price and all applicable withholding taxes and the delivery of the Assignment Separate from Certificate duly executed (with date and number in blank) in the form attached as Exhibit A to this Agreement, against the issuance by the Company of any certificate(s) representing Shares to which the Optionee is entitled to receive as a result of the exercise. If any issuance or transfer of the Shares to be purchased requires the consent of or a filing with or notice to the Securities and Exchange Commission or any other applicable agency charged with the administration of applicable securities laws, the Closing Date shall be extended for such period as the necessary request for consent or approval to issue or transfer is pending. Neither the Optionee nor the Optionee's heirs, legatees, or legal representatives may exercise the Option granted under this Agreement more than once in any given calendar quarter without the consent of the Committee, except in the case of the exercise of an Option following the Optionee's death or termination of employment with the Company or an exercise made in contemplation of a transaction described in Section 2(b) above. The date on which the Optionee's written notice is received by the Secretary of the Company shall be the date of exercise of the Option as to such number of Shares. On or before the Closing Date, the Optionee must deliver to the Secretary of the Company in form satisfactory to the Committee all documents required under the Plan, this Agreement and applicable laws and regulations with regard to the purchase of Common Stock (including investment and/or residency representations as may be required by the Committee). Payment of the Exercise Price shall be made either (i) in cash (including check, bank draft or money order), (ii) with the consent of the Committee by delivering Shares already owned by the Optionee, or (iii) by a combination of these forms of payment.

Section 3. Company's Repurchase Option. The Shares which have been issued to Optionee upon exercise of the Option under the provisions of Section 2 of this Agreement shall be subject to repurchase by the Company in accordance with Section 13 of the Plan.

Section 4. Deposit of Stock Certificates.

(a) As security for the Optionee's faithful performance of the terms of this Agreement and to insure the availability for delivery of the Optionee's Shares upon exercise of the Company's repurchase rights under the Plan, the Optionee hereby agrees that (i) the certificates evidencing the Shares and any additions and substitutions to said Shares may be retained and held by the Company in accordance with the terms of this Section 4 and (ii) the Optionee will deliver and deposit with the Company on the Closing Date the Assignment Separate from Certificate duly executed (with date and number of shares in blank) as set forth in Section 2(c) above.

(b) The Optionee further hereby irrevocably constitutes and appoints the Company as his or her attorney-in-fact and agent to execute with respect to the foregoing securities all documents and/or agreements necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated. Subject to the provisions of this Section 4, the Optionee shall be entitled to exercise all rights and privileges of a shareholder of the Company while the certificates representing the Shares are held by the Company.

(c) In the event the Company shall elect to exercise its repurchase rights under the Agreement and the Plan, the Company shall give to the Optionee a written notice as provided in the Plan, and the Company is hereby irrevocably authorized and directed to close the transaction contemplated by such notice.

(d) Upon the closing of any repurchase of all or any portion of the Shares, the Company will (i) date the stock assignment form or forms necessary for the transfer in question, (ii) fill in the number of Shares being repurchased, (iii) cancel the certificate or certificates evidencing the Shares being repurchased, against the simultaneous delivery to the Optionee of the purchase price (by certified or bank cashier's check) for the number of Shares being purchased pursuant to the exercise of the Company's repurchase rights, and (iv) retain the certificate or certificates evidencing the Shares not being repurchased in accordance with the terms of this Section 4.

(e) Upon the termination of all restrictions imposed upon the Shares under the Plan and this Agreement, the Company will deliver to the Optionee a certificate or certificates representing the number of Shares not repurchased by the Company or its assignee(s) pursuant to exercise of the Company's repurchase rights under the Plan.

Section 5. Restrictions on Sale or Transfer. The Optionee shall not sell or transfer at any time any Shares except as permitted in the Plan. Notwithstanding any permitted sale or transfer of the Shares under the Plan, no permitted sale or transfer shall be effective as against the Company until such time as the transferee has furnished the Company with an executed copy of Exhibit B attached hereto.

Section 6. Cessation of Shareholder Rights. If the Company makes available, at the time and place and in the amount and form provided in this Agreement, the consideration for

the Shares to be repurchased in accordance with the provisions of Section 3 of this Agreement, then from and after such time the person from whom such Shares are to be repurchased shall no longer have any rights as a holder of such Shares (other than the right to receive payment of such consideration in accordance with this Agreement). Such Shares shall be deemed to have been repurchased in accordance with the applicable provisions of this Agreement, whether or not the certificate(s) therefor have been delivered as required by this Agreement.

Section 7. Legends. All certificates representing the Shares issued to the Optionee upon exercise of the Option shall, where applicable, have endorsed thereon legends in substantially the following form:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SHARES UNDER SAID ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT REGISTRATION IS NOT REQUIRED.

THE TRANSFERABILITY OF THIS CERTIFICATE AND THE SHARES OF STOCK REPRESENTED HEREBY ARE SUBJECT TO THE TERMS AND CONDITIONS (INCLUDING FORFEITURE) CONTAINED IN THE WEBTV NETWORKS, INC. 1996 STOCK INCENTIVE PLAN AND A NONQUALIFIED STOCK OPTION AGREEMENT ENTERED INTO BETWEEN THE REGISTERED OWNER AND WEBTV NETWORKS, INC. COPIES OF SUCH PLAN AND AGREEMENT ARE ON FILE IN THE PRINCIPAL OFFICES OF THE COMPANY.

and any legend required to be placed thereon by the California Commissioner of Corporations, if any, and any applicable state securities law.

Section 8. Investment Representations.

(a) This Agreement is made with the Optionee in reliance upon the Optionee's representation to the Company, which by his or her acceptance hereof he or she confirms, that the Option and the Shares which he or she will receive will be acquired for investment for an indefinite period for his or her own account, not as a nominee or agent, and not with a view to the sale or distribution of any part thereof, and that he or she has no present intention of selling, granting participation in, or otherwise distributing the same, but subject, nevertheless, to any requirement of law that the disposition of his or her property shall at all times be within his or her control. By executing this Agreement, the Optionee further represents (i) that he or she does not have any contract, understanding or agreement with any person to sell, transfer or grant participation, to such person or to any third person, with respect to the Option or any of the Shares issuable pursuant to the Option, (ii) that his or her current residence address is as set forth on the signature page hereto, and (iii) that all communications between the parties concerning the Shares issuable pursuant to the Option have taken place within the State of California.

(b) The Optionee understands that the Shares will not be registered under the Securities Act of 1933, as amended (the "Securities Act") on the ground that the sale provided for in this Agreement is exempt pursuant to Section 4(2) of the Securities Act, and that the Company's reliance on such exemption is predicated on his or her representations set forth herein.

(c) The Optionee agrees that in no event will he or she make a disposition of any of the Shares, unless and until (i) he or she shall have notified the Company of the proposed disposition and shall have furnished the Company with a statement of the circumstances surrounding the proposed disposition, and (ii) he or she shall have furnished the Company with an opinion of counsel satisfactory to the Company to the effect that (A) such disposition will not require registration of such Common Stock under the Securities Act, or (B) that appropriate action necessary for compliance with the Securities Act has been taken, or (iii) the Company shall have waived, expressly and in writing, its rights under clauses (i) and (ii) of this Section 8(c).

(d) In connection with the investment representations made herein, the Optionee represents that he or she has heretofore discussed or had the opportunity to discuss the Company's plans, operations and financial condition with the Company's officers and has heretofore received all such information as he or she deems necessary and appropriate to enable him or her to evaluate the financial risks inherent in his or her investment. The Optionee further represents that he or she has received satisfactory and complete information concerning the business and financial condition of the Company in response to all inquiries in respect thereof, and by reason of the Optionee's business or financial experience or the business or financial experience of the Optionee's professional advisors who are unaffiliated with and who are not compensated by the Company or any affiliate or selling agent of the Company, directly or indirectly, the Optionee has the capacity to protect his or her own interest in connection with the transactions contemplated by this Agreement.

(e) The Optionee understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or if a registration statement covering the Shares (or a filing pursuant to the exemption from registration under Regulation A of the Securities Act) under the Securities Act is not in effect when he or she desires to sell the Shares, he or she may be required to hold the Shares for an indeterminate period. The Optionee also acknowledges that he or she understands that any sale of the Shares which might be made by him or her in reliance upon Rule 144 under the Securities Act may be made only in limited amounts in accordance with the terms and conditions of that Rule 144.

Section 9. Initial Public Offering. The Optionee hereby agrees that in the event of an initial public offering of stock made by the Company under the Securities Act, the Optionee shall not offer, sell, contract to sell, pledge, hypothecate, grant any option to purchase or make any short sale of, or otherwise dispose of any shares of stock of the Company or any rights to acquire stock of the Company for one hundred eighty (180) days, or such shorter period as may be determined by the Board of Directors of the Company, from the effective date of the registration statement to be filed in connection with such initial public offering.

Section 10. Modifications. No modification of this Agreement shall be valid unless made in writing and signed by the parties to this Agreement.

Section 11. Entire Agreement. This Agreement and the Plan constitute the entire agreement between the Company and the Optionee regarding the Option and the Shares issuable thereunder and supersedes all prior or contemporaneous discussions between them. In the event of a conflict between the terms of this Agreement and the Plan, the Plan shall be controlling. Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, all remaining parts, terms and provisions of this Agreement shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties to this Agreement or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. The headings of each paragraph of this Agreement are provided for the convenience of the parties and are not to be given legal effect or significance.

Section 12. Income Taxes. Neither the Company nor the Committee nor any of their representatives or agents has made any representations or warranties to the Optionee with respect to the income tax or other consequences of the transactions contemplated by this Agreement, and the Optionee is in no manner relying on the Company, the Committee or any of their representatives or agents for an assessment of such tax or other consequences.

Section 13. Written Notice. Any written notice under this Agreement shall be given in the manner and shall be effective on the date provided in Section 14(c) of the Plan.

Section 14. Miscellaneous. This Agreement shall bind and inure to the benefit of the Company and its successors and assigns, and the Optionee and any heir, legatee, or legal representative of the Optionee as provided in Section 2(c) hereof. This Agreement shall be interpreted under and governed by the laws of the State of California. The sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and federal courts located in the County of Santa Clara, California.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Company and the Optionee to be effective as of the date first set forth above.

Optionee: WebTV Networks, Inc.

_____ By: _____
Optionee Its: _____

Address:
_____
_____
_____

Spousal Consent

The undersigned has read and is familiar with the preceding Agreement and hereby consents and agrees to be bound by all the terms of the Agreement (including the Plan) as if the undersigned had executed the Agreement. Without limiting the foregoing, the undersigned specifically agrees that the Company may rely on any authorization, instruction or election made under the Agreement by the Optionee alone and that all of his or her right, title or interest, if any, in the Common Stock purchased by the Optionee under the Agreement, whether arising by operation of community property law, by property settlement or otherwise, shall be subject to all of such terms.

Dated: _____

_____
(Printed Name)

_____
(Signature)

Exhibit A

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers ---------- (----------) shares of the Common Stock of WEBTV NETWORKS, INC., a California corporation (the "Company"), standing in the undersigned's name on the books of the Company represented by Certificate No. ---------to the Company and herewith and hereby irrevocably constitutes and appoints ----------, Attorney to transfer said stock on the books of the Company with full power of substitution in the premises.

Dated:----------

(Optionee)

Exhibit B

ACKNOWLEDGMENT OF AND AGREEMENT TO BE BOUND
BY THE 1996 STOCK INCENTIVE PLAN OF
WEBTV NETWORKS, INC.

The undersigned, as transferee of shares of WEBTV NETWORKS, INC., hereby acknowledges that he or she has read and reviewed the terms of the Nonqualified Stock Option Agreement attached hereto (the "Agreement") and the 1996 Stock Incentive Plan of WEBTV NETWORKS, INC. and hereby agrees to be bound by the terms and conditions thereof, as if the undersigned had executed the Agreement as an original party thereto.

Dated: _____

_____
(Printed Name)

_____
(Signature)

Address:
_____
_____
_____

Exhibit C

1996 STOCK INCENTIVE PLAN

[attached]

NOTICE OF EXERCISE OF OPTION

The undersigned hereby notifies WebTV Networks, Inc. (the "Company") of his or her (or its) decision to exercise the Option as to ---------- shares of the Company's Common Stock.

Dated: ----------

(Optionee)

NONQUALIFIED STOCK OPTION AGREEMENT
UNDER THE WEBTV NETWORKS, INC.
1996 STOCK INCENTIVE PLAN

(Consultants)

THIS NONQUALIFIED STOCK OPTION AGREEMENT (the "Agreement"), effective as of ((Effective Date)), is entered into between WebTV Networks, Inc., a California corporation (the "Company") whose executive offices are located at 305 Lytton Avenue, Palo Alto, CA 94301, and ((Optionee)) (the "Optionee"), whose address is set forth on the signature page hereto.

R E C I T A L S

A. The Board of Directors of the Company has adopted, and the shareholders of the Company have approved, the WebTV Networks, Inc. 1996 Stock Incentive Plan, as amended (the "Plan"), to promote the long-term interests of the Company by providing officers and other employees of, and consultants to, the Company and members of the Board of Directors of the Company with an incentive to promote the financial success of the Company. Capitalized terms used in this Agreement without definition shall have the meanings set forth in the Plan, a copy of which is attached hereto as Exhibit C.

B. On ((BoardAprvlDate)) the Committee awarded to the Optionee an option to purchase shares of the Common Stock of the Company and the Optionee has elected to accept such option, on the terms and conditions hereinafter set forth.

C. The Company has delivered to the Optionee a copy of the Plan.

NOW, THEREFORE, it is agreed between the parties as follows:

SECTION 1. GRANT OF OPTION. In consideration of the services performed or to be performed by the Optionee, the Company hereby grants the Optionee an Option under the Plan to purchase ((SharesSpelled)) (((NoShares))) shares of Common Stock of the Company (the "Shares"), upon the following terms and conditions:

(a) The Option is granted under and pursuant to the Plan and the Option is subject to all of the provisions thereof.

(b) The Option is intended to be issued as a NQSO.

(c) The Exercise Price of the Option is $((PricePerShare)) per share.

(d) The Option is not exercisable after the expiration of three (3) months following the later of (i) completion or termination of the consulting services by Optionee, or (ii) the receipt of option documentation by Optionee from the Company; or such shorter period of time provided for exercising the Option as set forth in Section 6(c) of the Plan.

(e) The Option is not transferable otherwise than by the laws of testate and intestate descent and distribution, and the Option is exercisable during the lifetime of the Optionee only by the Optionee.

SECTION 2. EXERCISE.

(a) VESTING. The Option may be exercised in accordance with the following schedule: ((CliffAmount)) of the Shares subject to the Option shall vest on the ((Cliff)) anniversary of the Vesting Commencement Date (which Vesting Commencement Date is ((VCD))), and ((MonthAmount)) of the total number of Shares subject to the Option shall vest on the ((MonthVestDate)) day of each month thereafter. Notwithstanding the foregoing, the Shares immediately will cease to vest on the date that Optionee's continuous employment or consulting relationship with the Company ceases. Subject to Section 1(d) hereof and all other provisions of this Agreement and the Plan applicable to the exercise of this Option, Optionee shall be entitled to exercise the Option only as to all or any portion of the Shares that have become vested in accordance with this Section 2(a), and only with respect to whole Shares.

(b) CHANGE OF OWNERSHIP. The Option is subject to Section 6(h) of the Plan regarding the proposed effect of dissolution, merger, etc., as defined in the Plan.

(c) EXERCISE PROCEDURE. The Option or any part thereof shall be exercised by giving written notice of exercise to the Secretary of the Company on or before the applicable date specified in Section 6(c) of the Plan. Such notice shall state the Optionee's election to exercise the Option, the number of whole Shares in respect of which the Option is being exercised, and the notice must be signed by the Optionee or other person exercising the Option. Such exercise shall either be evidenced by the delivery of the notice accompanied by payment of the full Exercise Price and all applicable withholding taxes and an Assignment Separate from Certificate duly executed (with date and number in blank) in the form attached as Exhibit A to this Agreement to the Company, in which event the Company shall issue any certificate(s) representing the Shares to which the Optionee is entitled as a result of the exercise as soon as practicable after the notice has been received; or the Company shall fix a date (the "Closing Date") (not more than 30 days from the date such notice has been received by the Company) for the payment of the full Exercise Price and all applicable withholding taxes and the delivery of the Assignment Separate from Certificate duly executed (with date and number in blank) in the form attached as Exhibit A to this Agreement, against the issuance by the Company of any certificate(s) representing Shares to which the Optionee is entitled to receive as a result of the exercise. If any issuance or transfer of the Shares to be purchased requires the consent of or a filing with or notice to the Securities and Exchange Commission or any other applicable agency charged with the administration of applicable securities laws, the Closing Date shall be extended for such period as the necessary request for consent or approval to issue or transfer is pending. Neither the Optionee nor the Optionee's heirs, legatees, or legal representatives may exercise the Option granted under this Agreement more than once in any given calendar quarter without the consent of the Committee, except in the case of the exercise of an Option following the Optionee's death or termination of employment with the Company or an exercise made in contemplation of a transaction described in Section 2(b) above. The date on which the Optionee's written notice is received by the Secretary of the Company shall be the date of exercise of the Option as to such number of Shares. On or before the Closing Date, the Optionee must deliver to the Secretary of the Company in form satisfactory to the Committee all documents required under the

Plan, this Agreement and applicable laws and regulations with regard to the purchase of Common Stock (including investment and/or residency representations as may be required by the Committee). Payment of the Exercise Price shall be made either (i) in cash (including check, bank draft or money order), (ii) with the consent of the Committee by delivering Shares already owned by the Optionee, or (iii) by a combination of these forms of payment.

SECTION 3. COMPANY'S REPURCHASE OPTION. The Shares which have been issued to Optionee upon exercise of the Option under the provisions of Section 2 of this Agreement shall be subject to repurchase by the Company in accordance with Section 13 of the Plan.

SECTION 4. DEPOSIT OF STOCK CERTIFICATES.

(a) As security for the Optionee's faithful performance of the terms of this Agreement and to insure the availability for delivery of the Optionee's Shares upon exercise of the Company's repurchase rights under the Plan, the Optionee hereby agrees that (i) the certificates evidencing the Shares and any additions and substitutions to said Shares may be retained and held by the Company in accordance with the terms of this Section 4 and (ii) the Optionee will deliver and deposit with the Company on the Closing Date the Assignment Separate from Certificate duly executed (with date and number of shares in blank) as set forth in Section 2(c) above.

(b) The Optionee further hereby irrevocably constitutes and appoints the Company as his or her attorney-in-fact and agent to execute with respect to the foregoing securities all documents and/or agreements necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated. Subject to the provisions of this Section 4, the Optionee shall be entitled to exercise all rights and privileges of a shareholder of the Company while the certificates representing the Shares are held by the Company.

(c) In the event the Company shall elect to exercise its repurchase rights under the Agreement and the Plan, the Company shall give to the Optionee a written notice as provided in the Plan, and the Company is hereby irrevocably authorized and directed to close the transaction contemplated by such notice.

(d) Upon the closing of any repurchase of all or any portion of the Shares, the Company will (i) date the stock assignment form or forms necessary for the transfer in question, (ii) fill in the number of Shares being repurchased, (iii) cancel the certificate or certificates evidencing the Shares being repurchased, against the simultaneous delivery to the Optionee of the purchase price (by certified or bank cashier's check) for the number of Shares being purchased pursuant to the exercise of the Company's repurchase rights, and (iv) retain the certificate or certificates evidencing the Shares not being repurchased in accordance with the terms of this Section 4.

(e) Upon the termination of all restrictions imposed upon the Shares under the Plan and this Agreement, the Company will deliver to the Optionee a certificate or certificates representing the number of Shares not repurchased by the Company or its assignee(s) pursuant to exercise of the Company's repurchase rights under the Plan.

SECTION 5. RESTRICTIONS ON SALE OR TRANSFER. The Optionee shall not sell or transfer at any time any Shares except as permitted in the Plan. Notwithstanding any permitted sale

or transfer of the Shares under the Plan, no permitted sale or transfer shall be effective as against the Company until such time as the transferee has furnished the Company with an executed copy of Exhibit B attached hereto.

SECTION 6. CESSATION OF SHAREHOLDER RIGHTS. If the Company makes available, at the time and place and in the amount and form provided in this Agreement, the consideration for the Shares to be repurchased in accordance with the provisions of Section 3 of this Agreement, then from and after such time the person from whom such Shares are to be repurchased shall no longer have any rights as a holder of such Shares (other than the right to receive payment of such consideration in accordance with this Agreement). Such Shares shall be deemed to have been repurchased in accordance with the applicable provisions of this Agreement, whether or not the certificate(s) therefor have been delivered as required by this Agreement.

SECTION 7. LEGENDS. All certificates representing the Shares issued to the Optionee upon exercise of the Option shall, where applicable, have endorsed thereon legends in substantially the following form:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SHARES UNDER SAID ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT REGISTRATION IS NOT REQUIRED.
>
> THE TRANSFERABILITY OF THIS CERTIFICATE AND THE SHARES OF STOCK REPRESENTED HEREBY ARE SUBJECT TO THE TERMS AND CONDITIONS (INCLUDING FORFEITURE) CONTAINED IN THE WEBTV NETWORKS, INC. 1996 STOCK INCENTIVE PLAN AND A NONQUALIFIED STOCK OPTION AGREEMENT ENTERED INTO BETWEEN THE REGISTERED OWNER AND WEBTV NETWORKS, INC. COPIES OF SUCH PLAN AND AGREEMENT ARE ON FILE IN THE PRINCIPAL OFFICES OF THE COMPANY.

and any legend required to be placed thereon by the California Commissioner of Corporations, if any, and any applicable state securities law.

SECTION 8. INVESTMENT REPRESENTATIONS.

(a) This Agreement is made with the Optionee in reliance upon the Optionee's representation to the Company, which by his or her acceptance hereof he or she confirms, that the Option and the Shares which he or she will receive will be acquired for investment for an indefinite period for his or her own account, not as a nominee or agent, and not with a view to the sale or distribution of any part thereof, and that he or she has no present intention of selling, granting participation in, or otherwise distributing the same, but subject, nevertheless, to any requirement of law that the disposition of his or her property shall at all times be within his or her control. By executing this Agreement, the Optionee further represents (i) that he or she does not have any

contract, understanding or agreement with any person to sell, transfer or grant participation, to such person or to any third person, with respect to the Option or any of the Shares issuable pursuant to the Option, (ii) that his or her current residence address is as set forth on the signature page hereto, and (iii) that all communications between the parties concerning the Shares issuable pursuant to the Option have taken place within the State of California.

(b) The Optionee understands that the Shares will not be registered under the Securities Act of 1933, as amended (the "Securities Act") on the ground that the sale provided for in this Agreement is exempt pursuant to Section 4(2) of the Securities Act, and that the Company's reliance on such exemption is predicated on his or her representations set forth herein.

(c) The Optionee agrees that in no event will he or she make a disposition of any of the Shares, unless and until (i) he or she shall have notified the Company of the proposed disposition and shall have furnished the Company with a statement of the circumstances surrounding the proposed disposition, and (ii) he or she shall have furnished the Company with an opinion of counsel satisfactory to the Company to the effect that (A) such disposition will not require registration of such Common Stock under the Securities Act, or (B) that appropriate action necessary for compliance with the Securities Act has been taken, or (iii) the Company shall have waived, expressly and in writing, its rights under clauses (i) and (ii) of this Section 8(c).

(d) In connection with the investment representations made herein, the Optionee represents that he or she has heretofore discussed or had the opportunity to discuss the Company's plans, operations and financial condition with the Company's officers and has heretofore received all such information as he or she deems necessary and appropriate to enable him or her to evaluate the financial risks inherent in his or her investment. The Optionee further represents that he or she has received satisfactory and complete information concerning the business and financial condition of the Company in response to all inquiries in respect thereof, and by reason of the Optionee's business or financial experience or the business or financial experience of the Optionee's professional advisors who are unaffiliated with and who are not compensated by the Company or any affiliate or selling agent of the Company, directly or indirectly, the Optionee has the capacity to protect his or her own interest in connection with the transactions contemplated by this Agreement.

(e) The Optionee understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or if a registration statement covering the Shares (or a filing pursuant to the exemption from registration under Regulation A of the Securities Act) under the Securities Act is not in effect when he or she desires to sell the Shares, he or she may be required to hold the Shares for an indeterminate period. The Optionee also acknowledges that he or she understands that any sale of the Shares which might be made by him or her in reliance upon Rule 144 under the Securities Act may be made only in limited amounts in accordance with the terms and conditions of that Rule 144.

SECTION 9. INITIAL PUBLIC OFFERING. The Optionee hereby agrees that in the event of an initial public offering of stock made by the Company under the Securities Act, the Optionee shall not offer, sell, contract to sell, pledge, hypothecate, grant any option to purchase or make any short sale of, or otherwise dispose of any shares of stock of the Company or any rights to acquire stock of the Company for one hundred eighty (180) days, or such shorter period as may be determined by the Board of Directors of the Company, from the effective date of the registration statement to be filed in connection with such initial public offering.

SECTION 10. MODIFICATIONS. No modification of this Agreement shall be valid unless made in writing and signed by the parties to this Agreement.

SECTION 11. ENTIRE AGREEMENT. This Agreement and the Plan constitute the entire agreement between the Company and the Optionee regarding the Option and the Shares issuable thereunder and supersedes all prior or contemporaneous discussions between them. In the event of a conflict between the terms of this Agreement and the Plan, the Plan shall be controlling. Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, all remaining parts, terms and provisions of this Agreement shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties to this Agreement or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. The headings of each paragraph of this Agreement are provided for the convenience of the parties and are not to be given legal effect or significance.

SECTION 12. INCOME TAXES. Neither the Company nor the Committee nor any of their representatives or agents has made any representations or warranties to the Optionee with respect to the income tax or other consequences of the transactions contemplated by this Agreement, and the Optionee is in no manner relying on the Company, the Committee or any of their representatives or agents for an assessment of such tax or other consequences.

SECTION 13. WRITTEN NOTICE. Any written notice under this Agreement shall be given in the manner an shall be effective on the date provided in Section 14(c) of the Plan.

SECTION 14. MISCELLANEOUS. This Agreement shall bind and inure to the benefit of the Company and its successors and assigns, and the Optionee and any heir, legatee, or legal representative of the Optionee as provided in Section 2(c) hereof. This Agreement shall be interpreted under and governed by the laws of the State of California. The sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and federal courts located in the County of Santa Clara, California.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Company and the Optionee to be effective as of the date first set forth above.

Optionee:

_____
((Optionee))

Address:
_____

_____

_____

WebTV Networks, Inc.

By: _____

Its: _____

SPOUSAL CONSENT

The undersigned has read and is familiar with the preceding Agreement and hereby consents and agrees to be bound by all the terms of the Agreement (including the Plan) as if the undersigned had executed the Agreement. Without limiting the foregoing, the undersigned specifically agrees that the Company may rely on any authorization, instruction or election made under the Agreement by the Optionee alone and that all of his or her right, title or interest, if any, in the Common Stock purchased by the Optionee under the Agreement, whether arising by operation of community property law, by property settlement or otherwise, shall be subject to all of such terms.

Dated: _____

_____
(Printed Name)

_____
(Signature)

Exhibit A

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers _____ (_____) shares of the Common Stock of WEBTV NETWORKS, INC., a California corporation (the "Company"), standing in the undersigned's name on the books of the Company represented by Certificate No. _____ to the Company and herewith and hereby irrevocably constitutes and appoints _____, Attorney to transfer said stock on the books of the Company with full power of substitution in the premises.

Dated: _____

_____
((Optionee))

Exhibit B

ACKNOWLEDGMENT OF AND AGREEMENT TO BE BOUND

BY THE 1996 STOCK INCENTIVE PLAN OF

WEBTV NETWORKS, INC.

The undersigned, as transferee of shares of WEBTV NETWORKS, INC., hereby acknowledges that he or she has read and reviewed the terms of the Nonqualified Stock Option Agreement attached hereto (the "Agreement") and the 1996 Stock Incentive Plan of WEBTV NETWORKS, INC. and hereby agrees to be bound by the terms and conditions thereof, as if the undersigned had executed the Agreement as an original party thereto.

Dated: _____

_____
(Printed Name)

_____
(Signature)

Address:
_____

_____

_____

Exhibit C

1996 STOCK INCENTIVE PLAN

[attached]

NOTICE OF EXERCISE OF OPTION

The undersigned hereby notifies WebTV Networks, Inc. (the "Company") of his or her (or its) decision to exercise the Option as to _____ shares of the Company's Common Stock.

Dated: _____

_____

((Optionee))

NONQUALIFIED STOCK OPTION AGREEMENT
UNDER THE WEBTV NETWORKS, INC.
1996 STOCK INCENTIVE PLAN
(Directors)

THIS NONQUALIFIED STOCK OPTION AGREEMENT (the "Agreement"), effective as of ((Date)), is entered into between WebTV Networks, Inc., a California corporation (the "Company") whose executive offices are located at 305 Lytton Avenue, Palo Alto, CA 94301, and ((Optionee)) (the "Optionee"), a director of the Company, whose address is set forth on the signature page hereto.

R E C I T A L S

A. The Board of Directors of the Company has adopted, and the shareholders of the Company have approved, the WebTV Networks, Inc. 1996 Stock Incentive Plan, as amended (the "Plan"), to promote the long-term interests of the Company by providing officers and other employees of, and consultants to, the Company and members of the Board of Directors of the Company with an incentive to promote the financial success of the Company. Capitalized terms used in this Agreement without definition shall have the meanings set forth in the Plan.

B. The Committee has awarded to the Optionee an option to purchase shares of the Common Stock of the Company and the Optionee has elected to accept such option, on the terms and conditions hereinafter set forth.

C. The Company has delivered to the Optionee a copy of the Plan.

NOW, THEREFORE, it is agreed between the parties as follows:

SECTION 1. GRANT OF OPTION. In consideration of the services performed or to be performed by the Optionee, the Company hereby grants the Optionee an Option under the Plan to purchase ((SharesSpelled)) (((NoShares))) shares of Common Stock of the Company (the "Shares"), upon the following terms and conditions:

(a) The Option is granted under and pursuant to the Plan and the Option is subject to all of the provisions thereof.

(b) The Option is intended to be issued as a NQSO.

(c) The Exercise Price of the Option is $((PricePerShare)) per share.

(d) The Option is not exercisable after the tenth anniversary of the date first set forth above, subject to such shorter periods for exercising the Option as set forth in Section 6(c) of the Plan.

(e) The Option is not transferable otherwise than by the laws of testate and intestate descent and distribution, and the Option is exercisable during the lifetime of the Optionee only by the Optionee.

SECTION 2. EXERCISE.

(a) Fully-Vested Option. The Option granted to the Optionee under this Agreement is fully-vested, and the Optionee shall be entitled to exercise the Option as to all or any of the Shares, but only with respect to whole Shares.

(b) CHANGE OF OWNERSHIP. The Option is subject to Section 6(h) of the Plan regarding the proposed effect of dissolution, merger, etc., as defined in the Plan.

(c) TERMINATION OF DIRECTORSHIP. The Optionee or, in the event of the Optionee's death, the Optionee's heirs, legatees or legal representatives, as the case may be, shall have the right to exercise the Optionee's Option with respect to the same number of Shares that the Optionee would have been able to exercise hereunder on the date immediately preceding the date the Optionee's directorship was terminated (without regard to any payments upon termination) in accordance with the Plan.

(d) EXERCISE PROCEDURE. The Option or any part thereof shall be exercised by giving written notice of exercise to the Secretary of the Company on or before the applicable date specified in Section 6(c) of the Plan. Such notice shall state the Optionee's election to exercise the Option, the number of whole Shares in respect of which the Option is being exercised, and the notice must be signed by the Optionee or other person exercising the Option. Such exercise shall either be evidenced by the delivery of the notice accompanied by payment of the full Exercise Price and all applicable withholding taxes and an Assignment Separate from Certificate duly executed (with date and number in blank) in the form attached as Exhibit A to this Agreement to the Company, in which event the Company shall issue any certificate(s) representing the Shares to which the Optionee is entitled as a result of the exercise as soon as practicable after the notice has been received; or the Company shall fix a date (the "Closing Date") (not more than 30 days from the date such notice has been received by the Company) for the payment of the full Exercise Price and all applicable withholding taxes and the delivery of the Assignment Separate from Certificate duly executed (with date and number in blank) in the form attached as Exhibit A to this Agreement, against the issuance by the Company of any certificate(s) representing Shares to which the Optionee is entitled to receive as a result of the exercise. If any issuance or transfer of the Shares to be purchased requires the consent of or a filing with or notice to the Securities and Exchange Commission or any other applicable agency charged with the administration of applicable securities laws, the Closing Date shall be extended for such period as the necessary request for consent or approval to issue or transfer is pending. Neither the Optionee nor the Optionee's heirs, legatees, or legal representatives may exercise the Option granted under this Agreement more than once in any given calendar quarter without the consent of the Committee, except in the case of the exercise of an Option following the Optionee's death or termination of employment with the Company or an exercise made in contemplation of a transaction described in Section 2(b) above. The date on which the

Optionee's written notice is received by the Secretary of the Company shall be the date of exercise of the Option as to such number of Shares. On or before the Closing Date, the Optionee must deliver to the Secretary of the Company in form satisfactory to the Committee all documents required under the Plan, this Agreement and applicable laws and regulations with regard to the purchase of Common Stock (including investment and/or residency representations as may be required by the Committee). Payment of the Exercise Price shall be made either (i) in cash (including check, bank draft or money order), (ii) with the consent of the Committee by delivering Shares already owned by the Optionee, or (iii) by a combination of these forms of payment.

SECTION 3. COMPANY'S REPURCHASE OPTION. The Shares which have been issued to Optionee upon exercise of the Option under the provisions of Section 2 of this Agreement shall be subject to repurchase by the Company in accordance with Section 13 of the Plan.

SECTION 4. DEPOSIT OF STOCK CERTIFICATES.

(a) As security for the Optionee's faithful performance of the terms of this Agreement and to insure the availability for delivery of the Optionee's Shares upon exercise of the Company's repurchase rights under the Plan, the Optionee hereby agrees that (i) the certificates evidencing the Shares and any additions and substitutions to said Shares may be retained and held by the Company in accordance with the terms of this Section 4 and (ii) the Optionee will deliver and deposit with the Company on the Closing Date the Assignment Separate from Certificate duly executed (with date and number of shares in blank) as set forth in Section 2(d) above.

(b) The Optionee further hereby irrevocably constitutes and appoints the Company as his or her attorney-in-fact and agent to execute with respect to the foregoing securities all documents and/or agreements necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated. Subject to the provisions of this Section 4, the Optionee shall be entitled to exercise all rights and privileges of a shareholder of the Company while the certificates representing the Shares are held by the Company.

(c) In the event the Company shall elect to exercise its repurchase rights under the Agreement and the Plan, the Company shall give to the Optionee a written notice as provided in the Plan, and the Company is hereby irrevocably authorized and directed to close the transaction contemplated by such notice.

(d) Upon the closing of any repurchase of all or any portion of the Shares, the Company will (i) date the stock assignment form or forms necessary for the transfer in question, (ii) fill in the number of Shares being repurchased, (iii) cancel the certificate or certificates evidencing the Shares being repurchased, against the simultaneous delivery to the Optionee of the purchase price (by certified or bank cashier's check) for the number of Shares being purchased pursuant to the exercise of the Company's repurchase rights, and (iv) retain the certificate or certificates evidencing the Shares not being repurchased in accordance with the terms of this Section 4.

(e) Upon the termination of all restrictions imposed upon the Shares under the Plan and this Agreement, the Company will deliver to the Optionee a certificate or certificates representing the number of Shares not repurchased by the Company or its assignee(s) pursuant to exercise of the Company's repurchase rights under the Plan.

SECTION 5. RESTRICTIONS ON SALE OR TRANSFER. The Optionee shall not sell or transfer at any time any Shares except as permitted in the Plan. Notwithstanding any permitted sale or transfer of the Shares under the Plan, no permitted sale or transfer shall be effective as against the Company until such time as the transferee has furnished the Company with an executed copy of Exhibit B attached hereto.

SECTION 6. CESSATION OF SHAREHOLDER RIGHTS. If the Company makes available, at the time and place and in the amount and form provided in this Agreement, the consideration for the Shares to be repurchased in accordance with the provisions of Section 3 of this Agreement, then from and after such time the person from whom such Shares are to be repurchased shall no longer have any rights as a holder of such Shares (other than the right to receive payment of such consideration in accordance with this Agreement). Such Shares shall be deemed to have been repurchased in accordance with the applicable provisions of this Agreement, whether or not the certificate(s) therefor have been delivered as required by this Agreement.

SECTION 7. LEGENDS. All certificates representing the Shares issued to the Optionee upon exercise of the Option shall, where applicable, have endorsed thereon legends in substantially the following form:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SHARES UNDER SAID ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT REGISTRATION IS NOT REQUIRED.
>
> THE TRANSFERABILITY OF THIS CERTIFICATE AND THE SHARES OF STOCK REPRESENTED HEREBY ARE SUBJECT TO THE TERMS AND CONDITIONS (INCLUDING FORFEITURE) CONTAINED IN THE WEBTV NETWORKS, INC. 1996 STOCK INCENTIVE PLAN AND A NONQUALIFIED STOCK OPTION AGREEMENT ENTERED INTO BETWEEN THE REGISTERED OWNER AND WEBTV NETWORKS, INC. COPIES OF SUCH PLAN AND

AGREEMENT ARE ON FILE IN THE PRINCIPAL OFFICES OF THE COMPANY.

and any legend required to be placed thereon by the California Commissioner of Corporations, if any, and any applicable state securities law.

SECTION 8. INVESTMENT REPRESENTATIONS.

(a) This Agreement is made with the Optionee in reliance upon the Optionee's representation to the Company, which by his or her acceptance hereof he or she confirms, that the Option and the Shares which he or she will receive will be acquired for investment for an indefinite period for his or her own account, not as a nominee or agent, and not with a view to the sale or distribution of any part thereof, and that he or she has no present intention of selling, granting participation in, or otherwise distributing the same, but subject, nevertheless, to any requirement of law that the disposition of his or her property shall at all times be within his or her control. By executing this Agreement, the Optionee further represents (i) that he or she does not have any contract, understanding or agreement with any person to sell, transfer or grant participation, to such person or to any third person, with respect to the Option or any of the Shares issuable pursuant to the Option, (ii) that his or her current residence address is as set forth on the signature page hereto, and (iii) that all communications between the parties concerning the Shares issuable pursuant to the Option have taken place within the State of California.

(b) The Optionee understands that the Shares will not be registered under the Securities Act of 1933, as amended (the "Securities Act") on the ground that the sale provided for in this Agreement is exempt pursuant to Section 4(2) of the Securities Act, and that the Company's reliance on such exemption is predicated on his or her representations set forth herein.

(c) The Optionee agrees that in no event will he or she make a disposition of any of the Shares, unless and until (i) he or she shall have notified the Company of the proposed disposition and shall have furnished the Company with a statement of the circumstances surrounding the proposed disposition, and (ii) he or she shall have furnished the Company with an opinion of counsel satisfactory to the Company to the effect that (A) such disposition will not require registration of such Common Stock under the Securities Act, or (B) that appropriate action necessary for compliance with the Securities Act has been taken, or (iii) the Company shall have waived, expressly and in writing, its rights under clauses (i) and (ii) of this Section 8(c).

(d) In connection with the investment representations made herein, the Optionee represents that he or she has heretofore discussed or had the opportunity to discuss the Company's plans, operations and financial condition with the Company's officers and has heretofore received all such information as he or she deems necessary and appropriate to enable him or her to evaluate the financial risks inherent in his or her investment. The Optionee further represents that he or she has received satisfactory and complete information concerning the business and financial condition of the Company in response to all inquiries in respect thereof,

and by reason of the Optionee's business or financial experience or the business or financial experience of the Optionee's professional advisors who are unaffiliated with and who are not compensated by the Company or any affiliate or selling agent of the Company, directly or indirectly, the Optionee has the capacity to protect his or her own interest in connection with the transactions contemplated by this Agreement.

(e) The Optionee understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or if a registration statement covering the Shares (or a filing pursuant to the exemption from registration under Regulation A of the Securities Act) under the Securities Act is not in effect when he or she desires to sell the Shares, he or she may be required to hold the Shares for an indeterminate period. The Optionee also acknowledges that he or she understands that any sale of the Shares which might be made by him or her in reliance upon Rule 144 under the Securities Act may be made only in limited amounts in accordance with the terms and conditions of that Rule 144.

SECTION 9. INITIAL PUBLIC OFFERING. The Optionee hereby agrees that in the event of an initial public offering of stock made by the Company under the Securities Act, the Optionee shall not offer, sell, contract to sell, pledge, hypothecate, grant any option to purchase or make any short sale of, or otherwise dispose of any shares of stock of the Company or any rights to acquire stock of the Company for one hundred eighty (180) days, or such shorter period as may be determined by the Board of Directors of the Company, from the effective date of the registration statement to be filed in connection with such initial public offering.

SECTION 10. MODIFICATIONS. No modification of this Agreement shall be valid unless made in writing and signed by the parties to this Agreement.

SECTION 11. ENTIRE AGREEMENT. This Agreement and the Plan constitute the entire agreement between the Company and the Optionee regarding the Option and the Shares issuable thereunder and supersedes all prior or contemporaneous discussions between them. In the event of a conflict between the terms of this Agreement and the Plan, the Plan shall be controlling. Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, all remaining parts, terms and provisions of this Agreement shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties to this Agreement or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. The headings of each paragraph of this Agreement are provided for the convenience of the parties and are not to be given legal effect or significance.

SECTION 12. INCOME TAXES. Neither the Company nor the Committee nor any of their representatives or agents has made any representations or warranties to the Optionee with respect to the income tax or other consequences of the transactions contemplated by this Agreement, and the Optionee is in no manner relying on the Company, the Committee or any of their representatives or agents for an assessment of such tax or other consequences.

SECTION 13. WRITTEN NOTICE. Any written notice under this Agreement shall be given in the manner and shall be effective on the date provided in Section 14(c) of the Plan.

SECTION 14. MISCELLANEOUS. This Agreement shall bind and inure to the benefit of the Company and its successors and assigns, and the Optionee and any heir, legatee, or legal representative of the Optionee as provided in Section 2(c) hereof. This Agreement shall be interpreted under and governed by the laws of the State of California. The sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and federal courts located in the County of Santa Clara, California.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Company and the Optionee to be effective as of the date first set forth above.

Optionee:	WebTV Networks, Inc.
_____	By: _____
((Optionee))	
Address:	Its:
_____	_____
_____	
_____	

SPOUSAL CONSENT

The undersigned has read and is familiar with the preceding Agreement and hereby consents and agrees to be bound by all the terms of the Agreement (including the Plan) as if the undersigned had executed the Agreement. Without limiting the foregoing, the undersigned specifically agrees that the Company may rely on any authorization, instruction or election made under the Agreement by the Optionee alone and that all of his or her right, title or interest, if any, in the Common Stock purchased by the Optionee under the Agreement, whether arising by operation of community property law, by property settlement or otherwise, shall be subject to all of such terms.

Dated: _____

_____
(Printed Name)

_____
(Signature)

Exhibit A

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers _____ (_____) shares of the Common Stock of WEBTV NETWORKS, INC., a California corporation (the "Company"), standing in the undersigned's name on the books of the Company represented by Certificate No. _____ to the Company and herewith and hereby irrevocably constitutes and appoints _____, Attorney to transfer said stock on the books of the Company with full power of substitution in the premises.

Dated: _____

_____

((Optionee))

Exhibit B

ACKNOWLEDGMENT OF AND AGREEMENT TO BE BOUND
BY THE 1996 STOCK INCENTIVE PLAN OF
WEBTV NETWORKS, INC.

The undersigned, as transferee of shares of WEBTV NETWORKS, INC., hereby acknowledges that he or she has read and reviewed the terms of the Nonqualified Stock Option Agreement attached hereto (the "Agreement") and the 1996 Stock Incentive Plan of WEBTV NETWORKS, INC. and hereby agrees to be bound by the terms and conditions thereof, as if the undersigned had executed the Agreement as an original party thereto.

Dated: _____

_____
(Printed Name)

_____
(Signature)

Address:
_____

_____

_____

NOTICE OF EXERCISE OF OPTION

The undersigned hereby notifies WebTV Networks, Inc. (the "Company") of his or her (or its) decision to exercise the Option as to _____ shares of the Company's Common Stock.

Dated: _____

_____
((Optionee))

EXHIBIT 10.1

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (the "Agreement") is made as of January 17, 1997 by and between WebTV Networks, Inc., a California corporation (the "Company"), and IndemniteeName (the "Indemnitee").

RECITALS

The Company and Indemnitee recognize the increasing difficulty in obtaining liability insurance for directors, officers and key employees, the significant increases in the cost of such insurance and the general reductions in the coverage of such insurance. The Company and Indemnitee further recognize the substantial increase in corporate litigation in general, subjecting directors, officers and key employees to expensive litigation risks at the same time as the availability and coverage of liability insurance has been severely limited. Indemnitee does not regard the current protection available as adequate under the present circumstances, and Indemnitee and agents of the Company may not be willing to continue to serve as agents of the Company without additional protection. The Company desires to attract and retain the services of highly qualified individuals, such as Indemnitee, and to indemnify its directors, officers and key employees so as to provide them with the maximum protection permitted by law.

AGREEMENT

In consideration of the mutual promises made in this Agreement, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Company and Indemnitee hereby agree as follows:

1. Indemnification.

(a) Third Party Proceedings. The Company shall indemnify Indemnitee if Indemnitee is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company) by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Company, or any subsidiary of the Company, by reason of any action or inaction on the part of Indemnitee while an officer or director or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) actually and reasonably incurred by Indemnitee in connection with such action, suit or proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee

reasonably believed to be in or not opposed to the best interests of the Company, or, with respect to any criminal action or proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(b) Proceedings By or in the Right of the Company. The Company shall indemnify Indemnitee if Indemnitee was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding by or in the right of the Company or any subsidiary of the Company to procure a judgment in its favor by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Company, or any subsidiary of the Company, by reason of any action or inaction on the part of Indemnitee while an officer or director or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) and, to the fullest extent permitted by law, amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld), in each case to the extent actually and reasonably incurred by Indemnitee in connection with the defense or settlement of such action or suit if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and its shareholders, except that no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudicated by court order or judgment to be liable to the Company in the performance of Indemnitee's duty to the Company and its shareholders unless and only to the extent that the court in which such action or proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(c) Mandatory Payment of Expenses. To the extent that Indemnitee has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1(a) or Section 1(b) or the defense of any claim, issue or matter therein, Indemnitee shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by Indemnitee in connection therewith.

2. No Employment Rights. Nothing contained in this Agreement is intended to create in Indemnitee any right to continued employment.

3. Expenses; Indemnification Procedure.

(a) Advancement of Expenses. The Company shall advance all expenses incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of any civil or criminal action, suit or proceeding referred to in Section 1(a) or Section 1(b) of this Agreement (including amounts actually paid in settlement of any such action, suit or proceeding). Indemnitee hereby undertakes to repay such amounts advanced only if, and to the extent that, it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Company as authorized hereby. Any advances to be made under this Agreement shall be paid by the Company to Indemnitee within twenty (20) days following delivery of a written request therefor by Indemnitee to the Company.

(b) Notice/Cooperation by Indemnitee. Indemnitee shall, as a condition precedent to his or her right to be indemnified under this Agreement, give the Company notice in writing as soon as practicable of any claim made against Indemnitee for which indemnification will or could be sought under this Agreement. Notice to the Company shall be directed to the Chief Executive Officer of the Company and shall be given in accordance with the provisions of Section 12(d) below. In addition, Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(c) Procedure. Any indemnification and advances provided for in Section 1 and this Section 3 shall be made no later than forty-five (45) days after receipt of the written request of Indemnitee. If a claim under this Agreement, under any statute, or under any provi sion of the Company's Articles of Incorporation or Bylaws providing for indemnification, is not paid in full by the Company within forty-five (45) days after a written request for payment thereof has first been received by the Company, Indemnitee may, but need not, at any time thereafter bring an action against the Company to recover the unpaid amount of the claim and, subject to Section 11 of this Agreement, Indemnitee shall also be entitled to be paid for the expenses (including attorneys' fees) of bringing such action. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any action, suit or proceeding in advance of its final disposition) that Indemnitee has not met the standards of conduct which make it permissible under applicable law for the Company to indemnify Indemnitee for the amount claimed, but the burden of proving such defense shall be on the Company and Indemnitee shall be entitled to receive interim payments of expenses pursuant to Section 3(a) unless and until such defense may be finally adjudicated by court order or judgment from which no further right of appeal exists. It is the parties' intention that if the Company contests Indemnitee's right to indemnification, the question of Indemnitee's right to indemnification shall be for the court to decide, and neither the failure of the Company (including its Board of Directors, any committee or subgroup of the Board of Directors, independent legal counsel, or its shareholders) to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct required by applicable law, nor an actual determination by the Company (including its Board of Directors, any committee or subgroup of the Board of Directors, independent legal counsel, or its shareholders) that Indemnitee has not met such applicable standard of conduct, shall create a presumption that Indemnitee has or has not met the applicable standard of conduct.

(d) Notice to Insurers. If, at the time of the receipt of a notice of a claim pursuant to Section 3(b) hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(e) Selection of Counsel. In the event the Company shall be obligated under Section 3(a) hereof to pay the expenses of any proceeding against Indemnitee, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, with counsel reasonably

approved by Indemnitee, upon the delivery to Indemnitee of written notice of its election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding, provided that (i) Indemnitee shall have the right to employ counsel in any such proceeding at Indemnitee's expense; and (ii) if (A) the employment of counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense or (C) the Company shall not, in fact, have employed counsel to assume the defense of such proceeding, then the fees and expenses of Indemnitee's counsel shall be at the expense of the Company.

4. Additional Indemnification Rights; Nonexclusivity.

(a) Scope. Notwithstanding any other provision of this Agreement, the Company hereby agrees to indemnify the Indemnitee to the fullest extent permitted by law, notwithstanding that such indemnification is not specifically authorized by the other provisions of this Agreement, the Company's Articles of Incorporation, the Company's Bylaws or by statute. In the event of any change, after the date of this Agreement, in any applicable law, statute, or rule which expands the right of a California corporation to indemnify a member of its board of directors or an officer, such changes shall be deemed to be within the purview of Indemnitee's rights and the Company's obligations under this Agreement. In the event of any change in any applicable law, statute or rule which narrows the right of a California corporation to indemnify a member of its board of directors or an officer, such changes, to the extent not otherwise required by such law, statute or rule to be applied to this Agreement shall have no effect on this Agreement or the parties' rights and obligations hereunder.

(b) Nonexclusivity. The indemnification provided by this Agreement shall not be deemed exclusive of any rights to which Indemnitee may be entitled under the Company's Articles of Incorporation, its Bylaws, any agreement, any vote of shareholders or disinterested members of the Company's Board of Directors, the General Corporation Law of the State of California, or otherwise, both as to action in Indemnitee's official capacity and as to action in another capacity while holding such office. The indemnification provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity even though he or she may have ceased to serve in any such capacity at the time of any action, suit or other covered proceeding.

5. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the expenses, judgments, fines or penalties actually or reasonably incurred in the investigation, defense, appeal or settlement of any civil or criminal action, suit or proceeding, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such expenses, judgments, fines or penalties to which Indemnitee is entitled.

6. Mutual Acknowledgment. Both the Company and Indemnitee acknowledge that in certain instances, Federal law or public policy may override applicable state law and prohibit the Company from indemnifying its directors and officers under this Agreement or otherwise. For example, the Company and Indemnitee acknowledge that the Securities and Exchange Commission (the "SEC") has taken the position that indemnification is not permissible for liabili ties arising under certain federal securities laws, and federal legislation prohibits indemnification for certain ERISA violations. Indemnitee understands and acknowledges that the Company has undertaken or may be required in the future to undertake with the SEC to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee.

7. Officer and Director Liability Insurance. The Company shall, from time to time, make the good faith determination whether or not it is practicable for the Company to obtain and maintain a policy or policies of insurance with reputable insurance companies providing the officers and directors of the Company with coverage for losses from wrongful acts, or to ensure the Company's performance of its indemnification obligations under this Agreement. Among other considerations, the Company will weigh the costs of obtaining such insurance coverage against the protection afforded by such coverage. In all policies of director and officer liability insurance, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights and benefits as are accorded to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's officers, if Indemnitee is not a director of the Company but is an officer; or of the Company's key employees, if Indemnitee is not an officer or director but is a key employee. Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain such insurance if the Company determines in good faith that such insurance is not reasonably available, if the premium costs for such insurance are disproportionate to the amount of coverage provided, if the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit, or if Indemnitee is covered by similar insurance maintained by a parent or subsidiary of the Company.

8. Severability. Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. The provisions of this Agreement shall be severable as provided in this Section 8. If this Agreement or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify Indemnitee to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated, and the balance of this Agreement not so invalidated shall be enforceable in accordance with its terms.

9. Exceptions. Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) Claims Initiated by Indemnitee. To indemnify or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, except with respect to proceedings brought to establish or enforce a

right to indemnification under this Agreement or any other statute or law or otherwise as required under Section 317 of the California General Corporation Law, but such indemnification or advancement of expenses may be provided by the Company in specific cases if the Board of Directors finds it to be appropriate;

(b) Lack of Good Faith. To indemnify Indemnitee for any expenses incurred by Indemnitee with respect to any proceeding instituted by Indemnitee to enforce or interpret this Agreement, if a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such proceeding was not made in good faith or was frivolous;

(c) Insured Claims. To indemnify Indemnitee for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement) to the extent such expenses or liabilities have been paid directly to Indemnitee by an insurance carrier under a policy of officers' and directors' liability insurance maintained by the Company; or

(d) Claims under Section 16(b). To indemnify Indemnitee for expenses or the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute.

10. Construction of Certain Phrases.

(a) For purposes of this Agreement, references to the "Company" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that if Indemnitee is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(b) For purposes of this Agreement, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants, or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

11. Attorneys' Fees. In the event that any action is instituted by Indemnitee under this Agreement to enforce or interpret any of the terms hereof, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee with respect to such action, unless as a part of such action, the court of competent jurisdiction determines that each of the material assertions made by Indemnitee as a basis for such action were not made in good faith or were frivolous. In the event of an action instituted by or in the name of the Company under this Agreement or to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be paid all court costs and expenses, including attorneys' fees, incurred by Indemnitee in defense of such action (including with respect to Indemnitee's counterclaims and cross-claims made in such action), unless as a part of such action the court determines that each of Indemnitee's material defenses to such action were made in bad faith or were frivolous.

12. Miscellaneous.

(a) Governing Law. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

(b) Entire Agreement; Enforcement of Rights. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

(c) Construction. This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

(d) Notices. Any notice, demand or request required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficient when delivered personally or sent by telegram or fax or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, and addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice.

(e) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(f) Successors and Assigns. This Agreement shall be binding upon the Company and its successors and assigns, and inure to the benefit of Indemnitee and Indemnitee's heirs, legal representatives and assigns.

(g) Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company to effectively bring suit to enforce such rights.

[Signature Page Follows]

The parties hereto have executed this Agreement as of the day and year set forth on the first page of this Agreement.

WEBTV NETWORKS, INC.

By: _____

Title: _____

Address: 305 Lytton Avenue
Palo Alto, CA 94301

AGREED TO AND ACCEPTED:

_____
(IndemniteeName)

Address:
(IndemniteeAddress)

Exhibit 10.2

AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION

STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE--NET

(Do not use this form for Multi-Tenant Property)

1. Basic Provisions ("Basic Provisions")

1.1 Parties: This Lease ("Lease"), dated for reference purposes only, September 1, 1995, is made by and between Holvick Family Trust and Artemis Research Inc., a California Corporation ("Lessor") _____ ("Lessee"), (collectively the "Parties," or Individually a "Party").

1.2 Premises: That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known by the street address of 275 Alma Street located in the County of Santa Clara, State of California and generally described as (describe briefly the nature of the property) approximately 7,400 plus or minus square feet of the entire building plus sixteen (16) parking spaces at the rear of the building on the northern side of lot ("Premises"). (See Paragraph 2 for further provisions.)

1.3 Term: 0 years and 18 months ("Original Term") commencing October 1, 1995 ("Commencement Date") and ending March 31, 1997 ("Expiration Date"). (See Paragraph 3 for further provisions.)

1.4 Early Possession: Subject to agreement and coordination with Museum of American Heritage ("Early Possession Date"). (See Paragraphs 3.2 and 3.3 for further provisions.)

1.5 Base Rent: $8,880.00 per month ("Base Rent"), payable on the first (1st) day of each month commencing October 1, 1995. Should Lessee take early Possession of more than 33% of the Premises, then Lessee shall pay to Lessor rent based on pro-rata square footage occupied (See Paragraph 4 for further provisions.)

[ ] If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 Base Rent Paid Upon Execution: $ Eight Thousand Eight Hundred Eighty and 00/100 ($8,880,00) as Base Rent for the period October 1, 1995 through October 31, 1995.

1.7 Security Deposit: $8,880.00 ("Security Deposit"). (See Paragraph 5 for further provisions.)

1.8 Permitted Use: Professional business use (See Paragraph 6 for further provisions.)

1.9 Insuring Party: Lessor is the "Insuring Party" unless otherwise stated herein. (See Paragraph 8 for further provisions.)

1.10 Real Estate Brokers: The following real estate brokers (collectively, the "Brokers") and brokerage relationships exist in this transaction and are consented to by the Parties (check applicable boxes):

Cornish & Carey Commercial represents
[x] Lessor exclusively ("Lessor's Broker"); [ ] both Lessor and Lessee, and
Spallino Reid Corporate Real Estate Services represents
[x] Lessee exclusively ("Lessee's Broker"); [ ] both Lessee and Lessor. (See Paragraph 15 for further provisions.)

1.11 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by _____ ("Guarantor"). (See Paragraph 37 for further provisions.)

1.12 Addends. Attached hereto is an Addendum or Addenda consisting of Paragraphs _____ through _____ and Exhibits _____ all of which constitute a part of this Lease.

2. Premises.

2.1 Letting. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of square footage set forth in this Lease, or that may have been used in calculating rental, is an approximation which Lessor and

Lessee agree is reasonable and the rental based thereon is not subject to revision whether or not the actual square footage is more or less.

2.2 Condition. Lessor shall deliver the Premises to Lessee clean and free of debris on the Commencement Date and warrants to Lessee that the existing plumbing, fire sprinkler system, lighting, air conditioning, heating, and loading doors, if any, in the Premises, other than those constructed by Lessee, shall be in good operating condition on the Commencement Date. If a non-compliance with said warranty exists as of the Commencement Date, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within thirty (30) days after the Commencement Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense.

2.3 Compliance with Covenants, Restrictions and Building Code. Lessor warrants to Lessee that the improvements on the Premises comply with all applicable covenants or restrictions of record and applicable building codes, regulations and ordinances in effect on the Commencement Date. Said warranty does not apply to the use to which Lessee will put the Premises or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within six (6) months following the Commencement Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense.

2.4 Acceptance of Premises. Lessee hereby acknowledges: (a) that it has been advised by the Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical and fire sprinkler systems, security, environmental aspects, compliance with Applicable Law, as defined in Paragraph 6.3) and the present and future suitability of the Premises for Lessee's Intended use, and (c) that neither Lessor, nor any of Lessor's agents, has made any oral or written representations or warranties with respect to the said matters other than as set forth in this Lease.

2.5 Lessee Prior Owner/Occupant. The warranties made by Lessor in this Paragraph 2 shall be of no force or effect if immediately prior to the date set forth in Paragraph 1.1 Lessee was the owner or occupant of the Premises. In such event, Lessee shall, at Lessee's sole cost and expense, correct any non-compliance of the Premises with said warranties.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease, however (including but not limited to the obligations to pay Real Property Taxes and Insurance premiums and to maintain the Premises) shall be in effect during such period. Any such early possession shall not affect nor advance the Expiration Date of the Original Term.

Initials

3.3 Delay in Possession. If for any reason Lessor cannot delivery possession of the Premises to Lessee as greed herein by the Early Possession Date, if one is specified in Paragraph 1.4, or, if no Early Possession Date is specified, by the Commencement Date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease, or the obligations of Lessee hereunder, or extend the term hereof, but in such case, Lessee shall not, except as otherwise provided herein, be obligated to pay rent or perform any other obligation of Lessee under the terms of this Lease until Lessor delivers possession of the Premises to Lessee. If possession of the Premises is not delivered to Lessee within thirty (30) days after the Commencement Date, Lessee may, at its option, by notice in writing to Lessor within ten (10) days thereafter, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder; provided, however, that it such written notice by Lessee is not received by Lessor within said ten (10) day period, Lessee's right to cancel this Lease shall terminate and be of no further force or effect. Except as may be otherwise provided, and regardless of when the term actually commences, if possession is not tendered to Lessee when required by this Lease and Lessee does not terminate this Lease, as aforesaid, the period free of the obligation to pay Base Rent, if any, that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts changes or omissions of Lessee.

4. Rent.

4.1 Base Rent. Lessee shall cause payment of Base Rent and other rent or charges, as the same may be adjusted from time to time, to be received by Lessor in lawful money of the United States, without offset or deduction, on or before the day on which it is due under the terms of this Lease. Base Rent and all other rent and charges for any period during the term hereof which is for less than one (1) full calendar month shall be prorated based upon the actual number of days of the calendar month Involved. Payment of Base Rent and other charges shall be made to Lessor at its address stated herein or to such other persons or at such other addresses as Lessor may from time to time designate in writing to Lessee.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit set forth in Paragraph 1.7 as security for Lessee's faithful performance of Lessee's obligations under this Lease. If Lessee falls to pay Base Rent or other rent or charges due hereunder, or otherwise Defaults under this Lease (as defined in Paragraph 13.1), Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse Lessor for any liability, cost, expense, loss or damage (including attorneys' fees) which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of said Security Deposit, Lessee shall within ten (10) days after written request therefor deposit moneys with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. Any time the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional moneys with Lessor sufficient to maintain the same ratio between the Security Deposit and the Base Rent as those amounts are specified in the Basic Provisions. Lessor shall not be required to keep all or any part of the Security Deposit separate from its general accounts. Lessor shall, at the expiration or earlier termination of the term hereof and after Lessee has vacated the Premises, return to Lessee (or, at Lessor's option, to the last assignee, if any, of Lessee's interest herein), that portion of the Security Deposit not used or applied by Lessor. Unless otherwise expressly agreed in writing by Lessor, no part of the Security Deposit shall be considered to be held in trust, to bear interest or other increment for its use, or to be prepayment for any moneys to be paid by Lessee under this Lease.

6. Use.

6.1 Use. Lessee shall use and occupy the Premises only for the purposes set forth in Paragraph 1.8, or any other use which is comparable thereto, and for no other purposes Lessee shall not use or permit the use of the Premises in a manner that creates waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to, neighboring promises or properties. Lessor hereby agrees to not unreasonably withhold or delay its consent to any written request by Lessee, Lessees assignees or subtenants, and by prospective assignees and subtenants of the Lessee, its assignees and subtenants, for a modification of said permitted purpose for which the promises may be used or occupied, so long as the same will not impair the structural integrity of the improvements on the Premises, the mechanical or electrical systems therein, is not significantly mote burdensome to the Premises and the improvements thereon, and is otherwise permissible pursuant to this Paragraph 6. If Lessor elects to withhold such consent, Lessor shall within five (5) business days give a written notification of same, which notice shall include an explanation of Lessor's reasonable

objections to the change in use.

6.2 Hazardous Substances.

(a) Reportable Uses Require Consent. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in, on or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Lessor and compliance in a timely manner (at Lessee's sole cost and expense) with all Applicable Law (as defined in Paragraph 8.3). "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority. Reportable Use shall also include Lessee's being responsible for the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Law requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may, without Lessor's prior consent, but in compliance with all Applicable Law, use any ordinary and customary materials reasonably required to be used by Lessee in the normal course of Lessee's business permitted on the Premises, so long as such use is not a Reportable Use and does not expose the Premises or neighboring properties to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may (but without any obligation to do so) condition its consent to the use or presence of any Hazardous Substance, activity or storage tank by Lessee upon Lessee's giving Lessor such additional assurances as Lessor, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefrom or therefor, including, but not limited to, the installation (and removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of an additional Security Deposit under Paragraph 5 hereof.

(b) Duty to Inform Lessor. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance, or a condition involving or resulting from same, has come to be located in, on, under or about the Premises, due to Lessee's use of the Premises other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor. Lessee shall also immediately give Lessor a copy of any statement, report, notice, registration, application, permit. business plan, license, claim, action or proceeding, given to, or received from, any governmental authority or private party, or persons entering or occupying the Premises, concerning the presence, spill, release, discharge of, or exposure to, any Hazardous Substance or contamination in, on, or about the Premises, including but not limited to all such documents as may be Involved in any Reportable Uses involving the Premises.

(c) Indemnification. Lessee shall indemnify, protect, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, and the Premises, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, costs, claims, liens, expenses, penalties, permits and attorney's and consultant's fees arising out of or involving any Hazardous Substance or storage tank brought onto the Premises by or for Lessee or under Lessee's control. Lessee's obligations under this Paragraph 6 shell include, but not be limited to, the effects of any contamination or injury to person, property or the environment created by Lessee, and the cost of investigation (including consultant's and attorney's fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances or storage tanks, unless specifically so agreed by Lessor in writing at the time of such agreement.

6.3 Lessee's Compliance with Law. Except as otherwise provided in this Lease, Lessee, shall, at Lessee's sole cost and expense, fully, diligently and in a

timely manner, comply with all "Applicable Law," which term is used in this Lease to include all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, relating in any manner to Lessee's unique use of Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soft and groundwater conditions, and (iii) the use, generation, manufacture, production, Installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance or storage tank), now in effect or which may hereafter come Into effect, and whether or not reflecting a change in policy from any previously existing policy. Lessee shall, within five (5) days after receipt of Lessor's written request, provide Lessor with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing Lessee's compliance with any Applicable Law specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Lessee or the Premises to comply with any Applicable Law.

6.4 Inspection; Compliance. Lessor and Lessor's Lender(s) (as defined in Paragraph 8.3(a)) shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times, and upon reasonable notice for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease and all Applicable Laws (as defined in Paragraph 6.3), and to employ experts and/or consultants in connection therewith and/or to advise Lessor with respect to Lessee's activities, including but not limited to the installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance or storage tank on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a Default or Breach of this Lease, violation of Applicable Law, or a contamination, caused or materially contributed to by Lessee is found to exist or be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination. In any such case, Lessee shall upon request reimburse Lessor or Lessor's Lender, as the case may be, for the costs and expenses of such inspections.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations.

(a) Subject to the provisions of Paragraphs 2.2 (Lessor's warranty as to condition), 2.3 (Lessor's warranty as to compliance with covenants, etc.),

7.2 (Lessor's obligations to repair), 9 (damage and destruction), and 14 (condemnation), Lessee shall, at Lessee's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition and repair, structural and non-structural (whether or not such portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, without limiting the generality of the foregoing, all equipment or facilities serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire sprinkler and/or standpipe and hose or other automatic fire extinguishing system, including fire alarm and/or smoke detection systems and equipment, fire hydrants, fixtures, walls (interior and exterior), foundations, ceilings, roofs, floors, windows, doors, plate glass, skylights landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, about, or adjacent to the Premises. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises, the elements surrounding same, or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance and/or storage tank brought onto the Premises by or for Lessee or under its control. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Lessee's obligations shall Include restorations, replacements or renewals when necessary to keep the Premises and all Improvements thereon or a part thereof in good order, condition and state of repair. If Lessee occupies the Premises for seven (7) years or more, Lessor may require Lessee to repaint the exterior of the buildings on the Premises as reasonably required, but not more frequently than once every seven (7) years.

(b) Lessee shall, at Lessee's sole cost and expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in, the inspection, maintenance and service of the following equipment and improvements, if any, located on the Premises: (i) healing, air conditioning and ventilation equipment, (ii) boiler, fired or unfired pressure vessels, (iii) fire sprinkler and/or standpipe and hose or other automatic fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drain maintenance and (vi) asphalt and parking lot maintenance.

7.2 Lessor's Obligations. Except for the warranties and agreements of Lessor contained in Paragraphs 2.2 (relating to condition of the Premises), 2.3 (relating to compliance with covenants, restrictions and building code), 9 (relating to destruction of the Premises) and 14 (relating to condemnation of the Premises), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, the improvements located thereon, or the equipment therein, whether structural or non structural, all of which obligations are intended to be that of the Lessee under Paragraph 7.1 hereof. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises. Lessee and Lessor expressly waive the benefit of any statute now or hereafter in of fact to the extent it is inconsistent with the terms of this Lease with respect to, or which affords Lessee the right to make repairs at the expense of Lessor or to terminate this Lease by reason of any needed repairs.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) Definitions; Consent Required. The term "Utility Installations" is used in this Lease to refer to all carpeting, window coverings, airlines, power panels, electrical distribution, security, fire protection systems, communication systems, lighting fixtures, heating, ventilating, and air conditioning equipment, plumbing, and fencing in, on or about the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The form "Alterations" shall mean any modification of the Improvements on the Premises from that which are provided by Lessor under the terms of this Lease, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by losses that are not yet owned by Lessor as defined in Paragraph 7.4(a). Lessee shall not make any Alterations or Utility Installations in, on, under or about the Premises without Lessor's prior written consent. Lessee

may, however, make non-structural Utility Installations to the Interior of the Premises (excluding the roof), as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, and the cumulative cost thereof during the term of this Lease as extended does not exceed $25,000.

(b) Consent. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with proposed detailed plans. All consents given by Lessor, whether by virtue of Paragraph 7.3(a) or by subsequent specific consent, shall be deemed conditioned upon: (i) Lessee's acquiring all applicable permits required by governmental authorities, (ii) the furnishing of copies of such permits together with a copy of the plans and specifications for the Alteration or Utility Installation to Lessor prior to commencement of the work thereon, and (iii) the compliance by Lessee with all conditions of said permits in a prompt and expeditious manner. Any Alterations or Utility installations by Lessee during the term of this Lease shall be done in a good and workmanlike manner, with good and sufficient materials, and in compliance with all Applicable Law. Lessee shall promptly upon completion thereof furnish Lessor with as-built plans and specifications therefor.

(c) Indemnification. Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises. If Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to one and one-half times the amount of such contested lion claim or demand, indemnifying Lessor against liability for the same, as required by law for the holding of the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor's attorney's fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) Ownership. Subject to Lessor's right to require their removal or become the owner thereof as hereinafter provided in this Paragraph 7.4, all Alterations and Utility Additions made to the Premises by Lessee shall be the property of and owned by Lessee, but considered a part of the Premises. Lessor may, at any time and at its option, elect in writing to Lessee to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per subparagraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or earlier termination of this Lease, become the property of Lessor and remain upon and be surrendered by Lessee with the Premises.

(b) Removal. Unless otherwise agreed in writing, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or earlier termination of this Lease, notwithstanding their installation may have been consented to by Lessor. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent of Lessor.

(c) Surrender/Restoration. Lessee shall surrender the Premises by the end of the last day of the Lease term or any earlier termination date, with all of the improvements. parts and surfaces thereof clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice or by Lessee performing all of its obligations under this Lease. Except as otherwise agreed or specified in writing by Lessor, the Premises, as surrendered, shall include the Utility Installations. The obligation of Lessee shall include the repair of any damage occasioned by the installation, maintenance or removal of Lessee's Trade Fixtures, furnishings, equipment, and Alterations and/or Utility Installations, as well as the removal of any storage tank installed by or for Lessee, and the removal, replacement, or remediation of any soil, material or ground water contaminated by Lessee, all as may then be required by Applicable Law and/or good service practices Lessee's Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee subject to its obligation to repair and restore the Premises per this Lease.

8. Insurance; Indemnity.

8.1 Payment For Insurance. Regardless of whether the Lessor or Lessee is the Insuring Party, Lessee shall pay for all insurance required under this Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor in excess of $1,000,000 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within ten (10) days following receipt of an Invoice for any amount due.

8.2 Liability Insurance.

(a) Carried by Lessee. Lessee shall obtain and keep in force during the term of this Lease a Commercial General Liability policy of insurance protecting Lessee and Lessor (as an additional Insured) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an "Additional Insured-Managers or Lessors of Premises" Endorsement and contain the "Amendment of the Pollution Exclusion" for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance required by this Lease or as carried by Lessee shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance to be carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) Carried By Lessor. In the event Lessor is the Insuring Party, Lessor shall also maintain liability insurance described in Paragraph 8.2(a), above, in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance-Building, Improvements and Rental Value.

(a) Building and Improvements. The Insuring Party shall obtain and keep in force during the term of this Lease a policy or policies in the name of Lessor, with loss payable to Lessor and to the holders of any mortgages, deeds of trust or ground leases on the Premises ("Lender(s)"), insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full replacement cost of the Premises, as the same shall exist from time to time, or the amount required by Lenders, but in no event more than the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost. If Lessor is the Insuring Party, however, Lessee Owned Alterations and Utility Installations shall be insured by Lessee under Paragraph 8.4 rather than by Lessor. If the coverage is available anti commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Premises required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered cause of loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property Insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $1,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss, as defined in Paragraph 9.1(c).

(c) Adjacent Premises. If the Premises are part of a larger building, or if the Premises are part of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) Tenant's Improvements. If the Lessor is the Insuring Party. the Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease. If Lessee is the Insuring Party, the policy carried by Lessee under this Paragraph 8.3 shall insure Lessee Owned Alterations and Utility Installations.

8.4 Lessee'e Property insurance. Subject to the requirements of Paragraph 8.5, Lessee at its cost shall by separate policy maintain insurance coverage on all of Lessee's personal property, Lessee Owned Alterations and Utility Installations in, on, or about the Premises similar in coverage to that carried by the Insuring Party under Paragraph 8.3. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property or the restoration of Lessee Owned Alterations and Utility Installations. Lessee shall be the Insuring Party with respect to the insurance required by this Paragraph 8.4 and shall provide Lessor with written evidence that such insurance is in force.

8.5 Insurance Policies. Insurance required hereunder shall be in companies duty licensed to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B +, V, or such other rating as may be required by a Lender having a lien on the Premises, as set forth in the most current issue of "Best's Insurance Guide." Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in this Paragraph 8. If Lessee is the Insuring Party, Lessee shall cause to be delivered to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with the insureds and loss payable clauses as required by this Lease. No such policy shall be cancellable or subject to modification except after thirty (30) days prior written notice to Lessor. Lessee shall at least thirty (30) days prior to the expiration of such policies, furnish Lessor with evidence of renewals or 'insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. If the Insuring Party shall fall to procure and maintain the insurance required to be carried by the Insuring Party under this Paragraph 8, the other Party may, but shall not be required to, procure and maintain the same, but at Lessee's expense.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor ("Waiving Party") each hereby release and relieve the other, and waive their entire right to recover damages (whether in contract or in tort) against the other, for loss of or damage to the Waiving Party's property arising out of or incident to the perils required to be insured against under Paragraph B. The effect of such releases and waivers of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

8.7 Indemnity. Except for Lessor's negligence, willful acts and/or break of express warranties, Lessee shall indemnity, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, permits, attorneys and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the occupancy of the Premises by Lessee, the conduct of Lessee's business, any act, omission or neglect of Lessee, its agents, contractors, employees or invitees, and out of any Default or Breach by Lessee in the performance in a timely manner of any obligation on Lessee's part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Lessor) litigated and/or reduced to judgment. and whether well founded or not. In case any action or proceeding be brought against Lessor by reason of any of the foregoing matters, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense, Lessor need not have first paid any such claim in order to be so indemnified.

8.8 Exemption of Lessor from Liability. Except for Lessor's active negligence, willful acts and/or breach of express warranty, Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain. or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor.

9. Damage or Destruction.

9.1 Definitions.

(a) "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, the repair cost of which damage or destruction is lose than 50% of the then Replacement Cost of the Premises immediately prior to such damage or destruction, excluding from such calculation the value of the land and Lessee Owned Alterations and Utility Installations.

(b) "Premises Total Destruction" shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations the repair cost of which damage or destruction is 50% or more of the then Replacement Cost of the Premises immediately prior to such damage or destruction, excluding from such calculation the value of the land and Lessee Owned Alterations and Utility Installations.

(c) "Insured Loss" shall mean damage or destruction to Improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of applicable building codes, ordinances or laws, and without deduction for depreciation.

(e) "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises.

9.2 Partial Damage--Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility

Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and. in such event, Lessor shall make the insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. in the event, however. the shortage in proceeds was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within ten (10) days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If Lessor does not receive such funds or assurance within said period, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect. If in such case Lessor does not so elect, then this Lease shall terminate sixty (60) days following the occurrence of the damage or destruction. Unless otherwise agreed, Lessee shall in no event have any right to reimbursement from Lessor for

any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3 rather than Paragraph 9.2, notwithstanding that there may be some insurance coverage, but the not proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage--Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 13), Lessor may at Lessor's option, either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage of Lessor's desire to terminate this Lease as of the date sixty (60) days following the giving of such notice. in the event Lessor elects to give such notice of Lessor's intention to terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage totally at Lessee's expense and without reimbursement from Lessor. Lessee shall provide Lessor with the required funds or satisfactory assurance thereof within thirty (30) days following Lessee's said commitment. in such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible and the required funds are available. If Lessee does not give such notice and provide the funds or assurance thereof within the times specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs (including any destruction required by any authorized public authority), this Lease shall terminate sixty (60) days following the date of such Premises Total Destruction, whether or not the damage or destruction is an Insured Loss or was caused by a negligent or willful act of Lessee. In the event, however, that the damage or destruction was caused by Lessee, Lessor shall have the right to recover Lessor's damages from Lessee except as released and waived in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last six (6) months of the term of this Lease there is damage for which the cost to repair exceeds one (1) month's Base Rent, whether or not an Insured Loss, Lessor may, at Lessor's option, terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within thirty (30) days after the date of occurrence of such damage. Provided, however, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, within twenty (20) days following the occurrence of the damage. or before the expiration of the time provided in such option for its exercise, whichever is earlier ("Exercise Period"), (i) exercising such option and (ii) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs. If Lessee duly exercises such option during said Exercise Period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall. at Lessor's expense repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during said Exercise Period, then Lessor may at Lessor's option terminate this Lease as of the expiration of said sixty (60) day period following the occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within ten (10) days after the expiration of the Exercise Period, notwithstanding any term or provision in the grant of option to the contrary.

9.6 Abatement of Rent; Lessee's Remedies.

(a) In the event of damage described in Paragraph 9.2 (Partial Damage--Insured), whether or not Lessor or Lessee repairs or restores the Premises, the Base Rent, Real Property Taxes, Insurance premiums, and other charges, if any, payable by Lessee hereunder for the period during which such damage, its repair or the restoration continues (not to exceed the period for which rental value Insurance is required under Paragraph 8.3(b)), shall be abated in proportion to the degree to which Lessee's use of the Premises is Impaired. Except for abatement of Base Rent, Real Property Taxes, insurance premiums, and other charges, if any, as aforesaid, all other obligations of Lessee hereunder shall be performed by Lessee, and Lessee shall have no claim against Lessor for any damage suffered by reason of any such repair or restoration.

(b) If Lessor shall be obligated to repair or restore the Premises under the provisions of this Paragraph 9 and shall not commence, in a substantial and

meaningful way, the repair or restoration of the Premises within thirty (30) days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Lessee gives such notice to Lessor and such Lenders and such repair or restoration is not commenced within thirty (30) days after receipt of such notice, this Lease shall terminate as of the date specified in said notice. If Lessor or a Lender commences the repair or restoration of the Premises within thirty (30) days after receipt of such notice, this Lease shall continue in full force and effect. "Commence" as used in this Paragraph shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.9 Waive Statutes. Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

10. Real Property Taxes. three (3) business

10.1 (a) Payment of Taxes. Lessee shall pay the Real Property Taxes, as defined in Paragraph 10.2, applicable to the Premises during the term of this Lease. Subject to Paragraph 10.1(b), all such payments shall be made at least three (3) business days prior to the delinquency date of the applicable installment. Lessee shall promptly furnish Lessor with satisfactory evidence that such taxes have been paid. If any such taxes to be paid by Lessee shall cover any period of time prior to or after the expiration or earlier termination of the term hereof, Lessee's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year this Lease is in effect, and Lessor shall reimburse Lessee for any overpayment after such proration. If Lessee shall fail to pay any Real Property Taxes required by this Lease to be paid by Lessee, Lessor shall have the right to pay the same, and Lessee shall reimburse Lessor therefor upon demand.

(b) Advance Payment. In order to insure payment when due and before delinquency of any or all Real Property Taxes, Lessor reserves the right, at Lessor's option, to estimate the current Real Property Taxes applicable to the Premises, and to require such current year's Real Property Taxes to be paid in advance to Lessor by Lessee, either: (i) in a lump sum amount equal to the Installment due, at least twenty (20) days prior to the applicable delinquency date, or (ii) monthly in advance with the payment of the Base Rent. If Lessor elects to require payment monthly in advance, the monthly payment shall be that equal monthly amount which. over the number of months remaining before the month in which the applicable tax installment would become delinquent (and without interest thereon), would provide a fund large enough to fully discharge before delinquency the estimated installment of taxes to be paid. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payment shall be adjusted as required to provide the fund needed to pay the applicable taxes before delinquency. If the amounts paid to Lessor by Lessee under the provisions of this Paragraph are insufficient to discharge the obligations of Lessee to pay such Real Property Taxes as the same become due, Lessee shall pay to Lessor, upon Lessor's demand, such additional sums as are necessary to pay such obligations. All moneys paid to Lessor under this Paragraph may be intermingled with other moneys of Lessor and shall not bear interest.

10.2 Definition of "Real Property Taxes." As used herein, the term "Real Property Taxes" shall include any form of real estate tax or assessment. general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed upon the Premises by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other Improvement district thereof, levied against any legal or equitable interest of Lessor in the Premises or in the real property of which the Premises are a part, Lessor's right to rent or other income therefrom, and/or Lessor's business of leasing the Premises. The term "Real Property Taxes" shall also include any tax, too, levy, assessment or charge, or any increase therein, imposed by reason of events occurring, or changes in applicable law taking effect, during the term of this Lease, including but not limited to a change in the ownership of the Premises or in the improvements thereon, the execution of this Lease, or any modification, amendment or transfer thereof, and whether or not contemplated by the Parties.

10.3 Joint Assessment. If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations

assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.4 Personal Property Taxes. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises or elsewhere. When possible, Lessee shall cause its Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property or, at Lessor's option, as provided in Paragraph 10.1(b).

11. Utilities. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered with other premises.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or otherwise transfer or encumber (collectively, "assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent given under and subject to the terms of Paragraph 36.

(b) A change in the control of Lessee shall constitute an assignment requiring Lessor's consent. The transfer, on a cumulative basis, of twenty-five percent (25%) or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, refinancing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee, as hereinafter defined, by an amount equal to or greater than twenty-five percent (25%) of such Net Worth of Lessee as it was represented to Lessor at the time of the execution by Lessor of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, at whichever time said Net Worth of Lessee was or is greater, shall be considered an assignment of this Lease by Lessee to which Lessor may reasonably withhold its consent. "Net Worth of Lessee" for purposes of this Lease shall be the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles consistently applied.

(d) An assignment or subletting of Lessee's interest in this Lease without Lessor's specific prior written consent shall be a Default curable after notice per Paragraph 13.1(c).

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, any assignment or subletting shall not: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Base Rent and other sums due Lessor hereunder or for the performance of any other obligations to be performed by Lessee under this Lease.

(b) Lessor may accept any rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of any rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for the Default or Breach by Lessee of any of the terms, covenants or conditions of this Lease.

(c) The consent of Lessor to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting by Lessee or to any subsequent or successive assignment or subletting by the sublessee.

(d) In the event of any Default or Breach of Lessee's obligations under this Lease, Lessor may proceed directly against Lessee, any Guarantors or any one else responsible for the performance of the Lessee's obligations under this Lease, including the sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor or Lessee.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a non-refundable deposit of $1,000 or ten percent (10%) of the current monthly Base Rent, whichever is greater, as reasonable consideration for Lessor's considering and processing the request for consent. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested by Lessor.

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed, for the benefit of Lessor, to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented in writing.

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all rentals and Income arising from any sublease of all or a portion of the Premises heretofore or hereafter made by Lessee, and Lessor may collect such rent and income and apply same toward Lessee's obligations under this Lease; provided, however, that unfit a Breach (as defined in Paragraph 13.1) shall occur in the performance of Lessee's obligations under this Lease, Lessee may, except as otherwise provided in this Lease, receive, collect and enjoy the rents accruing under such sublease. Lessor shall not, by reason of this or any other assignment of such sublease to Lessor, nor by reason of the collection of the rents from a subleases, be deemed liable to the subleases for any failure of Lessee to perform and comply with any of Lessee's obligations to such subleases under such sublease. Lessee hereby Irrevocably authorizes and directs any such subleases, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor the rents and other charges due and to become due under the sublease. Sublessee, shall rely upon any such statement and request from Lessor and shall pay such rents and other charges to Lessor without any obligation or right to inquire as to whether such Breach exists and notwithstanding any notice from or claim from Lessee to the contrary. Lessee shall have no right or claim against said subleases, or, until the Breach has been cured, against Lessor, for any such rents and other charges so paid by said subleases to Lessor.

(b) In the event of a Breach by Lessee in the performance of its obligations under this Lease, Lessor, at its option and without any obligation to do so, may require any subleases to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such subleases to such sublessor or for any other prior Defaults or Breaches of such sublessor under such sublease.

(c) Any matter or thing requiring the consent of the sublessor under a sublease shall also require the consent of Lessor herein.

(d) No subleases shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(a) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the subleases, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The subleases shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the subleases.

13. Default; Breach; Remedies.

13.1 Default; Breach. Lessor and Lessee agree that if an attorney is consulted by Lessor in connection with a Lessee Breach (as hereinafter defined), $350.00

is a reasonable minimum sum per such occurrence for legal services and costs in the preparation and service of a notice of Default, and that Lessor may include the cost of such services and costs in said notice as rent due and payable to cure said Default. A "Default" is defined as a failure by the Lessee to observe, comply with or perform any of the terms, covenants, conditions or rules applicable to Lessee under this Lease. A "Breach"

is defined as the occurrence of any one or more of the following Defaults, and, where a grace period for cure after notice is specified herein, the failure by Lessee to cure such Default prior to the expiration of the applicable grace period, shall entitle Lessor to pursue the remedies set forth in Paragraphs 13.2 and/or 13.3:

(a) The abandonment of the Premises.

(b) Except as expressly otherwise provided in this Lease, the failure by Lessee to make any payment of Base Rent or any other monetary payment required to be made by Lessee hereunder, whether to Lessor or to a third party, as and when due, the failure by Lessee to provide Lessor with reasonable evidence of insurance or surety bond required under this Lease, or the failure of Lessee to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) days following written notice thereof by or on behalf of Lessor to Lessee.

(c) Except as expressly otherwise provided in this Lease, the failure by Lessee to provide Lessor with reasonable written evidence (in duly executed original form, if applicable) of (i) compliance with Applicable Law per Paragraph 6.3, (ii) the Inspection, maintenance and service contracts required under Paragraph 7.1(b). (iii) the recession of an unauthorized assignment or subletting per Paragraph 12.1(b), (iv) a Tenancy Statement per Paragraphs 1 6 or 37, (v) the subordination or non-subordination of this Lease per Paragraph 30, (vi) the guaranty of the performance of Lessee's obligations under this Lease if required under Paragraphs 1.11 and 37, (vii) the execution of any document requested under Paragraph 42 (easements), or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice by or on behalf of Lessor to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, that are to be observed, complied with or performed by Lessee, other than those described in subparagraphs (a), (b) or (c), above, where such Default continues for a period of thirty (30) days after written notice thereof by or on behalf of Lessor to Lessee; provided, however, that If the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then It shall not be deemed to be a Breach of this Lease by Lessee if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(a) The occurrence of any of the following events: (i) The making by lessee of any general arrangement or assignment for the benefit of creditors; (ii) Lessee's becoming a "debtor" as defined in 11 U.S.C. (S)101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days, or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph (a) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(f) The discovery by Lessor that any financial statement given to Lessor by Lessee or any Guarantor of Lessee's obligations hereunder was materially false.

(g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a guarantor, (ii) the termination of a guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a guarantor's refusal to honor the guaranty, or (v) a guarantor's breach of its guaranty obligation on an anticipatory breach basis, and Lessee's failure, within sixty (60) days following written notice by or on behalf of Lessor to Lessee of any such event, to provide Lessor with written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any affirmative duty or obligation of Lessee under this Lease, the applicable notice period(or in case of an emergency, without notice). Lessor may at its option (but without obligation to do so), perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee to Lessor upon invoice therefor. In the event of a Breach of this Lease by Lessee, as defined in Paragraph 13.1, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach, Lessor may:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. in such event Lessor shall be entitled to recover from Lessee: (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, reasonable attorneys' fees, and that portion of the leasing commission paid by Lessor applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the prior sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Default, or Breach of this Lease shall not waive Lessor's right to recover damages under this Paragraph. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein, or Lessor may reserve therein the right to recover all or any part thereof in a separate suit for such rent and/or damages. If a notice and grace period required under subparagraphs 13.1(b), (c) or (d) was not previously given, a notice to pay rent or quit, or to perform or quit, as the case may be, given to Lessee under any statute authorizing the forfeiture of leases for unlawful detainer shall also constitute the applicable notice for grace period purposes required by subparagraphs 13.1(b), (c) or (d). In such case, the applicable grace period under subparagraphs 13.1(b), (c) or (d) and under the unlawful detainer statute shall run concurrently after the one such statutory notice, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession in effect (in California under California Civil Code Section 1951.4) after Lessee's Breach and abandonment and recover the rent as it becomes due, provided Lessee has the right to sublet or assign, subject only to reasonable limitations. See Paragraphs 12 and 36 for the limitations on assignment and subletting which limitations Lessee and Lessor agree are reasonable. Acts of maintenance or preservation, efforts to relet the Premises, or the appointment of a receiver to protect the Lessor's interest under the Lease, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state wherein the Premises are located.

(d) The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture In Event Of Breach. Any agreement by Lessor for free or abated rent or other charges applicable to the Premises, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease to be performed or observed by Lessee during the term hereof as the same may be extended. Upon the occurrence of a Breach of this Lease by Lessee, as define d in Paragraph 13.1, any such

Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, and recoverable by Lessor as additional rent due under this Lease, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this Paragraph shall not be deemed a waiver by Lessor of the provisions of this Paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by the terms of any ground lease, mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within three (3) days after notice of non-receipt up to three (3) times, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a late charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder unless the default is also cured. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding Paragraph 4.1 or any other provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance. Further, should rent check not be honored at bank two (2) times, Lessee shall pay rent thereafter by Cashier's Check.

13.5 Breach by Lessor. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph 13.5, a reasonable time shall in no event be less than thirty (30) days after receipt by Lessor, and by the holders of any ground lease, mortgage or deed of trust covering the Premises whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days after such notice are reasonably required for its performance, then Lessor shall not be in breach of this Lease if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority

title or possession, whichever first occurs. If more than ten percent (10%) of the floor area of the Premises, or more than twenty-five percent (25%) of the land area not occupied by any building, is taken by condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes possession. If Lessee does not terminate this Lease in accordance with foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the building located on the Premises. No reduction of Base Rent shall occur if the only portion of the Premises taken is land on which there is no building. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any compensation separately awarded to Lessee for Lessee's relocation expenses and/or loss of Lessee's Trade Fixtures. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall to the extent of its not severance damages received, over and above the legal and other expenses incurred by Lessor in the condemnation matter, repair any damage to the Premises caused by such condemnation, except to the extent that Lessee has been reimbursed therefor by the condemning authority. Lessee shall be responsible for the payment of any amount in excess of such net severance damages required to complete such repair.

15. Broker's Fee. per separate agreement

15.1 The Brokers named in Paragraph 1.10 are the procuring causes of this Lease.

15.2 Upon execution of this Lease by both Parties, Lessor shall pay to said Brokers jointly, or in such separate shares as they may mutually designate in writing, a fee as set forth in a separate written agreement between Lessor and said Brokers (or in the event there is no separate written agreement between Lessor and said Brokers, the sum of $per separate agreement) for brokerage services rendered by said Brokers to Lessor in this transaction.

15.3 Unless Lessor and Brokers have otherwise agreed in writing, Lessor further agrees that: (a) it Lessee exercises any Option (as defined in Paragraph 39.1) or any Option subsequently granted which is substantially similar to an Option granted to Lessee in this Lease, or (b) if Lessee acquires any rights to the Premises or other promises described in this Lease which are substantially similar to what Lessee would have acquired had an Option herein granted to Lessee been exercised, or (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of the term of this Lease after having failed to exercise an Option, or (d) if said Brokers are the procuring cause of any other lease or sale entered into between the Parties pertaining to the Premises and/or any adjacent property in which Lessor has an interest, or (e) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then as to any of said transactions, Lessor shall pay said Brokers a fee in accordance with the schedule of said Brokers in effect at the time of the execution of this Lease,

15.4 Any buyer or transferee of Lessor's interest in this Lease, whether such transfer is by agreement or by operation of law, shall be deemed to have assumed Lessor's obligation under this Paragraph 15. Each Broker shall be a third party beneficiary of the provisions of this Paragraph 15 to the extent of its interest in any commission arising from this Lease and may enforce that right directly against Lessor and its successors.

15.5 Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person firm, broker or finder (other there the Brokers, if any named in Paragraph 1.10) in connection with the negotiation of this Lease and/or the consummation of the transaction contemplated hereby, and that no broker or other person, firm or entity other than said named Brokers is entitled to any commission or finder's fee in connection with said transaction. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

15.6 Lessor and Lessee hereby consent to and approve all agency relationships, including any dual agencies, indicated in Paragraph 1.10.

16. Tenancy Statement.

16.1 Each Party (as "Responding Party") shall within ten (10) days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Tenancy Statement" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

16.2 If Lessor desires to finance, refinance, or sell the Premises, any part thereof, or the building of which the Premises are a part, Lessee and all Guarantors of Lessee's performance hereunder shall deliver to any potential lender or purchaser designated by Lessor such financial statements of Lessee and such Guarantors as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past three (3) years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Lessor's Liability. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or in this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lesser at the time of such transfer or assignment. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, and the assumption of Lessor's obligations by the successors in interest, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Interest on Past-Due Obligations. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor within Thirty (30) days following the date on which it was due, shall bear interest from the thirty-first (31st) day after it was due at the rate of 10% per annum, but not exceeding the maximum rate allowed by law, in addition to the late charge provided for in Paragraph 13.4.

20. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

21. Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease are deemed to be rent.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notice porpoises. Either Party may by written notice to the other specify a different address for notice purposes, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for the purpose of mailing or delivering notices to Lessee. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted !o such party or parties at such addresses as Lessor may from time to lime hereafter designate by written notice to Lessee.

23.2 Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed

as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the United States Postal Service or courier. If any notice is transmitted by facsimile transmission or similar means. the same shall be deemed served or delivered upon telephone confirmation of receipt of the transmission thereof, provided a copy is also delivered via delivery or mail. If notice is received on a Sunday or legal holiday, it shall be deemed received on the next business day.

24. Waivers. No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. Regardless of Lessor's knowledge of a Default or Breach at the time at accepting rent, the acceptance of rent by Lessor shall not be a waiver of any preceding Default or Breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted. Any payment given Lessor by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. Recording. Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes. The Party requesting recordation shall be responsible for payment of any fees or taxes applicable thereto.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions,

29. Binding Effect; Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. Subordination; Attornment; Non-Disturbance.

30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed by Lessor upon the real property of which the Premises are a part, to any and all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof. Lessee agrees that the Lenders holding any such Security Device shall have no duty, liability or obligation to perform any of the obligations of Lessor under this Lease, but that in the event of Lessor's default with respect to any such obligation, Lessee will give any Lender whose name and address have been furnished Lessee in writing for such purpose notice of Lessor's default and allow such Lender thirty (30) days following receipt of such notice for the cure of said default before invoking any remedies Lessee may have by reason thereof. If any Lender shall elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device and shall give written notice thereof to Lessee, this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 Attornment. Subject to the non-disturbance provisions of Paragraph 30.3, Lessee agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Lessee might have against any prior lessor, or (iii) be bound by prepayment of more than one (1) month's rent.

30.3 Non-Disturbance. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving assurance (a "non-disturbance agreement") from the Lender that Lessee's possession and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises. Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any such subordination or non-subordination, attornment and/or non-disturbance agreement as is provided for herein.

31. Attorney's Fees. If any Party or Broker brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) or Broker in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorney's fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorney's fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorney's fees reasonably incurred. Lessor shall be entitled to attorney's fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach.

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times and upon reasonable notice for the purpose of showing the same to prospective purchasers, lenders, or lessees, and

making such alterations, repairs, improvements or additions to the Premises or to the building of which they are a part, as Lessor may reasonably deem necessary. Lessor may at any time place on or about the Premises or building any ordinary "For Sale" signs and Lessor may at any time during the last one hundred twenty (120) days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All such activities of Lessor shall be without abatement of rent or liability to Lessee.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Lessor's prior written consent. Notwithstanding anything to the contrary in this Lease, Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to grant such consent.

34. Signs. Lessee shall not place any sign upon the Premises, except that Lessee may, with Lessor's prior written consent, install (but not on the roof) such signs as are reasonably required to advertise Lessee's own business. The installation of any sign on the Premises by or for Lessee shall be subject to the provisions of Paragraph 7 (Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations).

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, Lessor shall, in the event of any such surrender, termination or cancellation, have the option to continue any one or all of any existing subtenancies. Lessor's failure within ten (10) days following any such event to make a written election to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents.

(a) Except for Paragraph 33 hereof (Auctions) or as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' or other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent pertaining to this Lease or the Premises, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, practice or storage tank, shall be paid by Lessee to Lessor upon receipt of an invoice and supporting documentation therefor. Subject to Paragraph 12.2(e) (applicable to assignment or subletting). Lessor's consent to any act, assignment of this Lease or subletting of the Premises by Lessee shall not constitute an acknowledgement that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent.

(b) All conditions to Lessor's consent authorized by this Lease are acknowledged by Lessee as being reasonable. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given.

37. Guarantor.

37.1 If there are to be any Guarantors of this Lease per Paragraph 1.11, the form of the guaranty to be executed by each such Guarantor shall be in the form most recently published by the American Industrial Real Estate Association, and each said Guarantor shall have the same obligations as Lessee under this Lease, including but not limited to the obligation to provide the Tenancy Statement and information called for by Paragraph 16.

37.2 It shall constitute a Default of the Lessee under this Lease if any such Guarantor fails or refuses, upon reasonable request by Lessor to give: (a) evidence of the due execution of the guaranty called for by this Lease, including the authority of the Guarantor (and of the party signing on Guarantor's behalf) to obligate such Guarantor on said guaranty, and including in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, together with a certificate of incumbency showing the signature of the persons authorized to sign on its behalf, (b) current financial statements of Guarantor as may from time to time be requested by Lessor, (c) a Tenancy Statement, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Upon payment by Lessee of the rent for the Premises and

the observance and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease.

39. Options.

39.1 Definition. As used in this Paragraph 39 the word "Option" has the following meaning: (a) the right to extend the term of this Lease or to renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal to lease the Premises or the right of first offer to lease the Premises or the right of first refusal to lease other property of Lessor or the right of first offer to lease other property of Lessor; (c) the right to purchase the Premises, or the right of first refusal to purchase the Premises, or the right of first offer to purchase the Premises, or the right to purchase other property of Lessor, or the right of first refusal to purchase other property of Lessor, or the right of first offer to purchase other property of Lessor.

39.2 Options Personal To Original Lessee. Each Option granted to Lessee in this Lease is personal to the original Lessee named in Paragraph 1.1 hereof, and cannot be voluntarily or involuntarily assigned or exercised by any person or entity other than said original Lessee while the original Lessee is in full and actual possession of the Premises and without the intention of thereafter assigning or subletting. The Options, if any, herein granted to Lessee are not assignable, either as a part of an assignment of this Lease or separately or apart therefrom, and no Option may be separated from this Lease in any manner, by reservation or otherwise.

Initials

39.3 Multiple Options. In the event that Lessee has any Multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options to extend or renew this Lease have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option, notwithstanding any provision in the grant of Option to the contrary, (i) during the period commencing with the giving of any notice of Default under Paragraph 13.1 and continuing until the noticed Default is cured, or (ii) during the period of time any monetary obligation due Lessor from Lessee is unpaid (without regard to whether notice thereof is given Lessee), or (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessor has given to Lessee three (3) or, more notices of Default under Paragraph 13.1, whether or not the Defaults are cured, during the twelve (12) month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) All rights of Lessee under the provisions of an Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, If, after such exercise and during the term of this Lease, (i) Lessee fails to pay to Lessor a monetary obligation of Lessee for a period of thirty (30) days after such obligation becomes due (without any necessity of Lessor to give notice thereof to Lessee), or (ii) Lessor gives to Lessee three (3) or more notices of Default under Paragraph 13.1 during any twelve (12) month period, whether or not the Defaults are cured, or (iii) if Lessee commits a Breach of this Lease.

40. Multiple Buildings. If the Premises are part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by, keep and observe all reasonable rules and regulations which Lessor may make from time to time for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of such other buildings and their invitees, and that Lessee will pay its fair share of common expenses incurred in connection therewith.

41. Security Measures. Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. Reservations. Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

44. Authority. If either Party hereto is a corporation, trust, or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. If Lessee is a corporation, trust or partnership, Lessee shall, within thirty (30) days after request by Lessor, deliver to Lessor evidence satisfactory to Lessor of such authority.

45. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. Offer. Preparation of this Lease by Lessor or Lessor's agent and submission of same to Lessee shall not be deemed an offer to lease to Lessee. This Lease is

not intended to be binding until executed by all Parties hereto.

47. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. The parties shall amend this Lease from time to time to reflect any adjustments that are made to the Base Rent or other rent payable under this Lease. As long as they do not materially change Lessee's obligations hereunder. Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by an institutional, insurance company, or pension plan Lender in connection with the obtaining of normal financing or refinancing of the property of which the Premises are a part.

48. Multiple Parties. Except as otherwise expressly provided herein, if more than one person or entity is named herein as either Lessor or Lessee, the obligations of such Multiple Parties shall be the joint and several responsibility of all persons or entities named herein as such Lessor or Lessee.

49. Condition of Premises: Lessor shall, at Lessor's sole cost and expense and prior to lease commencement, install a dishwasher in the existing kitchen on the Premises.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO, THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

IF THIS LEASE HAS BEEN FILLED IN, IT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR HIS APPROVAL. FURTHER, EXPERTS SHOULD BE CONSULTED TO EVALUATE THE CONDITION OF THE PROPERTY AS TO THE POSSIBLE PRESENCE OF ASBESTOS, STORAGE TANKS OR HAZARDOUS SUBSTANCES. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY THE REAL ESTATE BROKER(S) OR THEIR AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, 08 TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES; THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE. IF THE SUBJECT PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, AN ATTORNEY FROM THE STATE WHERE THE PROPERTY IS LOCATED SHOULD BE CONSULTED.

The parties hereto have executed this Lease at the place on the dates specified above to their respective signatures.

Executed at _____
on _____
by LESSOR:
Holvick Family Trust

By Debra Holvick
Name Printed: _____
Title: _____

By _____
Name Printed: _____
Title: _____
Address: _____
_____
Tel. No. (___)_____ Fax No. (___)_____

Executed at _____
on _____
by LESSEE:
Artemis Research, Inc., a California Corporation

By _____
Name Printed: _____
Title: _____

By _____
Name Printed: _____
Title: _____
Address: _____
_____
Tel. No. (___)_____ Fax No. (___)_____

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: American Industrial Real Estate Association, 345 South Figueroa Street, Suite M-1, Los Angeles, CA 90071. (213) 687-8777. Fax. No. (213) 687-8616.

FORM 204N-R-12/91

Exhibit 10.3

325 LYTTON AVENUE
PALO ALTO, CALIFORNIA
COMMERCIAL LEASE SUMMARY

The information contained in this "Office Commercial Lease Summary" is incorporated into the terms of the attached "Commercial" Lease.

I. LANDLORD: Mercury Property Investments, LLC

II. TENANT: WebTV Networks, Inc.

III. PREMISES: 325 Lytton Avenue, the entire building consisting of approximately 10,000 rentable square feet

IV. TERM:

Lease Term Approximately Thirty-six (36) months

Landlord's Right to Terminate After the 24th month with 180 days prior written notice

Lease Commencement: The Lease Term shall commence August 10th, 1996
Lease Expiration: The Lease Term shall expire July 31st, 1999

V. OPTION TO EXTEND: None

VI. RENT AND REIMBURSEMENTS:

Initial Full Service Rent:	Monthly Full Service Rent is Twenty Eight Thousand Seven Hundred Dollars ($28,700) approximately equal to $2.87 per rentable foot per month("Base Rent").
Rental Adjustment Schedule:	See Exhibit B
Security Deposit:	Twenty Eight Thousand Seven Hundred Dollars ($28,700)

VII. TENANT USE: General Office Uses Consistent With Section 4.1 of This Lease Agreement

VIII. EXECUTION: The Landlord and Tenant agree to the provisions of the Commercial Lease, including the attached Exhibits.

Landlord: Mercury Property Investments, LLC
By:

Date: _____, 1996
Tenant N Inc.
By:
Date:

TABLE OF CONTENTS

COMMERCIAL LEASE
325 LYTTON AVENUE
PALO ALTO, CALIFORNIA

This Lease is made and entered by and between "Landlord" and "Tenant" as these terms are defined in the ''Commercial Lease Summary", which Commercial Lease Summary constitutes and is numbered as page 1 of this Lease.

1. Premises.

1.1 Description of Premises. Landlord leases the "Premises" (as hereinafter defined) to Tenant for Tenant's exclusive use, and Tenant leases the Premises from Landlord for the term, at the rental, and upon all of the conditions set forth herein and in the Lease Summary. A floor plan showing the "Premises" is attached as Exhibit A. The Premises consist of the entire building of approximately 10,000 rentable square feet. The land upon which the Building is located is referred to herein as the "Property".

1.2 Landlord's Work. Landlord shall provide the Premises to Tenant in as is condition and makes no representation that the existing conditions are free from defects.

1.3 Surrender of Premises. At the end of the term of this Lease or upon any earlier termination pursuant to this Lease, Tenant shall surrender the Premises to Landlord in the same condition as existed on the Commencement Date, subject to reasonable wear and tear except that all articles of personal property and all business and trade fixtures, machinery, equipment, furniture owned by Tenant and installed by Tenant at its expense in the Premises shall remain the Property of the Tenant and may be removed by Tenant at any time during the Lease term. If Tenant fails to remove all of Tenant's Property from the Premises upon termination of the Lease for any cause whatsoever, Landlord may, at its option, any time within thirty (30) days of the lease termination and after ten (10) days written notice to Tenant of its intention to remove Tenant's Property, remove same in any manner Landlord shall choose and store such effects without liability to Tenant for loss thereof, and Tenant shall pay Landlord upon demand any and all reasonable expenses incurred in connection with such removal, including court costs, reasonable attorney fees, and reasonable storage charges incurred which such effects were in Landlord's possession.

1.5 Parking. Landlord shall provide Tenant 25 dedicated parking spaces or more if available in the parking lot on the Property behind and to the side of the Building during the Lease Term.

2. Term. This Lease shall begin on August 10th, 1996, the "Commencement Date" and shall continue for a term of approximately thirty six (36) months, expiring July 31st, 1999 as stated in the Lease Summary, in accordance with the following:

2.1 Postponement. Intentionally Omitted

2.2 Option to Extend. Intentionally Omitted

2.3 Landlord's Right to Terminate. At any time after the twenty fourth (24) month of the initial term, Landlord shall have the right to terminate this agreement with 180 days prior written notice to Tenant.

3. Rent.

3.1 Payment of Rent. Tenant shall pay to Landlord the Rent as stated in the Lease Summary, without deduction, offset, prior notice or demand, in advance on the first day of each calendar month of the term of this Lease. Rent shall be payable in lawful money of the United States to Landlord at such place as Landlord may designate in writing. Tenant's obligation to pay rent for the initial and any subsequent partial month shall be prorated on the basis of a thirty (30) day month.

3.2 Additional Rent.

(a) Tenant shall pay to Landlord during the term hereof, in addition to Rent, as additional rent (the "Additional Rent") all charges, costs and expenses which Tenant is required to pay hereunder, together with all late charges, interest, costs and expenses including attorneys' fees, that may accrue thereto in the event of Tenant's failure to pay such amounts, and all damages, reasonable costs and expenses which Landlord may incur by reason of Tenant's default or breach of this Lease.

(b) In the event of nonpayment by Tenant of Additional Rent, Landlord shall have all the rights and remedies with respect thereto as Landlord has for nonpayment of Base Rent.

3.4 Late Payment: Interest. If any installment of Rent, Additional Rent or any other sum due from Tenant is not received by Landlord within ten (10) days after the due date, Tenant shall pay to Landlord as liquidated damages an additional sum equal to five percent (5%) of the amount overdue (but not to exceed One Thousand Five Hundred Dollars ($1500) for any single event of late payment) to compensate Landlord for reasonably foreseeable processing and accounting charges, and any charges that may be incurred by Landlord with regard to any financing secured by the Property. Should Tenant fail to make any payment within the specified time limits, then Landlord's acceptance of any late charge shall not constitute a waiver by Landlord of Tenant's default with respect to the overdue amount.

3.5 Security Deposit:. Tenant has deposited the Security Deposit with Landlord as security for the full and faithful performance by Tenant of every term and covenant of this Lease. In the event Tenant defaults in the performance of any of its obligations hereunder, Landlord may use or apply any portion of the Security Deposit to cure the default or to compensate Landlord for its damages from the default, in which event Tenant shall promptly deposit with Landlord the sum necessary to restore the Security Deposit to its original amount. Upon termination of this Lease and performance of all of Tenant's obligations hereunder, Landlord shall return the Security Deposit or any balance thereof to Tenant Tenant shall not be entitled to any interest on the Security Deposit, and Landlord shall be entitled to commingle the Security Deposit with its general funds.

4. Uses.

4.1 Use of the Premises. The Premises shall be used only for general office uses or any other lawful purpose consistent with the City Of Palo Alto zoning and use ordinance for the Premises. Tenant will engage in no activity on the Premises that would, in the judgment of any insurer of the Premises, increase the premium on any of Landlord's insurance over the amount otherwise charged therefor or cause such insurance to be canceled. Tenant will comply with all applicable laws and governmental regulations pertaining to its use and occupancy of the Premises. Tenant will not cause any excessive loads to be placed upon the floor slabs or the walls of the Premises by the placement of its furnishings or equipment or otherwise. Tenant will commit no nuisance or waste on the Premises and will not cause any unreasonable odors, noise, smoke, vibration, electronic emissions, or any other item to emanate from the Premises so as to damage the Property or any other person's property.

4.2 No Exterior Uses. No area outside of the Building or the exterior of the Building is leased to or may be used by Tenant except for signage in accordance with Paragraph 14 and parking and access. No rubbish containers may be stored outside of the Premises except in areas specifically identified by Landlord. No materials may be stored outside of the Premises by Tenant.

4.3 Hazardous Materials.

(a) Tenant shall not cause or permit to be discharged from or about the Premises or the Building any materials identified by any federal, state, or local governmental body or agency as hazardous materials (collectively, "Hazardous Materials"). Tenant shall at its sole expense comply with all applicable governmental rules, regulations, codes, ordinances, statutes and other requirements respecting Hazardous Materials in connection with Tenant's activities on or about the Premises or the Property. Tenant shall at its sole cost perform all clean-up and remedial actions which may be required of Tenant by any governmental authority pertaining to any discharge of such materials by Tenant.

(b) Tenant shall indemnify and hold Landlord harmless from all costs, claims, judgments, losses, demands, causes of action, proceedings or hearings, including without limitation Landlord's reasonable attorneys' fees and court costs, relating to the storage, placement or use of Hazardous Materials by Tenant on or about the Premises, including without limitation (i) losses in or reductions to rental income resulting from Tenant's use, storage, or disposal of Hazardous Materials; (ii) all costs of clean-up or other alterations to the Premises necessitated by Tenant's use, storage, or disposal of Hazardous Materials; and (iii) any diminution in the fair market value of the Property caused by Tenant's use, storage, or disposal of Hazardous Materials. The obligations of Tenant under this Paragraph 4.3 shall survive the expiration of the Lease term.

(c) Tenant hereby acknowledges the asbestos or building materials containing asbestos may be present in the Premises as follows:

(i) In the linoleum and tile under carpet in conference room, kitchen, and corridors (ii) In the roofing materials (iii) In the exterior soffit materials.

Tenant further acknowledges that it shall be incumbent upon Tenant to conduct its own investigation as to the presence or absence of asbestos in the Premises. Landlord shall have absolutely no liability to Tenant with regard to the presence and/or release of asbestos in the Premises. Notwithstanding anything to the contrary contained herein, Landlord shall, at its sole cost, assume full responsibility for any removal or encapsulation of asbestos required by any governmental or regulatory agency due to Tenant's use or occupancy of the Premises, and any and all removal or encapsulation shall be conducted in compliance with the provisions of this Section 4.3.

(d) Landlord shall indemnify and hold Tenant harmless from all costs, claims, judgments, losses, damages, demands, causes of action, proceedings and hearings, including without limitation, Tenant's reasonable attorney's fees and court costs, arising out of or resulting from any Hazardous Materials on the Property or alleged to be on the Property and that were not brought on to the Property by Tenant or Tenant's agents or employees. The obligations of Landlord under this paragraph 4.4 survive the expiration of the Lease term.

5. Alterations and Additions. Tenant shall not make any alteration, addition or utility installation (collectively "Changes") to the Premises without Landlord's prior written consent which can be exercised using its sole descretion. Notwithstanding the immediately preceding sentence, Tenant

shall have the right to make interior, non structural alterations within the Premises without Landlord's approval, provided that (i) such alterations do not exceed Twenty Thousand Dollars ($20,000) in cost per project; (ii) prior to commencing such alterations, Tenant shall give 30 days prior written notice to Landlord specifying the work to be done and the area of the Premises affected by such work; and (iii) Tenant shall obtain all necessary governmental permits and approvals prior to commencing such work. In making any changes hereunder, Tenant shall comply with all applicable building codes and other governmental requirements. Tenant shall be solely responsible for any requirements imposed on the Building due to City, County, State or Federal regulations as a consequence of such alterations. Unless Landlord has specifically waived this provision in writing prior to the installation of the Changes, such Changes (i) shall be removed from the Premises, and all damage resulting from such removal repaired by Tenant prior to the expiration or sooner termination of the Lease term, or (ii) shall remain on the Premises at the end of the Lease term and become the property of the Landlord, at Landlord's sole election. In making all Changes, Tenant shall hold Landlord harmless from mechanics' liens and all other liability resulting therefrom. Tenant shall not proceed to make any changes until five (5) days after receipt of Landlord's written consent, in order that Landlord may post on the Premises appropriate notices to avoid any liability or liens by reason thereof.

6. Maintenance and Repair.

6.1 Tenant's Obligations. Except for those portions of the Building which Landlord is obligated to maintain and repair pursuant to Paragraph 6.2 below, Tenant, at its sole cost, shall maintain in good working order and repair the non-structural portions of the Premises (pre-existing latent defects excepted which defects shall be the sole responsibility of Landlord to repair and correct) and every part thereof. Tenant's obligation will include, but not be limited to; regular janitorial service for the maintenance of the interior and exterior of the Premises, HVAC system maintenance including a regular service contract, maintenance of the fiber optic cabling, general repairs based on Tenant use of the premises and regular landscape service. If Tenant refuses or neglects to make repairs and/or maintain the Premises, or any part thereof, in a manner and within a time period reasonably satisfactory to Landlord, Landlord shall have the right, upon giving Tenant reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event the reasonable cost of such work shall be paid by Tenant promptly upon Landlord's presentation of reasonable evidence of the costs actually incurred.

6.2 Landlord's Obligations. Subject to Tenant's obligations pursuant to Paragraph 6.1, and the provisions of this Lease dealing with damage or destruction and condemnation, Landlord shall repair and maintain in good working order the roof, roof membrane, and all structural portions of the Premises and the Building, the heating, ventilation, air-conditioning equipment serving the Premises (exclusive for routine maintenance which is a Tenant obligation) and electrical systems and equipment(including utility lines and conduits), exterior surfaces or the Building, sidewalks, and the parking lot for the Building. Tenant hereby waives the benefit of any statute now or hereinafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good condition, order and repair. Tenant specifically waives all rights it may have under Sections 1932(1),1941, and 1942 of the California Civil Code, and any similar or successor statute or law.

7. Taxes.

7.1 Tenant's Personal Property Taxes. Tenant shall pay prior to delinquency all taxes, license fees, and public charges assessed or levied against Tenant, Tenant's estate in this Lease or Tenant's leasehold improvements, trade fixtures, furnishings, equipment and other personal property.

8. Utilities and Services. All utilities metered to the Tenant's Premises shall be paid by the Tenant directly to the charging authority. Any utilities not separately metered to the Tenant but serving the Premises shall be allocated to Tenant as "additional rent". No failure or interruption of any such utilities or service shall entitle Tenant to terminate this Lease or to withhold rent or other sums due hereunder and Landlord shall not be liable to Tenant for any such failure or interruption unless caused by the willful misconduct of Landlord. Landlord shall not be responsible for providing any security protection for all or any portion of the Property and Tenant shall at its own expense provide or obtain any security services that it desires.

9. Indemnity.

(a) Tenant hereby agrees to indemnify and hold Landlord harmless from and against any and all claims, demands, liabilities, and expenses, including reasonable attorneys' fees, arising from Tenant's use of the Premises or from any act permitted, or any omission to act, in or about the Premises or the Property by Tenant or its agents, employees, contractors, or invitees, or from any breach or default by Tenant of this Lease, or from any injury to person or property, except to the extent caused by the gross negligence or willful misconduct of Landlord or Landlord's agents, contractors, or employees. In the event any action or proceeding shall be brought against Landlord by reason of any such claim, Tenant shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord.

(b) Landlord hereby agrees to indemnify and hold Tenant harmless from all costs, claims, judgments, losses, damages, demands, causes of action, proceedings and hearings, including without limitation, Tenant's reasonable attorney's fees and court costs, arising from the gross negligence or willful misconduct of Landlord or Landlord's agents, contractors, or employees, or from the material breach or default by Landlord of this Lease.

10. Waiver of claims Tenant hereby waives any claims against Landlord for injury to Tenant's business or any loss of income therefrom, for damage to Tenant's property, or for injury or death of any other person in or about the Premises or the Property from any cause whatsoever, except to the extent caused only by Landlord's gross negligence or willful misconduct.

11. Insurance.

11.1 Tenant's Liability Insurance. Tenant shall, at its expense, obtain and keep in force during the term of this Lease a policy of comprehensive public liability insurance insuring Landlord and Tenant against any liability arising out of the operation of Tenant's business and the condition, use, occupancy or maintenance of the Premises. Such insurance policy shall have a combined single limit for both bodily injury and property damage in an amount not less than Two Million Dollars ($2,000,000), which amount shall be increased from time to time as reasonably required by Landlord. The policy shall contain cross liability endorsements (to the extent available on commercially reasonable terms) and shall insure performance by Tenant of the indemnity provisions of Paragraph 9 above. The limits of said insurance shall not limit the liability of Tenant hereunder.

11.2 Tenant's Property Insurance. Tenant shall, at its expense, keep in force during the term of this Lease, a policy of fire and property damage insurance, including protection for glass and windows to the Premises, in an "all risk" form, insuring Tenant's inventory, fixtures, equipment, personal property, and leasehold improvements within the Premises (whether installed by Landlord or Tenant) for the full replacement value thereof. Tenant also shall obtain and maintain business interruption insurance in an amount adequate to provide for payment of Base Rent and other amounts due Landlord under this Lease during a one year interruption of Tenant's business due to fire or other casualty.

11.3 Landlord's Liability Insurance. Landlord shall maintain a policy of comprehensive general liability insurance in an amount of coverage the Landlord deems advisable insuring Landlord (and such other entities as designated by Landlord) against liability for personal injury, bodily injury or death and damage to property occurring or resulting from an occurrence in, on, or about the Property with such coverage as Landlord may from time to time deem advisable.

11.4 Landlord's Property Insurance. Landlord shall maintain a policy or policies of insurance covering loss or damage to the Property, including protection from rental loss and coverage for operating expenses resulting from loss or damage to the Building, and such other hazards in the industry in such amounts and with such coverage as Landlord deems advisable, but in no event for less than 90% of replacement value (except for earthquake coverage). All proceeds under such policies shall be payable exclusively to Landlord.

11.5 Waiver of Subrogation. Tenant and Landlord each hereby waives, and shall cause their respective insurers to similarly waive, any and all rights of recovery against the other, or against the officers, employees, partners, agents and representatives of the other, for loss of or damage to the property of the waiving party or the property of others under its control, to the extent such loss or damage is (or would have been) insured against under any insurance policy carried (or required to be carried) by Landlord or Tenant hereunder.

11.6 Insurance Policies. All of Tenant's insurance shall be primary insurance written in a form satisfactory to Landlord by companies acceptable to Landlord and shall specifically provide by endorsements reasonably acceptable to Landlord that such policies shall: (i) not be subject to cancellation or other change except after at least thirty (30) days' prior written notice to Landlord; (ii) be primary insurance; (iii) specifically waive subrogation pursuant to this Lease. All liability policies maintained by Tenant hereunder shall name Landlord and Landlord's property management company as additional insured parties. Copies of the policies or certificates evidencing the policies, together with satisfactory evidence of payment of premiums shall be deposited with Landlord on or prior to the Commencement Date, and upon each renewal of such policies, which shall be effected not less than thirty (30) days prior to the expiration date of the term of such coverage.

12. Damage. Except as provided for Paragraph 12.1, if damage occurs to any portion of the Premises that Landlord is obligated to maintain, providing that (i) such damage is insured against or required to be insured against, (ii) such damage does not render the Premises unusable, and (iii) such damage does not occur within the last twelve (12) months of the lease term, Landlord will cause such damage to be repaired with reasonable diligence, subject to delays in the obtaining and disbursement of insurance proceeds and delays caused by inclement weather, governmental action or inaction, and shortage of materials or services. If such damage is not required to be insured against, or if the damage occurs within the last twelve (12) months of the lease term, Landlord may elect, at its option exercised by written notice to Tenant within sixty (60) days of the date that Landlord learns of the damage, to either complete the repair at its expense or elect to terminate this Lease as of the date of damage. If at any time a portion of the Premise that Landlord is obligated to maintain is damages or destroyed by any cause thereby rendering the Premises unusable, even if such damage is required to be insured against pursuant to Paragraph 11 above, Landlord shall notify Tenant in writing as to the estimated time for repairing the damage within sixty (60) days of the date on which Landlord learns of the damage. If Landlord reasonably estimates that the time required for repair exceeds six (6) months, then either Landlord or Tenant shall be entitled to terminate this Lease by delivering written notice of termination to the other party within 10 (ten) days after receipt of the estimation. Regardless of the total repair time, if this lease is not terminated, rent will abate during the period until the Premises are repaired and ready for Tenant's full use and occupancy. Under no scenario will Landlord have liability on account of the damage.

12.1 Tenant's Property. Landlord's obligation to rebuild or restore shall not include Tenant's trade fixtures, equipment, merchandise, or any improvements, alterations or additions made by Tenant to the Premises.

12.2 Waiver. Tenant waives the provisions of California Civil Code Sections 1932(2) and 1933(4), and any similar or successor statutes relating to termination of leases in the event of damage or destruction, and agrees that the parties' rights and obligations in such event shall instead be governed by this Lease.

13. Condemnation. If any part of the Premises shall be taken for any public, or quasi-public use, under any statute or by right of eminent domain or purchase in lieu thereof, and a part thereof remains which is susceptible to occupation hereunder, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor or purchaser, and the rent payable hereunder shall be adjusted so that Tenant shall be required to pay for the remainder of the Lease term only such portion of such rent as the value of the part remaining after such taking bears to the value of the entire Premises prior to such taking; but in such event Landlord shall have the option to terminate this Lease as of the date when title to the part so taken vests in the condemnor or purchaser. If all of the Premises, or such part thereof be taken so that there does not remain a portion susceptible to occupation hereunder, this Lease shall thereupon terminate. All compensation awarded upon any taking hereunder shall belong exclusively to the Landlord. Notwithstanding any provision to the contrary contained herein, Tenant shall have the right to make a separate claim against the appropriate governmental authority for condemnation proceeds allocable to the unamortized costs of the leasehold improvements made at the cost of Tenant, the removal of Tenant's trade fixtures or removable personal property, and relocation expenses if and only to the extent that such separate claim does not diminish Landlord's condemnation award.

14. Advertisements and Signs. Tenant shall not place or maintain any sign, advertisement, notice or other marking whether temporary or permanent on the exterior or visible from the exterior of the Premises or the Property, without the approval of the City of Palo Alto and the prior written consent of Landlord. The Landlord's consent shall not be unreasonably withheld.

15. Entry by Landlord. Landlord and its agents shall have the right to enter the Premises on reasonable prior written notice (except in an emergency) to Tenant at the Premises, subject to Tenant's security requirements, only for the purpose of inspecting the same, showing the premises to prospective purchasers or others, posting notices of non- responsibility, or making repairs, alterations or additions to any portion of the Building (but not to the Premises, except when Landlord is required to do so by this Lease or by law). In making any such entry, Landlord shall minimize its interference with Tenant's use and occupancy to the extent reasonable under the circumstances surrounding such entry. Landlord and its agents may, at any time within ninety (90) days prior to the expiration of the lease term, place upon Premises "For Lease" signs and, on reasonable written or oral notice to Tenant at the Premises only, exhibit the Premises to prospective tenants.

16. Assignment and Subletting.

16.1 Landlord's Consent Required. Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in the Lease or in the Premises, without Landlord's prior written consent, which shall not be unreasonably withheld or delayed. It shall be reasonable for Landlord to deny consent if (a) the use to be made of the Premises by the proposed assignee or sublessee would be prohibited by any other term of this Lease; or (b) the character, reputation and financial condition of the proposed assignee or sublessee are not satisfactory to Landlord.

16.2 Documentation. Prior to any assignment or sublease, Tenant shall provide to Landlord the proposed assignee's or sublessee's name, address, financial statements for the previous three (3) years, (if available) and copies of all documents relating to Tenant's proposed assignment or sublease.

16.3 Terms and Conditions. In connection with any proposed assignment or sublease, Tenant shall pay to Landlord all processing costs and attorneys' fees incurred by Landlord (not to exceed One Thousand Dollars ($1,000)), regardless of whether Landlord consents to such assignment or sublease . Each assignment or sublease shall be in form satisfactory to Landlord and shall be subject and subordinate to the provisions of this Lease. Once approved by Landlord, such assignment or sublease shall not be modified without Landlord's prior written consent. Each assignee or sublessee shall agree to perform all of the obligations of Tenant hereunder and shall acknowledge that the termination of this Lease shall, at Landlord's sole election, constitute a termination of every such assignment or sublease. Notwithstanding any assignment or sublease, Tenant for the then current lease term not including any option periods shall remain primarily liable for all obligations and liabilities of Tenant under this Lease. Landlord may accept Rent from a proposed assignee or sublessee without waiving its right to withhold consent to a proposed assignment or subletting.

16.4 Landlord's Remedies. Any assignment or sublease without Landlord's prior written consent where such consent is required shall be void, and shall constitute a default under this Lease. The consent by Landlord to any assignment or sublease shall not constitute a waiver of the provisions of this Paragraph 16 with respect to any subsequent assignment or sublease.

17. Default.

17.1 Event of Default. The occurrence of any of the following events (an "Event of Default") shall constitute a default and breach of this Lease by Tenant:

(a) The failure by Tenant to make any payment of rent or any other required payment, as and when due, and such failure shall not have been cured within five (5) days after written notice thereof from Landlord;

(b) Tenant's failure to perform any other term, covenant or condition contained in this Lease and such failure shall have continued for thirty (30) days after written notice of such failure is given to Tenant; provided that where such failure cannot reasonably be cured within said thirty (30) day period, Tenant shall not be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently pursues all reasonable efforts to complete said cure until completion thereof;

(c) Tenant's assignment of its assets for the benefit of its creditors; the filing of a petition by or against Tenant, where such action is not dismissed within thirty (30) days, seeking adjudication or reorganization under the Bankruptcy Code; the appointment of a receiver to take possession of, or a levy by way of attachment or execution upon, substantially all of Tenant's assets at the Premises.

(d) Tenant abandons the Premises.

17.2 Remedies. Upon any Event of Default, which is not cured, Landlord shall have the following remedies, in addition to all other remedies now or hereafter provided by law or equity:

(a) Landlord shall be entitled to keep this Lease in full force and effect and Landlord may enforce all of its rights and remedies under this Lease, including the right to recover rent and other sums as they become due, plus interest at the highest rate then allowed by law, from the due date of each installment of rent or other sum until paid; or

(b) Landlord may terminate Tenant's right to possession by giving Tenant written notice of termination, whereupon this Lease and all of Tenant's rights in the Premises shall terminate. Any termination under this paragraph shall not release Tenant from the payment of any sum then due Landlord or from any claim for damages or rent accrued.

In the event this Lease is terminated pursuant to this Paragraph 17.2(b), Landlord may recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including but not limited to: (i) The cost of recovering possession of the Premises; (ii) Expenses of reletting, including necessary renovation and alteration of the Premises; (iii) Reasonable attorneys' fees, any real estate commissions actually paid and that portion of any leasing commission paid by Landlord applicable to the unexpired term of this Lease; (iv) The worth at the time of award of the unpaid rent which had been earned at the time of termination; (v) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss for the same period that Tenant proves could have been reasonably avoided; (vi) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided; and (vii) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom except for utilities and other expenses that would cease with the closure of the restaurant business.

The "worth at the time of award" of the amounts referred to in subparagraphs (iv) and (v) of this Paragraph 17.2(b) shall be computed by allowing interest at the maximum rate then permitted by law. The "worth at the time of award" of the amount referred to in subparagraph (vi) of this Paragraph 17.2(b) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). The term "rent" as used in this paragraph shall include all sums required to be paid by Tenant to Landlord pursuant to the terms of this Lease.

17.3 No Relief From Forfeiture After Default. Tenant waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, and under any other present or future law, in the event Tenant is evicted or Landlord otherwise lawfully takes possession of the Premises by reason of any Event of Default.

17.4 Landlord's Right to Perform Tenant's Obligations. If Tenant shall at any time fail to perform any obligation required of Tenant hereunder, and provided Tenant has been provided a thirty (30) day notice from Landlord concerning such obligation, then Landlord may, at its option, perform such obligation to the extent Landlord deems desirable, and may pay any and all expenses incidental thereto and employ counsel. No such action by Landlord shall be deemed a waiver by Landlord of any of Landlord's rights or remedies, or a release of Tenant from performance of such obligation. All sums so paid by Landlord shall be due and payable by Tenant to Landlord on the day immediately following Landlord's payment thereof. Landlord shall have the same rights and remedies for the nonpayment of any such sums as for default by Tenant in the payment of rent.

17.5 Remedies Not Exclusive. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies available.

17.6 Termination. Surrender and Abandonment. No act or conduct of Landlord, including, without limitation, efforts to relet the Premises, an action in unlawful detainer or service of notice upon Tenant or surrender of possession by Tenant pursuant to such notice or action, shall extinguish the liability of Tenant to pay rent or other sums due hereunder or terminate this Lease, unless Landlord notifies Tenant in writing of Landlord's election to terminate this Lease. No act or conduct of Landlord, including the acceptance of the keys to the Premises, other than a written acknowledgment of acceptance of surrender signed by Landlord, shall be deemed to be or constitute an acceptance of the surrender of the Premises by Tenant prior to the expiration of the Lease term. The surrender of this Lease by Tenant, voluntarily or otherwise, shall, at Landlord's option, operate as an assignment to Landlord of any and all existing assignments and subleases, or Landlord may elect to terminate any or all of such assignments and subleases by notifying the assignees and subleases of its election within fifteen (15) days after such surrender.

17.7 Landlord's Default. In the event of any failure by Landlord to perform any of Landlord's obligations under this Lease, Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall thereupon have thirty (30) days in which to cure any such default. Unless and until Landlord fails to so cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof. If a default by Landlord remains uncured after the expiration of the thirty (30) day period (except for obligations of Landlord which reasonably require greater than thirty (30) days to fulfill, and provided Landlord has initiated performance of any such obligation within such thirty (30) day period and has thereafter diligently acted to fulfill any such obligation), then Tenant shall have the right, as Tenant's sole and exclusive remedies, to either (i) bring an action for damages. All obligations of Landlord hereunder will be construed as covenants, not conditions; and all such obligations will be binding upon Landlord only during the period of Landlord's ownership of the building and not thereafter.

18. Effect of Conveyance. The term "Landlord" as used in this Lease, means only the current owner(s) of the Building so that in the event of any sale or other transfer of the Building, the transferor shall be deemed to be relieved of all obligations of the Landlord hereunder from and after the date of such sale, and the transferee shall be deemed to have assumed and agreed to perform any and all obligations of Landlord hereunder arising from and after said date.

19. Instruments Required by Lender. Upon written request from Landlord, Tenant agrees to forthwith execute and deliver to Landlord, such instruments, including a current statement of Tenant's financial condition, as may be reasonably required by any mortgagee or holder of a deed of trust or other encumbrance on the Property.

20. Tenant's Estoppel Certificate. Tenant shall, from time to time, within ten (10) days after receipt by Tenant from Landlord of written request therefor, deliver a duly executed and acknowledged and factually accurate estoppel certificate to Landlord in a form reasonably satisfactory to Landlord and Tenant.

21. Subordination Attornment and Quiet Enjoyment. Tenant agrees that this Lease may, at the option of Landlord, be subject and subordinate to any mortgage, deed of trust, any other instrument of security, or ground lease which has been or shall be placed on the Property, provided, so long as tenant is not in default under this Lease, no foreclosure or other right or remedy exercised by the lender holding such security shall terminate this Lease. This subordination is hereby made effective without any further act of Tenant. Tenant shall, at any time hereafter, on demand, execute any instruments, releases, or other documents that may be required by any mortgagee, mortgagor, or trustor or beneficiary under any security instrument for the purpose of subjecting and subordinating this lease to the lien of such instrument, provided, so long as tenant is not in default under this Lease, no foreclosure or other right or remedy exercised by the mortgagee, mortgagor, or trustor or beneficiary shall terminate this

Lease. Tenant shall attorn any third party purchasing or otherwise acquiring the Premises at any sale or other proceeding or pursuant to the exercise of any rights, powers or remedies under any instruments of security or ground leases now or hereafter encumbering all or any part of the Premises, as if such third party had been named as Landlord under this Lease.

22. Notices. All notices, demands or requests to be given to Tenant or Landlord shall be in writing, delivered personally or by commercial courier or by United States mail, postage prepaid, certified return receipt requested and addressed (a) to Tenant at the Premises, or (b) to Landlord at 435 Tasso Street, Suite 300, Palo Alto, CA 94301 or any subsequent address as it may from time to time designate to Tenant in writing. Each such notice, demand or request shall be deemed to have been received by Tenant or Landlord upon actual delivery.

23. No Accord and Satisfaction. No payment by Tenant, or receipt by Landlord, of an amount which is less than the full amount of Base Rent and all other sums payable by Tenant hereunder at such time shall be deemed to be other than on account of (a) the earliest of such other sums due and payable, and thereafter (b) to the earliest Base Rent or other sum due and payable hereunder. No endorsement or statement on any check or any letter accompanying any payment of Base Rent or such other sums shall be deemed an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to Landlord's right to receive payment of the balance of such rent and/or other sums, or Landlord's right to pursue Landlord's remedies.

24. Attorneys' Fees. If any action or proceeding at law or in equity, or an arbitration proceeding (collectively, an "Action"), shall be brought to recover any rent under this Lease, or for or on account of any breach of or to enforce or interpret any of the terms, covenants, or conditions of this Lease, or for the recovery of possession of the Premises, the "Prevailing Party" shall be entitled to recover from the other party as a part of such action or in a separate action brought for that purpose, its reasonable attorneys' fees and costs and expenses incurred in connection with the prosecution or defense of such action. 'prevailing Party" within the meaning of this paragraph shall include, without limitation, a party who brings an action against the other after the other is in breach or degault, if such action is dismissed upon the other's payment of the sums alledgedly due or upon the performance of the covenants alleged breached, or if the commencing such action or proceeding obtains substantially the relief sought by it in such action, whether or not such action proceeds to a final judgment or determination. In addition, each party agrees to reimburse the other party for all of such other party's legal fees and expenses incurred in the enforcement and protection of all of such other party's rights under the Lease and applicable laws, whether or not an action has been brought, including reasonable attorneys' fees without limitation and costs incurred in any out-of-court settlement or in connection with the filing of a bankruptcy petition by or against the first party.

25. Holding Over. This Lease shall terminate without further notice at the expiration of the lease term. Any holding over after the expiration of the lease term, with the prior written approval of Landlord, shall be construed to be a tenancy from month to month, at a monthly rental of one hundred ten percent (110%) of the last applicable Base Rent, and shall otherwise be on the terms and conditions herein specified. If however, Landlord does not consent to continued occupancy by the Tenant after the lease termination date with prior written approval, such hold over shall be construed to be a tenancy from month to month, at a monthly rental of one hundred fifty percent (150%) of the last applicable Base Rent, and shall otherwise be on the terms and conditions herein specified

26. Landlord Liability. Tenant agrees that if Landlord shall fail to perform any covenant or obligation on its part to be performed, and as a consequence thereof, or if on any other claim by Tenant concerning the Premises or this Lease, Tenant shall recover a money judgment against Landlord, then such judgment shall be satisfied only out of Landlord's estate in the Property, and Landlord shall have no personal or further liability whatsoever with respect to any such default or judgment.

27. General Provisions.

27.1 Entire Agreement. This instrument, together with the exhibits attached hereto, constitutes the entire agreement made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all of the parties hereto or their respective successors in interest.

27.2 Timeliness. Time is of the essence with respect to the performance of each and every provision of this Lease in which time of performance is a factor. Whenever the provisions of this Lease provide that the consent of the party must be obtained, except as otherwise specifically provided, such party agrees to act reasonably and in a timely manner in determining whether to grant or withhold its consent.

27.3 Captions. The captions of the numbered paragraphs of this Lease are inserted solely for the convenience of the parties hereto and shall have no effect upon the construction or interpretation of any part hereof.

27.4 California Law. This Lease shall be construed and interpreted in accordance with the laws of the State of California.

27.5 Partial Invalidity. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall nonetheless continue in full force and effect.

27.6 No Warranties. Any agreements, warranties or representations not expressly contained herein shall not bind either Landlord or Tenant.

27.7 Joint and Several Liability. If Landlord or Tenant is more than one person or entity, each such person or entity shall be jointly and severally liable under the Lease.

27.8 Binding on Successors. The covenants and conditions herein contained, subject to the provisions as to assignment, shall apply to and be binding upon the parties hereto and their respective successors in interest.

27.9 Authority. The parties hereby represent and warrant that they have all necessary power and authority to execute and deliver this Lease on behalf of Landlord and Tenant, respectively.

27.10 No Light. Air or View Easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to or in the vicinity of the Building shall in no way affect this Lease, entitle Tenant to any reduction of rent or impose any liability upon Landlord.

27.11 Brokers. Landlord agrees to pay a brokerage commission to Premier Properties Management, Inc., a California corporation and Spallino Reid under separate agreement. Neither Landlord nor Tenant have engaged any other broker, finder or agent. Each party hereby agrees to indemnify and hold the other harmless from any claims for commissions arising from its dealings with any other broker or agent.

27.12 Force Majeure. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, inability to procure

materials, restrictive governmental laws or regulations, delay by the other party hereto or other cause without fault and beyond the control of the party obligated to perform (financial inability excepted), then upon notice to the other party, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equal to the period of such delay; provided, however, the party so delayed or prevented from performing shall exercise good faith efforts to remedy any such cause of delay or cause preventing performance, and nothing in this Section shall excuse Tenant from the prompt payment of any rental or other charges required of Tenant except as may be expressly provided elsewhere in this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the dates specified below immediately adjacent to their respective signatures. Delivery of this Lease to Landlord, duly executed by Tenant, constitutes an offer by Tenant to lease the Premises as herein set forth, and under no circumstances shall such delivery be deemed to create an option or reservation to lease the Premises for the benefit of Tenant. This Lease shall only become effective and binding upon execution of this Lease by Landlord and delivery of a signed copy to Tenant.

Landlord: Mercury Property Investments, LLC
By:

Date:

Tenant: WebTV Networks

By:

Date: / 6 . 1996

LANDLORD INITIALS: TENANT INITIALS

Exhibit 10.4

SUBLEASE

THIS SUBLEASE is made as of June 14, 1996 (the "Effective Date"), by and between TIBCO Inc., a Delaware corporation with an address at 530 Lytton Avenue, Palo Alto, California ("Sublessor") and Artemis Research, a California corporation, with an address at 275 Alma Street, Palo Alto, California ("Sublessee").

WHEREAS, Sublessor is the subtenant under a certain Sublease from Digital Equipment Corporation ("DEC") dated February 17, 1995 ("Prime Sublease"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, DEC is the tenant under a certain Original Lease from Richard R. Kelley, Jr. ("Landlord") executed September 18, 1990, a copy of which is attached hereto as Exhibit B, as amended by First Amendment to Lease dated January 18, 1991 ("First Amendment"), a copy of which is attached hereto as Exhibit C, and Second Amendment to Lease dated June 1, 1991 ("Second Amendment"), a copy of which is attached hereto as Exhibit D (such Original Lease, as amended by the First Amendment and the Second Amendment is referred to hereafter as the "Prime Lease"); and

WHEREAS, the premises leased under the Prime Lease and subleased under the Prime Sublease are the land, with the building and improvements thereon at 305 Lytton Avenue, Palo Alto, California, 94301, which premises are more particularly described in Article I of the Prime Lease as the "Demised Premises" and are shown on Exhibit E; and

WHEREAS, Sublessee wishes to sublease from Sublessor the entire Demised Premises, consisting of a certain parcel of land more particularly described in Exhibit C of the Prime Lease (the "Land"), the building (the "Building") on the Land, containing approximately 11,102 square feet, and the parking spaces and other improvements on the Land (collectively, the "Sublet Premises"), and Sublessor is willing to sublet the Sublet Premises to Sublessee;

NOW, THEREFORE, the parties hereto agree as follows:

1. Demise. Sublessor hereby subleases the Sublet Premises to Sublessee and Sublessee hereby sublets the Sublet Premises from Sublessor subject to the terms and conditions hereinafter stated.

2. Term. The term of this Sublease (the "Sublease Term") shall be approximately six (6) years, commencing on August 1, 1996 or when DEC consents to this Sublease, whichever occurs last (the "Commencement Date"), and shall end September 15, 2002 (the "Termination Date"), unless terminated earlier in accordance with the provisions of this Sublease. In the event the Sublease Term commences on a date later than August 1, 1996, Sublessor and Sublessee shall execute a memorandum setting forth the actual Commencement Date. Sublessor agrees to use best efforts to make a portion of the Sublet Premises available to Sublessee prior to the Commencement Date. In the event any such portion becomes available prior to the Commencement Date, upon approval by DEC and delivery of such portion of the premises as are available to Sublessee, Sublessee shall pay that portion of the rent attributable to such portion of

the Sublet Premises for such time until the Commencement Date and shall occupy said portion under all other terms and conditions of this Sublease. The rent payment for such early occupancy shall not become due and payable unless and until Sublessor delivers the entire Sublet Premises and the Bryant Street Premises (as defined below) to Sublessee.

3. Delivery of Sublet Premises.

a. Sublessee expressly acknowledges that it has inspected the Sublet Premises and is fully familiar with the physical conditions thereof, and agrees to accept possession of the Sublet Premises in its "as is" condition. Sublessee acknowledges that, except as expressly provided in this Sublease, Sublessor has made no representations or warranties regarding the Sublet Premises and that it has relied on no such representations or warranties in accepting the Sublet Premises. Sublessee acknowledges that Sublessor shall have no obligation to do any work in or to the Sublet Premises or incur any expense in connection therewith, in order to make them suitable and/or ready for occupancy and use by Sublessee. Sublessee shall have the right to utilize the telecommunications equipment (the "Telecommunications Equipment") described in Exhibit E to the Prime Sublease, subject to the terms of this Sublease.

b. Concurrently herewith, Sublessor and Sublessee are entering into a Sublease of premises located at 335 Bryant Street, Palo Alto, California (the "Bryant Street Premises") on terms and conditions similar to that of this Sublease. Sublessee's obligations under this Sublease are conditioned upon Sublessor delivering both the Sublet Premises and the Bryant Street Premises to Sublessee on or before August 1, 1996 (which date may be extended only in Sublessee's discretion). If Sublessor fails to deliver either the Sublet Premises or the Bryant Street Premises to Sublessee on or before August 1, 1996, then Sublessee shall be entitled to terminate this Sublease by written notice to Sublessor at any time after August 1, 1996 and before both the Sublet Premises and the Bryant Street Premises are delivered to Sublessee. Such termination shall effect the simultaneous termination of the sublease of the Bryant Street Premises and shall serve to discharge and release both parties from any further liability to each other.

4. Rent.

a. Base Rent. Sublessee shall pay to Sublessor base rent ("Base Rent") without offset, deduction or demand in the following amounts, commencing on the Commencement Date and continuing on the first day of every month thereafter; provided, however, that the first month's rent shall be due and payable upon execution of this Sublease:

Term	Rent/Month
Commencement Date - January 31, 1997	$29,087.24
February 1, 1997 - January 31, 1999	$30,197.44
February 1, 1999 - January 31, 2000	$32,195.80
February 1, 2000 - January 31, 2001	$32,750.90
February 1, 2001 - January 31, 2002	$33,306.00
February 1, 2002 - September 15, 2002	$34,416.20

Base Rent shall be apportioned for any partial calendar month occurring at the beginning or end of the Sublease Term.

All payments hereunder shall be made at the following address:

TIBCO Inc.
530 Lytton Avenue
Palo Alto, CA 94301
Attn: Accounting Department

or such other address as Sublessor may from time to time designate by written notice to Sublessee. Sublessor agrees to use its best efforts to for ward to Sublessee on a monthly basis evidence of its payment of all rents and Operating Expenses due under the Prime Sublease.

b. Operating Expenses. Sublessee shall pay to Sublessor all Operating Expenses as defined and required to be paid by Sublessor under paragraph 4.b of the Prime Sublease. Payment shall be made as and when payable by Sublessor to DEC. Sublessor shall promptly forward to Sublessee a copy of all statements showing Operating Expenses which Sublessor receives from DEC, including, without limitation, statements for the year just ended and statements of estimates for the current year. Sublessee shall have the right, through Sublessor, to inspect, audit and examine the records pertaining to Operating Expenses in accordance with the provisions of Paragraph 3 of Article V of the Prime Lease.

All sums which Sublessee agrees to pay under this Sublease other than Base Rent, or which Sublessor pays or incurs as a result of a default by Sublessee which constitutes an Event of Default as defined in the Prime Sublease, including without limitation interest at the Default Rate of Interest as defined in Section 13 of the Prime Sublease and the early termination penalty, if applicable, due under Section 10 below, shall be included within the term "Additional Rent" whether or not expressly so identified. As used in this Sublease, the term "Rent" shall mean collectively Base Rent and Additional Rent.

5. Utilities. Sublessee shall make its own arrangements with the applicable utility companies for the provision of all utilities and services as set forth in Section 5 of the Prime Sublease.

6. Security Deposit. Upon the later of the execution of this Sublease and the receipt of DEC's written consent to this Sublease, Sublessee shall deposit with Sublessor a security deposit in the amount of $34,416.20 (the "Security Deposit"). If Sublessee fails to pay Rent when due under this Sublease, which failure continues beyond any applicable cure period, Sublessor may apply all or any portion of the Security Deposit for the payment of any such Rent then due hereunder and unpaid beyond any applicable cure period. If Sublessor so uses any portion of the Security Deposit, Sublessee shall, within ten (10) days after receipt of written demand by Sublessor, restore the Security Deposit to the full amount originally required, and Sublessee's failure to do so shall constitute a default under this Sublease. In the event Sublessor assigns its interest in this Sublease, Sublessor shall deliver to its assignee so much of the Security Deposit as is then held by Sublessor. Within ten (10) days after the Term has expired, or

Sublessee has vacated the Premises, whichever shall occur last, the Security Deposit, or so much thereof as had not heretofore been applied by Sublessor in accordance with Sublessor's rights hereunder, shall be returned to Sublessee or to the last assignee, if any, of Sublessee's interest hereunder.

7. Use. Sublessee shall be entitled to use and occupy the Sublet Premises, to the extent permitted by law, for the purpose of general office use and for no other use or purpose (the "Permitted Uses").

8. Assignment and Subletting. Sublessee shall not assign, transfer, mortgage or pledge this Sublease, or further sublet all or any part of the Sublet Premises, or enter into any other license or occupancy arrangement, whether voluntary or involuntary or by operation of law (collectively a "Transfer") without the prior written consent of Sublessor, which consent shall not be unreasonably withheld, conditioned or delayed, and the prior written consent of DEC, subject to the requirements of the Master Lease.

No Transfer, nor any collection of rent by Sublessor from any person or entity other than Sublessee, shall relieve Sublessee of its obligations to fully observe and perform the terms, covenants, and conditions hereof. No consent by Sublessor or DEC in a particular instance shall be deemed a waiver of the obligation to obtain Sublessor's and/or DEC's consent in another instance. Sublessee shall pay to Sublessor as received any excess of amounts received pursuant to an assignment, subletting, license or other occupancy arrangement in excess of the Rent due hereunder. For purposes of this Sublease, the transfer of a majority ownership interest in Sublessee shall be deemed a Transfer.

9. Prime Sublease.

a. Incorporation of Prime Sublease. Except as otherwise provided herein, Sublessor grants to Sublessee, all of Sublessor's rights, benefits and interests with respect to the Sublet Premises, and Sublessee agrees to accept from Sublessor and hereby assumes all of Sublessor's obligations and burdens under the Prime Sublease with respect to the Sublet Premises (including but not limited to Sublessor's obligations and burdens with respect to the Prime Lease), as if all such rights and obligations were set forth herein in their entirety, provided that the terms and conditions hereof shall be controlling whenever the terms and conditions of the Prime Sublease are contradictory to or inconsistent with terms and conditions hereof, and provided further that those provisions of the Prime Lease which are protective and for the benefit of the Landlord shall in this Sublease be deemed to be protective and for the benefit of Landlord, DEC and Sublessor and those provisions of the Prime Lease which are protective and for the benefit of DEC shall in this Sublease be deemed to be protective and for the benefit of Sublessee. The deletion of certain sections of the Prime Lease from inclusion in the Prime Sublease are set forth in paragraph 11.a. of the Prime Sublease and incorporated herein by this reference. All applicable terms and conditions of the Prime Sublease are incorporated into and made a part of this Sublease as if Sublessor were the Sublandlord thereunder and Sublessee the Subtenant thereunder, except paragraphs 4.a., 14, 15, 21, and 24 are deleted and shall not apply.

Sublessee represents that it has read and is familiar with the terms of the Prime Lease and the Prime Sublease.

b. Performance of Prime Sublease. Sublessee covenants and agrees faithfully to observe and perform all of the terms, covenants and conditions of the Prime Sublease on the part of Sublessor to be performed with respect to the Sublet Premises, other than the payment of Rent to DEC which shall be Sublessor's responsibility, and neither to do nor cause to be done, any act or thing which would and might cause the Prime Sublease to be canceled, terminated, forfeited or surrendered, or which would or might make Sublessor liable for any damages, claims or penalties.

c. Representation, Covenant, Indemnity.

(i) Sublessor hereby represents and warrants to Sublessee that as of the date hereof Sublessor is not in default under the Prime Sublease nor has any event occurred that with the giving of notice or the passage of time would constitute a default by Sublessor under the Prime Sublease, and to Sublessor's knowledge DEC is not in default and no event has occurred that with the giving of notice or the passage of time would constitute a default by DEC under the Prime Sublease or under the Prime Lease.

(ii) Sublessor covenants and agrees to pay all Rent due under the Prime Sublease as and when due and to perform all other obligations under the Prime Sublease that are not Sublessee's obligations hereunder or are otherwise not performable by Sublessee.

(iii) Sublessor shall indemnify, defend and hold Sublessee harmless from and against any and all losses, costs, damages and expenses, including reasonable attorneys fees and expenses, incurred by Sublessee as a result of (x) any failure of Sublessor to perform any of its obligations under the Prime Sublease as set forth in Section 9c(ii), or (y) any other default by Sublessor under the Prime Sublease. Sublessor's maximum aggregate liability under this Section 9c(iii) shall not exceed $350,000 and the aforesaid indemnity shall not include special, indirect, incidental or consequential damages (including loss of profits) even if Sublessor has been advised of the possibility of the same.

d. Termination. If the Prime Sublease terminates, this Sublease shall terminate and the parties shall be relieved of any further liability or obligation under this Sublease; provided, however, that if the Prime Sublease terminates as a result of a default or breach by Sublessor or Sublessee under this Sublease and/or the Prime Sublease, then the defaulting party shall be liable to the nondefaulting party for the costs incurred as a result of such termination. Notwithstanding the foregoing to the contrary, if the Prime Sublease gives Sublessor any right to terminate the Prime Lease in the event of a partial or total damage, destruction or condemnation of the Sublet premises or the building or project of which the Sublet Premises are a part, the exercise of such right by Sublessor shall not constitute a default or breach under this Sublease.

e. Recognition Agreements. Sublessor shall use reasonably diligent efforts to obtain from DEC a consent, recognition and attornment agreement in the form of

attached Exhibit E or in such other form as is acceptable to Sublessee in its reasonable discretion. In addition, Sublessor shall use reasonably diligent efforts to obtain a recognition and attornment agreement in the form of attached Exhibit F or such other form as is reasonably acceptable to Sublessee executed by the Landlord.

10. Option to Terminate. Sublessee shall have the option to terminate this Sublease, subject to the following provisions: Sublessee shall exercise the option to terminate this Sublease, if at all, by written notice to Sublessor given not later than October 31, 1998. If Sublessee exercises the option to terminate, then the Sublease shall terminate effective on July 31, 1999; provided that if, and only if, Sublessee has exercised its termination option, Sublessor shall have the right, upon not less than three months prior written notice to Sublessee, to terminate the Sublease effective as of the end of any month after January 31, 1999 and prior to July 31, 1999. In the event that Sublessee exercises its option to terminate the Sublease, Sublessee shall pay to Sublessor an early termination penalty equal to one month's Base Rent (in the amount in effect as of the date of termination) which penalty shall be due and payable on the date three months prior to the effective date of the termination.

In addition, Sublessee will reimburse Sublessor for fifty percent (50%) of any reasonable brokerage commissions (not in excess of standard commissions for office buildings in Palo Alto) incurred by Sublessor in re-subleasing the Sublet Premises and one hundred percent (100%) of reasonable out-of-pocket expenses incurred by Sublessor for marketing and brochures in connection with such subsequent re-subletting and 100% of reasonable attorneys' fees in connection with such subsequent re-subletting, not to exceed $5,000. Sublessee shall have the right to conduct a search for and attempt to locate a subsequent subtenant provided that such subsequent subtenant shall be subject to the reasonable approval of Sublessor, which consent shall not be unreasonably withheld. Sublessor may, in its sole discretion, direct the retention or retain the services of Bill Reid of Spallino Reid as listing broker for any subsequent sublease.

11. Insurance. Sublessee shall maintain insurance in accordance with the terms of the Prime Sublease. The named insureds shall be Sublessee, Sublessor, DEC, Landlord and Landlord's mortgagees.

12. Surrender. Upon the expiration or earlier termination of the Sublease Term, Sublessee shall surrender the Sublet Premises free and clear of all tenants and occupants, and in good order and condition, reasonable wear and tear and damage by casualty or taking only excepted. All alterations, additions and improvements (other than Sublessee's equipment and property) shall remain part of the Sublet Premises and shall not be removed unless Sublessor has required that such alterations be removed as a condition to Sublessor's consent to the making of such alteration. Sublessee shall repair any damage to the Sublet Premises caused by the removal of its property. Any property of Sublessee not removed at or prior to the expiration or earlier termination of the Sublease Term may be removed and stored or disposed of by Sublessor as it deems appropriate in its sole discretion (provided that in the event of a termination prior to the expiration of the Sublease Term, Sublessee shall have a reasonable period of time to remove such property). Sublessee agrees to reimburse Sublessor for all of Sublessor's costs resulting from

such removal and storage or disposition, less any proceeds received by Sublessor as a result of the disposition.

13. Notices. All notices relating to this Sublease or the Sublet Premises shall be in writing and addressed, if to Sublessee, at the Sublet Premises, or at such other address as Sublessee shall designate in writing, and if to Sublessor, to TIBCO Inc., 530 Lytton Avenue, Palo Alto, California, Attn: Chief Financial Officer, or to such other address as Sublessor shall designate in writing.

14. Broker. Upon execution of this Sublease and consent thereto by DEC, Sublessor shall be responsible for paying the brokerage commissions due to Spallino Reid and CB Commercial Real Estate Group, Inc. (the "Brokers") in connection with this Sublease. Sublessee and Sublessor each represent and warrant to the other that it has not dealt with any broker or agent in connection with Sublease other than the Brokers and it shall indemnify, defend (with counsel reasonably satisfactory to the indemnified party) and hold the other party hereto harmless from and against all claims, liability, leases, damages, costs and expenses arising from a breach of such representation and warranty. If Spallino Reid is retained by Sublessor as its broker and earns a commission in connection with a subsequent sublease of the Sublet Premises, Spallino Reid agrees to waive its portion of the brokerage commission less reasonable out-of-pocket costs and to pay fifteen percent (15%) of the remaining brokerage commission.

15. Consent by DEC. This Sublease shall be of no force or effect unless consented to by DEC.

IN WITNESS WHEREOF, the parties hereto have caused this Sublease to be executed by their duly authorized offices as of the date first written above.

Sublessor:
TIBCO Inc.

Signed:-
Print Name:

Title:

Sublessee:
ARTEMIS RESEARCH

Signed:
Print Name:
Title:

EXHIBIT A

SUBLEASE

between

DIGITAL EQUIPMENT CORPORATION, Sublandlord

and

TEKNEKRON SOFTWARE SYSTEMS, INC., Subtenant

Dated as of February 17, 1995

305 Lytton Avenue

Palo Alto, California 94301

SUBLEASE

BY DIGITAL EQUIPMENT CORPORATION, Sublandlord

TO TEKNEKRON SOFTWARE SYSTEMS, INC., SUBTENANT

DATED: AS OF February 17, 1995

305 Lytton Avenue
Palo Alto, California 94301

TABLE OF CONTENTS

Exhibits

SUBLEASE

THIS SUBLEASE is made as of the day of February, 1995, by and between Digital Equipment Corporation, a Massachusetts corporation, with an address at 111 Powdermill Road, Maynard, MA, ("Sublandlord") and Teknekron Software Systems, Inc., a Delaware Corporation with an address at 530 Lytton Avenue, Palo Alto, California ("Subtenant").

WITNESSETH

WHEREAS, Sublandlord is the tenant under a certain Original Lease from Richard R. Kelley, Jr. ("Landlord"), executed September 18, 1990, a copy of which is attached hereto as Exhibit A as amended by First Amendment to Lease dated January 18, 1991 ("First Amendment"), a copy of which is attached hereto as Exhibit "B", and Second Amendment to Lease dated June 1, 1991 ("Second Amendment"), a copy of which is attached hereto as Exhibit "C" (such Original Lease, as amended by the First Amendment and the Second Amendment, is hereinafter referred to as the "Prime Lease"). The premises leased to Sublandlord under the Prime Lease are the land, with the building and improvements thereon, at 305 Lytton Avenue, Palo Alto, CA 94301, which premises are more particularly described in Article I of the Prime Lease as the "Demised Premises" and are shown on Exhibit D; and

WHEREAS, Subtenant wishes to sublease from Sublandlord the leased premises shown on the plan attached hereto as Exhibit D, consisting of a certain parcel of land more particularly described in Exhibit C of the Prime Lease (the "Land"), the building (the "Building") on the Land, containing approximately 11,102 square feet, and the parking spaces and other improvements on the Land (collectively, the "Sublet Premises"), and Sublandlord issuing to sublet the Sublet Premises to Subtenant;

NOW, THEREFORE, the parties hereto agree as follows:

1. Demise. Sublandlord hereby subleases the Sublet Premises to Subtenant and Subtenant hereby sublets the Sublet Premises from Sublandlord subject to the terms and conditions hereinafter stated.

2. Term. The term of this Sublease (the "Sublease Term") shall be approximately seven (7) years and seven (7) months, commencing seven (7) days after the mutual execution and delivery of this Sublease (the "Commencement Date") and terminating on the 15th day of September, 2002.

3. Delivery of Sublet Premises. Subtenant expressly acknowledges that it has inspected the Sublet Premises and is fully familiar with the physical condition thereof, and agrees to accept possession of the Sublet Premises in its "as is" condition. Subtenant acknowledges that Sublandlord has made no representations or warranties regarding the Sublet Premises, and that it has relied on no such representations or warranties in accepting the Sublet Premises. Subtenant acknowledges that Sublandlord shall have no obligation to do any work in or to the Sublet

Premises, or to incur any expense in connection therewith, in order to make them suitable and ready for occupancy and use by Subtenant. Subtenant shall have the light to utilize the telecommunications equipment (the "Telecommunications Equipment") described in Exhibit E, subject to the terms of this Sublease.

4. Rent.

a. Base Rent. Subtenant shall pay to Sublandlord base rent ("Base Rent") without set-off or demand in the following amounts, commencing on the Commencement Date and continuing on the first day of every month thereafter:

Mos. 1-24:	$29,087.24 per month
Mos. 25-48:	$30,197.44 per month.
Mos. 49-60:	$32,195.80 per month.
Mos. 61-72:	$32,750.90 per month.
Mos. 73-84:	$33,306.00 per month.
Mos. 85-92:	$34,416.20 per month.

Base Rent shall be apportioned for any partial calendar month occurring at the beginning or end of the Sublease Term.

All payments hereunder shall be made at the following address:

Digital Equipment Corporation
305 Rockrimmon Boulevard, South
Mailstop CX03 -D 12
Colorado Springs, Colorado 80919-2398
Attention: Property Development Center, Real Estate Administrator

or such other address as Sublandlord may from time to time designate by written notice to Subtenant.

b. Operating Expenses. Operating Expenses shall be defined as the sum of (i) Operating Costs, as defined in Article V, Section 1 of the Prime Lease, (ii) Real Estate Taxes, as defined in Article V, Section 4 of the Prime Lease, and (iii) the costs of Sublandlord's Maintenance Obligations, as defined in Section 10 hereof. If, with respect to any calendar year during the Sublease Term after the Operating Expenses Base Year (which shall be defined as calendar year 1995); the aggregate amount of Operating Expenses exceeds the Operating Expenses for the Operating Expenses Base Year; Tenant shall pay to Landlord, as Additional Rent, the entire amount of such excess. Tenant's obligation under this Section 4(b) shall be prorated for partial calendar years at the beginning or end of the Term.

After the end of each calendar year included in the Sublease Term, Sublandlord shall send Subtenant a statement showing Operating Expenses (i) for the calendar year just ended ("Actual

Expenses"), which statement shall be based in part upon information supplied by Sublandlord, and (ii) an estimate of Operating Expenses for the then-current calendar year ("Estimated Expenses"). Subtenant shall pay Sublandlord on the first day of each month, in advance, as Additional Rent, an amount equal to 1/12th of the amount, if any, by which the Estimated Expenses for the then current calendar year exceed the Operating Expenses for the Operating Expenses Base Year. Such payments shall not bear interest and may be commingled by Sublandlord with any other funds of Sublandlord. If the total amount paid by Subtenant in accordance with (ii) above on account of Operating Expenses for any calendar year during the Sublease Term (i) exceeds the amount due therefor as shown on Sublandlord's statement delivered after the end of such calendar year, such excess shall be credited against the monthly installments of Additional Rent next due (or refunded to Subtenant if the Sublease Term has expired), or (ii) is less than the amount due therefor as shown on Sublandlord's statement delivered after the end of such calendar year, then Subtenant shall pay the difference to Sublandlord within 30 days after receipt of such statement from Sublandlord. Subtenant's rights and obligations under this Section 4(b) with respect to the last calendar year (or portion thereof) included in the Sublease Term shall survive the expiration or termination of this Sublease.

All sums which Subtenant agrees to pay under this Sublease other than Base Rent, or which Sublandlord pays or incurs as a result of a default by Subtenant, including without limitation interest at the Default Rate of Interest as defined in Section 13, shall be included within the term "Additional Rent" whether or not expressly so identified. As used in this Sublease, the term "Rent" shall mean collectively Base Rent and Additional Rent.

1.

5. Utilities. Subtenant shall make its own arrangements with the applicable utility companies for the provision of all utilities and services, including, without limitation, water, sewer, electricity, gas, heating fuels, and telephone service, which are required for the use of the Sublet Premises for the Permitted Uses, and shall pay when due all charges therefor directly to the company which provides such service. If Sublandlord is notified that a lien will be placed upon the Sublet Premises as a result of Subtenant's nonpayment of any such utility charge, then Sublandlord may pay such charges and notify Subtenant thereof, and Subtenant shall pay the same to Sublandlord as Additional Rent with the next installment of Base Rent becoming due. In no event shall Sublandlord be responsible for charges for any utilities or services consumed by Subtenant at the Sublet Premises.

If, for any reason whatsoever other than a negligent act or omission or a willful act or omission of Subtenant and its officers, directors, employees, contractors, servants or agents, or a default by Subtenant hereunder, any utilities or services which are required for Subtenant's use of the Sublet Premises for the Permitted Uses are interrupted, Tenant shall promptly so notify Sublandlord in writing.

If resumption of such utilities or services does not occur within sixty (60) days after the commencement of such interruption, and the lack of such utilities or services continues to materially impair Subtenant's then-current use of the Sublet Premises or a material portion thereof, Subtenant shall have the right to terminate this Sublease at any given time thereafter while

such interruption continues by giving to Sublandlord a written notice of termination stating the date on which this Sublease shall terminate.

If the unavailability of such utilities or services materially impairs Subtenant's then-current use of the Premises or a material portion thereof for a period of more than ten (10) consecutive days, Rent shall be abated proportionately according to the extent to which the Subtenant's use and occupancy of the Sublet Premises are so affected, for the period commencing on the date such utilities or services became unavailable and ending on the date on which such condition is cured or this Sublease terminates, as the case may be.

Subtenant shall not connect to the Building's electrical system any equipment which operates in excess of the current capacity of such system without Sublandlord's prior written consent.

6. Use. Subtenant shall continuously use and occupy the Sublet Premises, to the extent permitted by law, for the purpose of general office use (the "Permitted Uses") and for no other use or purpose. Sublandlord makes no representation or warrant as to the necessity of obtaining any license, permit or approval from any federal, state or municipal governmental authority for such uses.

Subtenant shall not conduct any activity on the Sublet Premises which is not permitted under the Prime Lease, or which causes any noise, odor or vibration to be emitted from the Sublet Premises. Subtenant shall comply with reasonable rules and regulations as the same may be promulgated and modified by Landlord from time to time. Except as specifically provided in Section 26 hereof, Subtenant shall comply with all laws, statutes, ordinances, by-laws, regulations, restrictions, and with the requirements of all governmental approvals, licenses and permits, relating to the Building or the Sublet Premises (collectively, "Legal Requirements"), and with the provisions of all insurance policies from time to time in effect with respect to the Building or the Sublet Premises. In addition, Subtenant shall obtain, keep in force, and comply with all requirements of all governmental approvals, licenses and permits required for Subtenant's specific use of the Sublet Premises.

Subtenant shall not use, generate, treat, store, or dispose of "Hazardous Substances" (as hereinafter defined) on the Sublet Premises without giving prior written notification to Sublandlord, including the identity and amounts of the Hazardous Substances which Subtenant proposes to use, and receiving prior written consent from Sublandlord, which may be withheld or conditioned in Sublandlord's sole discretion. In all events, Subtenant's use of Hazardous Substances must be in full and complete accordance with all Legal Requirements applicable thereto. Subtenant shall indemnify, save harmless, and defend (with counsel reasonably satisfactory to Sublandlord) Sublandlord, its officers, directors, employees, contractors, servants and agents, from and against all loss, costs, damages, claims proceedings, demands, liabilities, penalties, fines and expenses, including without limitation reasonable attorneys' fees, consultants' fees, litigation costs, and cleanup costs, asserted against or incurred by Sublandlord, its officers, directors, employees, contractors, servants and agents at any time and from time to time resulting from the presence of any Hazardous Substances in or on the Sublet Premises during the Sublease

ARTICLE V

OPERATING COSTS, CAPITAL EXPENDITURES AND REAL ESTATE TAXES

1. Operating Costs. During the Term of this Lease, Tenant shall pay to Landlord, as Additional Rent, certain costs and expenses incurred by Landlord in connection with the operation, repair and maintenance of the Building ("Operating Costs").

(a) Items Included. The term "Operating Costs" shall include, but not be limited to (i) the Annual Amortization (defined in paragraph 1 (c) (ii) below) of certain capital expenditures, described in paragraph 1(c) (ii) below; (ii) compensation (including normal and customary vacation time, health benefits, reasonable sick leave and employment taxes) of all persons who perform duties connected with the operation, maintenance and repair of the Building, excluding any executive above the level of building manager; (iii) accounting fees incurred in connection with the determination and allocation of Operating Costs; (iv) a management and overhead fee equal to one and three-quarter (1.75%) per year of Tenant's annual Base Rent hereunder, which shall include all fees for Landlord's direct personnel and office expenses; (v) insurance premiums for the insurance coverage required to be carried by Landlord pursuant to Article XVI, paragraph 1; and (vi) any deductibles under the insurance coverage required to be carried by Landlord pursuant to Article XVI, paragraph 1. The computation of Operating Costs shall be made in accordance with Generally Accepted Accounting Principles.

(b) Items Excluded. Operating Costs shall not include any costs recoverable under insurance coverage operating Costs shall also exclude, by way of illustration and not limitation, (i) repair and replacement resulting from inferior or deficient workmanship, materials, or equipment in the Building or from the negligent acts or omissions of Landlord; (ii) the cost of the Interior' Improvements, the Shell Improvements or of any additions to the Building; (iii) depreciation, amortization, and interest on and capital retirement of debt; (iv) leasing commissions; (v) repairs or other work of a capital nature (or reimbursed by insurance proceeds, exclusive of reasonable deductibles) occasioned by fire, windstorm or other casualty; (vi) any expenses for repairs or maintenance which are covered by warranties or service contracts (excluding deductibles); (vii) attorney's fees, costs and disbursements and other expenses incurred in connection with negotiations or disputes with tenants, other occupants, or prospective tenants or other occupants of the Building; (viii) costs incurred in renovating or otherwise improving or decorating or redecorating space for tenants or other occupants of the Building; (ix) Landlord's cost of services provided to tenants, which services are not standard for the Building and the cost of which is payable directly by

such tenants to Landlord; (x) capital expenditures as described in paragraph (c) below (except for Annual Amortization); (xi) structural repairs as described in Article XI, paragraph 2 below; (xii) expenses in connection with services or other benefits of a type which are not standard for the Building and which are not available to Tenant without specific charge therefor, but which are provided to another tenant or occupant of the Building, whether or not such other tenant or occupant is specifically charged therefor by Landlord; (xiii) costs incurred due to the violation by Landlord of any valid, applicable building code, regulation or law or incurred due to the Building being in violation of any such code, regulation or law; (xiv) amounts paid to affiliates of Landlord for services to the Building, to the extent that such amounts exceed competitive costs for such services rendered by persons or entities of similar skill, competence and experience; (xv) costs of Landlord's general administration (other than as Specifically set forth in this Article V, paragraph 1 (a) (xi); (xvi) any compensation paid to clerks, attendants or other persons in commercial concessions, if any, operated by Landlord; (xvii) rentals and other related expenses, if any, incurred in leasing air conditioning systems, elevators or other capital equipment, except equipment which is used in conjunction with an energy management system and except for rentals and expenses incurred in emergency leasing of such equipment; (xviii) all items and services for which Tenant or other tenants specifically reimburse Landlord other than through payment of Operating Costs; (xix) costs incurred in installing, operating and maintaining any specialty improvement not normally installed, operated, and maintained in buildings comparable to the Building and not necessary for Landlord's operation, repair, maintenance, and providing of required services for the Building; (xx) costs incurred in advertising and promotional activities for marketing of the Building; and (xxi) when and if any service (such as janitorial service) which is normally provided by Landlord to tenants of the Building is not provided by Landlord pursuant to agreement with Tenant in the Demised Premises under the specific terms of this Lease, then in determining Operating Costs for Tenant, the cost of that service shall be excluded. Further, if any facilities, services or utilities for the operation, repair and maintenance of the Building are provided from another building or other buildings owned or operated by Landlord, or for the operation, repair and maintenance of another building or other buildings owned or operated by Landlord are provided from the Building, the net costs, charges and expenses therefor shall be allocated by Landlord among the Building and the other building or buildings on a fair and equitable basis.

(c) Capital Expenditures.

(i) For purposes of this Lease, "capital expenditure" shall mean the acquisition of a prior nonexisting asset or the replacement of a pre-existing asset not acquired in the ordinary course of business and not characterized as an

operating cost or expense within generally accepted accounting principles, provided that the acquired asset must enhance the value of the real estate over its useful life, be permanently affixed to the real estate and excludes all personalty and removable trade fixtures. "Capital expenditure" shall not mean any costs incurred by Landlord in order to comply with any laws, ordinances, regulations, insurance requirements or building codes applicable to the Land, Building or Demised Premises.

(ii) If, during the term of this Lease, Landlord shall make a capital expenditure (A) for an improvement made by Landlord which produces a cost savings in operating the Land, Building, or Demised Premises and of which Landlord has given information reasonably satisfactory to Tenant demonstrating a cost savings equal to or greater than the Annual Amortization of such improvement as stated in the following sentence; or (B) for capital item replacement made by Landlord to the Building, except for any such capital expenditure made as a result of an obligation of Landlord pursuant to Article XI, paragraph 2 of this Lease, which shall be done at Landlord's sole expense without any reimbursement from Tenant, then Tenant shall pay the Annual Amortization of such capital expenditure. "Annual Amortization" shall be determined by fully amortizing the original capital expenditure at the interest rate then being charged for long-term mortgages by institutional lenders on like properties within the locality in which the Demised Premises are located, over a period equal to the number of years of the economic useful life of the capital expenditure.

With respect to capital expenditures, Tenant shall commence payment as Additional Rent of one-twelfth (1/12th) of Tenant's Percentage Share of the annual amount shown in Landlord's notice given pursuant to the immediately preceding sentence with the next and each succeeding installment of Rent becoming due during the Term, provided that the item for which the expenditure was made has been fully completed on the date of Tenant's first payment and further provided that Tenant has received notice of such amount at least fifteen (15) days prior to the month in which payment is first due or if not so received, then Tenant's payment shall commence as of the following month. If Tenant exercises its option to purchase the Property as set forth in Article XXIX below, the purchase price shall include an amount equal to any portions of the costs of capital expenditures which have not been amortized as of the close of escrow for said purchase but, in the case of capital expenditures made during the seventh, eighth, ninth or tenth years of the Primary Term, only if Landlord has obtained the written consent of Tenant before making such capital expenditures.

2. Payment of Operating Costs. Landlord shall reasonably estimate the
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Operating Costs for each calendar year wholly or partially included within the Term of this Lease and shall send notice of said estimate to Tenant within thirty (30) days after the Term Commencement Date for the remaining portion of the first

such calendar year and thereafter at least thirty (30) days prior to the commencement of each subsequent calendar year. During each calendar year thereafter included in the Term, Tenant shall pay, as Additional Rent, one twelfth of the applicable estimate each month to Landlord together with the Base Rent. If Landlord does not give Tenant an estimate within the time periods stated above, then Tenant shall continue to make estimated payments based upon the preceding year's estimate and within thirty (30) days after receipt of the new estimate for the current calendar year, Tenant shall commence payment of the new estimated monthly amount and shall pay in a lump sum any retroactive amounts due from the beginning of the new calendar year.

It is agreed between the parties that Landlord in good faith may revise its estimate of Operating Costs once a calendar year to reflect increased costs and shall give notice to Tenant thereof no later than the tenth (10th) day of the month preceding the month in which said increased operating Costs will be applicable. All payments of estimated Operating Costs and all payments-pursuant to any accounting made hereunder shall be paid to Landlord as stated in this Lease.

3. Annual Statement. Within one hundred twenty (120) days after the
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expiration of each calendar year included in the Term, Landlord shall make a determination of the actual Operating Costs for such year. Landlord shall submit to Tenant a written statement, certified by Landlord, in sufficient detail for verification by Tenant and a summary showing operating Costs on a line item basis by category, which statement shall include the amount of actual operating Costs for such calendar year and any amounts owed by either Landlord or Tenant to the other for such year. Within thirty (30) days after delivery of such statement, including any statement delivered after the expiration or termination of this Lease, Tenant shall pay to Landlord the difference, if any, between the amount paid by Tenant as estimated operating Costs and the amount owed by Tenant for the actual operating Costs for such calendar year. If Tenant's payment of the estimated Operating Costs was greater than the amount owed by Tenant of the actual Operating costs, then Landlord shall, at Tenant's election, either credit such amount against the next due installments of Base Rent and/or Additional Rent or pay the same to Tenant all within thirty (30) days after receipt of Landlord's annual statement.

Notwithstanding the foregoing, Tenant may at any time give Landlord written notice of its intent to inspect, examine and audit Landlord's records pertaining to operating Costs for the calendar year covered by such statement ("Audit Notice"). Tenant shall have the right, upon delivery of an Audit Notice to Landlord, to inspect, audit and/or copy at Tenant's expense Landlord's books, records and accounts pertaining to Operating Costs for the calendar year specified in the Audit Notice, and Landlord shall make such books, records and accounts available to Tenant and its agents, and accountants for review during regular

business hours at Landlord's principal place of business. Any overpayment or underpayment of Operating Costs revealed by Tenant's audit shall be adjusted within thirty (30) days after Tenant delivers written notice of such overpayment or underpayment to Landlord but only if such underpayment or overpayment pertains to a year for which Landlord's annual statement was delivered to Tenant within two (2) years prior to Tenant's delivery of an Audit Notice for such year. If Tenant's audit discloses that Tenant's Percentage Share of Operating Costs has been overstated by two percent (2%) or more, Landlord shall pay the cost of such audit. If Tenant delivers an Audit Notice to Landlord within thirty (30) days after the date of Tenant's receipt of Landlord's annual statement, the time period for payment of the difference between Tenant's Percentage Share of actual operating Costs and the amount paid by Tenant as estimated Operating Costs shall be tolled until Tenant gives Landlord written notice that its audit is completed.

Landlord hereby waives any right to collect from Tenant any items of Operating Costs of which Landlord fails to notify Tenant within two (2) years following the expiration of the calendar year in which such items were incurred. Tenant waives any right to collect from Landlord any overpayment of Operating Costs for any year provided that Tenant has not delivered to Landlord an Audit Notice respecting said year within two (2) years after Landlord's annual statement respecting said year has been delivered to Tenant.

4. Real Estate Taxes. As used herein, "Real Estate Taxes" shall mean real estate taxes and general and special assessments. Real Estate Taxes shall exclude, without limitation, any income, franchise, gross receipts, corporation, capital levy, excess profits, revenue, rent, inheritance, devolution, gift, estate, payroll or stamp tax by whatsoever authority imposed or howsoever designated or any tax upon the sale, transfer and/or assignment of Landlord's title or estate which at any time may be assessed against or become a lien upon all or any part of the Land or the Building. In addition, Real Estate Taxes shall exclude any liens or taxes, penalties or interest which are levied or assessed against the Land or the Building for a period of time prior to the commencement of the Term.

S. Change in Laws. If at any time during the Term the laws concerning the methods of real property taxation prevailing at the commencement of the Term are changed so that a tax or excise on rents or any other such tax, however described, is levied or assessed against Landlord as a direct substitute in whole or in part for any Real Estate Taxes, Tenant shall pay as described in paragraph 7 hereof (but only to the extent that it can be ascertained that there has been a substitution and that as a result Tenant has been relieved from the payment of Real Estate Taxes it would otherwise have been obligated to pay) the substitute tax or excise on rents.

6. Separate Assessment. The Land and the Building are currently assessed as a single and separate tax parcel. Throughout the Term of this Lease, Landlord shall cause the Land and the Building to remain separately assessed and maintained within a single and separate tax parcel or lot by the applicable governmental taxing authority, so that Real Estate Tax bills shall issue solely with respect to the Real Estate Taxes applicable only to the Land and the Building.

7. Payment of Real-Estate Taxes. The total assessed value of the Land and Building for the 1989-1990 tax year, as shown on the secured property tax roll for Santa Clara County, was One Million Three Hundred Sixty-Five Thousand Two Hundred Fifty-Five Dollars ($1,365,255). The total amount of real property taxes due for such year, including assessments collected with real property taxes, was Seventeen Thousand Seven Hundred and Three Dollars and Thirty-Eight Cents ($17,703.38), due in two equal installments. In addition, supplemental taxes assessed pursuant to Chapter 3.5 of the California Revenue and Taxation Code for the 1989-1990 tax year totalled Eighty-Seven Dollars and Twenty-Two Cents ($87.22), due in two equal installments. Landlord shall use its best efforts to cause the tax bills for the Land and Building to be sent directly to Tenant from the county assessor or other applicable taxing authority. If tax bills are sent directly to Tenant, Tenant shall provide copies of such bills to Landlord within thirty (30) days after their receipt by Tenant. Tenant shall pay directly to the applicable governmental taxing authority, as Additional Rent without any abatement, setoff or other reduction pursuant to any other provision of this Lease, all Real Estate Taxes assessed for each tax period or portion thereof included within the Term of this Lease, and which are during such Term levied, or imposed upon or become a lien or liens upon the Land and the Building. Tenant shall pay all Real Estate Taxes within fifteen (15) business days of its receipt of the appropriate tax bill(s) from Landlord or from the taxing authority but not earlier than thirty (30) days prior to the delinquency date of any such taxes. Tenant shall furnish Landlord with evidence of payment of same within thirty (30) days thereafter. Landlord shall pay all interest and penalties assessed with respect to such Real Estate Taxes, unless such interest or penalties are assessed as a result of the failure of Tenant to timely pay such Real Estate Taxes, in which event Tenant shall pay such interest and penalties directly to the applicable governmental taxing authority as Additional Rent.

The foregoing notwithstanding, Tenant shall not be responsible to pay any portion of any increase in Real Estate Taxes attributable to an increase in valuation resulting or arising by virtue of a change of ownership of the Land and/or the Building occurring during the first five (5) Lease Years of the Primary Term. Tenant shall pay any increase in Real Estate Taxes attributable to an increase in valuation resulting or arising from a change in ownership of the Land and/or the Building

occurring during the remainder of the Primary Term or Extended Term(s).

Real Estate Taxes for the tax year in which the Term of this Lease commences and for the tax year in which such Term expires shall be apportioned between Landlord and Tenant in accordance with the number of days thereof falling within the Term of this Lease.

8. Contest. Tenant shall, at Tenant's sole expense, have the right to contest or review (in the name of Tenant, or of Landlord, or both, as Tenant shall elect, but with the cooperation of Landlord if requested) by appropriate proceedings (which may be instituted either during or after the Term of this Lease) any valuation of the Land and/or the Building for Real Estate Tax assessment purposes and/or any increase in the tax rate. In furtherance of the foregoing, Landlord shall, without limitation furnish on a timely basis, such data, documents, information and assistance and make such appearances as may be reasonably required by Tenant. Landlord agrees to execute all necessary instruments in connection with any such protest, appeal or other proceedings. If any such proceeding may only be instituted and maintained by Landlord then Landlord shall do so at the request and expense of Tenant. Landlord shall not settle any such appeal or other proceeding without obtaining Tenant's prior written approval in each such instance. Tenant shall not abandon any such appeal without first offering to Landlord the right to prosecute such appeal at Landlord's expense.

Tenant shall be entitled to any refund (net of Tenant's or Landlord's expenses in obtaining same) obtained by reason of any such proceeding or otherwise, whether obtained during or after the expiration of the Term and whether obtained by Landlord or Tenant, except that if such refund shall relate to the year in which the Term of this Lease commences or expires, such refund (after deducting all costs of Landlord or Tenant in obtaining same) shall be equitably apportioned between Landlord and Tenant.

Tenant shall not be responsible to pay any portion of any increase in Real Estate Taxes attributable to an increase in valuation unless Landlord shall have delivered to Tenant a copy of the applicable Real Estate Tax bill or notification of valuation increase in sufficient time to enable Tenant to contest such Real Estate Taxes if Tenant so desires.

9. Payment in Installments. If, by law, any Real Estate Taxes may be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), such Real Estate Taxes, at Tenant's option, shall be paid in installments in accordance with paragraph 10 hereof. Tenant shall pay to Landlord any installments coming due during the Term prorated for any fraction of an installment period included within the Term, including interest, becoming due at the end of such period.

10. Amortization. Real Estate Taxes shall include betterment assessments for municipal improvements levied against the Land and the Building during the Term of this Lease. Such assessments shall be amortized over the maximum period provided under the law and shall be payable in the maximum number of installments permitted under the law and as described in paragraph 7 and 9 hereof.

11. Landlord's Action. Except to the extent provided in paragraph 7 above, if Landlord, solely by its action, causes the Real Estate Taxes and/or assessments levied against the Land and/or the Building to increase, Tenant shall not be responsible for said increase unless Tenant has been notified in writing of such action and has agreed to same.

12. Minimum Additional Rent. Notwithstanding any other provisions of this Lease, the portion of Operating Costs consisting of insurance premiums for the insurance coverage required to be carried by Landlord pursuant to Article XVI and all Real Estate Taxes (collectively, the "Minimum Additional Rent") shall not be subject to any abatement, set-off or other reduction pursuant to any other provision of this Lease.

ARTICLE VI

UTILITIES AND SERVICES

1. Utilities and Services Provided by Landlord. Landlord will provide, at no cost to Tenant, at or prior to the commencement of the Primary Term, the following utility lines to and within the Demised Premises: water, electricity, gas, sewer, and telephone (provided that telephone lines shall be provided up to the connection points of the Building with installation of telephones within the Demised Premises being the responsibility of Tenant, and that any utility lines incorporated within the Demised Premises shall be Tenant's responsibility) in such capacity as to meet general office use building code requirements. Telephone service, electricity, gas and water shall be separately metered. The installation of any new utility meters required for separate metering, as well as the maintenance of all existing and new utility meters, shall be at Tenant's expense.

2. Security. Landlord shall not be responsible for providing any security protection for the Demised Premises, the Land or the Building, and Tenant shall at its own expense provide or obtain any security system or services that it desires, if any.

3. Separate Utilities. Tenant shall make arrangements with the public utility companies or other service provider serving the Demised Premises for telephone service, electricity, gas, water, sewer, trash collection and all other services required for Tenant's use of the Demised Premises and shall pay

when due any and all charges for such services directly to the companies providing same. Tenant shall provide janitorial service to the Demised Premises.

Tenant's failure to pay such charges shall not constitute a default under this Lease entitling Landlord to exercise any rights or remedies it may have in the event of default except that if Landlord is notified that a lien will be placed upon the Demised Premises as a result of Tenant's nonpayment of any such utility charge, then to protect the real estate Landlord may pay such charges, notify Tenant thereof and the same shall be paid by Tenant as Additional Rent with the next installment of Base Rent becoming due. In no event shall Landlord be responsible for charges for any telephone service used by Tenant at the Demised Premises.

Tenant shall supply to Landlord upon request copies of the most recent invoices for utilities services provided to the Building.

4. Interruption of Services.

(a) If, for any reason whatsoever other than a negligent act or omission or a willful act or omission of Tenant, its officers, directors, employees, contractors, servants or agents, or a default by Tenant hereunder, any utilities or services which are required for Tenant's use of the Premises for the Permitted Uses are interrupted, Tenant shall promptly so notify Landlord. Notwithstanding any other provision to the contrary contained in this Lease, in the event that Tenant reasonably determines that the existing situation constitutes an emergency which either threatens imminent injury to persons or material damage to property or materially impairs Tenant's then current use of the Premises or a material portion thereof, Tenant may give such notice by any means including, without limitation, by telephone.

(b) If resumption of such utilities or services does not occur within thirty (30) days after the commencement of such interruption, and the lack of such utilities or services continues to materially impair Tenant's then-current use of the Premises or a material portion thereof, Tenant shall have the right to terminate this Lease at any time thereafter while such interruption continues by giving to Landlord a written notice of termination stating the date on which this Lease shall terminate.

(c) If the unavailability of such utilities or services materially impairs Tenant's then-current use of the Premises or a material portion thereof for a period of more than five (5) days, Rent shall be abated proportionately according to the extent to which the Tenant's use and occupancy of the Premises are so affected, for the period commencing on the date such utilities or services became unavailable and ending on the

date on which such condition is cured or this Lease terminates, as the case may be.

ARTICLE VII

USE OF DEMISED PREMISES

Tenant may use the Demised Premises for all uses reasonably compatible with office uses including but not limited to general office; research and development including prototype assembly; customer/employee training; sales and services; computer rooms, a cafeteria, and all related and accessory uses customarily incidental thereto.

2. Permits. Except as expressly provided below, Landlord shall procure all authorizations and permits which may be required for the Demised Premises including but not limited to certificates of occupancy and variances (if required) prior to the time Tenant occupies the Demised Premises. All authorizations and permits required for the construction and occupancy of the Interior Improvements and of any Alterations are the responsibility of Tenant. Any special business permits or licenses which may be required of Tenant to conduct its particular business in the state or locality where the Demised Premises are located are the responsibility of Tenant.

3. Compliance with Laws. Nothing shall be done upon or about the Demised Premises by Tenant, Landlord, or their agents, servants, employees or invitees which shall be contrary to any law, ordinance, regulation or requirement of any public authority having jurisdiction. Tenant will keep the Demised Premises reasonably clean. Tenant will not do, nor suffer to be done, nor keep or suffer to be kept, anything in or upon the Demised Premises or the Building which may prevent the obtaining of any insurance on the Demised Premises or the Building or on any property therein, including, but Without limitation of the generality of the foregoing, fire, extended coverage and public liability insurance, or which may make void any such insurance, If such actions do create any extra premiums for or increase the rate of any such insurance, then Tenant shall pay the increased cost of the same to Landlord upon written demand therefor.

ARTICLE VIII

PREPARATION OF DEMISED PREMISES

1. Building Shell. Landlord has enclosed the balcony on the second floor of the Building, and shall use its best efforts to enclose the covered walkway on the first floor of the Building prior to October 23, 1990, both as described on Exhibit 2 attached hereto (the "Shell Improvements"). Tenant shall not be required to accept the first floor portion of the Shell Improvements if they are not substantially completed on or before November 7, 1990, and if they are not substantially completed on or before October 23, 1990, then Tenant shall not be required to

pay Rent with respect to the such first floor portion of the Shell improvements until Tenant has completed its Interior Improvements in such space. Landlord shall provide Tenant with notice of the substantial completion of the first floor of the Shell Improvements by a Substantial completion Notice in the form of Exhibit E attached hereto. The Shell Improvements shall be constructed and installed by Landlord, at Landlord's sole cost and expense. Landlord and its contractor and subcontractors shall employ union workers only for any work on the Shell Improvements occurring on a weekday after the Date of Execution. Landlord warrants and represents that the Shell Improvements will be constructed in a good and workmanlike manner and in compliance with all Laws. Landlord has the entire and sole responsibility to correct any portion of the Shell Improvements which is not in compliance with Laws.

2. Interior Improvements.

(a) Construction of Interior Improvements. From and after the Date of Execution, Tenant shall construct and install its interior improvements ("Interior Improvements") in the Demised Premises. The Interior Improvements will be constructed In accordance with plans and specifications prepared by Tenant. Landlord shall have the right to approve the plans and specifications for the interior Improvements, which approval shall not be unreasonably withhold or delayed. Landlord's consent shall be deemed given if Landlord does not respond to Tenant's request for such consent within ten (10) days after the date of Landlord's receipt of plans and specifications for the Interior Improvements together with Tenant's request for approval of such plans and specifications. If Landlord disapproves the plans and specifications, Landlord shall give Tenant written notice of such disapproval specifying the reasons and basis for its disapproval within ten (10) days after the date of Landlord's receipt of the plans and specifications. The parties shall thereafter confer and negotiate in good faith to reach agreement on the plans and specifications for the Interior Improvements. Tenant shall comply with Article X, Paragraphs 3 through 8, inclusive, in constructing the Interior Improvements. Tenant shall have no obligation to remove the Interior Improvements upon the expiration or earlier termination of the Lease.

(b) Interior Improvement Allowance. Landlord shall pay to Tenant an improvement allowance for use in construction of the Interior improvements equal to Three Hundred Nineteen Thousand Twenty Dollars ($319,020), which shall be increased to Three Hundred Twenty-One Thousand Twenty Dollars ($321,020) if Landlord completes the enclosure of certain ground-floor covered walkway space as provided in Article VIII, paragraph 1, ("Improvement Allowance"). Landlord shall pay the Improvement Allowance to Tenant upon the closing of a refinancing by Landlord of the existing monetary encumbrances on the Land and Building, provided that no mechanics' liens or similar liens for labor or material supplied to the Interior Improvements have been filed or asserted against the Demised Premises. Landlord shall use its best efforts to obtain such refinancing within three (3) months

after the Date of Execution. The unpaid balance of the Improvement Allowance shall be increased by one percent (1%) for each month that payment of the Improvement Allowance is delayed beyond three (3) months after the Date of Execution, prorated for any partial month on the basis of a thirty (30) day month. Notwithstanding the provisions of Article IV, Paragraph 4, if payment of the Improvement Allowance is delayed beyond four (4) months after the Date of Execution, Tenant may deduct the remaining balance of the Improvement Allowance from the next payments of Rent coming due according to the following schedule: (i) Tenant may deduct all but Ten Thousand Dollars ($10,000) from the first such Base Rent payment and all but the Minimum Additional Rent from the first such Additional Rent payment, (ii) Tenant may deduct all but Five Thousand Dollars ($5,000) from the next such Base Rent payment and all but the Minimum Additional Rent from the next such Additional Rent payment, and (iii) Tenant may deduct all of each remaining Base Rent payment and all but the Minimum Additional Rent from each remaining Additional Rent payment, until Tenant has recovered the remaining unpaid balance of the Improvement Allowance. Tenant shall be responsible for payment of all Improvement Costs in excess of the Improvement Allowance.

3. Entry by Tenant. The date on which Tenant may enter the Demised Premises for purposes of constructing the Interior Improvements shall be the Date of Execution. From and after the Date of Execution, Tenant shall have access to the Demised Premises for purposes of planning, constructing and installing the Interior Improvements, provided that Tenant's activities shall not materially interfere with Landlord's completion of the Shell improvements. Tenant's occupancy of the Demised Premises for the construction of the Interior Improvements shall be subject to all of the provisions of this Lease except that Rent shall not be payable until the Term Commencement Date.

4. Insurance. During the period of construction of the Interior Improvements, Tenant or its general contractor shall procure and maintain in affect the following insurance coverages with an insurance company or companies authorized to do business in California and the following agreements shall apply:

(a) Worker's Compensation - statutory limits for the state in which the work is to be performed, together with "ALL STATES" and "VOLUNTARY COMPENSATION" coverage endorsements;

(b) Employer's Liability Insurance with a limit of not less than One Hundred Thousand Dollars ($100,000);

(c) Comprehensive Liability - at least Three Million Dollars ($3,000,000) combined single limit, including personal injury, contractual and products/completed operations liability. Coverage must include the following: (i) Premises - operations; (ii) elevators and hoists; (iii) independent contractor; (iv) contractual liability assumed under this contract;

(v) completed operations - products; and (vi) explosion, underground and collapse (XUC) coverage;

(d) Automobile Liability - including owned, hired and non-owned vehicles of at least Two Million Dollars ($2,000,000) combined single limit for bodily injury or property damage. Coverage must include the following: (1) owned vehicles; (2) leased vehicles; (3) hired vehicles; and (4) non-owned vehicles;

(e) Standard builder's risk insurance in an amount at least equal to the Improvements Allowance;

(f) Tenant shall furnish Landlord with certificates of insurance evidencing such coverage prior to the commencement of the Interior Improvements. All insurance shall be carried in companies having a Best's Guide rating of A- or better. The following statement shall appear in each certificate of insurance provided Landlord by Tenant hereunder: "It is agreed that in the event of any material change in, cancellation or non-renewal of this policy, thirty (30) days prior notice will be given to:

Richard R. Kelley, Jr.
c/o Premier Properties
532 Emerson Street
Palo Alto, California 94301"

(g) The carrying of any of the insurance required hereunder shall not be interpreted as relieving Tenant of any responsibility to Landlord.

ARTICLE IX

COMPLIANCE WITH LAW

1. Compliance by Landlord. Landlord at its sole expense shall comply with and shall from time to time conform the Building (other than the Interior Improvements and any Alterations) to all Laws of which the Building (other than the Interior Improvements and any Alterations) would otherwise be in violation (other than the Interior Improvements and any Alterations) required by law, except for compliance necessitated by reason of Tenant's special use of the Demised Premises. Landlord shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands that may in any manner arise out of or be imposed because of the failure of Landlord to comply with the provisions of this Paragraph 1.

2. Compliance By Tenant. Tenant shall comply, at Tenant's sole expense, with all Laws if such compliance is related to the Interior Improvements or Alterations or necessitated by reason of Tenant's special use of the Demised Premises. The foregoing notwithstanding, Tenant shall not be required to make any

structural, exterior or roof alterations of any nature whatsoever necessitated by reason of its special use of the Demised Premises, but in such event Landlord shall so comply and Tenant shall reimburse Landlord for the actual Out-of-pocket cost thereof within thirty (30) days after demand therefor, provided Tenant is in receipt of an itemized invoice regarding same and the work has been performed, regardless of whether or not the alteration is a capital expenditures Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands that may in any manner arise out of or be imposed because of the failure of Tenant to comply with the provisions of this Paragraph 2.

3. Right to Contest. Landlord and Tenant shall each have the right upon giving notice to the other to contest any obligations imposed upon either pursuant to the provisions of this Article and to defer their respective compliance during the pendency of such contest, provided the enforcement of such requirement or law is stayed during such contest and such contest will not subject the other party to civil or criminal penalty or materially interfere with Tenant's use and occupancy of the Demised Premises or jeopardize the title to or use and enjoyment of the Land and the Building. Each party shall cooperate with the other in such contest and shall execute any documents reasonably required in the furtherance of such purpose. If either party is contesting as aforesaid, then such party shall not be in default hereunder until and unless it is determined that such party must perform such obligation and fails to do so by the date upon which all applicable appeal periods have expired or if such party has duly appealed any such determination and enforcement is stayed pending appeal, then until all such appeals have been finally decided against said party and said party fails to comply therewith.

ARTICLE X

ALTERATIONS, ADDITIONS AND IMPROVEMENTS

1. Non-Structural Alterations. Tenant may, from time to time, at its own cost and expense and without the consent of Landlord make alterations, additions or improvements (collectively herein called "Alterations") of a non-structural nature to the interior of the Demised Premises whose cost in any one instance is Twenty-Five Thousand Dollars ($25,000) or less, provided Tenant gives landlord five (5) days written notice of any such Alterations. To the extent that Tenant obtains plans and specifications for any such Alterations whose cost is Twenty-five Thousand Dollars ($25,000) or less, Tenant shall provide Landlord with copies of such plans and specifications for Landlord's information. If Tenant desires to make any Alterations to the exterior of the Demised Premises, or any nonstructural Alterations to the interior of the Demised Premises costing in excess of Twenty-five Thousand Dollars ($25,000) in any one instance, Tenant must first obtain the consent of

Landlord thereto, and which consent shall not be unreasonably withheld or delayed and which is hereby deemed given if Landlord does not respond to Tenant's request for such consent within ten (10) days from receipt of such request. Any request by Tenant to make Alterations to the exterior of the Demised Premises, or any non-structural Alterations to the interior of the Demised Premises costing in excess of Twenty-Five Thousand Dollars ($25,000) in any one instance shall include written plans and specifications for the Alterations. At the end of the Term (including any extensions), Tenant may elect to remove or to leave any such Alterations, provided that Tenant must give Landlord written notice of its election as to each Alteration no less than nine (9) months prior to the expiration of the Term (including any extensions). If Tenant elects to remove any such Alterations, Tenant's only responsibility upon removal is to repair any damage caused by the removal and not to restore the Demised Premises. If Tenant (i) fails to give Landlord the notice provided herein or (ii), fails to obtain Landlord's prior approval (whether actual or deemed) when required hereunder, for any non-structural alterations to the interior of the Demised Premises, such failure shall not constitute a default by Tenant hereunder.

2. Structural Alterations. If Tenant desires to make any structural Alterations to the Demised Premises, Tenant must first obtain the prior written consent of Landlord thereto which may be withheld in Landlord's sole discretion and at such time Landlord shall advise Tenant if such Alterations must either remain or be removed at the end of the Term. If Landlord does not respond within ten (10) business days of receipt of Tenant's request for such consent or, if Landlord responds by consenting to the request, but such response does not address the issue of removal, such consent is hereby deemed given and Tenant may either remove or leave such Alterations at the end of the Term (including any extensions) as Tenant elects, provided that Tenant must give Landlord written notice of its election as to each Alteration no less than nine (9) months prior to the expiration of the Term (including any extensions). If removal of any such Alteration is required by Landlord or elected by Tenant at the end of the Term, Tenant must only repair any damage caused by removal and not restore the Demised Premises.

3. Contractor. Alterations may be done by any contractor chosen by Tenant provided any such contractor is reputable, bondable by reputable bonding companies, and carries the kinds of insurance and in the amounts set forth in Article VIII, Paragraph 4 of this Lease.

4. Performance of Work. Tenant in making any Alterations shall cause all work to be done in a good and workmanlike manner using materials equal to or better than those used in the construction of the Demised Premises and shall comply with or cause compliance with all laws and with any direction given by any public officer pursuant to law. Tenant shall obtain or cause

to be obtained and maintain in effect, as necessary, all building permits, licenses, temporary and permanent certificates of occupancy and other governmental approvals which may be required in connection with the making of the Alternations. Landlord shall cooperate with Tenant in the-obtaining thereof and shall execute any documents reasonably required in furtherance of such purpose, provided any such cooperation shall be without expense and/or liability to Landlord.

5. Removal. At any time during the Term of this Lease, Tenant may, at its option, remove any Alterations which are removable by Tenant upon termination of the Lease. In the event of a removal of any Alterations by Tenant, Tenant shall, at its sole cost, repair any damage to the Demised Premises caused by such removal.

6. Insurance. During the period of construction of any Alterations costing in excess of One Hundred Thousand Dollars ($100,000), Tenant or its general contractor shall procure and maintain in effect the insurance coverage set forth in Article VIII, Paragraph 6 of this Lease, to the extent such insurance is applicable to Tenant's Alterations.

7. Mechanic's Liens. Landlord shall pay promptly for all labor and materials supplied to Landlord in connection with any construction or alteration on the Land or Building and shall not cause or permit any liens for such labor or materials to attach to the Land or Building. Tenant shall pay promptly for all labor and materials supplied to Tenant in connection with any construction or alteration on the Land or Building and shall not cause or permit any liens for such labor or materials to attach to the Land or Building. In the event of any such lien, the party to the contract for the work or materials giving rise to such lien shall cause the same to be discharged, at its expense and within ten (10) days following its receipt of notice thereof, by filing of a release bond meeting the requirements of California Civil Code section 3143, by payment, by satisfaction or otherwise. Any monetary amounts paid to Landlord by Tenant in connection with any Alterations performed by Landlord or Landlord's contractor on behalf of Tenant shall not be construed, as Rent.

8. Notices of Non-responsibility. Tenant shall give Landlord five (5) days written notice prior to the commencement of any Alterations in order to allow Landlord to post notices of non-responsibility with respect to such Alterations.

ARTICLE Xi

CONDITION, REPAIR AND MAINTENANCE OF THE BUILDING

1. Condition of Building. Landlord represents and warrants that on the Date of Execution, to Landlord's knowledge,

without any inspection or investigation having been undertaken by Landlord to confirm such matters, the structural elements of the Building (including the HVAC, electrical and mechanical systems) comply with applicable laws, ordinances, rules and regulations, including, but not limited to building and zoning laws, health and fire codes of the state, local and federal governments, agencies, and boards, and with requirements and regulations of Boards of Fire Underwriters having jurisdiction and of insurance carriers of all insurance on the Demised Premises (collectively called "Laws"). Landlord, at its sole cost and expense and without cost or charge to or contribution by Tenant, shall throughout the Term be responsible for and make all repairs, replacements and perform all maintenance which may be necessitated by defective design or construction of the Building and/or the Shell Improvements, and all equipment and systems associated therewith and/or incorporated therein, or which may be necessitated by latent defects in any of the foregoing or by the negligence or willful misconduct of Landlord.

2. Landlord's Responsibilities. Landlord at its sole cost and expense
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shall make all repairs and replacements to all structural elements of or associated with the Building as needed to keep same in good order, condition and repair. Such structural elements include, but are not limited to, (i) all footings, foundations, floor slabs, columns, girders, mullions, beams, loadbearing and non-loadbearing exterior walls; (ii) all utility lines located outside of the Building; (iii) roof and roofing system of the Building, including, without limitation, support members, membrane assembly, roof deck, flashing, roof insulation assembly, curbs, walkways, hatches, skylights, sleeves, vents, brackets and drain fixtures; (iv) exterior lighting, landscaping, walkways, drives and curbs, and any other improvements on the Land outside of the Building; (v) sewer lines up to an including the connection for the Building; and (vi) exterior facade of the Building. The foregoing notwithstanding, routine maintenance with respect to nonstructural elements concerning item (iv) shall be included as Operating Costs unless Tenant performs such routine maintenance itself pursuant to Paragraph 4 of this Article XI.

3. Capital Expenditures; Building Systems. Subject to reimbursement of
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Landlord as specified in Article V, Landlord shall make all capital expenditures throughout the Term which may be required to keep the Building in good repair and condition and in compliance with all Laws (except for compliance of the Interior Improvements and Alterations with Laws, which shall be Tenant's responsibility), and Landlord shall maintain and repair the mechanical, electrical, conveying, plumbing and all other systems within the Building (except for any portion of the HVAC system serving the Demised Premises which is installed by or at the expense of Tenant). In addition, Landlord shall perform any other repairs and maintenance not specifically allocated to Tenant hereunder.

4. Tenant's Responsibility. Tenant shall repair and maintain (i) the interior of the Demised Premises, (ii) the Interior Improvements and any Alterations, and (iii) all portions of the HVAC-system serving the Demised Premises which are installed by or at the expense of Tenant, in good order, condition, and repair and in compliance with all Laws, ordinary wear and tear and damage by casualty excepted, throughout the Term. Tenant shall perform at its own expense all (i) landscaping, repairing, replacing, painting, lighting, cleaning, and similar items with respect to the Building and its associated grounds, including within such grounds the patio shared by the Building with the adjacent building located at 325 Lytton Avenue (provided that: (A) prior to the construction of new improvements at 325 Lytton Avenue, Tenant shall not be required to bear more than fifty percent (50%) of the cost of maintaining such patio; (B) after the construction of new improvements at 325 Lytton Avenue, Tenant shall bear a share of the costs of maintaining such patio in proportion to the relative rentable square feet contained in the Demised Premises and in 325 Lytton Avenue as so improved; and (C) Tenant shall not bear any costs of altering or improving such patio which result from the construction of new improvements at 325 Lytton Avenue); (ii) normal maintenance of mechanical and electrical equipment, including heating, ventilating and air conditioning and elevator equipment; (iii) operating, repairing and maintaining life safety systems, including, without limitation, sprinkler systems; (iv) obtaining materials and supplies for repair or maintenance of items which are Tenant's responsibility; (vi) exterior window washing. Except, as otherwise provided in Article IX, paragraph 2, and except to the extent the need for such maintenance or repair is caused by the Tenant's negligence or willful misconduct, Tenant shall be required to perform only nonstructural, noncapital items of repair and maintenance, and shall not be responsible for any Building systems (other than those portions of the HVAC System serving the Demised Premises installed by or at the expense of Tenant for which Tenant shall be solely responsible).

5. Assignment of Warranties. Landlord shall assign to Tenant any assignable warranties and guarantees which Landlord has obtained with respect to the portions of the Improvements as to which Tenant has maintenance and repair responsibilities. Landlord shall cooperate with and assist Tenant in the enforcement of any such warranties and guaranties as may be required during the Term, provided that such cooperation and assistance shall be given at no cost to Landlord therefor. Landlord shall do no act which would impair or nullify any such warranty or guaranty.

6. Performance of Work. All work to be performed by either party under this Article shall:

(a) be made as soon as reasonably possible but in any event within twenty-four (24) hours in any emergency (as defined

below) and within twenty (20) days for all other repairs. If the work cannot be completed within twenty-four (24) hours or twenty (20) days, as the case may be, it shall be commenced within said period and prosecuted continuously and diligently thereafter until completion; and

(b) be done at the sole cost and expense of the party who has responsibility for same hereunder subject to Landlord's reimbursement rights with respect to Operating Costs, or any other rights of either Landlord or Tenant to reimbursement or set-off as provided in this Lease.

For purposes of this paragraph, the word "emergency" shall mean a situation which (1) threatens the physical well-being of persons within the Demised Premises or (2) materially disrupts the Tenant's use and/or occupancy of the Demised Premises, ingress or egress to the Demised Premises, or any portion thereof.

Notwithstanding anything contained herein to the contrary, if any repairs and/or replacements are necessitated as a result of the negligence of either party, its agents, employees, or contractors, said partys shall be responsible for any such repairs and replacements, at its sole expense.

ARTICLE XII

DAMAGE AND DESTRUCTION

1. Damage or Destruction. In the event of damage or destruction to all or part of the Building or if Tenant's access to the Building ("Access") is obstructed or hindered, Tenant shall notify Landlord thereof as soon as possible after Tenant becomes aware thereof. It shall be Landlord's obligation, at Landlord's cost and expense to repair such damage and destruction to the Building including any Shell Improvements in the Building, and to restore such Access to the condition that existed prior to such damage or destruction (collectively "Repair and Restoration"), except as expressly provided otherwise in this Article XII.

2. Estimate. Landlord shall within a period of twenty (20) calendar days from receipt of Tenant's notice described above deliver to Tenant a good faith estimate of the time and cost required to complete such Repair and Restoration ("Estimate"). If the damage results from a casualty for which Landlord is required to insure under Article XVI and the Estimate is for a period equal to or more'than one hundred twenty (120) days, the damage is hereby deemed substantial ("Substantial"). If the damage results from a casualty for which Landlord is required to insure under Article XVI and the Estimate is for a period of less than one hundred twenty (120) days, the damage is hereby deemed partial ("Partial").

3. Partial Damage. If the damage is Partial, Landlord shall forthwith
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complete the Repair and Restoration. If Landlord does not complete the Repair and Restoration within one hundred thirty-five (135) days ("Partial Damage Restoration Date"), Tenant shall have the right to terminate this Lease on ten (10) days written notice to Landlord which notice must be delivered by Tenant to Landlord within ten (10) days after the Partial Damage Restoration Date. If Landlord does not complete the Repair and Restoration within fifteen (15) days after the date stated in the Estimate, Tenant may complete the Repair and Restoration for Landlord's account. If Tenant completes the Repair and Restoration, Tenant shall be entitled to receive any insurance proceeds available for such purpose in excess of those required to reimburse Landlord for the Repair and Restoration undertaken Landlord. If the amount expended by Tenant to complete the Repair and Restoration (subject to the limit provided above) exceeds the insurance proceeds available to Tenant, Tenant shall be entitled to recover the remainder of such amount by reimbursement from Landlord on demand or, if Landlord does not pay such reimbursement within thirty (30) days after demand by Tenant, by set-off against the Base Rent payments next due, subject to payment of Minimum Base Rent and Minimum Additional Rent.

4. Substantial Damage. If the damage is Substantial, Tenant may elect to
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terminate the Lease within ten (10) days after receipt of Landlord's Estimate. If Tenant does not elect to terminate the Lease, Landlord shall forthwith complete the Repair and Restoration. If Landlord does not complete the Repair and Restoration within sixty (60) days after the end of the period stated in the Estimate ("Substantial Damage Restoration Date"), Tenant shall have the right to either (a) terminate this Lease on ten (10) days written notice to Landlord which notice must be delivered by Tenant to Landlord' within ten (10) days after the Substantial Damage Restoration Date; or (b) complete the Repair and Restoration for Landlord's account. If Tenant completes the Repair and Restoration, Tenant shall be entitled to receive anv insurance proceeds available for such purpose in excess of those required to reimburse Landlord for the Repair and Restoration undertaken by Landlord. If the amount expended by Tenant to complete the Repair and Restoration (subject to the limit provided above) exceeds the insurance proceeds available to Tenant, Tenant shall be entitled to recover the remainder of such amount by reimbursement from Landlord on demand or, if Landlord does not pay such reimbursement within thirty (30) days after demand by Tenant, by set-off against the Rent payments next due, subject to payment of Minimum Base Rent and Minimum Additional Rent.

5. Uninsured Damage. If the estimated cost of the damage to the Demised
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Premises or Tenant's Access is Two Hundred Fifty Thousand Dollars ($250,000) or less and is caused by a casualty for which Landlord is not required to insure under Article XVI and has not otherwise elected to obtain insurance coverage, the

Term arising after Subtenant's taking possession of the Sublet Premises and resulting from (a) the action or inaction of Subtenant, its officers, directors, employees, contractors, servants and agents, or (b) Subtenant's generation, storage, treatment, handling, transportation disposal or release of any Hazardous Substances at or near the Sublet Premises, or (c) the violation of any applicable law governing Hazardous Substances by Subtenant, its officers, directors, employees, contractors, servants or agents. The indemnities and duties to defend set forth in this Section shall survive the expiration or earlier termination of this Sublease. As used in this Sublease, "Hazardous Substances" shall mean any chemical, substance, waste, material, gas or emission which is deemed hazardous, toxic, a pollutant, or a contaminant under any federal, state or local statute, law, ordinance, rule or regulations, now or hereafter in effect. "Hazardous Substances" include but are not limited to petroleum and petroleum products, asbestos, chloroflourocarbons (CFCs), radon gas and polychlorinated biphenyle (PCBs). Upon request by Sublandlord from time to time, Subtenant shall certify in writing to Sublandlord that no portion of the Sublet Premises has been or is then being used by Subtenant or by anyone claiming under Subtenant for the use, generation, treatment, storage, or disposal of Hazardous Substances and Premises except those set forth in such certification.

7. Assignment and Subletting. Subtenant shall not assign, transfer, mortgage or pledge this Sublease, nor sublet all or any part of the Sublet Premises, or enter into any other license or occupancy arrangement, whether voluntary or involuntary or by operation of law (collectively a "Transfer") without Sublandlord's prior written consent, which consent shall not be unreasonably withheld by Sublandlord.

No Transfer, nor any collection of rent by Sublandlord from any person or entity other than Subtenant, shall relieve Subtenant of its obligations to fully observe and perform the terms, covenants, and conditions hereof. No consent by Sublandlord in a particular instance shall be deemed a waiver of the obligation to obtain Sublandlord's consent in another instance. Subtenant shall pay to Sublandlord as received any excess of amounts received pursuant to an assignment, subletting, license or other occupancy arrangement in excess of the Rent due hereunder. For the purposes of this Sublease, the transfer of a majority ownership interest in Subtenant shall be deemed a Transfer.

8. Insurance. Subtenant shall maintain in full force and effect during the Sublease Term a commercial general liability insurance policy with a combined single limit not less than $2,000,000 for personal injury/bodily injury and property damage, under which Subtenant, Sublandlord, Landlord and Landlord's mortgagees are named as insured. Such policy shall be in a form which shall specifically include contractual liability coverage insuring Subtenant's obligations under this Sublease. Such policy shall be issued by a responsible insurance company with an A-M. Best rating of B+ or better and which is authorized to do business in the state in which the Sublet Premises are located Subtenant shall deliver certificates of such insurance to Sublandlord before the Commencement date and thereafter within ten (10) days after a request by Sublandlord. Subtenant shall use reasonable efforts to obtain insurance policies which shall not be canceled, non-renewed, or materially changed without thirty (30) days' prior written notice to Sublandlord, Landlord and Landlord's mortgagees. Sublandlord and Subtenant each waive all claims and rights against the other and their respective officers, directors, employees, contractors, servants and

agents, for any damage to or destruction of real or personal property of Sublandlord or Subtenant, regardless of cause or origin and regardless of any proceeds or recoveries from any insurance policies, and all insurance policies carried by Subtenant shall include a waiver of its right of subrogation against Sublandlord. All such insurance shall be obtained at Subtenant's sole cost and expense. Sublandlord shall have no responsibility or liability for any loss or damage to personal property or trade fixtures of Subtenant, damage to all such property and fixtures being Subtenant's sole risk.

In the event that Sublandlord receives a notice of cancellation of such insurance policy, Sublandlord may, in addition to and without thereby waiving any other remedies therefor, either (i) pay the premiums necessary to prevent such cancellation or (ii) obtain substitute insurance, and bill Subtenant therefor. Subtenant shall reimburse Sublandlord therefor by paying such amount to Sublandlord, as Additional Rent, within ten (10) days after demand by Sublandlord.

9. Indemnification. To the maximum extent that this agreement may be made effective according to law, but subject to the waiver of subrogation in Section 8 above, Subtenant agrees that it will defend and indemnify Sublandlord and save Sublandlord harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against Sublandlord by reason of (a) any accident, injury to, or death of persons, or damage to or loss of property other than that of Sublandlord and Subtenant, in or about the Sublet Premises to the extent not caused by any negligence or willful misconduct of Sublandlord, or (b) any failure on the part of Subtenant to perform, fulfill or observe any of Subtenant's representations, warranties or agreements set forth in this Sublease. This indemnification shall survive expiration or earlier termination of this Sublease. To the extent that any action, suit or proceeding is brought against Sublandlord by reason of any such occurrence, Subtenant, upon Sublandlord's request, shall at Subtenant's expense, cause such action, suit or proceeding to be resisted and defended by counsel reasonably satisfactory to Sublandlord.

10. Maintenance and Services. Subtenant hereby agrees that, except as otherwise provided in this Section IO, it is relying directly on Landlord's obligations under the Prime Lease for (i) all repairs and replacements to all structural elements of or associated with the Building (as provided in Article XI, Section 2 of the Original Lease), (ii) all capital expenditures throughout the Sublease Term which may be required to keep the Building in good repair and maintenance and in compliance with all Laws (except for compliance of Interior Improvements and Alterations) and the maintenance and repair of the mechanical, electrical, conveying, plumbing and other systems within the Building, except for any portion of the HVAC system serving the Sublet Premises which was installed by or at the expense of Sublandlord (as provided in Article XI, Section 3 of the Original Lease), and (iii) all water, gas, electricity, sewer and telephone lines, up to the connection points of the Building (as provided in Article VI, Section I of the Original Lease).

Sublandlord shall maintain in good order, condition and repair all portions of the HVAC system serving the Sublet Premises which were installed by or at the expense of Sublandlord, and the paved and landscaped portions of the Land, shall provide five (5) day per week janitorial

service to the Sublet Premises and shall perform all necessary landscaping, repairing & replacing, painting, lighting, and cleaning with respect to the Land and the exterior of the Building (collectively "Sublandlord's Maintenance Obligations"). No failure or delay by Sublandlord in supplying any service or performing any maintenance required under the preceding sentence shall give Subtenant any right to terminate this Lease or shall give rise to any claim for set-off or any abatement of rent or additional rent or of any of Subtenant's obligations under this Sublease when such failure or delay is caused by the act or omission of Subtenant or by any cause beyond the control of Sublandlord.

Subtenant shall, at its expense, maintain the interior non-structural portions of the Building and the Telecommunications Equipment in good order and condition, except for reasonable wear and tear and damage caused by fire or other casualty, Taldng, default by Sublandlord hereunder, or by any negligent act or omission or willful act or omission by Sublandlord, its officers, directors, employees, contractors, servants or agents.

11. Prime Lease.

a. Incorporation of Prime Lease. Except as otherwise expressly provided herein, Sublandlord grants to Subtenant, to share in common with Sublandlord, and of Sublandlord's rights, benefits, and interests with respect to the Sublet Premises, and Subtenant agrees to accept from Sublandlord and hereby assumes all of Sublandlord's obligations and burdens under the Prime Lease with respect to the Sublet Premises, as if all of such rights and obligations were set forth herein in their entirety, provided that the terms and conditions hereof shall be controlling whenever the terms and conditions of the Prime Lease are contradictory to or inconsistent with terms and conditions hereof, and provided further that those provisions of the Original Lease which are protective and for the benefit of the Landlord shall in this Sublease be deemed to be protective and for the benefit of the Landlord and Sublandlord. Notwithstanding the foregoing sentence, the terms, covenants and conditions of the following Sections of the Second Amendment are expressly deleted from this Sublease: Sections 2, 3, 4 and 5; the terms, covenants and conditions of Section I of the First Amendment is expressly deleted from this Sublease; and the terms, covenants and conditions of the following Articles, Sections and Exhibits of the Original Lease are expressly deleted from this Sublease: Article I, Sections 1 (d), (e), (f) and (1), Article III, Sections 2 and 3, Article IV, Sections 3 and 4, Article V, Sections 7, 8, 9, Article VI, Section 4, Article VII, Section 2, Article VIII, Article IX, Sections 2 and 3, Article X, Article XI, Sections 4 and 5, Article XIV, Article XV, Article XVI, Article XVII, Article XIX, Article XX, Article XXI, Article XXII, Article XXIII, Article XXIV, Article XXV, Article XXVI, Article XXVIII, Article XXIX, Article XXXI, Sections 1, 6, 9, 10, 12, 15 and 20, and Exhibits E, F, G, H and I.

Subtenant represents that it has read and is familiar with the terms of the Prime Lease.

b. Performance of Prime Lease. Subtenant covenants and agrees faithfully to observe and perform all of the terms, covenants and conditions of the Prime Lease on the part of Sublandlord to be performed with respect to the Sublet Premises, and neither to do nor cause to be done, nor suffer, nor permit any act or thing to be done which would or might cause the Prime

Lease to be canceled, terminated, forfeited or surrendered, or which would or might make Sublandlord liable for any damages, claims or penalties.

c. Consents. Sublandlord shall not be required to give any consent required or permitted under the terms of this Sublease with respect to any matter on which the Prime Lease requires the consent of Landlord until it has first obtained the written consent of the Landlord with respect to such matter. Upon written request by Subtenant, Sublandlord agrees to use reasonable efforts (not involving the payment of money, unless Subtenant pays such money) to obtain such consent of the Landlord in a timely manner.

d. No Sublandlord Obligation. Except as otherwise specifically provided herein, Sublandlord shall not have any obligation to construct, maintain, alter, restore or repair the Sublet Premises, the Building, the Telecommunications Equipment, or any parking area or other facility or improvement appurtenant thereto or to provide Subteriant with any service of any kind or description whatsoever, nor shall Sublandlord be responsible for the performance of Landlord's obligations under the Prime Lease or be liable in damages or otherwise for any negligence of Landlord or for any damage or injury suffered by Subteriant as a result of any act or failure to act by Landlord or any default by Landlord in fulfilling its obligations under the Prime Lease. Upon written request by Subtenant, Sublandlord agrees to use reasonable efforts (not involving the payment of money, unless Subtenant pays such money) to cause Landlord to perform its obligations under the Prime Lease in a timely manner. Subtenant hereby waives all claims for consequential damages against Sublandlord arising out of any breach or failure by Sublandlord to perform or observe the requirements and obligations created by this Sublease.

e. Termination. If the Prime Lease is terminated pursuant to any provision of the Prime Lease or otherwise, (i) this Sublease shall terminate simultaneously therewith, and (ii) any unearned rent paid in advance shall be refunded to Subtenant unless such termination was the result of a breach by Subteriant of any term, covenant, or condition of this Sublease.

Notwithstanding the preceding sentence, in the event that Sublandlord or an affiliate thereof acquires title to the Building, this Sublease shall remain in full force and effect.

12. Alterations. Subtenant may, from time to time, at its own cost and expense and without the consent of Sublandlord, make alterations, additions or improvements (collectively herein called "Alterations") of a non-structural nature to the interior of the Sublet Premises whose cost in any one instance is $25,000 or less, provided Subtenant gives Sublandlord fifteen (15) days prior written notice of any such Alterations. To the extent that Subtenant obtains plans and specifications for any such Alterations whose cost is $25,000 or less, Subtenant shall provide Sublandlord with copies of such plans and specifications for Sublandlord's information. If Subtenant desires to make any non-structural Alterations to the interior of the Sublet Premises costing in excess of $25,000 in any one instance, Subtenant must first obtain the consent of Sublandlord thereto, which consent by Sublandlord shall not be unreasonably withheld or delayed. Any request by Subtenant to make any non-structural Alterations to the interior of the Sublet Premises costing in excess of $25,000 in any one instance shall include written plans and specifications for the Alterations. At the end of the Sublease Term, Subtenant may elect to remove or to leave any such Alterations, provided that Subtenant must give Sublandlord written

notice of its election as to each Alteration no less than ten (10) months prior to the expiration of the Term. If Subtenant elects to remove any such Alterations, Subtenant's only responsibility upon removal is to repair any damage caused by the removal and not to restore the Sublet Premises.

All Alterations shall be done by Sublandlord's designated contractors and engineers in accordance with the terms and conditions of the Prime Lease. Without limiting the foregoing, Subtenant shall obtain all necessary licenses and permits, shall perform all Alterations in accordance with all laws, by-laws, rules, regulations, licenses and permits.

13. Defaults and Remedies. The occurrence of any of the following shall constitute an "Event of Default" hereunder: (i) if Subtenant fails to pay any Rent when due and such failure continues for 10 days after written notice of such failure, provided, however, that Subtenant shall not be entitled to such notice if Sublandlord has give notice to Subtenant of one or more previous such failures within a 12-month period, in which event such failure shall constitute a default hereunder upon the expiration of 10 days after such payment was due, or (ii) if Subtenant fails to perform or observe any of the terms of this Sublease other than those requiring the payment of Rent and such failure continues for 15 days after Sublandlord gives written notice of said failure; provided, however, that if the grace period for such default provided to Sublandlord under the Prime Lease is shorter than 15 days, the length of Subtenant's grace period shall be one-half of Sublandlord's grace period; or (iii) if the subleasehold hereby created shall be taken on execution, or by other process of law, or if any assignment shall be made of Subtenant's property for the benefit of creditors, or if a receiver, guardian, conservator, trustee in bankruptcy or similar officer shall be appointed to take charge of all or any part of Subtenant's property by a court of competent jurisdiction, or if a petition is filed by Subtenant under any bankruptcy or insolvency law, or if a petition is filed against Subtenant under any bankruptcy law and the same shall not be dismissed within 30 days from the date upon which it is filed.

If an Event of Default occurs, Sublandlord may at its option immediately or at any time thereafter exercise any one or more of the remedies provided in the Prime Lease with respect to a default thereunder by Sublandlord. Notwithstanding the foregoing, and in addition thereto, Sublandlord may at its option immediately or at any time thereafter exercise one or more of the following remedies, consecutively or simultaneously, without notice or demand.

(a) Sublandlord may bring suit for damages or specific performance for the collection of unpaid Rent or the performance of any of Subtenant's obligations, all either with or without entering into possession or terminating this Sublease.

(b) Sublandlord may, at its option, give Subtenant a notice terminating this Sublease on a date not less than 3 business days after Sublandlord gives such notice, and upon such date this Sublease shall terminate and all rights of Subtenant shall cease without further notice or lapse of time, Subtenant hereby waiving all statutory rights, including rights of redemption, if any. Upon termination of this Sublease, Subtenant shall surrender the Sublet Premises to Sublandlord in accordance with the terms of this Sublease. Subtenant's liability hereunder shall survive such

termination and Subtenant shall indemnify and hold Sublandlord harmless from all claims, losses, costs, expenses, damages or liabilities arising out of or in connection with such termination.

(c) If, after such termination, Sublandlord elects to relet all or any part of the Sublet Premises, such reletting may be on such terms and conditions as Sublandlord in its reasonable discretion may determine. Sublandlord may retain for itself all rents from reletting, and Sublandlord shall not be liable for any failure to relet a or any part of the Sublet Premises. The rent obtained from such reletting shall be, for purposes of subsection 13(d)(2), prima facie evidence of the fair rental value for the part of the Sublet Premises so relet during the term of the reletting. The proceeds of reletting shall be applied first to pay all Sublandlord's reletting expenses, including, without limitation, all repossession costs, alteration costs, brokerage commissions, advertising expenses and reasonable attorneys' fees ("Reletting Expenses"), then to pay any cost to Sublandlord of curing Subtenant's defaults, then to pay Rent, any balance then to be kept by Sublandlord.

(d) After such termination, Subtenant shall:

(1) pay Sublandlord monthly on the days on which Base Rent would have been payable, as damages for Subtenant's default, the difference between: (i) the amount of Rent which would be payable under this Sublease by Subtenant if this Sublease were still in effect, less (ii) the net proceeds of any reletting, after deducting Sublandlord's Reletting Expenses and Sublandlord's costs incurred in curing Subtenant's defaults; or

(2) at Sublandlord's election, whether or not Sublandlord shall have collected any payments under the preceding paragraph (1), pay Sublandlord, on demand, an amount equal to: (i) the present value, discounted at the discount rate at which one-year Treasury bills have then most recently sold, of the difference between (a) all Rent which would have been payable from the date of such termination until the last day of the term of this Sublease, and (b) the fair rental value of the Sublet Premises for the same period; plus (ii) Sublandlord's reasonable estimate of Reletting Expenses.

(e) If an Event of Default occurs, Sublandlord shall have the right, but not the obligation, without the necessity of terminating this Sublease, to enter the Sublet Premises and perform any of Subtenant's obligations notwithstanding that no specific provision for such substituted performance by Sublandlord is made in this Sublease. All sums so paid by Sublandlord, and all costs and expenses incurred by Sublandlord in connection with the performance of Subtenant's obligations, plus interest thereon at the rate of IS% per annum (or, if less, the maximum rate of interest permitted at such time by law), shall be deemed Additional Rent and shall be payable to Sublandlord immediately upon demand.

The rights and remedies granted to Sublandlord herein are cumulative and in addition to any others Sublandlord may be entitled to at law or in equity.

Should Sublandlord prevail in the enforcement of any provision in this Sublease, Subtenant shall pay on demand all of Sublandlord's costs and expenses incurred in connection with said enforcement, including without limitation, reasonable attorney's fees and court costs.

All sums not paid by Subtenant when due hereunder (regardless of whether or not the applicable grace period has expired) shall bear interest at a rate equal to the lesser of (i) 1-1/2% per month or (H) the highest rate permitted by law (the "Default Rate of Interest"), which interest shall be payable to Sublandlord as Additional Rent hereunder immediately upon demand.

The occurrence of the following shall constitute a "Sublandlord Event of Default" hereunder; if Sublandlord fails to perform or observe any of the terms of this Sublease and such failure continues for ten (10) business days after Subtenant gives Sublandlord written notice of said failure, provided, however, that in the event Sublandlord cannot reasonably cure the default within the ten (10) business day time period but has commenced to cure and proceeded diligently, the ten (10) business day time period shall be extended so long as Sublandlord continues to cure the default. In the event of a Sublandlord Event of Default, Subtenant shall have all rights available at law or in equity.

14. Surrender. Upon the expiration or earlier termination of the Sublease Term, Subtenant shall surrender the Sublet Premises and the Teleco communications Equipment free and clear of all tenants and occupants, and in good order and condition, reasonable wear and tear and damage by casualty or taking only excepted. Subtenant's Work shall be removed if required pursuant to Section 3 hereof and all other alterations, additions and improvements shall remain part of the Sublet Premises and shall not be removed unless Sublandlord so requests such removal by notice to Subtenant at least thirty (30) days prior to the expiration or earlier termination date. Subtenant shall repair any damage to the Sublet Premises caused by the removal of its property. Any property of Subtenant not removed at or prior to the expiration or earlier termination of the Sublease Tenant may be removed and stored or disposed of by Sublandlord as it deems appropriate in its sole discretion. Subtenant agrees to reimburse Sublandlord for all of Sublandlord's costs resulting from such removal and storage or disposition, less any proceeds received by Sublandlord as a result of the disposition.

15. Notices. All notices relating to this Sublease or the Sublet Premises shall be in writing addressed, if to Subtenant, to the Sublet Premises, or to such other address as Subtenant shall designate in writing; and if to Sublandlord:

Digital Equipment Corporation, 305 Rockrimmon Boulevard, South, Mailstop CX03-D12, Colorado Springs, CO 80919-2398, Attention: Property Development Center, Real Estate Administrator, and with a copy to: Digital Equipment Corporation, 111 Powdermill Road, Mailstop 02-3/F13, Maynard, MA 01754-1514-, Attention: Real Estate Law Group, or to such other address as Sublandlord shall designate in writing.

No notice from Subtenant to Landlord shall be effective as to Sublandlord unless Subtenant delivers a copy of such notice in the manner set forth in this section to Sublandlord simultaneously with delivery of such notice to Landlord. Any notice shall be deemed duly given

when delivered by hand, if so delivered and a receipt obtained, or (ii) four (4) days after being deposited with the U.S. Postal Service addressed to such address, postage prepaid, registered or certified mail, return receipt requested, or (iii) the next business day after being delivered to an overnight courier with acceptance signature required.

16. Effect. This Sublease shall be binding upon the parties hereto and their respective successors and assigns.

17. Applicable Law. This Sublease shall be governed by and construed in accordance with the laws of the state in which the Sublet Premises are located.

18. Modification, etc. Neither this Sublease nor any provision hereof may be waived, modified, amended, discharged or terminated, except by an instrument in writing signed by both parties. This Sublease constitutes the entire agreement of the parties hereto with respect to the Sublet Premises.

19. Severability. If any term or provision of this Sublease or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Sublease or the application of such term or provision to other persons or circumstances shall not be affected thereby, and each term and provision of this Sublease shall be valid and enforceable to the fullest extent permitted by law.

20. No Waiver. No failure by Sublandlord or Subtenant to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent by Sublandlord during the continuance of such breach, shall constitute a waiver of any such breach or of any such term. Sublandlord's consent in one instance hereunder shall not relieve Subtenant of the requirement of obtaining Sublandlord's consent in any other instance.

21. Broker. Sublandlord shall be responsible for paying the brokerage commissions due to Julien J. Studley, Inc. and CB Commercial Real Estate Services (the "Brokers") in connection with this Sublease. Subtenant and Sublandlord each represent and warrants to the other that it has not dealt with any broker or agent in connection with this Sublease other than the Brokers and it shall indemnify, defend (with counsel reasonably satisfactory to the indemnified party) and hold the other party hereto harmless from and against all claims, liabilities, leases, damages, costs and expenses arising from a breach of such representation and warranty.

22. Mechanics Liens. Subtenant shall not cause or permit any liens for labor or materials to attach to the Sublet Premises as a result of any work performed by or on behalf of Subtenant, and shall immediately discharge any such liens which may so attach.

23. Confidentiality. All terms and conditions of this Sublease shall be kept confidential by all parties and shall not be disclosed without the consent of the other parties, provided, however, that either party may disclose the terms and conditions of this Sublease to their respective legal counsels, accountants, lenders, real estate brokers, prospective purchasers, and

prospective subtenants and assignees, provided that each such entity shall be instructed to keep the terms and conditions of this Sublease confidential.

24. Abatement. Provided that Subtenant is not in default hereunder, Base Rent shall be abated for the first two months of the Sublease Term. In addition, provided that (i) Subtenant is not in default hereunder, (ii) Subtenant vacates the entire Sublet Premises at any time between July 1, 1996 and January 31, 2001, and (iii) Subtenant gives Sublandlord ninety (90) days advance written notice of such vacation, then in such event Subtenant shall be entitled to a one-time abatement of Base Rent commencing upon such vacation, and continuing for 11 months thereafter. After the commencement of this 11 month Base Rent abatement period, Subtenant shall not reoccupy the Sublet Premises prior to the end of said eleven (11) month abatement period.

25. Quiet Enjoyment. Subject to the terms and provisions contained in this Sublease, Sublandlord covenants and agrees with Subtenant that upon Subtenant paying the Rent and observing and performing all of the terms and conditions to be observed and performed by Subtenant under this Sublease, Subtenant may peacefully and quietly enjoy the Sublet Premises during the Sublease Term without molestation or interference from Sublandlord or anyone claiming through Sublandlord.

26. Compliance With Legal Requirements. Subtenant hereby agrees that, except as otherwise provided in this Section 26, it is relying directly on Landlord's obligations under the Prime Lease to conform the Building (other than the interior improvements and any Alterations) to all Legal Requirements of which the Building (other than the interior improvements and any Alterations) would otherwise be in violation (as provided in Article IX, Section I of the Original Lease).

Notwithstanding the foregoing, Sublandlord shall, at its sole expense, comply with all Legal Requirements if such compliance is related to the interior improvements in the Sublet Premises in their condition as of the Commencement Date, provided however, that Subtenant, at its sole expense, shall be responsible for compliance with all Legal Requirements necessitated by Subtenant's Alterations or Subtenant's special use of the Sublet Premises.

IN WITNESS WHEREOF, the parties hereto have caused this Sublease to be executed under seal by their duly authorized officers as of date first above written.

Sublandlord:

Name: D. E. Sliwinski
Title: Manager, Property Development Center, West

Subtenant:

TEKNEKRON SOFTWARE SYSTEMS, INC.

By:

Name: DAVID W. RICE

Title: EXEC. VICE PRESIDENT/CFO

EXHIBIT B

Original Lease

LEASE

between

RICHARD R. KELLEY, JR.

"Landlord"

and

DIGITAL EQUIPMENT CORPORATION,
a Massachusetts corporation

"Tenant"

TABLE OF CONTENTS

ARTICLE I

BASIC LEASE TERMS

1. Summary of Lease Provisions. Reference in this Lease to any of the terms listed below shall be deemed to incorporate and be a reference to the data set forth next to such term in this Article.

(a) Address of Demised Premises: 305 Lytton Avenue, Palo Alto, California 94301.

(b) Building: That certain building located at 305 Lytton Avenue, Palo Alto, California 94301, comprised of ten thousand nine hundred and two (10,902) rentable square feet which shall be increased to eleven thousand one hundred two (11,102) square feet if Landlord completes the enclosure of certain ground-floor covered walkway space as provided in Article VIII, paragraph 1.

(c) Demised Premises: The entire Building, plus seven (7) designated parking spaces, as indicated on Exhibit A attached hereto.

(d) Date of Execution: 1990.

(e) Extended Term: See Article III.

(f) Interior Improvements: See Article VIII and Exhibit B.

(g) Primary Term: Twelve (12) years, commencing October 1, 1990 and terminating September 30, 2002.

(h) Use: See Article VII.

(i) Land: That certain real property, more particularly described in Exhibit C, on which the Building is located.

(j) Landlord: Richard R. Kelley, Jr.

(k) Landlord's Address: c/o Premier Properties
532 Emerson Street
Palo Alto, CA 94301

(l) Base Rent:

Monthly for Lease Year 1: $2.30 per rentable square foot.

Monthly for Lease Years 2-12 As of the commencement of each lease year, monthly base rent hereunder shall be increased by five (5) percent of the previous lease year's base rent.

(m) Additional Rent: See Article IV.

(n) Rent During Extended Term: See Article III.

(o) Tenant: Digital Equipment Corporation, a Massachusetts corporation.

(p) Tenant's Address: Digital-Equipment Corporation, 1110 Chapel Hills Drive, Colorado Springs, Colorado 80920-3995 Attention: Western-Property Development Center Manager.

(q) Term: Primary Term and/or any Extended Term as the context may require.

(r) Beginning Liability Insurance Coverage Amount: $3,000,000.

2. Exhibits. The Exhibits listed below are attached hereto and are incorporated in this Lease by reference herein.

(a) EXHIBIT A.- Demised Premises

(b) EXHIBIT B - Interior Improvements

(c) EXHIBIT C - Legal Description of Land

(d) EXHIBIT D - shell Improvements

(e) EXHIBIT E - Substantial Completion Notice

(f) EXHIBIT F - Subordination, Recognition and Non Disturbance Agreement

(g) EXHIBIT G - Permitted Encumbrances

(h) EXHIBIT H - Tenant's Personal Property

(i) EXHIBIT I - Roof Space

ARTICLE II
- ----------

DESCRIPTION OF DEMISED PREMISES

Landlord hereby leases to Tenant and Tenant hereby takes from Landlord the entire Building, plus seven (7) designated parking spaces, as indicated on Exhibit A attached hereto.
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ARTICLE III

TERM
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1. Term. The term of this Lease shall be for the period set forth in
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Article I hereof ("Primary Term"), except as hereinafter provided otherwise.

2. Option to Extend. Tenant has two (2) consecutive options to extend this
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Lease for a term(s) of five (5) year(s) each (each an "Extended Term"), provided Tenant shall give to Landlord written notice of the exercise of (i) the first option to extend the term on or before September 30, 2001, and (ii) the second option no later than one hundred twenty (120) days prior to the expiration of the first Extended Term. Each such Extended Term shall be upon the same terms, covenants and conditions hereof, except for Base Rent.

3. Lease Commencement. The Primary Term shall commence on October 1, 1990

("Term Commencement Date"). For purposes of this Lease, each "Lease Year" shall commence on the same calendar date as the Term Commencement Date.

ARTICLE IV

RENT
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1. Base Rent. The Base Rent for the Demised Premises shall be paid in equal
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monthly installments as set forth in Article I of this Lease on the first day of each month during the Primary Term commencing with the Term Commencement Date (subject to abatement as described below).

Rental payments shall be made at the address set forth in Article I or at such other address as the Landlord may from time to time designate in writing. Except as otherwise specified in this Lease, all other payments required by this Lease to be made by Tenant to Landlord during the Term hereof are Additional Rent and shall be paid as elsewhere in this at the address set forth in as Landlord may from time to as otherwise specified in this by this Lease set forth. Additional Rent shall begin accruing and be payable commencing on the Term Commencement Date. Base Rent and Additional Rent are collectively referred to herein as "Rent" or "Rents."

2. Payment. All Rent payable by Tenant pursuant to this Lease shall be paid without set off, adjustment, deduction or abatement except as otherwise in this Lease provided.

If on two consecutive occasions in any Lease Year Landlord has not received any installment of Base Rent or any other sum due from Tenant hereunder within ten (10) days after the due date thereof and Tenant has received written notice of such delinquency, then if any subsequent installment of Base Rent or any other sum due from Tenant hereunder in the same Lease Year is not received by Landlord within (i) ten (10) days after the due date thereof and (ii) five (5) days after the date of Tenant's receipt of written notice from Landlord, Tenant shall pay to Landlord a late charge equal to five percent (5%) of the amount overdue, to compensate Landlord for processing and accounting charges and any other charges that may be incurred by Landlord.

3. Base Rent During Extended Term(s). Base Rent for any Extended Term(s) shall be as hereinafter provided. During the first Lease Year of each Extended Term hereof, Base Rent for the Demised Premises shall be equal to ninety-five percent (95%) of the then current fair market rent for similar properties in downtown Palo Alto taking into account the Demised Premises as improved, and Tenant's responsibility for operating Costs and Real Estate Taxes pursuant to this Lease. If the parties fail to agree, after good faith negotiation, upon the amount of the fair market rent used to determine the Base Rent for the first Lease Year of either Extended Term on or before ninety (90) days prior to commencement thereof, the fair market rent used to determine the Base Rent for the first Lease Year of such Extended Term shall be determined by appraisal in the manner hereafter set forth.

If it becomes necessary under this paragraph to determine the fair market rent by appraisal, not less than ninety (90) days prior to commencement of the Extended Term, Landlord and Tenant each shall appoint a real estate appraiser who shall be a member of the American Institute of Real Estate Appraisers ("AIREA") and shall be experienced in the appraisal of rental value for commercial properties in the Palo Alto area. Such appraisers shall each determine the fair market rent for the Demised Premises taking into account the value of the Demised Premises as improved and the amenities provided by the Building, Tenant's obligation to pay operating Costs and Real Estate Taxes and prevailing comparable rentals. Such appraisers shall, within twenty (20) business days after their appointment, complete their appraisals and submit their appraisal reports to Landlord and Tenant. If the fair market rent of the Demised Premises established in the two (2) appraisals varies by five percent (5%) or less of the higher rental, the average of the two shall be controlling. If said fair market rent varies by more than five percent (5%) of the higher rental, said appraisers, within ten (10) days after submission of the last appraisal, shall appoint a third appraiser who shall be a member of AIREA and who shall be

similarly qualified and experienced. Such third appraiser shall, within twenty (20) business days after his appointment, determine by appraisal the fair market rent of the Demised Premises, taking into account the same factors referred to above, and submit his appraisal report to Landlord and Tenant. The fair market rent determined by the third appraiser for the Demised Premises shall be averaged with whichever of the other two appraised values is closest to that determined by the third appraiser, and said average shall be the fair market rent used to determine Base Rent pursuant to the receding paragraph. If either Landlord or Tenant fails to appoint an appraiser, or if an appraiser appointed by either of then fails, after his appointment, to submit his appraisal within the required period in accordance with the foregoing, the appraisal submitted by the appraiser properly appointed and timely submitting his appraisal shall be controlling. if the two appraisers appointed by Landlord and Tenant are unable to agree upon a third appraiser within the required period in accordance with the foregoing, application shall be made within twenty (20) days thereafter by either Landlord or Tenant to AIREA, which shall appoint a member of said institute willing to serve as appraiser. Each party shall be responsible for the cost of the appraiser appointed by such party hereunder and the cost of any third appraiser appointed under this paragraph shall be borne equally be Landlord and Tenant.

The Base Rent payable during the second Lease Year of each Extended Term shall be an amount equal to one hundred five percent (105%) of the Base Rent payable during the first Lease Year of such Extended Term.

The Base Rent payable during the third Lease Year of each Extended Term shall be an amount equal to one hundred five percent (105%) of the Base Rent payable during the second Lease Year of such Extended Term.

The Base Rent payable during the fourth Lease Year of each Extended Term shall be an amount equal to one hundred five percent (105%) of the Base Rent payable during the third Lease Year of such Extended Term.

The Base Rent payable during the fifth Lease Year of each Extended Term shall be an amount equal to one hundred five percent (105%) of the Base Rent payable during the fourth Least Year of such Extended Term.

4. Minimum Rent. Notwithstanding any other provisions of this Lease
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allowing for abatement, set-off or other reduction in Bass Rent, other than pursuant to Article VIII, Paragraph 2(b), Article XII, Paragraph 8 or Article XIII, Paragraph 4, Tenant shall be required to pay a minimum amount of Base Rent.(the "Minimum Base Rent") equal to Nineteen Thousand Dollars ($19,000) per month.

damage is hereby deemed "Partial Uninsured. If the estimated cost of the damage is over Two Hundred Fifty Thousand Dollars ($250,000) and is caused by a casualty for-which Landlord is not required to insure under Article XVI and has not otherwise elected to obtain insurance coverage, the damage is hereby deemed "Substantial Uninsured. Notwithstanding the other provisions of this Article XII, if any damage caused by a casualty for which Landlord is not required to insure under Article XVI and has not otherwise elected to obtain insurance coverage, and is due to the negligence or wilful misconduct of Tenant or its agents, officers, employees, subtenants, assignees, guests or invitees, the repair and restoration of such casualty shall be at Tenant's expense.

6. Partial Uninsured Damage. If the damage is Partial Uninsured, Landlord
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shall deliver Tenant an Estimate and forthwith complete the Repair and Restoration. If Landlord does not complete the Repair and Restoration within one hundred thirty-five (135) days ("Partial Uninsured Damage Restoration Date"), Tenant shall have the right to terminate-this Lease on ten (10) days written notice to Landlord which notice must be delivered by Tenant to Landlord within ten (10) days after the Partial Uninsured Damage Restoration Date. If Landlord does not complete the Repair and Restoration within fifteen (15) days after the date stated in the Estimate, Tenant may complete the Repair and Restoration for Landlord's account. If Tenant completes the Repair and Restoration, Tenant shall be entitled to receive any insurance proceeds available for such purpose in excess of those required to reimburse Landlord for the Repair and Restoration undertaken by Landlord. If the amount expended by Tenant to complete the Repair and Restoration (subject to the limit provided above) exceeds the insurance proceeds available to Tenant, Tenant shall be entitled to recover the remainder of such amount by reimbursement from Landlord on demand or, if Landlord does not pay such reimbursement within thirty (30) days after demand by Tenant, by set-off against the Rent payments next due, subject to payment of Minimum Base Rent and Minimum Additional Rent.

7. Substantial Uninsured Damage. If the damage is Substantial Uninsured,
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Landlord may elect to terminate this Lease by delivering written notice of such termination within twenty (20) calendar days after the date of the damage. If Landlord elects to terminate the Lease, then Tenant's Purchase option pursuant to Article XXIX, Paragraph 2 shall be accelerated on the following terms:

(a) Tenant must exercise the Purchase option, if at all, by notice to Landlord within ninety (90) days after Landlord gives notice of termination;

(b) The Close of Escrow shall occur within one hundred eighty (180) days after Tenant exercises the Purchase option but

in no event before sixty (60) days after a final damage estimate has been determined pursuant to Paragraph (c), below;

(c) The Purchase Price shall be computed by substituting in Article XXIX, Paragraph 2 (a) (i), the Base Rent for the Lease Year in which the termination occurs and by deducting the cost of repairing the damage as determined below. Landlord and Tenant shall attempt to agree on the cost of repairing the damage. If they are unable to agree within sixty (60) days after Tenant exercises the Purchase Option, each shall select a contractor or other estimator (the "Estimator") to determine the cost of repairing the damage. The Estimators shall be required to estimate such cost within thirty (30) days after their appointment. If the two cost estimates so determined do not differ by more than 10%, then the average of such two cost estimates shall be the cost of repair. If the two cost estimates differ by more than 10%, then the two Estimators shall select a third Estimator* who shall estimate the cost of repair within thirty (30) days after his appointment. The two closest of the three appraised cost estimates shall then be averaged to determine the cost of repair. The fees of each of the first two Estimators shall be borne by the party who appointed each, the fees of any third Estimator shall be borne 50% by Landlord and 50% by Tenant; and through the National Association of Independent Insurance Adjustors.

(d) Landlord shall assign to Tenant any insurance proceeds to which Landlord is entitled with respect to the casualty giving rise to the termination, and the Purchase Price shall be increased by the amount of such proceeds, if any.

If Landlord does not elect to terminate the Lease, Landlord shall deliver to Tenant an Estimate. If the Estimate is for a period of one hundred twenty (120) days or more, Tenant shall have the right to terminate the Lease within ten (10) days after the date of receipt of Landlord's Estimate. If Tenant does not elect to terminate the Lease, Landlord shall forthwith complete the Repair and Restoration. If Landlord does not complete the Repair and Restoration within sixty (60) days after the end of the period stated in the Estimate ("Substantial uninsured Damage Restoration Date"), Tenant shall have the right to either (a) terminate this Lease on ten (10) days' written notice to Landlord which notice must be delivered by Tenant to Landlord within ten (10) days after the Substantial Uninsured Damage Restoration Date; or (b) complete the Repair and Restoration for Landlord's account. If Tenant completes the Repair and Restoration, Tenant shall be entitled to receive any insurance proceeds available for such purpose in excess of those required to reimburse Landlord for the Repair and Restoration undertaken by Landlord. If the amount expended by Tenant to complete the Repair and Restoration (subject to the limit provided above) exceeds the insurance Proceeds available to Tenant, Tenant shall be entitled to recover the remainder of such amount by reimbursement from Landlord on demand or, if Landlord does not pay such reimbursement within thirty (30) days after demand by Tenant, by set-off against the

Rent payments next due, subject to payment of minimum Base Rent and Minimum Additional Rent.

8. Rent Abatement. From the date of such damage or destruction or obstruction or hindrance of Access, a proportionate part of Base Rent and Additional Rent according to the nature and extent of the Building rendered unusable by Tenant thereby shall be abated until the completion of the Repair and Restoration. In the event this Lease is terminated as hereunder provided, Tenant shall pay the Base Rent and Additional Rent apportioned to the date of such damage or destruction and thereafter Tenant shall be relieved of all further liability for the payment thereof.

9. Damage Near End of Term. Notwithstanding anything to the contrary in this Lease, if the Estimate is for a period extending beyond the remainder of the Term, either Landlord or Tenant may terminate this Lease upon thirty (30) days written notice to the other delivered within sixty (60) days after the date of Tenant's receipt of the Estimate, provided, however, except in the case of Uninsured Substantial Damage, Landlord may not exercise this right if Tenant has previously exercised or exercises within said sixty (60) day period its Purchase option pursuant to Article XXIX, Paragraph 2, or an option to extend the Term contained in this Lease, provided, further, however that Tenant's rights contained in paragraphs 3, 4, 6, and 7 of this Article remain in effect.

10. Waiver. Tenant waives the provisions of California civil Code sections 1932(2), 1933(4), 1941 and 1942 and any similar or successor statues relating to the termination of leases in the event of damage or destruction, Landlord's obligations for tenant ability and Tenant's right to make repairs and deduct the expenses of such repairs from rent, and agrees that the parties' rights and obligations in such event shall instead be governed by this Lease.

ARTICLE XIII

CONDEMNATION

1. Total Taking. In the event of a taking by condemnation or by the exercise of the power of eminent domain by a public or quasi-public authority or entity or conveyance in lieu thereof (all hereinafter referred to as "Taking") of the entire Demised Premises, this Lease shall terminate as of the earlier of (a) the date of the vesting of title in the Taking authority or entity or (b) the date of the taking of possession by such authority or entity so as to deprive Tenant of the use thereof without the necessity for any further act or notice by either party hereto (said earlier date being herein the "Taking Date").

2. Substantial Taking. In the event either of the following occurs:

(i) a Taking occurs of a portion of the Demised Premises or the Building such that undue hardship or substantial interference is caused in the conduct of Tenant's business operations in the Demised Premises or (ii) a Taking occurs of a portion of the Demised Premises or Building such that Tenant's access to the Demised Premises is denied or interfered with substantially, Tenant shall have the right to terminate this Lease upon written notice to Landlord given within thirty (30) days of the Taking Date, which notice shall specify the effective date of such termination, but which date shall not be more than fifteen (15) days after the date of such notice. In the event that a Taking occurs of a substantial portion of the Building resulting in undue hardship or substantial interference the conduct of business operations in the Building, Landlord shall waive the right to terminate this Lease upon written notice to Tenant given within thirty (30) days of the Taking Date, which notice shall specify the effective date of such termination, but which date shall not be more than fifteen (15) days after the date of such notice. If Landlord elects to terminate the Lease, then Tenant's Purchase Option pursuant to Article XxIX, Paragraph 2 shall be accelerated on the following terms:

(a) Tenant must exercise the Purchase option, if at all, by notice to Landlord within ninety (90) days after Landlord gives notice of termination;

(b) The Close of Escrow shall occur within one hundred eighty (180) days after Tenant exercises the Purchase option;

(c) The Purchase Price shall be computed by substituting in Article XXIX, Paragraph 2 (a) (i), the scheduled Base Rent for the Lease Year in which the termination occurs; and

(d) The Purchase Price shall be reduced as provided in Article XXIX, Paragraph 2 (e) (iii) (B)

3. Continuance of Lease. In the event this Lease is not cancelled and terminated as a result of a Taking:. (i) Base Rent and Additional Rent payable hereunder shall abate from the Taking Date; such abatement in Base Rent and Additional Rent shall be in proportion to the amount of the Demised Premises subject to a Taking (and shall be permanent in the case of divestiture of title); (ii) Landlord shall commence the work of repairing and restoring the Building to a complete architectural unit and the work of restoring the remainder of the Demised Premises as nearly as possible to the condition existing immediately prior to the Taking and to restore Tenant's access to the Building and Demised Premises or provide alternative access thereto, all such work including the planning to be commenced promptly following the Taking Date, and shall complete such work within one hundred twenty (120) days after the Taking Date. If Landlord fails to complete the work of repair and restoration within one hundred thirty-five (135) days after the Taking Date ("Final Work Date"),

Tenant shall have the right to either (a) terminate this Lease by written notice given to Landlord within ten (10) days after the Final Work Date effective on the date specified in the notice which date shall not be more than ten (10) days from the date of the notice; or (b) complete the repair and restoration for Landlord's account. If Tenant completes the repair and restoration, Tenant shall be entitled to receive any condemnation award available for such purpose in excess of those required to reimburse Landlord for the repair and restoration undertaken by Landlord. If the amount expended by Tenant to complete the repair and restoration (subject to the limit provided above) exceeds the condemnation award available to Tenant, Tenant shall be entitled to recover the remainder of such amount by reimbursement from Landlord on demand or, if Landlord does not pay such reimbursement within thirty (30) days after demand by Tenant, by set-off against the Rent payments next due, subject to payment of Minimum Base Rent and Minimum Additional Rent. Landlord shall use its best efforts to obtain and retain the maximum amount of condemnation award available for reconstruction of the Premises in accordance with this paragraph 3.

4. Refund of Rent; Allocation of Award. In event of a Taking: (i) Tenant shall, within ten (10) days after the effective date of the termination of this Lease or after the effective date of abatement of Base Rent and Additional Rent, as the case may be, receive a refund from Landlord of the appropriate Base Rent and Additional Rent amount paid by Tenant for any period subsequent to the effective date of termination or abatement, (ii) Landlord shall be entitled to receive the entire condemnation award; provided, however, that Tenant may pursue a separate claim against the condemning authority for Tenant's moving expenses, the value of Tenant's leasehold estate, the value of Tenant's trade fixtures and equipment and any interruption or damage to Tenant's business, and (iii) Landlord shall pay to Tenant promptly after receipt thirty percent (30%) of any amount by which (a) any condemnation award received by Landlord exceeds (b) the cost of repairing and restoring the Demised Premises as required pursuant to paragraph 3 of this Article XIII plus the Purchase Price that would apply pursuant to Article XXIX, Paragraph 2(a) if computed using the scheduled Base Rent for the Lease Year immediately following the Lease Year in which the Taking occurs.

5. Cancellation and Termination Rights. Landlord and Tenant may exercise any rights of cancellation and termination herein granted even though their respective right, title, or interest may have been taken or divested.

ARTICLE XIV

SUBORDINATION, RECOGNITION, NON-DISTURBANCE AND ATTORNMENT

1. Subordination. This Lease (including Tenant's Purchase Option pursuant to Article XXIX, Paragraph 2) shall be subject

and subordinate to the lien of any mortgage or deed of trust ("Mortgage") of all or a portion of the fee interest of the Demised Promises to (i) any institute or entity which in the ordinary course of its business extends financing secured by real estate, including without limitation, lending, thrift or banking institutions, pension funds or insurance companies, or (ii) individuals who have at least five (5) years experience in the management or development of real property and have a net worth of at least Five Million Dollars ($5,000,000) ("Mortgagee"), to provide construction and/or permanent financing and any renewals, modifications or extensions thereof, provided that the total liens on the Property pursuant to all Mortgages shall not exceed eighty percent (80%) of the Purchase Price which would apply pursuant to Article XXIX, Paragraph 2(a), if computed using the Base Rent in effect at the time any such additional Mortgage is granted, and that a Subordination, Recognition and Non-Disturbance Agreement substantially in the form of Exhibit F attached hereto and with such additional provisions as are reasonably required by the Mortgagee, is executed acknowledged and delivered by such Mortgages to Tenant.

Tenant shall execute and send to Landlord any such Agreement within fifteen (15) days of receipt of same if such Agreement contains substantially the provisions set forth in Exhibit F and such additional provisions as are reasonably required by the Mortgagee, or within fifteen (15) days after agreement of the parties to said Agreement of the contents of same.

2. Priority of Mortgage. If the holder of any Mortgage of the Land and/or Building requires that this Lease have priority over such Mortgage, Tenant shall, upon request of such holder, execute, acknowledge and deliver to such holder an agreement acknowledging such priority.

3. Existing Mortgage. In the event of the existence of any Mortgage at the time this Lease is executed and to which this Lease would be subordinate, Landlord shall obtain the type of agreement mentioned in this Article in favor of Tenant. If such agreements with respect to existing Mortgages are not obtained within fifteen (15) days after the Execution Date, Tenant may terminate this Lease by written notice to Landlord at any time within forty-five (45) days after the Date of Execution.

ARTICLE XV

LANDLORD'S-WARRANTIES AND INFORMATION

1. Warranties. To induce Tenant to execute this Lease, and in consideration thereof, Landlord warrants and represents and covenants and agrees as follows;

(a) Landlord is the fee owner of the Land and the Building.

(b) On the Date of Execution of this Lease, there are no liens, restrictions or encumbrances placed upon the Building

or Land other than those shown on Exhibit G ("Permitted Encumbrances").

Landlord further represents to its best knowledge that none of the liens, restrictions or encumbrances listed on Exhibit G does or shall materially
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adversely affect Tenant's use and occupancy of the Demised Premises. Landlord agrees that it shall not consent or agree to the creation of, and shall not itself create, any liens and encumbrances on the Building or Land except for the Permitted Encumbrances and the Mortgages permitted pursuant to Article XIV, Paragraph I and except for those to which Tenant consents in advance or which do not materially adversely affect Tenant's use and occupancy of the Demised Premises or the value of the Building or the Land.

(c) To Landlord's best knowledge, the Land and Building are in compliance with zoning, setback and other landuse laws, ordinances, rules and regulations, and there are no restrictions or other legal impediments either imposed by law (including applicable zoning and building ordinances) or by any instrument, which would prevent Tenant from using the Building for the uses and in the manner contemplated in Article VII of this Lease.

(d) This Lease, the Building and the Shell Improvements, when and as constructed, shall not be in violation of the provisions of any instrument executed by Landlord or any instrument which places any restrictions and burdens on the Land and/or Building.

(e) Landlord holds all easements required to provide for access or utilities to the Building as such access and utilities are currently used.

(f) On the Date of Execution of this Lease, (a) Landlord is not in default under any lease of the Land or Building, or any other agreement affecting the Land or the Building or any Mortgage which encumbers the Land or the Building, (b) this Lease and the Permitted Uses hereunder do not and will not constitute a violation of any such lease or Mortgage, and (c) all consents or approvals required by the terms of any such lease or Mortgage for this Lease have been duly obtained by Landlord.

If Landlord breaches any of the representations or warranties listed above or in the event any such representation or warranty proves to be false in any material respect, Tenant shall have the right, at its option, in addition to any other right hereunder or at law or equity, to terminate this Lease without liability therefor if Landlord does not cure such breach or falsity to Tenant's reasonable satisfaction within the period prescribed in Article XXI, Section 1 and if such breach has a material adverse effect on Tenant's use and occupancy of the Building or to cure such breach as provided in Article XXI.

2. Financial Information. Landlord will provide to Tenant within sixty (60) days after the close of each calendar year during the Term of this Lease (including any extensions) a balance sheet for Landlord prepared by a certified public accountant, which fairly and accurately represents Landlord's assets and liabilities as of the end of such calendar year. Landlord shall also give written notice to Tenant if at any time there is a material adverse change in Landlord's financial position from that reported in the most recent annual balance sheet provided to Tenant, and Landlord shall include in such notice a description of the change. If, upon review of such balance sheet or such notice of change, Tenant reasonably concludes that Landlord's financial status has been materially impaired in a manner which would adversely affect the ability of Tenant to enforce its Purchase Option pursuant to Article XXIX, Paragraph 2 of this Lease, then Tenant's Purchase Option pursuant to Article XXIX, Paragraph 2 shall be accelerated on the following terms:

(a) Tenant must exercise the Purchase Option, if at all, by notice to Landlord within sixty (60) days after receiving Landlord's balance sheet or notice of change;

(b) Tenant's notice of exercise of the Purchase option shall contain a statement of the basis for Tenant's conclusion that Landlord's financial status has been materially impaired in a manner which would adversely affect the ability of Tenant to enforce its Purchase option;

(c) The Close of Escrow shall occur within one hundred eighty (180) days after Tenant exercises the Purchase Option;

(d) The Purchase Price shall be computed by substituting in Article XXIX, Paragraph 2 (a) (i), the scheduled Base Rent for the Lease Year in which Tenant exercises the Purchase Option.

ARTICLE XVI

INSURANCE, WAIVER OF SUBROGATION

1. Landlord's Insurance. Landlord shall obtain and maintain throughout the Term the following insurance coverage, the cost of which shall be an operating Cost:

(a) Fire and extended coverage insurance, including all risk of physical loss and damage, upon the Building and the Common Area on a full replacement basis as reasonably determined by Landlord and consented to by Tenant, such consent not to be unreasonably withheld;

(b) Comprehensive liability coverage with respect to the Building and the Common Area throughout the Term with

combined single limit coverage of Dollars ($3,000,000), and said policy shall contain a contractual liability endorsement insuring Landlord's indemnity under this Lease.

Landlord shall, on the Term Commencement: Date (and thereafter within thirty (30) days after Tenant's request), deliver certificates of such policies to Tenant evidencing the coverage required hereunder, which shall provide that the insurance indicated therein shall not be materially changed, cancelled or non-renewed without at least thirty (30) days prior written notice to Tenant.

2. Tenant's Insurance. The Tenant shall maintain comprehensive general liability insurance, including contractual liability endorsement, with respect to the Demised Premises throughout the Term with combined single limit coverage of Three Million Dollars ($3,000,000). The Tenant shall deliver to the Landlord within thirty (30) days of Landlord's request a certificate evidencing the aforesaid coverage issued by insurance companies authorized to do business in the state wherein the Demised Premises are located and providing that the insurance indicated therein shall not be materially changed, cancelled or non-renewed without at least thirty (30) days prior written notice to Landlord.

3. General Requirements. Each party shall give prompt notice to the other party of all losses, damages, or injuries to any person or to property of Tenant, Landlord or third persons which may be in any way related to the Lease and for which a claim might be made against the other party. Each party shall promptly report to the other party all such claims of which the first party has notice, whether related to matters insured or uninsured. No settlement or payment for any claim for loss, injury or damage or other matter as to which either party may be charged with an obligation to make any payment or reimbursement, shall be made by either party without the written approval of the other party. Both parties shall assist and cooperate with any insurance company in the adjustment or litigation of all claims arising under the terms of this Lease. In the event of any damage or destruction caused by a casualty for which Landlord is required to maintain insurance under this Article XVI, Landlord shall use its best efforts to obtain and retain the maximum amount of insurance proceeds available for application to the cost of Repair and Restoration.

4. Waiver of Claims, Subrogation. Landlord and Tenant hereby waive all causes and rights of recovery against each other, their agents, officers and employees for any loss occurring to the real or personal property of Landlord or Tenant, regardless of cause or origin, to the extent of any recovery from any policy(s) of insurance. Landlord and Tenant agree that any policies presently existing or obtained on or after the date hereof (including renewals of present policies) shall include a

clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the insured to recover thereunder.

5. Excess-Insurance Proceeds. Landlord shall pay to Tenant promptly after completing repair and restoration of any insured casualty thirty percent (30%) of any amount by which any proceeds received by Landlord with respect to the Land and/or Building from casualty insurance required to be carried by Landlord pursuant to paragraph I of this Article XVI exceed the cost of repair and restoration of such casualty.

ARTICLE XVII

INDEMNIFICATION

1. Indemnity by Tenant. Tenant shall defend, indemnify and hold Landlord harmless from and against any and all suits claims, and demands arising out of injury or damage occurring at the Demised Premises because of the negligence or willful acts of Tenant, its agents, servants, employees, or Invitees, because of Tenant's breach of any obligation under this Lease, or because of any other occurrence for which Tenant is required to maintain insurance coverage under this Lease.

If Landlord is notified of a claim, action or proceeding, or becomes aware of an occurrence, which may result in indemnification by Tenant of Landlord as provided above, Landlord shall give prompt written notice thereof to Tenant. Landlord shall immediately forward to Tenant every demand, notice, summons or other process received by Landlord or its representatives.

Tenant has the exclusive right and obligation to defend any claim, action, or proceeding wherein Landlord is entitled to indemnification under the provisions of this Article, but Tenant may settle any such claim, action, or proceeding only with Landlord's prior written consent or approval, which shall not be unreasonably withheld. Landlord will fully cooperate with Tenant in the defense or settlement of any claim, action or proceeding.

2. Indemnity by Landlord. Landlord shall defend, indemnify and hold Tenant harmless from and against any and all suits, claims, and demands arising out of injury or damage occurring at the Demised Premises or the Building because of the negligence or willful acts of Landlord, its agents, servants, employees, or invitees or because of Landlord's breach of any obligation under this Lease.

In the event Tenant is notified of a claim, action or proceeding, or becomes aware of an occurrence, which may result in indemnification by Landlord of Tenant as provided above, Tenant shall give prompt written notice thereof to Landlord. Tenant shall immediately forward to Landlord every demand,

notice, summons or other process received by Tenant or its representatives.

Landlord has the exclusive right and obligation to defend any claim, action, or proceeding wherein Tenant is entitled to indemnification under the provisions of this Article, but Landlord may settle any such claim, action or proceeding only with Tenant's prior written consent or approval, which shall not be unreasonably withheld. Tenant will fully cooperate with Landlord in the defense or settlement of any claim, action, or proceeding.

3. Consequential Damages. Each party hereby waives any and all claims it may have against the other party for consequential damages arising out of the act or omission or breach or alleged breach of this Lease by such other party.

ARTICLE XVIII

ASSIGNMENT AND SUBLETTING

I. Assignment and Subletting. Landlord hereby grants to Tenant the right to sublet any portion of the Demised Premises throughout the Term, including extensions thereof, and without first obtaining Landlord's consent, provided that (a) the use made of the Demised Premises by any sublessee is permitted under Article VII of this Lease, and (b) Tenant remains primarily liable for and retain management and control over the performance of any and all maintenance, repair or restoration which Tenant is required or permitted to perform pursuant to the terms of this Lease. Landlord hereby grants to Tenant the right to assign this Lease throughout the Term, including extensions thereof, provided Tenant first obtains Landlord's consent to such assignment in writing. Landlord's consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, it shall be reasonable for Landlord to deny consent to a proposed assignment (a) if the use to be made of the Demised Premises by the proposed assignee would be prohibited by this Lease, or (b) if the financial condition of the proposed assignee is not reasonably satisfactory to Landlord. Landlord's consent or refusal of consent shall be in writing and, if Landlord refuses consent, the reasons for such refusal are to be stated with particularity. Landlord's consent to an assignment shall be accompanied by a statement addressed to Tenant and the assignee, upon which statement Tenant and the assignee may conclusively rely, stating that Tenant-is not in default under the Lease (or setting forth in what respects Tenant is in default), that this Lease has not been amended or modified (or setting forth such amendments or modifications), the expiration date of this Lease, and the date to which Rent has been paid to Landlord hereunder. Any permitted assignment shall not be effective unless and until the assignee delivers to Landlord an express assumption by the assignee of all of Tenant's liabilities and obligations pursuant to this Lease.

Tenant shall be relieved of liability for its obligations pursuant to this Lease only if (a) the permitted assignee is a corporation with a net worth (as reflected in its audited financial statements issued as of a date no more than ninety (90) days prior to the effective date of the assignment) of at least Twenty Million Dollars ($20,000,000) and (b) the holder of the mortgage having first priority on the Land and Building consents to such release, such consent not to be unreasonably withheld. In the case of any other assignment or subletting, regardless of whether Landlord consents to such assignment or subletting, Tenant shall remain fully liable for all of its obligations pursuant to this Lease.

2. Deemed Consent. If Landlord does not respond to the written request for such consent within fifteen (15) days after the date of such request from Tenant, Landlord consent is hereby deemed given.

3. Permitted Transfers. Notwithstanding anything to the contrary herein contained Tenant may assign or sublet all or any portion(s) of the Demised Premises at any time to a subsidiary of Tenant, to the entity with which or into which Tenant may merge, whether or not Tenant is the survivor of such merger, or to any affiliate of Tenant without the need for Landlord's consent to such assignment or subletting. For purposes of this Lease, the term "affiliate" means any corporation which directly or indirectly controls, is controlled by, or is under common control with Tenant. In the event of any such assignment or subletting, Tenant shall remain fully liable for all of its obligations pursuant to this Lease.

ARTICLE XIX

TENANT'S PROPERTY

1. Tenant's Property. Tenant's trade fixtures and personal property described on Exhibit H attached hereto (collectively, "Tenant's Property") however installed or located on the Demised Premises shall be and remain the property of Tenant and may be removed at any time and from time to time during the Term, except that Tenant may not remove any portions of Tenant's Property which are incorporated in the HVAC system or electrical, plumbing or mechanical systems of the Building and installed by or at the expense of the Tenant prior to the completion of the Interior Improvements. Tenant shall be entitled to all depreciation and other tax benefits incidental to the ownership of Tenant's Property. Tenant shall repair any damage caused by such removal or installation.

2. Removal. Upon the expiration or termination of this Lease, Tenant will remove Tenant's Property from the Demised Premises. If within ten (10) days after such expiration or termination, Tenant shall not have removed same, it shall be

deemed abandoned, whereupon Landlord shall remove and store the same in accordance with applicable law* including Tenant's right to redeem the same. Tenant shall pay to Landlord upon demand the reasonable costs and expenses incurred, by Landlord in removing and storing Tenant's Property and shall pay the reasonable cost of repairing any damage caused to the Demised Premises by the removal of same.

3. Waiver of Lien. In no event (including a default under this Lease) shall Landlord have any lien or other security interest in any of Tenant's Property located in the Demised Premises or elsewhere and Landlord hereby expressly waives and releases any such lien or other security interest however created or arising.

ARTICLE XX

TENANT'S DEFAULT

1. Events of Default. Tenant shall be deemed in default of this Lease if any of the following occur:

(a) If Tenant shall default in the payment of Rent and shall fail to cure said default within ten (10) days after receipt of written notice of said default from the Landlord; or

(b) if Tenant shall default in the performance or observance of any other agreement or condition of this Lease to be performed or observed by Tenant, and if Tenant shall fail to cure said default within ninety (90) days after receipt of written notice of said default from Landlord (or if said default cannot reasonably be cured within ninety (90) days, if Tenant fails to commence to cure said default within ninety (90) days after receipt of written notice thereof and thereafter diligently prosecute the cure to completion); or

(c) if Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any arrangement, composition, liquidation or dissolution under any present or future Federal, State, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or of the Demised Premises, or shall make any general assignment for the benefit of creditors, or shall admit in waiting its inability to pay its debts generally as they become due; or

(d) if a court shall enter an order, judgment or decree approving a petition filed against the Tenant seeking any arrangement, composition, liquidation, dissolution or similar relief under the present or future federal, state or other

statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated or unstayed for sixty (60) days.

2. Landlord's Remedies. In the event of any such default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity, the right to do the following:

(a) Termination. In the event of any default by Tenant, then after complying with Code of civil Procedure section 1161, Landlord may immediately terminate this Lease and Tenant's right to possession of the Demised Premises by giving Tenant written notice that this Lease is terminated, in which event this Lease shall terminate and Landlord may recover from Tenant:

(i) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(iv) any reasonable expenses incurred by Landlord in connection with obtaining possession of the Demised Premises, with removing from the Demised Premises property of Tenant and persons claiming under it (including warehouse charges), with putting the Demised Premises into the condition required under Article XXVI of the Lease, and with any reletting, including but without limitation, reasonable attorney's fees and broker's fees, but excluding the cost of any additional interior improvements or tenant rent concessions. All monies collected from any reletting shall be applied first to the foregoing expenses and then to the payment of Rent and all other payments due from Tenant to the Landlord under this Lease. In no event shall Tenant be liable for consequential damages to Landlord and Landlord shall have no right to recover damages under Civil Code section 1951.2 (a) (4) Landlord shall use its best efforts to relet the Demised Premises by actively offering the same for rent in order to mitigate damages which may be incurred because of Tenant's default; or

(b) Continue Lease. Have this Lease continue in effect for so long as Landlord does not terminate this Lease and Tenant's right to possession of the Demised Premises, in which event Landlord shall have the right to enforce all of Landlord's rights and remedies under this Lease, including the right to

recover all rentals payable by Tenant under this Lease as they become due.

As used in subparagraphs 2 (a) (i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the maximum rate permitted by law per annum. As used in subparagraph 2 (a) (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(c) Right to Cure. If Tenant shall at any time fail, after written notice and the expiration of any applicable grace period, to perform any obligation required of Tenant hereunder, then Landlord may, at its option, and upon giving written notice to Tenant, perform such obligation to the extent Landlord deems reasonably necessary, and may pay any and all reasonable expenses incidental thereto. No such action by Landlord shall be deemed a waiver by Landlord of any of Landlord's rights or remedies, or a release of Tenant from performance of such obligation. All sums so paid by Landlord shall be due and payable by Tenant to Landlord within Twenty (20) days after the date of Landlord's invoice therefor. Landlord shall have the same rights and remedies for the nonpayment of any such sums as for default by Tenant in the payment of Rent.

(d) Remedies Not Exclusive. No remedy or election hereunder shall be deemed exclusive but shall wherever possible be cumulative with all other remedies available; provided, however, nothing contained herein shall permit Landlord to recover consequential damages as a result of Tenant's default hereunder.

(e) Termination, Surrender and Abandonment. No acts or conduct of Landlord, including, without limitation, efforts to relet the Demised Premises, an action in unlawful detainer or service of notice upon Tenant or surrender of possession by Tenant pursuant to such notice or action, shall extinguish the liability of Tenant to pay rent or other sums due hereunder or terminate this Lease, unless Landlord notifies Tenant in writing of Landlord's election to terminate this Lease. No act or conduct of Landlord, including the acceptance of the keys to the Demised Premises, other than a written acknowledgement of acceptance of surrender signed by Landlord, shall be deemed to be or constitute an acceptance of the surrender of the Demised Premises by Tenant prior to the expiration of the Lease term. The surrender of this Lease by Tenant, voluntarily or otherwise, shall, at Landlord's option, operate as an assignment to Landlord of any and all existing assignments and subleases, or, except for any assignments which are permitted or which Landlord has given consent in accordance with Article XVIII, Landlord may elect to terminate any or all of such assignments and subleases by notifying the assignees and sublessees of its election within fifteen (15) days after such surrender.

ARTICLE XXI

LANDLORD'S DEFAULT

1. If Landlord Shall default in the performance or observance of any agreement, obligation, or condition in this Lease requiring the payment of money and shall not cure such default within ten (10) days after receipt of written notice thereof from Tenant or if Landlord shall default in the performance or observance of any agreement, obligation or condition in this Lease other than one requiring the payment of money and shall not cure such default within thirty (30) days after receipt of written notice thereof from Tenant (or if such cure cannot reasonably be effected within thirty (30) days, shall not within said period commence to cure and thereafter prosecute the curing of such default to completion with due diligence), Tenant may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such default for the account of Landlord. In effecting such cure, Tenant may, without limitation, hire repairman, pay bills, and generally perform any other act which Landlord is required to perform hereunder. All costs incurred by Tenant in curing such default shall be paid to the applicable party by Landlord. If, however, Tenant pays any costs or expenses on account of such cure, Landlord shall immediately reimburse Tenant on demand for such payments. If Landlord has not made such reimbursement to Tenant by the date Base Rent or Additional Rent is next due, Tenant may deduct such amounts from Base Rent or Additional Rent until Tenant has been fully reimbursed, provided that Tenant shall continue to pay in any event the Minimum Base Rent required under Article IV, Paragraph 4 and the Minimum Additional Rent required under Article V, Paragraph 12.

If Tenant has cured a default of Landlord and is entitled to a set-off against Rent (whether pursuant to this Article XXI, Paragraph I or any other provision of this Lease), and the amount to be recovered by set-off exceeds One Hundred Thousand Dollars ($100,000), Tenant may require Landlord to execute, acknowledge and deliver to Tenant an interest-free promissory note in the total principal amount of the reimbursement due Tenant, payable in installments corresponding to the portions of Rent payments which Tenant is entitled to set-off but subject to acceleration and full reimbursement upon the Close of Escrow for Tenant's purchase of the Land and Building pursuant to its Purchase Option if exercised, as well as a deed of trust on the Land and Building securing such note.

If Tenant has cured a default of Landlord and is entitled to a set-off against Rent (whether pursuant to this Article XXI, Paragraph 1 or any other provision of this Lease), and the amount to be recovered by set-off is such that Tenant would not recover the full amount within the remaining original Term of this Lease,

then Tenant may accelerate its Purchase Option pursuant to Article, XXIX, Paragraph 2 on the following terms:

(a) Tenant must exercise the Purchase option, if at all, by notice to Landlord within sixty (60) days after set-off of Rent commences;

(b) The Close of Escrow shall occur within one hundred eighty (180) days after Tenant exercises the Purchase Option;

(c) The Purchase Price shall be computed by substituting in Article XXIX, Paragraph 2 (a) (i), the scheduled Base Rent for the Lease Year in which Tenant exercises the Purchase option.

2. Emergency. In the event of an emergency which threatens imminent injury to persons or material damage to property, Tenant may use any means including, without limitation, telephone to notify Landlord of such emergency. Tenant shall have no other obligation to act with respect to such emergency, but Tenant shall have the right to commence cure pursuant to Paragraph 1 of this Article XXI immediately without waiting for Landlord to commence cure.

ARTICLE XXII
NOTICES

1. In Writing. All notices, demands, requests and other instruments which may or are required to be given by either party to the other under this Lease shall be given in writing.

2. Notice to Tenant. All notices, demands, requests and other instruments from Landlord to Tenant shall be deemed to have been given upon receipt if sent by United States Registered or Certified Mail, postage prepaid, return receipt requested, or by overnight courier service, addressed to the Tenant at Tenant's Address with a copy to Tenant at 111 Powdermill Road, Maynard, Massachusetts, 01754, Attention; General Counsel.

3. Notice to Landlord. All notices, demands, requests and other instruments from Tenant to Landlord shall be deemed to have been properly given upon receipt if sent by United States Registered or Certified Mail, postage prepaid, return receipt requested, or by overnight courier service, addressed as follows:

Richard R. Kelley, Jr.
314 Raymundo Way
Woodside, California 94025

with a copy to:

Premier Properties
532 Florence Street
Palo Alto, California 94301

ARTICLE XXIII

QUIET ENJOYMENT

Landlord covenants and agrees with Tenant that upon Tenant paying the Rent and observing the terms, covenants and conditions on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises demised hereby.

ARTICLE XXIV

HOLDING OVER

If Tenant or anyone claiming under Tenant shall remain in possession of the Demised Premises or any part thereof after expiration of the Term of this Lease without any agreement in writing between Landlord and Tenant with respect thereto, such possession shall be deemed a month to month tenancy under all the terms, covenants and conditions of this Lease except that such tenancy may be terminated upon thirty (30) days written notice from one party to the other. It is hereby agreed by and between Landlord and Tenant that if Tenant or anyone claiming under Tenant leaves any property in the Demised Premises at the expiration of the Term or any renewal or extension thereof, such shall not constitute a holding over by Tenant.

ARTICLE XXV

MEMORANDUM OF LEASE AND OPTION

At the time of the execution of this Lease, Landlord and Tenant shall execute an instrument in recordable form containing those provisions including but not limited to the Term, the commencement and expiration date, and such other information as necessary to satisfy notice of lease statute of the state where the Demised Premises are located. Tenant may record the same.

ARTICLE XXVI

SURRENDER OF DEMISED PREMISES

Tenant shall, at the expiration of the Term of this Lease, peaceably yield up to Landlord the demised Premises in good repair in all respects, damage by fire or other casualty (unless

Tenant is responsible for such damage pursuant to the terms of this Lease), reasonable wear and tear, or other conditions for which Tenant is not responsible under this Lease excepted.

ARTICLE XXVII

ESTOPPEL CERTIFICATES

Upon the request of either party, at any time and from time to time, Landlord and Tenant agree to execute and deliver to the other within fifteen (15) business days after receipt of such request, a written instrument, duly executed and (i) certifying that this Lease has not been modified and is in full force and effect or, if there has been a modification of this Lease, that this Lease is in full force and effect as modified, stating such modifications; (ii) specifying the date to which the Rent has been paid; (iii) stating whether or not to the best knowledge, information and belief of the party executing such instrument, the other party hereto is in default and, if such party is in default, stating the nature of such default; (iv) stating the Term Commencement Date; and (v) stating which options to extend the Term have been exercised, if any.

ARTICLE XXVIII

HAZARDOUS SUBSTANCES

1. Definitions.

(a) "Demised Premises" includes, for purposes of this Article only, the Building, other improvements and the Land on which they are located.

(b) "Environmental Laws" shall mean all federal, state and local statutes, laws, ordinances, rules and regulations and judicial and administrative orders, rulings and decisions relating to pollution or protection of human health or the environment, including, without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

(c) "Hazardous Substances" means any chemical, substance, waste, material, gas or emission which is deemed hazardous, toxic, a pollutant or contaminant, under any federal, state or local statute, law, ordinance, rule, regulation, or judicial or administrative order or decisions, now or hereafter in effect, or which have been shown to have significant adverse effects on human health or the environment. "Hazardous Substances" include, but are not limited to, petroleum and

petroleum products, asbestos, po-lychlorinated biphenyls (PCBs) and radon gas.

(d) "Hazardous Substance on the Demised Premises" means any Hazardous Substance present in or on the Demised Premises including, without limitation, in or on the surface or beneath the Demised Premises, the surface water or groundwater, and in or on any improvement or part thereof at or beneath the surface of the Demised Premises.

(e) "Underground Storage Tank" means any one or combination of tanks (including underground pipes connected thereto), the total volume of which (including the volume of the underground pipes connected thereto) is ten percent 10% or more beneath the surface of the ground.)

2. Representations and Warranties. To induce Tenant to execute this Lease, and in consideration thereof, Landlord warrants and represents that, to Landlord's knowledge on the Date of Execution, without any inspection or investigation having been undertaken by Landlord to confirm such matters:

(a) Compliance with Law. Except as otherwise disclosed in writing to Tenant, all activities on the Demised Premises undertaken by Landlord or its employees and agents have been undertaken in full compliance with all Environmental Laws. Landlord has disclosed to Tenant all threatened or pending litigation or administrative actions relating to the use or disposal of Hazardous Substances on the Demised Premises.

(b) Hazardous Substances. Except as otherwise disclosed in writing to Tenant, no Hazardous Substances are in or on the Demised Premises, no Hazardous Substances are being released into the environment by Landlord from, in, or on, the Demised Premises, Landlord has not arranged for the off-site disposal of any Hazardous Substances generated on the Demised Premises, nor have wastes from Hazardous Substances been generated, treated or disposed of on the Demised Premises during Landlord's ownership of the Demised Premises.

(c) Indoor Environment. The air and water supplies of the Demised Premises do not release, circulate or introduce any substances that pose a hazard to human health or an impediment to working conditions. Landlord has not taken, or caused to be taken, any action with respect to the air and water supplies of the Demised Premises that would release, circulate, or introduce any substances that pose a hazard to human health or an impediment to working conditions.

(d) Underground Storage Tanks. There are no Underground Storage Tanks on the Demised Premises.

(e) PCBs. There are no transformers, capacitors, switches, or other equipment on the Demised Premises which contain PCBs.

(f) Asbestos. Except as otherwise disclosed in writing by Landlord to Tenant, there is no asbestos currently located on or about the Demised Premises.

Notwithstanding anything to the contrary stated herein, all representations contained in this paragraph 2 shall continue to be valid for the entire Term of the Lease. In the event (i) Landlord breaches any of the representations or warranties listed above, or (ii) any such representation or warranty proves to be false, then in each of the foregoing instances, (x) Landlord shall remedy such breach at Landlord's expense, (y) on the fifth (5th) day after Tenant gives Landlord written notice of the breach or falsity, Rent shall abate in full until the breach is remedied, and on the thirtieth (30th) day after Tenant gives Landlord written notice of the breach or falsity, Tenant shall have the additional right, at its option and in addition to any other right hereunder or at law or in equity, to terminate this Lease without liability therefor. Notwithstanding the foregoing, Tenant shall not be entitled to abate rent or to terminate this Lease as a result of the presence upon or about the Demised Premises of any Hazardous Substance which presence is disclosed to Tenant in writing by Landlord prior to the execution hereof.

3. Landlord's Indemnity. Landlord, its employees, agents, contractors, guests, invitees or licensees, shall not generate, store, dispose of, release or otherwise handle any Hazardous Substance on the Demised Premises in any fashion contrary to Environmental Laws. Landlord shall remove, cleanup and remedy any Hazardous Substance on or under the Demised Premises to the extent required by Environmental Law unless such Hazardous Substance resulted from the generation, storage, treatment, handling, transportation, disposal, or release by Tenant, its employees, agents, contractors, guests, invitees or licensees. Landlord agrees to defend, indemnify and hold harmless Tenant, its officers, directors, employees and agents, from and against any and all liability, loss, suits, claims, actions, causes of action, proceedings, demands, costs, penalties, fines and expenses, including without limitation attorneys' fees, consultants' fees, litigation costs, and cleanup costs, asserted against or incurred by Tenant at any time and from time to time by reason of or arising out of the presence of any Hazardous Substance on the Demised Premises unless such Hazardous Substance resulted from the generation, storage, treatment, handling, transportation, disposal, or release by Tenant, its employees, agents, contractors, guests, invitees or licensees. The foregoing obligation of Landlord shall survive the expiration or sooner termination of this Lease.

4. Tenant's Obligations and Indemnity. Tenant, its employees, agents, contractors, subtenants, assignees, guests,

invitees or licensees, shall not generate, store, dispose of, release or otherwise handle any Hazardous Substance on the Demised Premises in any fashion contrary to Environmental Laws. Tenant shall remove, cleanup and remedy any Hazardous Substance on or under the Demised Premises to the extent required by Environmental Law provided that such Hazardous Substance resulted from the generation, storage, treatment, handling, transportation, disposal, or release by Tenant, its employees, agents, contractors, subtenants, assignees, guests, invitees or licensees.

Tenant shall indemnify, defend and hold harmless Landlord from and against any and all liability, loss, suits, claims, actions, causes of action, proceedings, demands, costs, penalties, fines and expenses, including without limitation attorneys' fees, consultants' fees, litigation costs and cleanup costs asserted against or incurred by Landlord at any time and from time to time arising out of the generation, storage, treatment, handling, transportation, disposal or release of any Hazardous Materials on or under the Demised Premises by Tenant, its agents, employees, contractors, subtenants, assignees, guests, invitees or licensees. The foregoing obligation of Tenant shall survive the expiration or sooner termination of this Lease.

ARTICLE XXIX

RIGHT OF FIRST REFUSAL OPTION TO PURCHASE

1. Right of First Refusal. If during the Term of this Lease Landlord desires to sell or exchange its ownership interest in the Land and/or Building (the "Property"), or receives a bona fide offer to purchase or exchange the Property to anyone (the "Other Buyer") and Landlord desires to accept such offer (the "Outside Offer") Landlord shall first offer in writing to sell or exchange the Property to Tenant on the same terms and conditions and at the same price as set forth in the Outside Offer or, if no Outside Offer has been received, on the terms and conditions and at the price at which Landlord desires to sell or exchange its ownership interest in the Property (such terms, conditions and price, whether set forth in the Outside Offer or as determined by Landlord without any outside Offer, are referred to herein as the "Offer"). Tenant shall have twenty (20) business days from the delivery of written notice of the offer to elect in writing to exchange for or purchase the Property upon the terms and conditions of the Offer. Should Tenant elect not to exchange for or purchase the Property on such terms and conditions or should Tenant fail to respond in writing within said twenty (20) business days, Landlord may sell or exchange the Property to the Other Buyer or any other party on substantially the terms and conditions and at not less than ninety-five percent (95%) of the price set forth in the Offer, provided that the closing occurs within one hundred eighty (180) days after the date of the offer. If there are changes in the price or the terms of the offer

exceeding those allowed in the preceding sentence or if the transaction is not closed within said one hundred eighty (180) day period, Landlord shall not sell or exchange the Property without first offering to sell or exchange the Property to Tenant pursuant to this Article XXIX.

2. Option To Purchase. In consideration of the execution by Tenant of this Lease* Landlord hereby grants to Tenant the option to purchase the Property (the "Purchase Option"), at the price and upon the terms set forth in this Article XXIX, paragraph 2, by giving written notice (the "Notice of Exercise") to Landlord on or before September 30, 1999, Provided that this Lease is still in full force and effect. The date on which such notice is given is hereinafter referred to as the "Exercise Date."

Notwithstanding any provision of this Article XXIX, paragraph 2 to the contrary, if at the time Tenant gives the Notice of Exercise Tenant is in default of this Lease pursuant to paragraph 1(a), 1(c) or 1(d) of Article XX (but as to paragraph 1(a), only if the payments as to which Tenant is in default exceed One Hundred Thousand Dollars ($100,000) and are not paid by Tenant, including payment under protest, within thirty (30) days after Tenant gives the Notice of Exercise) then the Notice of Exercise shall be totally ineffective to-the-rights of Tenant under this Article XXIX, paragraph 2 shall terminate and Landlord and Tenant shall thereupon be relieved of all further obligation or liability in connection with the Purchase Option, but rights and obligations of Landlord and Tenant under all provisions of this Lease other than the provisions Of this Article XXIX, paragraph 2 shall continue.

(a) Purchase Price. The purchase price for the Property (the "Purchase Price") shall be the total of:

(i) a sum computed by multiplying the total of the scheduled base rent (including the scheduled Base Rent under this Lease) under all leases of the Property (including leases of space within the Building) payable for the period October 1, 2000 through September 30, 2001 by one hundred two and one-half percent (102.5%); and dividing the product resulting from the previous calculation by a factor of eight hundredths (.08); and multiplying the result of such division by ninety-seven percent (97%);

plus (ii) that portion of all capital expenditures incurred by Landlord which have not been reimbursed to Landlord by the tenants of the Property through direct payment or amortization of such capital expenditures,

plus (iii) the sum of Forty-Five Thousand Dollars ($45,000).

The Purchase Price shall be paid on the Closing Date (as hereinafter defined) in cash or by Federal Reserve Bank wire

transfer, with appropriate Closing adjustments as provided in paragraph (j) below.

(b) Closing. If Tenant gives the Notice of Exercise, the delivery of the deed to the Property, the payment of the Purchase Price and the closing of the purchase of the Property by Tenant pursuant to this Article XXIX, paragraph 2 (the "Closing") shall occur at 10:00 a.m. at the offices of Aufmuth, Fox & Baigent, on or about September 30, 2000 (such date, as the same may be extended as hereinafter expressly provided, is hereinafter referred to as the "Closing Date"). It is agreed that time is of the essence of this Article XXIX, paragraph 2.

(c) Title. At the Closing, Landlord shall convey the Property by a grant deed running to Tenant, or to such grantee as Tenant may designate by notice given to Landlord at least three (3) business days before the Closing Date, and the deed shall convey title to the Property free from encumbrances except:

(i) Taxes as are not delinquent on the Closing Date or for which Tenant has assumed the obligation to pay pursuant to Article V, paragraph 7;

(ii) Assessments for municipal or other betterments as are not delinquent on the Closing Date or for which Tenant has assumed the obligation to pay pursuant to Article V, paragraph 7;

(iii) Those Permitted Encumbrances as shown on Exhibit G which are non-monetary encumbrances;

(iv) Such other non-monetary encumbrances as are permitted pursuant to Article XV, Paragraph 2; and

(v) Such other matters as Tenant may approve in writing at or prior to the Closing Date (collectively, the "Permitted Exceptions").

The grant deed shall be in a form sufficient to convey marketable and insurable title to Tenant. The words "insurable title" shall mean title which may be insured under a standard ALTA owner's policy of title insurance subject to the Permitted Exceptions.

(d) Condition of Premises. On the Closing Date Landlord shall deliver to Tenant possession of the Property subject to the rights of any tenants of the Property which are subtenants or assignees of Tenant, and the Building to be in compliance with all laws and in the same condition as it now exists on the Term Commencement Date, reasonable use and wear thereof excepted, all Shell Improvements excepted, and all Interior Improvements and Alterations made by Tenant excepted.

(e) Perfection of Title or Condition.

(i) Landlord shall be obligated to remove defects in title on the following terms:

(A) Landlord shall at its sole expense remove from title at or prior to the Close of Escrow, all monetary encumbrances which existed at the Date of Execution or which were voluntarily granted by Landlord after the Date of Execution.

(B) Landlord shall at its sole expense either (I) remove from title at or prior to the close of Escrow or (II) secure prior to Close of Escrow a commitment from the issuer of title insurance, to issue title insurance and/or endorsements insuring Tenant against loss due to all monetary encumbrances arising after the Date of Execution which are not among the Permitted exceptions granted by Landlord.

(C) If Landlord does not remove or obtain insurance against all title defect at or before Close of Escrow as provided in paragraph (A) and (B), above then Tenant may remove such encumbrances itself at the Close of Escrow and deduct from the Purchase Price the reasonable costs incurred by Tenant in removing such encumbrances. If such costs incurred by Tenant exceed the Purchase Price landlord shall pay the excess to Tenant at the Close of Escrow.

(ii) if on the Closing Date, Landlord shall have failed to make the Prehises conform, as required in this Article XXIX, paragraph 2, then Tenant may elect, by written notice given to Landlord on or before the extended Closing Date:

(A) to accept the Property in its then existing condition and to pay therefor the Purchase Price with appropriate deduction (except in the event of a casualty or Taking as provided in Article XXIX, paragraph 2 (e) (iii) (A) or (B) hereinbelow); or

(B) to rescind Tenant's Notice of Exercise and Landlord and Tenant shall thereupon be relieved of all further obligation or liability in connection with the option to Purchase, but such rescission shall not affect the continued rights and obligations of Landlord and Tenant under all provisions of this Lease other than those of this Article XXIX, paragraph 2.

(iii) If, on the Closing Date, the Building shall have been damaged by fire or casualty insured against and shall not have been repaired or restored to its former condition, and Tenant agrees to accept such title and possession as Landlord can deliver and to accept the Property in its then condition pursuant to Article XXIX , paragraph 2 (a) (ii) (A) of this Lease, then:

(A) Landlord shall either (1) pay over or assign to Tenant, at the closing, all amounts recovered or recoverable on account of such insurance, or (2) if a holder of a Mortgage on the Land shall not permit the insurance proceeds or a part thereof to be used to restore the Building to its former condition or to be so paid or assigned to Tenant, give to Tenant a credit against the Purchase Price equal to the amount of the insurance proceeds retained by the Mortgagee, less in either case, any amounts expended or incurred by Landlord in the repair or restoration of the Building; and

(B) if any portion Of the Land and/or Building shall have been the subject of a Taking, the Purchase Price shall be reduced by an amount agreed upon by Landlord and Tenant to reflect the value of the portion of the Land and/or Building so taken. Landlord shall be entitled to retain the proceeds of such Taking, subject to the provisions of Article XIII, paragraph 4 of this Lease.

(f) Use of Purchase Money. To enable Landlord to convey the Property
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as required in this Article XXIX, paragraph 2, Landlord may, on the Closing Date, use the Purchase Price or any portion thereof to clear title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the grant deed, except for Mortgage discharges from institutional lenders which nay be recorded when received provided that satisfactory arrangements are agreed upon by Landlord and Tenant at the Closing for the payment of all indebtedness secured by such Mortgages.

(g) Inspections. Tenant, its employees, contractors, consultants,
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servants and agents shall have the right, at all reasonable times and at Tenant's sole cost and expense, prior to and after the Exercise Date, to conduct such surveys, tests, and inspections, including, without limitation, soil borings, water sampling, environmental studies and assessments, as Tenant determines necessary to evaluate the Property. In the exercise of such rights, Tenant shall not disturb the occupancy of any other tenant of the Building or interfere with any business conducted on the Property. Following the completion of each such survey, test and inspection, Tenant shall promptly restore the Property and every part thereof to its condition existing immediately prior to the conduct of such survey, test or inspection. Tenant shall indemnify, defend and hold harmless Landlord, and its partners, employees, contractors, servants and agents, from and against all loss, costs, fines and expenses, including without limitation, reasonable attorneys, fees and litigation costs, arising from the conducting of such surveys, tests, or inspections including, but not limited to, injury or death of any person or damage to property; provided, however, that this indemnity shall not apply to any loss, costs, damages, claims, proceedings, demands, liabilities, penalties, fines or expenses arising from the discovery of Hazardous Substances on the Land or in the Building which are not the responsibility of

Tenant Pursuant to Article XXVIII, paragraph 4 of this Lease. Tenant, its employees, contractors, consultants, servants and agents, upon prior written notice to Landlord, shall have the right to inquire at any and all governmental authorities regarding the Property.

Prior to the Exercise Date, Tenant shall have the right, at its sole cost and expense, to perform or have performed an environmental site assessment ("Site Assessment") of the Land and the Building.

Within thirty (30) days after written request by Tenant, Landlord shall supply Tenant with copies of all Mortgages, agreements and other instruments or documents, which Tenant would take subject to upon acquisition of the Land and Building or which affect the provision of services to or operation of the Land and Building.

(h) Landlord's Closing Obligations. At the Closing, Landlord shall deliver to Tenant:

(i) The grant deed conveying title to the Property in accordance with the provisions of Article XXIX, paragraph 2(c) of this Lease;

(ii) A bill of sale with warranty of title, in form and content reasonably satisfactory to Tenant, conveying and transferring title to Landlord's personal property used solely in connection with the ownership, maintenance and operation of the Property;

(iii) An assignment, in form and content reasonably satisfactory to Tenant, of all of Landlord's right, title and interest in and to all service, maintenance and management contracts (to the extent that Tenant, at its option, has elected to assume the same by written notice given to Landlord not later than thirty (30) days prior to the Closing Date) affecting or relating to the Property, together with the original of each such contract;

(iv) An assignment, in form and content reasonably satisfactory to Tenant, of all permits, authorizations and approvals which have been issued for or with respect to the Property by governmental authorities having jurisdiction thereof, together with the originals or photocopies of such permits, authorizations and approvals;

(v) A set of "as-built" plans and specifications for the Building to the extent that Landlord has possession thereof;

(vi) An assignment, in form and content reasonably satisfactory to Tenant, of all of Landlord's right, title and interest in and to all guaranties and warranties

relating to the Building, together with the original of each such guaranty and warranty;

(vii) A certificate of non-foreign status for Landlord;

(viii) All keys to the Building, appropriately tagged for identification; and

(ix) All maintenance records and operating manuals pertaining to the Building and copies of the books and records of Landlord with respect of the Building.

(i) Merger. The recording of the grant deed in the records of the County Recorder of Santa Clara County, California, shall be deemed to be a full performance and discharge of every agreement and obligation contained or expressed in this Article XXIX, paragraph 2, except as to those which by their terms are to be performed after the delivery of the grant deed.

(j) Adjustments. Adjustments of Base Rent, operating Costs, Real Estate Taxes, costs of operating and maintaining the Premises, utility charges and all other items of cost payable under this Lease shall be prorated as of the Closing Date and the net amount thereof shall be added to or deducted from the Purchase Price. Landlord and Tenant shall each pay at the Closing one-half (1/2) of all costs, fees, taxes and charges imposed as the result of the purchase of the Property by Tenant including, but not limited to, title policy and endorsement premiums (except as specifically provided in paragraph 2(c)(i)(B) of this Article XXIX), survey costs, transfer taxes, monument fees, escrow fees, document preparation fees and recording costs.

(k) Broker. Neither Landlord nor Tenant shall have any obligation to pay a broker's fee or commission to any party as a result of the exercise of the Purchase Option or the purchase of the Property, except for any broker's fee or commission which is the result of an agreement between such party and the claiming broker. Landlord shall indemnify, defend and hold harmless Tenant, its officers, directors, employees, contractors, servants or agents, from and against all loss, costs, damages, claims, proceedings, demands, liabilities or expenses, including without limitation reasonable attorneys' fees and litigation costs, incurred by them resulting from a claim by any person for a commission or fee relating to Tenant's exercise of the Purchase Option or purchase of the Property and arising out of the actions of Landlord. Tenant shall indemnify, defend and hold harmless Landlord, its officers, directors, employees, contractors, servants or agents, from and against all loss, costs, damages, claims, proceedings, demands, liabilities or expenses, including without limitation reasonable attorneys' fees and litigation costs, incurred by them resulting from a claim by any person for a commission or fee relating to Tenant's exercise

of the Purchase Option or purchase of the Property other than claims by the Brokers described in Article XXXI, paragraph 2.

(l) Recording Notice of Exercise. At the request of either party, the parties shall execute, acknowledge and deliver a notice of Tenant's exercise of the Purchase Option, in recordable form, which notice shall state the Closing Date. (including the circumstances under which it may be extended). Either party may record the notice.

(m) Failure to Purchase. If Tenant shall give the Notice of Exercise to Landlord and thereafter shall fail to purchase the Property in accordance with the terms of this Article XXIX, paragraph 2, this Lease shall remain in full force and effect. If such failure by Tenant occurs despite the fulfillment of all conditions to closing for Tenant's benefit contained in this Article XXIX, Paragraph 3, Tenant shall be liable to Landlord for all damage incurred by Landlord as the result of Tenant's failure to so purchase the Property; and Tenant shall deliver to Landlord at no charge copies of all surveys, tests, investigations, studies, reports and analyses performed by Tenant or its employees, contractors, consultants, servants and agents in connection with Tenant's investigation of the Property. If Landlord fails to sell the Property to Tenant despite the fulfillment of all conditions to closing for Landlord's benefit contained in this Article XXIX, paragraph 3, Landlord shall be liable to Tenant for all damage incurred by Tenant as the result of Landlord's failure to so sell the Property, or Tenant may pursue specific performance of its Purchase Option.

(n) General. All notices given under this Article XXIX, paragraph 2 shall be given in the manner and shall be effective as provided in Article XXII of this Lease. Tenant may assign this Purchase Option only in connection with an Assignment of all of Tenant's other rights under this Lease either before or after giving the Notice of Exercise. The Purchase option set forth in this Article XXIX, paragraph 2 shall terminate at midnight on September 30, 1999 unless Tenant shall have given a Notice of Exercise on or before that date.

3. Exchange. Landlord may elect to fulfill its obligations to dispose of the Property pursuant to this Article XXIX through an exchange intended to qualify under Internal Revenue Code section 1031. Tenant agrees to cooperate with such an exchange and execute all documents reasonably required by Landlord's attorney or tax advisor, provided that: (a) any such documents are delivered to Tenant for review at least thirty (30) days prior to the Close of Escrow; (b) any such documents are reasonably acceptable to Tenant's counsel; and (c) the exchange shall be at no cost or liability to Tenant. Landlord agrees to indemnify and hold Tenant harmless from any liability, damages or costs, including reasonable attorney's fees, that may arise from Tenant's participation in the exchange.

ARTICLE XXX

SATELLITE DISH

1. Roof Space. Tenant shall have the right to use for the purposes of this Article certain roof space on the Building in the location shown on Exhibit I (the "Roof Space") for the Term of this Lease. Tenant's right to use the Roof Space shall be appurtenant to the Premises and no Additional Rent shall be payable with respect to such use.

2. Equipment and cables. Tenant may install, use and maintain, on the Roof Space certain equipment, including a satellite dish(s) and related equipment (the "Equipment") and may run cables and related equipment (the "Cables") between the Roof Space and the Premises. The Equipment and the Cables are described in Exhibit I. The Equipment and Cables shall be deemed Tenant's Personal Property for the purposes of this Lease and shall be subject to the terms of this Lease with respect thereto.

3. Installation. Tenant shall have the right to select the contractor to install and maintain the Equipment and Cable, subject to Landlord's delayed. Tenant and/or its contractor shall install, use, and maintain the Equipment and Cables in a manner that does not interfere with Landlord's operation of the Building and that does not interfere with the quiet enjoyment of the tenants of the Building. Tenant shall bear all expenses in connection with the installation, use and maintenance of the Equipment and the Cables and the removal thereof. Tenant shall ensure that no mechanics' or materialmen's liens are placed on the Roof Space or the Building and will promptly remove any such liens so placed within ten (10) days after receiving notice of such liens. Tenant shall maintain (including the necessary power) the Equipment and the Cables at all times in a state of good repair and good and safe condition.

4. Indemnity. Tenant shall indemnify and save harmless Landlord, its officers, directors, employees, contractors, servants, guests, business invitees and agents, from and against all loss, costs, damages, claims, proceedings, demands, liabilities, penalties, fines and expenses, including without limitation reasonable attorneys' fees and litigation costs, arising from injury or death of any person or damage to property from Tenant's installation, use and maintenance of the Equipment and/or the Cables and the removal thereof or from any use made by Tenant of the Roof Space resulting from the failure of Tenant to perform and discharge its covenants under this Agreement. Landlord shall not be liable for any loss or damage due to imperfect or unsatisfactory communications experienced by Tenant for any reason whatsoever.

5 Insurance. Tenant shall include the Equipment and Cables in the insurance required from Tenant pursuant to Article X, Paragraph 6 and shall furnish Landlord with a certificate of insurance showing such coverage prior to Tenant's exercise of its rights hereunder, including, without implied limitation, the commencement of any work by Tenant.

6. Legal Requirements. Tenant and its contractors shall comply with all Legal Requirements and obtain all Authorizations in connection with the installation, use and maintenance of the Equipment and Cables.

7. Access. Landlord agrees to permit Tenant reasonable access during Building Hours to the Roof Space and such other areas of the Building necessary to facilitate the installation, use and maintenance of the Equipment and the Cables and the removal thereof.

8. Taxes. In the event that any Taxes are assessed with respect to the Building by any Governmental Authority (whether assessed against Landlord, Tenant, the Roof Space or the Equipment), Tenant shall pay the same in a timely manner before any lien or penalty is assessed thereon.

9. No Interference. Tenant warrants that the installation and operation of the Equipment and the Cables will not cause television transmitting or receiving interference, radio interference, or noise or annoyance to tenants of the Building, and that Tenant will correct such interference at once if it should occur.

ARTICLE XXXI

ADDITIONAL PROVISIONS

1. Broker Commission. Landlord warrants to Tenant that the only broker retained by Landlord in connection with the negotiation and consummation of this Lease is Hare, Brewer & Kelley, Inc., and Tenant warrants to Landlord that the only broker retained by Tenant in connection herewith is Cooper/Brady Commercial Real Estate (collectively, the aforementioned brokers shall be referenced as the "Broker(s)"). Landlord covenants that it shall pay any and all commissions, fees and amounts owing to the Broker(s) arising from the negotiation and/or consummation of this Lease.

2. Landlord's Access. Upon not less than twenty-four (24) hours prior notice to Tenant and at times mutually convenient to Landlord and Tenant, Landlord and its agents shall have the right to enter the Demised Premises for purposes of inspecting the same, showing the Demised Premises to prospective purchasers, posting notices of nonresponsibility, or making repairs, alterations or additions to any portion of the Building. At any time within four (4) months prior to the expiration of the Term,

Landlord shall have the right upon twenty-four (24) hours prior notice, at times mutually convenient to Landlord and Tenant and not more than three (3) times per week, to enter the Demised Premises, to show the Demised Premises to prospective tenants in entering the Demised Premises for any purpose, Landlord shall comply with any security measures required by Tenant.

3. Signage. Tenant shall not erect or place on any part of the exterior of the Building or on any Common Area any sign, radio or television antenna, or other structure, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Landlord acknowledges that Tenant intends to place antennae and a microwave dish on the roof of the Building. Installation of said items, including appropriate screening therefor, shall be subject to approval by the City of Palo Alto, and shall be performed by Landlord's roofing contractor at Tenant's expense. Upon the expiration of the Term of this Lease, Tenant shall remove any antennae, microwave or other dishes and all screening materials and shall repair any damages or roof penetrations caused thereby. Any signs installed by Tenant shall conform with all applicable Laws, and shall be fabricated and installed at Tenant's expense.

4. Binding Effect. The covenants and agreements herein contained shall, subject to the provisions hereof, bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, and its successors and assigns.

5. Validity. It is agreed that if any provisions of this Lease shall be determined to be void by any court of competent jurisdiction in the state where the Demised Premises are located, that such determination shall not affect any other provision of this Lease, all of which other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

6. Entire Agreement. This instrument contains the entire and only agreement between the parties as to the Demised Premises, and no oral statements or representations or prior written matter (including but not limited to unsigned drafts of this Lease) not contained in this instrument shall have any force or effect. This Lease shall not be modified in any way except by writing subscribed by both parties. This Lease shall not be effective unless fully executed by both parties.

7. Exhibits. All Exhibits attached to this Lease shall be deemed incorporated herein by the individual. Reference to each such Exhibit, and all such Exhibits shall be deemed a part of this Lease as though set forth in full. In the event of any conflict between the terms of this Lease and the terms of any Exhibit, the terms of this Lease shall control.

8 Acts at Own Cost. Whenever in this Lease provision is made for the doing of any act by any person, it is understood and agreed that said act shall be done by such person at his own-cost and expense unless a contrary intent is expressed.

9. Governing Law. This Lease shall be governed by and construed and enforced in accordance with the laws of the state where the Demised Premises are located.

10. Waiver/Consent. Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver of any rights hereunder. No waiver by either party at any time, express or implied, or any breach of any provisions of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action of any party shall require the consent or approval of the other party, the consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion, and such consent or approval shall not be unreasonably withheld or delayed.

11. Cumulative Rights and Remedies. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; no one of them whether exercised by the other party or not, shall be deemed to be exclusive of any other, and any two or more of all of such rights and remedies may be exercised at the same time; provided, however, nothing contained herein shall entitle a party to recover consequential damages from the other party arising out of any act or omission or breach of this Lease by such other party, except to the extent expressly permitted by this Lease.

12. Payment/Performance Under Protest. It is agreed that if at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions of this Lease, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said party to institute suit for the recovery of such sum, and if it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease; and if at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions hereof, the party against whom the work is asserted may perform such work and pay the cost thereof "under

protest" and the performance of such work shall in no event be regarded as a voluntary performance and there shall survive the right on the part of said party to institute suit for the recovery of the costs of such work, and it if shall be adjudged that there was no legal obligation on the part of said party to perform the same or any part thereof, said party shall be entitled to recover the cost of such work or the cost of so much thereof as said party was not legally required to perform under the provisions of this Lease.

13. Words and Phrases. Words and phrases used in the singular shall be deemed to include the plural and vice versa, and nouns and pronouns used in any particular gender shall be deemed to include any other gender.

14. Definition of Terms. The various terms which are defined in Articles of this Lease or are defined in Exhibits annexed hereto shall have the meanings specified in such Articles and such Exhibits for all purposes of this Lease and all agreements supplemental thereto, unless the context clearly indicates the contrary.

15. Effective Date of Lease. This Lease shall not be effective or binding on the parties to it until it has been signed by both Landlord and Tenant. Furthermore, if Landlord has not returned a fully executed copy of this Lease to Tenant within 15 days of execution by Tenant, this Lease is null and void and of no force and effect.

16. Authority. Each party represents to the other that the person signing this Lease on its behalf is properly authorized to do so.

17. Commencement/Expiration Dates. Landlord and Tenant shall execute within thirty (30) days of Term Commencement Date a certificate setting forth the Term Commencement Date and the expiration dates of the Primary Term and of any extended terms.

18. Force Majeure. Performance by Landlord or Tenant of their obligations hereunder shall be extended by the period of delay caused by force majeure. Force majeure is hereby deemed to include war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any such similar cause beyond the reasonable control of the party who is obligated to render performance.

19. Attorneys' Fees. If any party to this Lease shall institute an action to enforce the terms hereof, the prevailing party shall be entitled to reasonable attorneys' fees. Reasonable attorneys' fees shall be as fixed by the court. The "prevailing party" shall be the party which by law is entitled to recover its costs of suit, whether or not the action proceeds to

final judgment. If the party which shall have instituted suit shall dismiss it as against the other party without the concurrence of the other party, the other party shall be deemed the prevailing party.

20. Confidentiality. All of the terms and conditions of this Lease shall be kept confidential and shall not be disclosed to third parties by either party without the consent of the other party, except as otherwise provided in this Paragraph 20. Either Landlord or Tenant may disclose such terms and conditions to their attorneys, accountants-and other professional advisors. Tenant may disclose such terms and conditions to prospective assignees and subtenants of Tenant. Landlord may disclose such terms and conditions to prospective lenders and purchasers of the Property. When any permitted disclosure is made pursuant to this paragraph 20, the party making the disclosure shall do so only on the condition that the third party receiving the disclosure agrees to keep such terms and conditions confidential.

IN WITNESS WHEREOF, the parties have duly executed this Lease as of this 18 day of September, 1990.

LANDLORD:

Richard R. Kelly, Jr.

TENANT:

DIGITAL EQUIPMENT CORPORATION, a Massachusetts corporation,

By:

Carl Stegerwald
Development Manager
U.S. Property Development

EXHIBIT A
DEMISED PREMISES

DIGITAL EQUIPMENT CORPORATION
305 Lytton Avenue Renovation
Palo Alto, CA
11 JULY 1990
539 Bryant St. San Francisco 94107 127
Phone 415 896 0800
Fax 415 495 523

MECHANICAL

305 LYTTON

MECHANICAL

From our observations of the existing building and User's requirements, the system best suited for this building is a VAV reheat system. This system meets the flexibility and zoning requirements and at the same time fits into the amount of ceiling space available, while minimizing the amount of shaft area required through the floors. Medium velocity primary distribution ducting with low velocity downstream of the terminal units. With the existing rooftop units being single zone, they will be removed since they can't achieve the design criteria for this building.

Air Handling

Air handling will consist of two packaged single zone air conditioning units, each capable of handling 50% of the total building load. The units will consist.of an economizer section with exhaust fans, 85% bag filters, a preheat hot water coil to assist in morning warm up, a DX cooling coil, a supply fan with inlet vanes, condensing/compressor section, and a discharge plenum. The units will be front discharging . in order to route the ductwork on the roof to the architectural shafts.

Cooling

Cooling is programmed utilizing air cooled direct expansion (D/X). All components for the cooling will be integral with the air handling units. Each coil will have a modulating valve for control of the discharge air temperature.

Heating

The heating system will be a hot water reheat system with coils located in the ductwork downstream of the terminal units at each zone in the building. An exterior boiler will be installed on the roof. Insulated hot water distribution piping will be routed to the two air handlers (for morning warm-up) and then continue to each reheat coil. Each coil,will have a modulating valve for control of the discharge air temperature.

Air Distribution

The supply air system will be via a medium velocity system, using wrapped rectangular, round or oval duct to keep radiated noise levels to a minimum. In or near each zone will be a fan powered terminal unit with reheat coils. The terminal unit will be controlled by a temperature sensor mounted in the zone served by that particular terminal unit. The terminal unit modulates the cooling air supply volume while circulating a fixed amount of air to the space as required to satisfy the space conditions in response to the heat loads generated in the spaces. Where the internal, heat gains cannot overcome the heat losses through the building envelope, the hot water reheat coils will provide the necessary amount of heat to maintain the set point of the temperature sensor. Low velocity duct distribution will be utilized downstream of the terminal unit.

The return system will be a ceiling return plenum.

Return air will be through return registers in the ceiling in areas with no finished ceilings. Return air will be collected at a central location near each shaft and hard ducted back to the air handling unit. Careful consideration for the placement of return grilles must be exercised to reduce the possibility of crosstalk between grilles serving different rooms or areas, and will be incorporated into the design. Sensitive areas such as conference rooms and any other locations, as determined by the Owner based on the occupant of a particular room, will have sound attenuation boots mounted to the return grille.

Noise levels of both the supply and return systems will be controlled as required to maintain the necessary N.C. levels (NC 35 in offices and conference rooms; NC 40 in all other areas) using sound attenuators above the roof. Any additional attenuation will be installed in locations where the potential of noise generation is possible.

The existing air distribution system will be removed in order to accommodate the new medium velocity system.

Control

Control of the systems will be commercial grade direct digital control (DDC) which are hard wired rather than utilizing the tubing of a pneumatic system. Controllers will be capable of being programmed individually using a hand held programming touch pad or with a centrally operated computer setting the parameters of each controller. All wiring of a DDC system will be plenum rated so it may be routed throughout the return air plenum without conduit. This system is also utilized in order to tie the Palo Alto campus to a single point of control within the campus.

Design Conditions

The design conditions are in accordance with ASHRAE climate data for the City of Palo Alto. The summer outdoor conditions utilized are 90 degrees FDB/67 degrees FWB. The winter outdoor condition utilized is 31 degrees FOB. The system components will be sized for a constant 70 degrees indoor temperature, while the actual temperature settings will vary in accordance with Title 24 of the California Energy Commission. Indoor heat gains in offices are based on 15 watts per square foot total for equipment, an ultimate of 60 watts per square foot in computer machine rooms (if any are provided in this building) 1 1/2 watts per square foot for lighting, and one person per 200 square feet of gross floor space. Loads will be refined upon confirmation of actual finalized conditions.

Machine rooms (if any are provided in this building) with a high concentration of computers will be handled using 'in room,' self contained computer room units to handle the temperature and humidity loads of these atypical spaces. The necessary ventilation air (outside air) will be introduced into the space through the primary air handlers on the roof. The computer room units will be overhead discharge/low level return, utilizing an above ceiling plenum or ducted supply. Water cooled D/X appears to be the best solution for this

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application. LIEBERT REFRIGERANT GAS UNIT

PLUMBING/FIRE PROTECTION

installed on the roof. The air fluid cooler would reject waste heat from the computer room (Machine Room) cooling system.

Preorder Equipment

Depending on the construction schedule, items which may require pre-ordering would be the air handlers, boiler, computer room units, and the air fluid cooler.

PLUMBING

There are no special requirements for the plumbing systems. At the present time we will proceed with the assumption that all services (domestic water, sanitary sewer, storm drainage and natural gas) presently serving the building are of adequate capacity to meet the requirements for the new tenants. This assumption also carries over to the domestic hot water system.

Industrial cold water make-up with backflow prevention will be provided for any new hydronic mechanical systems.

It appears (based on the Building Survey Form) that no upgrades to the present Toilet Room will be required to suit the handicapped.

FIRE PROTECTION

Fire protection consists of reconfiguring piping and providing new sprinkler heads where required
based on the interior layout in accordance with
NFPA Chapter 13.

existing system shall be reused as possible, but the exact quantity cannot be determined until further review of the existing system and the new Architectural layout is determined. All components

shall be Factory Mutual approved where applicable.

ELECTRICAL TELECOMMUNICATIONS SECURITY/FIRE ALARM SYSTEM

305 LYTTON

Electrical Service

Existing electrical service is supplied from City of Palo Alto underground vault at 120/208V 3-phase rated 600 amperes. The main switchgear is in a closet under a stair. A new service-will be required to increase the capacity to 1200 amperes. A new location will have to be found for the new main switchgear.

Power Distribution

The new switchgear will be used to serve any new equipment and HV and AC loads and to back feed the existing main switchboard. Existing lighting panels and miscellaneous power will remain connected to existing switchboard.

Computer Room

None Programmed.

Emergency Power

Emergency power is required. There will be battery powered emergency lighting fixtures at --ress and stairs.

Emergency power for security system needs to be reviewed.

Interior Lighting

DEC standard lighting for offices is by using 2' x 4' Parabolic fluorescent fixtures with flicker-free electronic ballasts. Unless special treatment is required DEC standard will be followed.

Workstation Power Level

25% of the offices/cubicles will have 1 workstation.+ DISK :APVN
25% of the offices/cubicles will have 2 workstations.+ DISKS:APVM
25% of the offices/cubicles will have 3 workstations.+ DISK:APVH

Convenience Outlet System

1 circuit will be provided for low density offices. Two circuits will be provided for medium density offices and three circuits will be provided for heavy density offices.

Convenience outlets will be provided throughout the area. Convenience outlets will not be connected to circuits serving offices.

Telephone System

Telephone system will be extensions from main PBX located in 335 BRYANT

Voice and Data Distribution

Each office and work-station shall have ONE :APVM double gang 8 port communication outlet and ONE: APVH double gang blank plate for future fiber use. These outlets will be used for voice and data distribution. Method of providing these outlets in office area and open work station need to be addressed. Use of wiremold raceway system, power

poles or empty conduit system in the wall need to be Reviewed.

SER Rooms and Cable Tray

ONE PER FLOOR, 100 TO 120 SQ FT PER :APVM

P.A. System

A.single zone paging P.A. system will all call feature will be provided. Paging system microphone will be located at the security console and amplifiers will be located in security system equipment room. Location of security console to be determined.

Security System

Security system cameras will be located at each egress door with monitors located at security console, location of which needs to be determined.

Fire Alarm System

No fire alarm system is planned at this time.

EXHIBIT C

LEGAL DESCRlPTION OF LAND

PARCEL 1:
PARCEL 1, AS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED JUNE 9, 1976 IN BOOK 375 OF MAPS AT PAGE 2.

PARCEL 2:
A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, PARKING AND ACCESS, TO, OVER AND UPON THE NORTHWESTERLY 80 FEET OF PARCEL 2, AS SAID PARCEL 2 IS SHOWN ON THE PARCEL MAP RECORDED JUNE 9, 1976 IN BOOK 375) OF MAPS AT PAGE 2, AS GRANTED IN THAT CERTAIN EASEMENT AGREEMENT RECORDED SEPTEMBER 7, 1977 IN BOX D122 PAGE 355 OF OFFICIAL RECORDS. REFERENCE IS MADE TO SAID INSTRUMENT FOR FULL PARTICULARS.

PARCEL 3:
AN EASEMENT FOR PATIO PURPOSES, AS MORE PARTICULARLY SET FORTH IN THAT CERTAIN EASEMENT AGREEMENT RECORDED SEPTEMBER 7, 1977 IN BOOK D122 PAGE 335 OF OFFICIAL RECORDS, REFERENCE IS MADE TO SAID INSTRUMENT FOR FULL PARTICULARS, DESCRIBED AS FOLLOWS:

PORTION OF LOT 2, BLOCK 19 OF THE CITY OF PALO ALTO, AS SHOWN ON A MAP RECORDED IN BOOK "D", PAGE 69 OF MAPS, RECORDS OF SANTA CLARA COUNTY CALIFORNIA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 3/4O IRON PIPE SET IN THE NORTHWESTERLY LINE OF LYTTON AVENUE ADJACENT THEREON, NORTHEASTERLY 100 FEET FROM THE INTERSECTION OF SAID LINE OF LYTTON AVENUE WITH THE NORTHEASTERLY LINE OF BRYANT STREET; THENCE AT RIGHT ANGLES NORTHWESTERLY AND PARALLEL WITH SAID LINE OF BRYANT STREET FOR A DISTANCE OF 48 FEET; THENCE TO A POINT ON THE NORTHWESTERLY FROM POINT OF BEGINNING; THENCE ALONG SAID NORTHWESTERLY LINE OF LYTTON AVENUE FOR A DISTANCE OF 418 FEET TO POINT OF BEGINNING.

APN: 120-14-101

ARB: 120-14

SHELL IMPROVEMENTS
Page 1 - Second Floor

EXHIBIT

SHELL IMPROVEMENTS
page 2 - First Floor.

LANDLORD'S NOTICE OF SUBSTANTIAL COMPLETION DATE

Reference is made to a lease (the "Lease") dated September 18, 1990, by and between Richard R. Kelly, Jr., as landlord ("Landlord") and Digital Equipment Corporation, a Massachusetts corporation, as tenant ("Tenant"). Capitalized terms used in this Notice shall have the same meaning as assigned in the Lease.

Pursuant to Article VIII, Paragraph 1 of the Lease, Landlord hereby gives notice to Tenant that the substantial completion date of the Shell Improvements under the Lease shall be Dec. 15, 1990.

Executed on this 5th day of June, 1991.

LANDLORD:

Richard R. Kelley, Jr.

EXHIBIT E
- ---------

LANDLORD'S NOTICE OF SUBSTANTIAL COMPLETION DATE
- --

Reference is made to a lease (the "Lease") dated _____, by and between Richard R. Kelly, Jr., as landlord ("Landlord") and Digital Equipment Corporation, a Massachusetts corporation, as tenant ("Tenant"). Capitalized terms used in this Notice shall have the same meaning as assigned in the Lease.

Pursuant to Article VIII, Paragraph 1 of the Lease, Landlord hereby gives notice to Tenant that the substantial completion date of the Shell Improvements under the Lease shall be _____.

Executed on this _____ day of _____, 19_____.

LANDLORD:

Richard R. Kelley, Jr.

EXHIBIT F

SUBORDINATION, RECOGNITION, AND NON-DISTURBANCE AGREEMENT

(Mortgagee)

Date:

Lender:

Lender's Address:

Landlord:
Landlord's Address:
Tenant: Digital Equipment Corporation, a Massachusetts corporation

Tenant's Address: Digital Equipment Corporation

Attention: [Name of U.S. Area Attorney with Real Estate Responsibility]

Property: [Street Address of property subject to the Mortgage)

Mortgage: A deed of trust from Landlord to _____ ("Trustee") for the benefit of Lender encumbering the Property dated 19 _____, and recorded with _____ in Book _____, Page _____, together with any extensions, replacements, amendments or consolidations thereof

Premises: [Description of the leased premises making reference to the Property]

Lease: A lease of the Premises from Landlord to Tenant dated _____, 19 _____, together with any extensions, renewals, replacements or amendments thereof

In consideration of the mutual covenants and agreements made herein, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, Lender and Tenant agree:

1. Subordination. The Lease, including all rights to purchase the Property which are contained therein, is subject and subordinate to the Mortgage and to all advances now or hereafter made thereunder, with the same force and effect as if the Mortgage had been executed, delivered, recorded, and all advances had been made thereunder, prior to execution and delivery of the Lease.

2. Non-disturbance. Provided Tenant is not then in default under the Lease beyond all applicable periods of grace or cure thereunder (so as to entitle Landlord to exercise its rights and remedies under the Lease):

(a) the Lease shall not be terminated and shall continue in full force and effect and Tenant's possession of the Premises shall not be disturbed;

(b) in the event Lender forecloses the Mortgage, exercises its rights to sell the Property at a trustee's sale', accepts a deed in lieu thereof, or enters into possession or collects rent from-the tenants of the Property, Lender will not name Tenant as a party in any action or proceeding with respect to the Mortgage, whether to foreclose the Mortgage or to exercise any of its other rights under the Mortgage, under the note, bond, or any other document secured thereby, or under law; and

(c) Tenant's rights under the Lease, including all rights to purchase the Property which are contained the-rein, will not be impaired by any sale of the property pursuant to foreclosure, trustee's sale or otherwise.

3. Attornment and Recognition. If Lender succeeds to the rights of Landlord under the Lease, whether because Lender acquires the Property at a foreclosure or trustee's sale or accepts a deed in lieu thereof, Tenant will attorn to and recognize and be bound to Lender as landlord under the Lease, and Lender will accept such attornment and recognition, for the unexpired term of the Lease, subject to all of the terms of the Lease, including without limitation, all rights and options to extend the Term and to purchase the Property, and the Lease shall continue in full force and effect, without the necessity of executing any new document, as a direct lease between Tenant and Lender.

4. Consent. Lender hereby confirms its approval of and consent to the Lease.

5. Restoration. All condemnation awards and insurance proceeds paid or payable with respect to the Premises and the Property and received by Lender shall be applied to the repair and restoration of the Premises and the Property, whether by Landlord or Tenant, unless the Lease is terminated pursuant to the terms thereof.

6. Tenant's Personal Property. Lender hereby agrees that Tenant's Personal Property, as such term is defined in the Lease, however installed in or affixed to the Premises, shall at all times remain the property of Tenant and may be removed by Tenant at any time and from time to time. In not event, including without limitation, default under the Lease or Mortgage, shall Lender have any lien, right or claim in Tenant's Personal Property. Lender expressly waives all rights of levy, distraint, or execution with respect to Tenant's Personal Property.

7. Notice of Default. Notwithstanding any provision of the Lease to the contrary, no notice by Tenant to Landlord of any default by Landlord, if the default is of such a nature as to give Tenant a right to terminate the Lease, shall be effective against Lender unless and until Tenant gives Lender written notice of such default.

8. Successors and Assigns. The term "Lender", as used herein, unless the context requires otherwise, shall include the successors and assigns of Lender and any persons or entity which shall become the owner of the Property by reason of a foreclosure or trustee's sale under the Mortgage or an acceptance of a deed or an assignment in lieu of foreclosure or otherwise. The term "Tenant" as used herein shall include its successors and assigns.

9. Notices. All notices given 'hereunder shall be in writing and shall be delivered in hand, by recognized overnight courier, or by depositing with the United States Postal Service, postage prepaid, certified or registered mail, return receipt requested. All such communications shall be addressed to Tenant and Lender at their addresses appearing on the first. page hereof, or to such other address or addresses as the parties may from time to time specify by notice so given. Notices shall be deemed received:

(a) if delivered by hand, when actually received, as evidenced by a signed receipt;

(b) if sent by recognized overnight courier, the next Business Day; and

(c) if sent by the United States Postal Service, on the earlier of (i) the third business day following the mailing thereof, or (ii) the business day it is received.

10. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the state of California.

11. Changes in Writing. This Agreement may not be changed, waived, or terminated except in a writing signed by the party against whom enforcement of the change, waiver, or termination is sought.

12. Partial Invalidity. If any provision of this Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each covenant and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Executed as of the date first above written.

LENDER:

By:
Name:
Title:

TENANT: DIGITAL EQUIPMENT CORPORATION

By:
Name:
Title:

[ADD ACKNOWLEDGEMENTS IN LOCAL FORM FOR ALL PARTIES]

ENCUMBRANCES

6. A DEED OF TRUST TO SECURE AN INDEBTEDNESS IN THE AMOUNT SHOWN BELOW, AND ANY OTHER OBLIGATIONS SECURED THEREBY:

AMOUNT	$971,655.00
DATED:	AUGUST 17, 1987
TRUSTOR:	RICHARD R. KELLY, JR., AN UNMARRIED PERSON
TRUSTEE:	FIRST BANCORP, A CALIFORNIA CORPORATION
BENEFICIARY:	SANWA BANK CALIFORNIA, A CALIFORNIA CORPORATION
RECORDED:	AUGUST 28, 1987, BOOK K276, OFFICIAL RECORDS
PAGE 676	
SERIES NO.:	9413324
LOAN NO.:	NONE SHOWN
TYPE LOAN:	NONE SHOWN
ADDRESS:	NONE SHOWN

AND RE-RECORDED OCTOBER 27, 1987, BOOK X337, OFFICIAL RECORDS, PAGE-1238, AS SERIES NO. 9480429.

7. NOTICE OF ASSESSMENT 250 UNIVERSITY AVENUE PARKING PROJECT ASSESSMENT DISTRICT, RECORDED JANUARY 2, 1990, BOOK L216 OFFICIAL RECORDS, PAGE 157, AS SERIES NO. 10376964.

EXHIBIT G

PERMITTED ENCUMBRANCES

A. PROPERTY TAXES, INCLUDING ANY ASSESSMENTS COLLECTED WITH TAXES, TO SE LEVIED FOR THE FISCAL YEAR 1990 - 1991 WHICH ARE A LIEN NOT YET PAYABLE.

D. THE LIEN OF SUPPLEMENTAL TAXES, IF ANY, ASSESSED PURSUANT TO THE PROVISIONS OF CHAPTER 3.5 (COMMENCING WITH SECTION 75) OF THE REVENUE AND TAXATION CODE OF THE STATE OF CALIFORNIA.

1. COVENANTS, CONDITIONS AND RESTRICTIONS (DELETING THEREFROM ANY RESTRICTIONS BASED ON RACE, COLOR OR CREED) AS SET FORTH IN THE DOCUMENT

RECORDED: DECEMBER 22, 1888, VOLUME 110 OF DEEDS
PAGE 345

SAID DOCUMENT CONTAINS PROVISION FOR A REVERSION OF TITLE.

AFFECTS: A PORTION OF THE LAND DESCRIBED HEREIN.

EXHIBIT H

TENANT'S PERSONAL PROPERTY

All of Tenant's furniture, furnishings, equipment, fixtures trade fixtures, and personal property of every kind from time to time in or upon the Demised Premises, however or whether or not affixed or installed thereto, including, without limitation:

Free-standing HVAC units, including condensers
All cafeteria equipment, including dishwashers, sinks, walk-in freezers, refrigerators, ovens, grills, etc.
Plug-in type lights
Telephone equipment
Paging equipment
Buss duct
Cable tray
Motor generator system
Security equipment (cardreaders, cameras, monitors, etc.)
Vending machines
Halen systems
Computer room raised flooring
De-mountable partitions and ethernet components
Humidifier systems
White marker boards
Lobby receptionist desk
Copy/coffee center millwork

PERMITTED ENCUMBRANCES

2. UNRECORDED LEASE WITH CERTAIN TERMS, COVENANTS, CONDITIONS AND PROVISIONS SET FORTH THEREIN

LESSOR	RICHARD R. KELLEY, JR.
LESSEE	HARE, BREWER & KELLEY, INC.
DISCLOSED BY:	ASSIGNMENT OF LEASE
RECORDED:	DECEMBER 22, 1976, BOOK C490, OFFICIAL RECORDS PAGE 221
SERIES NO.:	5504537

THE PRESENT OWNERSHIP OF THE LEASEHOLD CREATED BY SAID LEASE AND OTHER MATTERS AFFECTING THE INTEREST OF THE LESSEE ARE NOT SHOWN HEREIN.

3. NOTICE OF ASSESSMENT, UNIVERSITY AVENUE AREA OFFSTREET PARKING ASSESSMENT DISTRICT PROJECT No. 75-63

RECORDED:	MARCH 1, 1977, BOOK C635, OFFICIAL RECORDS PAGE 71
SERIES NO.:	55677002

REFERENCE IS MADE TO SAID DOCUMENT FOR FULL PARTICULARS.

4. AN AGREEMENT ON THE TERMS AND CONDITIONS CONTAINED THEREIN,

FOR:	EASEMENTS
DATED:	JULY 15, 1977
EXECUTED BY:	RICHARD R. KELLEY, JR. AND LINDEN DEVELOPMENT CORPORATION, A CALIFORNIA CORPORATION
RECORDED:	SEPTEMBER 7, 1977, BOOK D122, OFFICIAL RECORDS. PAGE 335
SERIES NO.:	5775006

REFERENCE IS MADE TO SAID DOCUMENT FOR FULL PARTICULARS.

5. NOTICE OF ASSESSEMENT, UNIVERSITY AVENUE LOT J PARKING GARAGE

ASSESSMENT DISTRICT	
RECORDED:	AUGUST 9, 1984, BOOK 1780, OFFICIAL RECORDS. PAGE 100
SERIES NO.:	8152937

EXHIBIT C

FIRST AMENDMENT TO LEASE

This First Amendment to Lease is entered into by and between Richard R. Kelley, Jr. ("Landlord") and Digital Equipment Corporation, a Massachusetts corporation ("Tenant") effective as of January 18, 1991.

RECITALS

A. This First Amendment to Lease (this "First Amendment") modifies that certain lease (the "Lease") by and between Landlord and Tenant dated September 19, 1990 for the property located at 305 Lytton Avenue, Palo Alto, California. All terms used in this First Amendment shall have the same meaning ascribed to them in the Lease unless expressly defined herein.

B. In consideration of efforts by Landlord to secure a refinancing of the property subject to the Lease, Landlord and Tenant desire to amend the Lease to extend the date on which Tenant may abate rent for certain unpaid Interior Improvement Allowances.

AGREEMENT

NOW, THEREFORE, Landlord and Tenant hereby agree that die Lease shall be and hereby is amended as follows:

1. Amendment of Article VIII, Paragraph 2(b). The introductory clause of the Fifth sentence of Paragraph 2(b) of Article VM is amended to read as follows:

> Notwithstanding the provisions of Article IV, Paragraph 4, if payment of the Improvement Allowance is delayed beyond five (5) months after the Date of Execution, Tenant may deduct the remaining balance of the Improvement Allowance from the next payments of Rent coming due according to the following schedule:

2. No Further Modifications. Except as expressly modified by this First Amendment, the Lease shall remain unchanged and in full, force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Amendment effective as of the date first above written.

"Landlord"

Date:

Richard R. Kelley, Jr.

"Tenant"

Digital Equipment Corporation,
a Massachusetts corporation

Date: By:
Its:

EXHIBIT D

SECOND AMENDMENT TO LEASE

This Second Amendment to Lease is entered into by and between Richard R. Kelley, Jr. ("Landlord") and Digital Equipment Corporation, a Massachusetts corporation ("Tenant") effective as of June 1, 1991.

RECITALS

A. This Second Amendment to Lease (this "Second Amendment") modifies that certain lease (the "Lease") by and between Landlord and Tenant dated September 18, 1990 and amended by a First Amendment thereto dated effective January 18, 1991 (collectively, the "Lease"), for the property located at 305 Lytton Avenue, Palo Alto, California. All terms used in this Second Amendment shall have the same meaning ascribed to them in the Lease unless expressly defined herein.

B. In further consideration of efforts by Landlord to secure a refinancing of the property subject to the Lease, and in consideration of the payment of an increased Interior Improvement Allowance by Landlord, Landlord and Tenant have agreed to make certain modifications to the Lease.

C. All capitalized terms not defined in this Second Amendment shall have the meanings assigned to them in the Lease.

AGREEMENT

NOW, THEREFORE, Landlord and Tenant hereby agree that the Lease shall be and hereby is amended as follows:

1. Correction of First Amendment. The First Amendment refers to the Lease as dated September 19, 1990. The Parties acknowledge and agree that the Lease was dated as of September 18, 1990, and that the First Amendment amends such Lease.

2. Amendment of Article VIII, Paragraph 2(b). Paragraph 2(b) of Article VIII of the Lease shall be deleted in its entirety and there shall be inserted in its place the following:

(b) Interior Improvement Allowance. Landlord shall pay to Tenant an improvement allowance for use in Construction of the Interior Improvements equal to Three Hundred Twenty-One Thousand Twenty Dollars ($321,020) ("Improvement Allowance"). Landlord shall also pay to Tenant Eighteen Thousand Dollars ($18,000) as the "Supplemental Improvement Allowance." Landlord shall pay the Improvement Allowance and the Supplemental Improvement Allowance to Tenant upon the closing of a refinancing by Landlord of the existing monetary encumbrances on the Land and Building, provided that

no mechanics' liens or similar lien for labor or material supplied to the Interior Improvements have been filed or asserted against the Demised Premises. Landlord shall use its best efforts to obtain such refinancing within the three (3) months after the Date of Execution. The unpaid balance of the Improvement Allowance (but not the Supplemental Improvement Allowance) shall be increased by one percent (1%) for each month the payment of the Improvement Allowance is delayed beyond three (3) months after the Date of Execution, prorated for any partial month on the basis of a thirty (30) day month. Notwithstanding the provisions of Article IV, Paragraph 4, if payment of the Improvement Allowance is delayed beyond five (5) months after the Date, of Execution, Tenant may deduct the remaining balance of the Improvement Allowance (but not the Supplemental Improvement Allowance) from the next payments of Rent coming due according to the following schedule: (i) Tenant may deduct all but Ten Thousand Dollars ($10,000) from the first such Base Rent payments and all but the Minimum Additional Rent from the full such Additional Rent payment, (ii) Tenant may deduct all but Five Thousand Dollars ($5,000) from the next such Base Rent payment and all but the Minimum Additional Rent from the next such Additional Rent payment, and (iii) Tenant may deduct all of each remaining Base Rent payment and all but the Minimum Additional Rent from each remaining Additional Rent payment, until Tenant has recovered the Remaining unpaid balance of the Improvement Allowance. Tenant shall be responsible for payment of all Improvement Costs in excess of the Improvement Allowance and Supplemental Improvement Allowance.

3. Amendment of Article XXI. A new subparagraph 3 is added to Article XXI
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to read as follow:

3. Landlord Default Under Allstate Loan. Landlord proposes to enter into a
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Mortgage of the Property with Allstate Life Insurance Company of New York ("Allstate"). If Allstate gives any notice of default pursuant to the Allstate Mortgage to Landlord, Landlord shall provide a copy of such notice to Tenant: and shall also apprise Tenant of Landlord's plans (if any) for curing such default and with evidence of any payments made by Landlord to Allstate or other actions taken by Landlord to cure such default. If a default by Landlord pursuant to the Allstate Mortgage is not cured by Landlord within the allowable cure periods contained therein, a material adverse change in Landlord's financial position shall be deemed to have occurred which shall entitle Tenant to accelerate its Purchase Option on the terms set forth in Paragraph 2 of Article XV. Tenant may at its option cure any monetary default by Landlord pursuant to the Allstate Mortgage, during the period that Landlord is entitled to cure such default under the Allstate Mortgage. If Landlord does not reimburse Tenant for the cost of any such cure by Tenant of a monetary default pursuant to the Allstate Mortgage which does not also constitute a default by Tenant pursuant to this Lease, on or before the

monthly Base Rent is next due under this Lease, then Tenant may deduct such amounts from Base Rents, until Tenant has become fully reimbursed, provided that Tenant shall continue to pay in any event monthly Base Rent at least equal to 100% of the monthly debt service payments then due pursuant to the Allstate Mortgage. In no event shall Tenant have any obligation to cure any default of Landlord under the Allstate Mortgage, or to repeatedly cure any such default that Tenant has once cured.

4. Amendment of Article XXIX, Paragraph 2. The first sentence of Paragraph 2 of Article of XXX is amended to read as follows:

> In consideration of the execution by Tenant of this Lease, Landlord hereby grants to Tenant the one-time option to purchase the Property (the "Purchase Option"), at the price and upon the terms set forth in this Article XXIX, Paragraph 2, by giving written notice (the "Notice of Exercise") to Landlord no earlier than October 1, 1998 and no later than September 30, 1999, provided that this Lease is still in full force and effect.

5. Amendment of Article XXIX, Paragraph 2(m). Paragraph 2(m) of Article of XXIX is amended to read as follows:

> (m) Failure to Purchase. If Tenant shall give the Notice of Exercise to Landlord and thereafter shall fail to purchase the Property in accordance with the terms of this Article XXIX, Paragraph 2, this Lease shall remain in full force and effect. If such failure by Tenant occurs despite the fulfillment of all conditions to closing for Tenant's benefit contained in this Article XXIX, Paragraph 2, Tenant shall have no further right pursuant to this Lease to purchase the Property from Landlord, and Tenant shall be liable to Landlord for in damage incurred by Landlord as the result of Tenant's failure to so purchase the Property; and Tenant deliver to Landlord at no charge copies of all surveys, tests, investigations, studies, reports and analyses performed by Tenant or its employees, contractors, consultants, servants and agents in connection with Tenant's investigation of the Property. If Landlord fails to sell the Property to Tenant despite the fulfillment of all conditions to closing for Landlord's benefit contained in this Article XXIX, Paragraph 2, Landlord shall be liable to Tenant for all damage incurred by Tenant as the result of Landlord's failure to so sell the Property, or Tenant may pursue specific performance of its Purchase Option.

6. No Conflict. Except as amended by this Second Amendment, the terms and conditions of the Lease shall remain in full force and effect and are hereby ratified, affirmed and approved. In the event of any conflict between the terms of the Lease and this Second Amendment, this Second Amendment shall govern and control. This Amendment shall be interpreted and construed in accordance with the laws of the State of California, and shall be

EXHIBIT D
Plan of Sublet Premises

binding upon and inure to the benefit of the parties hereto and to their respective permitted successors and assigns under the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Second Amendment effective as of the date fall above written.

"Landlord"

Date: Richard R. Kelley, Jr.

"Tenant"

Digital Equipment Corporation, a Massachusetts corporation

Date: By:

Its:

EXHIBIT E

Telecommunications Equipment Inventory

Northern Telecom Handsets:	Model	Quantity
	2008	41
	2250 (console)	1
	2616 (without display)	1
	Unity	1
	500	1

EXHIBIT E

CONSENT TO SUBLEASE AND
RECOGNITION AND ATTORNMENT AGREEMENT

THIS RECOGNITION AND ATTORNMENT AGREEMENT (this "Agreement") is made as of _____ 1996, by and between by and between Digital Equipment Corporation ("DEC"), TIBCO Inc., a Delaware corporation ("Sublessor") and Artemis Research, a California corporation ("Sublessee").

A. DEC is the tenant under a certain Original Lease from Richard R. Kelley, Jr. ("Landlord") executed September 18, 1990, as amended by First Amendment to Lease dated January 18, 1991 and Second Amendment to Lease dated June 1, 1991 (which Original Lease, as amended is referred to herein as the "Prime Lease"), and DEC is the sublandlord and Sublessor is the subtenant under a certain Sublease dated February 17, 1995 (the "Prime Sublease"). The premises leased under the Prime Lease and subleased under the Prime Sublease are the land, with the building and improvements thereon, at 305 Lytton Avenue, Palo Alto, California, 94301 (as more particularly described in the Prime Lease, the "Premises").

B. Sublessor has entered into or is entering into a sublease of the Premises (the "Sublease") with Sublessee.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DEC, Sublessor and Sublessee hereby agree as follows:

I . Subject to the following provisions of this Agreement, DEC hereby consents to Sublessor's sublease of the Premises to Sublessee pursuant to the Sublease. Without limitation of the foregoing, DEC consents to the use of the Premises for general office use, network operations, research and development and any other use permitted under the Prime Lease.

2. The Sublease is subject and subordinate to the Prime Sublease.

3. DEC agrees to give Sublessee written notice of the occurrence of any default by Sublessor under the Prime Sublease and to accept as a cure of such default, any cure by Sublessee of such default within the applicable cure period provided for in the Prime Sublease, which cure period, for purposes hereof, shall commence on the date of delivery to Sublessee of the notice of default.

4. If the Prime Sublease is surrendered to DEC or if the Prime Sublease is terminated as a result of a default by the Sublessor that by its nature is personal to Sublessor and not curable by Sublessee, then DEC agrees that so long as Sublessee is not in default under the Sublease, which default has not been cured or is not in the process of being cured within any applicable grace period provided under the Sublease, the following shall apply:

(i) Sublessee, shall not be evicted, nor shall Sublessee, be joined in any eviction or unlawful detainer action or proceeding instituted or taken by DEC; and

(ii) DEC shall succeed to the interest of Sublessor in the Sublease and Sublessee shall be bound to DEC under all of the terms, covenants and conditions of the Sublease, for the remaining term thereof, with the same force and effect as if DEC were the Sublessor under the Sublease, and Sublessee does hereby agree to attom to DEC, such attornment to be effective and self operative without the execution of any further instruments on the part of any of the parties to this Agreement, immediately upon DEC succeeding to the interest of Sublessor under the Sublease.

5. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors, and assigns of the parties hereto.

6. In the event that any party fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, whichever the case may be, shall pay any and all costs and expenses incurred by the other parties in enforcing or establishing their rights hereunder, including court costs and reasonable attorneys' fees.

7. This Agreement shall not be modified or amended except by a written instrument executed by all of the parties hereto.

8. This agreement shall not be nor be deemed to be a consent or waiver or amendment of the Prime Sublease with respect to any other or future transaction, whether similar or dissimilar, and any other or future transaction shall require DEC's written consent, which consent, except as otherwise expressly provided in the Prime Sublease, may be given or withheld in DEC's sole discretion.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

DIGITAL EQUIPMENT CORPORATION

By
Print Name
Its

TIBCO INC.

By
Print Name
Its

TENANT

ARTEMIS RESEARCH

By
Print Name
Its

EXHIBIT F
RECOGNITION AND ATTORNMENT AGREEMENT

THIS RECOGNITION AND ATTORNMENT AGREEMENT (this "Agreement") is made as of _____ 1996, by and between Richard R. Kelley, Jr. ("Landlord") and TIBCO Inc., a Delaware corporation (Sublessor), and Artemis Research, a California corporation ("Sublessee").

A. Digital Equipment Corporation ("DEC") is the tenant under a certain Original Lease from Landlord executed September 18, 1990, as amended by First Amendment to Lease dated January 18, 1991 and Second Amendment to Lease dated June 1, 1991 (which Original Lease, as amended is referred to herein as the "Prime Lease"), and DEC is the sublandlord and Sublessor is the subtenant under a certain Sublease dated February 17, 1995 (the "Prime Sublease"). The premises leased under the Prime Lease and subleased under the Prime Sublease are the land, with the building and improvements thereon, at 305 Lytton Avenue, Palo Alto, California, 94301 (as more particularly described in the Prime Lease, the "Premises").

B. Sublessor has entered into or is entering into a sublease of the Premises (the "Sublease") with Sublessee.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord, Sublessor and Sublessee hereby agree as follows:

1. The Sublease is subject and subordinate to the Prime Lease.

2. Landlord agrees to give Sublessee written notice of the occurrence of any default by DEC under the Prime Lease and to accept as a cure of such default, any cure by Sublessee of such default within the applicable cure period provided for in the Prime Lease, which cure period, for purposes hereof, shall commence on the date of delivery to Sublessee of the notice of default.

3. If the Prime lease is surrendered to Landlord or if the Prime Lease is terminated as a result of a default by DEC that by its nature is personal to DEC and not surable by Sublessee, then Landlord agrees that so long as Sublessee is not in default under the Sublease, which default has not been cured or is not in the process of being cured within any applicable grace period provided under the Sublease, the following shall apply:

(i) Sublessee shall not be evicted, nor shall Sublessee be joined in any eviction or unlawful detainer action or proceeding instituted or taken by Landlord; and

(ii) Landlord shall succeed to the interest of Sublessor in the Sublease and Sublessee shall be bound to Landlord under all of the terms, covenants and conditions of the Sublease, for the remaining term thereof, with the same force and effect as if Landlord were the Sublessor under the Sublease, and Sublessee does hereby agree to attorn to Landlord, such attornment to be effective and self operative without the execution of any further instruments on

the part of any of the parties to this Agreement, immediately upon Landlord succeeding to the interest of Sublessor under the Sublease.

4. The covenants and agreements contained herein shall be binding upon and inure to the benefits of the respective heirs, administrators, executors, legal representatives, successors, and assigns of the parties hereto.

5. In the event that any party fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, whichever the case may be, shall pay any and all costs and expenses incurred by the other parties in enforcing or establishing their rights hereunder, including court costs and reasonable attorney's fees.

6. This Agreement shall not be modified or amended except by a written instrument executed by all of the parties hereto.

7. This agreement shall not be nor be deemed to be a consent or waiver or amendment of the Prime Lease with respect to any other or future transaction, whether similar or dissimilar, and any other or future transaction shall require Landlord's written consent, which consent, except as otherwise expressly provided in the Prime Lease, may be given or withheld in Landlord's sole discretion.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

Richard R. Kelly, Jr.

TIBCO INC.

By
Print Name
Its

TENANT

ARTEMIS RESEARCH

By
Print Name
Its

SUBLEASE

THIS SUBLEASE is made as of June 14, 1996 (the "Effective Date"), by and between TIBCO Inc., a Delaware corporation with an address at 530 Lytton Avenue, Palo Alto, California ("Sublessor") and Artemis Research, a California corporation, with an address at 275 Alma Street, Palo Alto, California ("Sublessee").

WHEREAS, Sublessor is the subtenant under a certain Sublease from Digital Equipment Corporation ("DEC") dated February 17, 1995 ("Prime Sublease"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, DEC is the tenant under a certain Amended and Restated Lease ("Original Lease") from Richard R. Kelley, Jr., Charles E. Hangar and Faye E. Hangar, and Harry L. Fox (as successor-in-interest to Hare, Brewer and Kelly, Inc.) ("Landlord") executed November 26, 1990, a copy of which is attached hereto as Exhibit B, which Original Lease, was amended by First Amendment to Amended and Restated Lease ("First Amendment"), a copy of which is attached hereto as Exhibit C (such Original Lease, as amended by the First Amendment is referred to hereafter as the "Prime Lease"); and

WHEREAS, the premises leased under the Prime Lease and subleased under the Prime Sublease are the land, with the building and improvements thereon at 335 Bryant Street, Palo Alto, California, 94301, which premises are more particularly described in Article I of the Original Lease as the "Demised Premises"; and

WHEREAS, Sublessee wishes to sublease from Sublessor the entire Demised Premises consisting of a certain parcel of land more particularly described in Exhibit C of the Prime Lease (the "Land"), the building (the "Building") on the Land, containing approximately 9,284 square feet, and the parking spaces (if any) and other improvements on the Land (collectively, the "Sublet Premises"), and Sublessor is willing to sublet the Sublet Premises to Sublessee;

NOW, THEREFORE, the parties hereto agree as follows:

1. Demise. Sublessor hereby subleases the Sublet Premises to Sublessee and Sublessee hereby sublets the Sublet Premises from Sublessor subject to the terms and conditions hereinafter stated.

2. Term. The term of this Sublease (the "Sublease Term") shall be approximately six (6) years, commencing on August 1, 1996 or when DEC consents to this Sublease, whichever occurs last (the "Commencement Date"), and shall end November 15, 2002 (the "Termination Date"), unless terminated earlier in accordance with the provisions of this Sublease. In the event the Sublease Term commences on a date later than August 1, 1996, Sublessor and Sublessee shall execute a memorandum setting forth the actual Commencement Date. Sublessor agrees to use best efforts to make a portion of the Sublet Premises available to Sublessee prior to the Commencement Date. In the event any such portion becomes available prior to the Commencement Date, upon approval by DEC and delivery of such portion of the premises as are available to Sublessee, Sublessee shall pay that portion of the rent attributable to such portion of

the Sublet Premises for such time until the Commencement Date and shall occupy said portion under all other terms and conditions of this Sublease. The rent payment for such early occupancy shall not become due and payable unless and until Sublessor delivers the entire Sublet Premises and the Lytton Avenue Premises (as defined below) to Sublessee.

3. Delivery of Sublet Premises.

a. Sublessee expressly acknowledges that it has inspected the Sublet Premises and is ftdly familiar with the physical conditions thereof, and agrees to accept possession of the Sublet Premises in its "as is" condition. Sublessee acknowledges that, except as expressly provided in this Sublease, Sublessor has made no representations or warranties regarding the Sublet Premises and that it has relied on no such representations or warranties in accepting the Sublet Premises. Sublessee acknowledges that Sublessor shall have no obligation to do any work in or to the Sublet Premises or incur any expense in connection therewith, in order to make them suitable and/or ready for occupancy and use by Sublessee. Sublessee shall have the right to utilize the telecommunications equipment (the "Telecommunications Equipment") described in Exhibit D to the Prime Sublease, subject to the terms of this Sublease.

b. Concurrently herewith, Sublessor and Sublessee are entering into a Sublease of premises located at 305 Lytton Avenue, Palo Alto, California (the "Lytton Avenue Premises") on terms and conditions similar to that of this Sublease. Sublessee's obligations under this Sublease are conditioned upon Sublessor delivering both the Sublet Premises and the Lytton Avenue Premises to Sublessee on or before August 1, 1996 (which date may be extended only in Sublessee's discretion). If Sublessor fails to deliver either the Sublet Premises or the Lytton Avenue Premises to Sublessee on or before August 1, 1996, then Sublessee shall be entitled to terminate this Sublease by written notice to Sublessor at any time after August 1, 1996 and before both the Sublet Premises and the Lytton Avenue Premises are delivered to Sublessee. Such termination shall effect the simultaneous termination of the sublease of the Lytton Avenue Premises and shall serve to discharge and release both parties from any further liability to each other.

4. Rent.

a. Base Rent. Sublessee shall pay to Sublessor base rent ("Base Rent") without offset, deduction or demand in the following amounts, commencing on the Commencement Date and continuing on the first day of every month thereafter; provided, however, that the first month's rent shall be due and payable upon execution of this Sublease:

Term	Rent/Month
Commencement Date - January 31, 1997	$24,324.08
February 1, 1997 - January 31, 1999	$25,252.48
February 1, 1999 - January 31, 2000	$26,923.60
February 1, 2000 - January 31, 2001	$27,387.80
February 1, 2001 - January 31, 2002	$27,852.00
February 1, 2002 - November 15, 2002	$28,780.40

Base Rent shall be apportioned for any partial calendar month occurring at the beginning or end of the Sublease Term.

All payments hereunder shall be made at the following address:

TIBCO Inc.
530 Lytton Avenue
Palo Alto, CA 94301
Attn: Accounting Department

or such other address as Sublessor may from time to time designate by written notice to Sublessee. Sublessor agrees to use its best efforts to forward to Sublessee on a monthly basis evidence of its payment of all rents and Operating Expenses due under the Prime Sublease.

b. Operating Expenses. Sublessee shall pay to Sublessor all Operating Expenses as defined and required to be paid by Sublessor under paragraph 4.b of the Prime Sublease. Payment shall be made as and when payable by Sublessor to DEC. Sublessor shall promptly forward to Sublessee a copy of all statements showing Operating Expenses which Sublessor receives from DEC, including, without limitation, statements for the year just ended and statements of estimates for the current year. Sublessee shall have the right, through Sublessor, to inspect, audit and examine the records pertaining to Operating Expenses in accordance with the provisions of Paragraph 3 of Article V of the Prime Lease.

All sums which Sublessee agrees to pay under this Sublease other than Base Rent, or which Sublessor pays or incurs as a result of a default by Sublessee which constitutes an Event of Default as defined in the Prime Sublease, including without limitation interest at the Default Rate of Interest as defined in Section 13 of the Prime Sublease and the early termination penalty, if applicable, due under Section 10 below, shall be included within the term "Additional Rent" whether or not expressly so identified. As used in this Sublease, the term "Rent" shall mean collectively Base Rent and Additional Rent.

5. Utilities. Sublessee shall make its own arrangements with the applicable utility companies for the provision of all utilities and services as set forth in Section 5 of the Prime Sublease.

6. Security Deposit. Upon the later of the execution of this Sublease and the receipt of DEC's written consent to this Sublease, Sublessee shall deposit with Sublessor a security deposit in the amount of $28,780.40 (the "Security Deposit"). If Sublessee fails to pay Rent when due under this Sublease, which failure continues beyond any applicable cure period, Sublessor may apply all or any portion of the Security Deposit for the payment of any such Rent then due hereunder and unpaid beyond any applicable cure period. If Sublessor so uses any portion of the Security Deposit, Sublessee shall, within ten (10) days after receipt of written demand by Sublessor, restore the Security Deposit to the full amount originally required, and Sublessee's failure to do so shall constitute a default under this Sublease. In the event Sublessor assigns its interest in this Sublease, Sublessor shall deliver to its assignee so much of the Security Deposit as is then held by Sublessor. Within ten (10) days after the Term has expired, or

Sublessee has vacated the Premises, whichever shall occur last, the Security Deposit, or so much thereof as had not heretofore been applied by Sublessor in accordance with Sublessor's rights hereunder, shall be returned to Sublessee or to the last assignee, if any, of Sublessee's interest hereunder.

7. Use. Sublessee shall be entitled to use and occupy the Sublet Premises, to the extent permitted by law, for the purpose of general office use and for no other use or purpose (the "Permitted Uses").

8. Assignment and Subletting. Sublessee shall not assign, transfer, mortgage or pledge this Sublease, or further sublet all or any part of the Sublet Premises, or enter into any other license or occupancy arrangement, whether voluntary or involuntary or by operation of law (collectively a "Transfer") without the prior written consent of Sublessor, which consent shall not be unreasonably withheld, conditioned or delayed, and the prior written consent of DEC, subject to the requirements of the Master Lease.

No Transfer, nor any collection of rent by Sublessor from any person or entity other than Sublessee, shall relieve Sublessee of its obligations to fully observe and perform the terms, covenants, and conditions hereof. No consent by Sublessor or DEC in a particular instance shall be deemed a waiver of the obligation to obtain Sublessor's and/or DEC's consent in another instance. Sublessee shall pay to Sublessor as received any excess of amounts received pursuant to an assignment, subletting, license or other occupancy arrangement in excess of the Rent due hereunder. For purposes of this Sublease, the transfer of a majority ownership interest in Sublessee shall be deemed a Transfer.

9. Prime Sublease.

a. Incorporation of Prime Sublease. Except as otherwise provided herein, Sublessor grants to Sublessee, all of Sublessor's rights, benefits and interests with respect to the Sublet Premises, and Sublessee agrees to accept from Sublessor and hereby assumes all of Sublessor's obligations and burdens under the Prime Sublease with respect to the Sublet Premises (including but not limited to Sublessor's obligations and burdens with respect to the Prime Lease), as if all such rights and obligations were set forth herein in their entirety, provided that the terms and conditions hereof shall be controlling whenever the terms and conditions of the Prime Sublease are contradictory to or inconsistent with terms and conditions hereof, and provided further that those provisions of the Prime Lease which are protective and for the benefit of the Landlord shall in this Sublease be deemed to be protective and for the benefit of Landlord, DEC and Sublessor and those provisions of the Prime Lease which are protective and for the benefit of DEC shall in this Sublease be deemed to be protective and for the benefit of Sublessee. The deletion of certain sections of the Prime Lease from inclusion in the Prime Sublease are set forth in paragraph I La. of the Prime Sublease and incorporated herein by this reference. All applicable terms and conditions of the Prime Sublease are incorporated into and made a part of this Sublease as if Sublessor were the Sublandlord thereunder and Sublessee the Subtenant thereunder, except paragraphs 4.a., 14, 15, 21, and 24 are deleted and shall not apply.

Sublessee represents that it has read and is familiar with the terms of the Prime Lease and the Prime Sublease.

b. Performance of Prime Sublease. Sublessee covenants and agrees faithfully to observe and perform all of the terms, covenants and conditions of the Prime Sublease on the part of Sublessor to be performed with respect to the Sublet Premises, other than the payment of Rent to DEC which shall be Sublessor's responsibility, and neither to do nor cause to be done, any act or thing which would and might cause the Prime Sublease to be canceled, terminated, forfeited or surrendered, or which would or might make Sublessor liable for any damages, claims or penalties.

C. Representation-Covenant, Indemnity.

(i) Sublessor hereby represents and warrants to Sublessee that as of the date hereof Sublessor is not in default under the Prime Sublease nor has any event occurred that with the giving of notice or the passage of time would constitute a default by Sublessor under the Prime Sublease, and to Sublessor's knowledge DEC is not in default and no event has occurred that with the giving of notice or the passage of time would constitute a default by DEC under the Prime Sublease or under the Prime Lease.

(ii) Sublessor covenants and agrees to pay all Rent due under the Prime Sublease as and when due and to perform all other obligations under the Prime Sublease that are not Sublessee's obligations hereunder or are otherwise not performable by Sublessee.

(iii) Sublessor shall indemnify, defend and hold Sublessee harmless from and against any and all losses, costs, damages and expenses, including reasonable attorneys fees and expenses, incurred by Sublessee as a result of (x) any failure of Sublessor to perform any of its obligations under the Prime Sublease as set forth in Section 9c(ii), or (y) any other default by Sublessor under the Prime Sublease. Sublessor's maximum aggregate liability under this Section 9c(iii) shall not exceed $350,000 and the aforesaid indemnity shall not include special, indirect, incidental or consequential damages (including loss of profits) even if Sublessor has been advised of the possibility of the same.

d. Termination. If the Prime Sublease terminates, this Sublease shall terminate and the parties shall be relieved of any further liability or obligation under this Sublease; provided, however, that if the Prime Sublease terminates as a result of a default or breach by Sublessor or Sublessee under this Sublease and/or the Prime Sublease, then the defaulting party shall be liable to the nondefaulting party for the costs incurred as a result of such termination. Notwithstanding the foregoing to the contrary, if the Prime Sublease gives Sublessor any right to terminate the Prime Lease in the event of a partial or total damage, destruction or condemnation of the Sublet premises or the building or project of which the Sublet Premises are a part, the exercise of such right by Sublessor shall not constitute a default or breach under this Sublease.

e. Recognition Agreements. Sublessor shall use reasonably diligent efforts to obtain from DEC a consent, recognition and attornment agreement in the form of

attached Exhibit F or in such other form as is acceptable to Sublessee in its reasonable discretion. In addition, Sublessor shall use reasonably diligent efforts to obtain a recognition and attornment agreement in the form of attached Exhibit G or such other form as is reasonably acceptable to Sublessee executed by the Landlord.

10. Option to Terminate. Sublessee shall have the option to terminate this Sublease, subject to the following provisions: Sublessee shall exercise the option to terminate this Sublease, if at all, by written notice to Sublessor given not later than October 31, 1998. If Sublessee exercises the option to terminate, then the Sublease shall terminate effective on July 31, 1999; provided that if, and only if, Sublessee has exercised its termination option, Sublessor shall have the right, upon not less than three months prior written notice to Sublessee, to terminate the Sublease effective as of the end of any month after January 31, 1999 and prior to July 31, 1999. In the event that Sublessee exercises its option to terminate the Sublease, Sublessee shall pay to Sublessor an early termination penalty equal to one month's Base Rent (in the amount in effect as of the date of termination) which penalty shall be due and payable on the date three months prior to the effective date of the termination.

In addition, Sublessee will reimburse Sublessor for fifty percent (50%) of any reasonable brokerage commissions (not in excess of standard commissions for office buildings in Palo Alto) incurred by Sublessor in re-subleasing the Sublet Premises and one hundred percent (100%) of reasonable out-of-pocket expenses incurred by Sublessor for marketing and brochures in connection with such subsequent re-subletting and 100% of reasonable attorneys' fees in connection with such subsequent re-subletting, not to exceed $5,000. Sublessee shall have the right to conduct a search for and attempt to locate a subsequent subtenant provided that such subsequent subtenant shall be subject to the reasonable approval of Sublessor, which consent shall not be unreasonably withheld. Sublessor may, in its sole discretion, direct the retention or retain the services of Bill Reid of Spallino Reid as listing broker for any subsequent sublease.

11. Insurance. Sublessee shall maintain insurance in accordance with the terms of the Prime Sublease. The named insureds shall be Sublessee, Sublessor, DEC, Landlord and Landlord's mortgagees.

12. Surrender. Upon the expiration or earlier termination of the Sublease Tenn, Sublessee shall surrender the Sublet Premises free and clear of all tenants and occupants, and in good order and condition, reasonable wear and tear and damage by casualty or taking only excepted. All alterations, additions and improvements (other than Sublessee's equipment and property) shall remain part of the Sublet Premises and shall not be removed unless Sublessor has required that such alterations be removed as a condition to Sublessor's consent to the making of such alteration. Sublessee shall repair any damage to the Sublet Premises caused by the removal of its property. Any property of Sublessee not removed at or prior to the expiration or earlier termination of the Sublease Term may be removed and stored or disposed of by Sublessor as it deems appropriate in its sole discretion (provided that in the event of a termination prior to the expiration of the Sublease Term, Sublessee shall have a reasonable period of time to remove such property). Sublessee agrees to reimburse Sublessor for all of Sublessor's costs resulting from

such removal and storage or disposition, less any proceeds received by Sublessor as a result of the disposition.

13. Notices. All notices relating to this Sublease or the Sublet Premises shall be in writing and addressed, if to Sublessee, at the Sublet Premises, or at such other address as Sublessee shall designate in writing, and if to Sublessor, to TIBCO Inc., 530 Lytton Avenue, Palo Alto, California, Attn: Chief Financial Officer, or to such other address as Sublessor shall designate in writing.

14. Broker. Upon execution of this Sublease and consent thereto by DEC, Sublessor shall be responsible for paying the brokerage commissions due to Spallino Reid and CB Commercial Real Estate Group, Inc. (the "Brokers") in connection with this Sublease. Sublessee and Sublessor each represent and warrant to the other that it has not dealt with any broker or agent in connection with Sublease other than the Brokers and it shall indemnify, defend (with counsel reasonably satisfactory to the indemnified party) and hold the other party hereto harmless from and against all claims, liability, leases, damages, costs and expenses arising from a breach of such representation and warranty. If Spallino Reid is retained by Sublessor as its broker and earns a commission in connection with a subsequent sublease of the Sublet Premises, Spallino Reid agrees to waive its portion of the brokerage commission less reasonable out-of-pocket costs and to pay fifteen percent (15%) of the remaining brokerage commission.

15. Consent by DEC. This Sublease shall be of no force or effect unless consented to by DEC.

IN WITNESS WHEREOF, the parties hereto have caused this Sublease to be executed by their duly authorized offices as of the date first written above.

Sublessor:
TIBCO Inc.

Signed:
Print Name:
Title:

Sublessee:
ARTEMI RESEARCH

Signed:
Print Name:
Title:

EXHIBIT A.

SUBLEASE

between

DIGITAL EQUIPMENT CORPORATION, Sublandlord

and

TEKNEKRON SOFTWARE SYSTEMS, INC., Subtenant

Dated as of February 17, 1995

3 3 5 Bryant Street
Palo Alto, California 94301

SUBLEASE

BY DIGITAL EQUIPMENT CORPORATION, Sublandlord

TO TEKNEKRON SOFTWARE SYSTEMS, INC., SUBTENANT

DATED: AS OF February 17, 1995

335 Bryant Street
Palo Alto, California 94301

TABLE OF CONTENTS

Exhibits

SUBLEASE

THIS SUBLEASE is made as of the day of February, 1995, by and between Digital Equipment Corporation, a Massachusetts corporation, with an address at 111 Powdermill Road, Maynard, MA, ("Sublandlord") and Teknekron Software Systems, Inc., a Delaware Corporation with an address at 530 Lytton Avenue, Palo Alto, California ("Subtenant").

WITNESSETH

WHEREAS, Sublandlord is the tenant under a certain Amended and Restated Lease ("Original Lease") from Richard R. Kelley, Jr., Charles E. Hanger and Faye E. Hanger, and Harry L. Fox (as successor-in-interest to Hare, Brewer and Kelley, Inc.) ("Landlord"), executed November 26, 1990, a copy of which is attached hereto as Exhibit A, as amended by First Amendment to Amended and Restated Lease ("First Amendment"), a copy of which is attached hereto as Exhibit B (such Original Lease, as amended by the First Amendment, is hereinafter referred to as the "Prime Lease"). The premises leased to Sublandlord under the Prime Lease are the land, with the building and improvements thereon at 335 Bryant Street, Palo Alto, CA 94301, which premises are more particularly described in Article I of the Original Lease as the "Demised Premises" and are shown on Exhibit C; and

WHEREAS, Subtenant wishes to sublease from Sublandlord the leased premises shown on the plan attached hereto as Exhibit C, consisting of a certain parcel of land more particularly described in Exhibit C of the Prime Lease (the "Land"), the building (the "Building") on the Land, containing approximately 9,284 square feet, and the parking spaces and other improvements on the Land (collectively, the "Sublet Premises'), and Sublandlord is willing to Sublet the Sublet Premises to Subtenant;

NOW, THEREFORE, the parties hereto agree as follows:

1. Demise. Sublandlord hereby subleases the Sublet Premises to Subtenant and Subtenant hereby sublets the Sublet Premises from Sublandlord subject to the terms and conditions hereinafter stated.

2. Term. The term of this Sublease (the "Sublease Term") shall be approximately six (6) years and ten and one half (10 1/2) months, beginning with the first day of January, 1996, (the "Commencement Date") and ending with the 15th day of November, 2002.

In order to move the commencement date forward, Sublandlord must receive one hundred fifty (150) days written notice from Subtenant. Upon commencement the rent schedule in Section 4 shall apply and the sublease term extended to reflect the earlier commencement date. In such an event, a subsequent amendment outlining the rent schedule and sublease term will be executed by the parties.

3. Delivery of Sublet Premises. Subtenant expressly acknowledges that it has inspected the Sublet Premises and is fully familiar with the physical condition thereof, and agrees to accept possession of the Sublet Premises in its "as is" condition. Subtenant acknowledges that Sublandlord has made no representations or warranties regarding the Sublet Premises, and that it has relied on no such representations or warranties in accepting the Sublet Premises. Subtenant acknowledges that Sublandlord shall have no obligation to do any work in or to the Sublet Premises, or to incur any expense in connection therewith, in order to make them suitable and

ready for occupancy and use by Subtenant. Subtenant shall have the right to utilize the telecommunications equipment (the "Telecommunications Equipment") described in Exhibit D, subject to the terms of this Sublease.

4. Rent.

a. Base Rent. Subtenant shall pay to Sublandlord base rent ("Base Rent") without offset, deduction or demand in the following amounts, commencing on the Commencement Date and continuing on the first day of every month thereafter:

Mos. 1-13:	$24,324.08 per month.
Mos. 14-37:	$25,252.48 per month.
Mos. 38-49:	$26,923.60 per month.
Mos. 50-61:	$27,387.80 per month.
Mos. 62-73:	$27,852.00 per month.
Mos. 74-83:	$28,780.40 per month.

Base Rent shall be apportioned for any partial calendar month occurring at the beginning or end of the Sublease Term.

All payments hereunder shall be made at the following address:

Digital Equipment Corporation
305 Rockrimmon Boulevard, South
Mailstop CX03-D12Colorado Springs, Colorado 80919-2398

Attention: Property Development Center, Real Estate Administrator

or such other address as Sublandlord may from time to time designate by written notice to Subtenant.

b. Operating Expenses. Operating Expenses shall be defined as the sum of (i) Operating Costs, as defined in Article V, Section 1 of the Prime Lease, (ii) Real Estate Taxes, as defined in Article V, Section 4 of the Prime Lease, and (ii) the costs of Sublandlord's Maintenance Obligations, as defined in Section 10 hereof. If, with respect to any calendar year during the Sublease Term after the Operating Expenses Base Year (Which shall be defined as calendar year 1996), the aggregate amount of Operating Expenses exceeds the Operating Expenses for the Operating Expenses Base Year; Tenant shall pay to Landlord, as Additional Rent, the entire amount of such excess. Tenant's obligation under this Section 4(b) shall be prorated for partial calendar years at the beginning or end of the Term.

After the end of each calendar year included in the Sublease Term, Sublandlord shall send Subtenant a statement showing Operating Expenses (i) for the calendar year just ended ("Actual Expenses"), which statement shall be based in part upon information supplied by Sublandlord, and

an estimate of Operating Expenses for the then-current calendar year ("Estimated Expenses"). Subtenant shall pay Sublandlord on the first day of each month, in advance, as Additional Rent, an amount equal to 1/12th of the amount, if any, by which the Estimated Expenses for the then current calendar year exceed the Operating Expenses for the Operating Expenses Base Year. Such payments shall not bear interest and may be commingled by Sublandlord with any other funds of Sublandlord. If the total amount paid by Subtenant in accordance with (ii) above on account of Operating Expenses for any calendar year during the Sublease Term (i) exceeds the amount due therefor as shown on Sublandlord's statement delivered after the end of such calendar year, such excess shall be credited against the monthly installments of Additional Rent next due (or refunded to Subtenant if the Sublease Term has expired, or (ii) is less than the amount due therefor as shown on Sublandlord's statement delivered after the end of such calendar year, then Subtenant shall pay the difference to Sublandlord within 30 days after receipt of such statement from Sublandlord. Subtenant's rights and obligations under this Section 4(b) with respect to the last calendar year (or portion thereof) included in the Sublease Term shall survive the expiration or termination of this Sublease.

All sums which Subtenant agrees to pay under this Sublease other than Base Rent, or which Sublandlord pays or incurs as a result of a default by Subtenant, including without limitation interest at the Default Rate of Interest as defined in Section 13, shall be included within the term "Additional Rent" whether or not expressly so identified. As used in this Sublease, the term "Rent" shall mean collectively Base Rent and Additional Rent.

5. Utilities. Subtenant shall make its own arrangements with the applicable utility companies for the provision of all utilities and services, including, without limitation, water, sewer, electricity, gas, heating fuels, and telephone service, which are required for the use of the Sublet Premises for the Permitted Uses, and shall pay when due all charges therefor directly to the company which provides such service. If Sublandlord is notified that a lien will be placed upon the Sublet Premises as a result of Subtenant's non-payment of any such utility charge, then Sublandlord may pay such charges and notify Subtenant thereof, and Subtenant shall pay the same to Sublandlord as Additional Rent with the next installment of Base Rent becoming due. In no event shall Sublandlord be responsible for charges for any utilities or services consumed by Subtenant at the Sublet Premises.

If, for any reason whatsoever other than a negligent act or omission or a WMI act or omission of Subtenant, its officers, directors, employees, contractors, servants or agents, or a default by Subtenant hereunder, any utilities or services which are required for Subtenant's use of the Sublet Premises for the Permitted Uses are interrupted, Tenant shall promptly so notify Sublandlord in writing.

If resumption of such utilities or services does not occur within sixty (60) days after the commencement of such interruption, and the lack of such utilities or services continues to materially impair Subtenant's then-current use of the Sublet Premises or a material portion thereof, Subtenant shall have the right to terminate this Sublease at any time thereafter while such interruption continues by giving to Sublandlord a written notice of termination stating the date on which this Sublease shall terminate.

If the unavailability of such utilities or services materially impairs Subtenant's then-current use of the Premises or a material portion thereof for a period of more than ten (10) consecutive days, Rent shall be abated proportionately according to the extent to which the Subtenant's use and occupancy of the Sublet Premises are so affected, for the period commencing on the date such utilities or services became unavailable and ending on the date on which such -condition is cured or this Sublease terminates, as the case may be.

Subtenant shall not connect to the Building's electrical system any equipment which operates in excess of the current capacity of such system without Sublandlord's prior written consent.

6. Use. Subtenant shall continuously use and occupy the Sublet Premises, to the extent permitted by law, for the purpose of general office use (the "Permitted Uses") and for no other use or purpose. Sublandlord makes no representation or warrant as to the necessity of obtaining any license, permit or approval from any federal, state or municipal governmental authority for such uses.

Subtenant shall not conduct any activity on the Sublet Premises, which is not permitted under the Prime Lease, or which causes any noise, odor or vibration to be emitted from the Sublet Premises. Subtenant shall comply with reasonable rules and regulations as the same may be promulgated and modified by Landlord from time to time. Except as specifically provided in Section 26 hereof, Subtenant shall comply with all laws, statutes, ordinances, by-laws, regulations, restrictions, and with the requirements of all governmental approvals, licenses and permits, relating to the Building or the Sublet Premises (collectively, "Legal Requirements"), and with the provisions of all insurance policies from time to time in effect with respect to the Building or the Sublet Premises. In addition, Subtenant shall obtain, keep in force, and comply with all requirements of all governmental approvals, licenses and permits required for Subtenant's specific use of the Sublet Premises.

Subtenant shall not use, generate, treat, store, or dispose of "Hazardous Substances" (as hereinafter defined) on the Sublet Premises without giving prior written notification to Sublandlord, including the identity and amounts of the Hazardous Substances which Subtenant proposes to use, and receiving prior written consent from Sublandlord, which may be withheld or conditioned in Sublandlord's sole discretion. In all events, Subtenant's use of Hazardous Substances must be in full and complete accordance with all Legal Requirements applicable thereto. Subtenant shall indemnify, save harmless, and defend (with counsel reasonably satisfactory to Sublandlord) Sublandlord, its officers, directors, employees, contractors, servants and agents, from and against all loss, costs, damages, claims proceedings, demands, liabilities, penalties, fines and expenses, including without Urnitation reasonable attorneys' fees, consultants' fees, litigation costs, and cleanup costs, asserted against or incurred by Sublandlord, its officers, directors, employees, contractors, servants and agents at any time and from time to time resulting from the presence of any Hazardous Substances in or on the Sublet Premises during the Sublease Term arising after Subtenant's taking possession of the Sublet Premises and resulting from (a) the action or inaction of Subtenant, its officers, directors, employees, contractors, servants and

agents, or (b) Subtenant's generation, storage, treatment, handling, transportation disposal or release of any Hazardous Substances at or near the Sublet Premises, or (c) the violation of any applicable law governing Hazardous Substances by Subtenant, its officers, directors, employees, contractors, servants or agents. The indemnities and duties to defend set forth in this Section shall survive the expiration or earlier termination of this Sublease. As used in this Sublease, "Hazardous Substances" shall mean any chemical, substance, waste, material, gas or emission which is deemed hazardous, toxic, a pollutant, or a contaminant under any federal, state or local statute, law, ordinance, rule or regulations, now or hereafter in effect. "Hazardous Substances" include but are not limited to petroleum and petroleum products, asbestos, chloroflourocarbons (CFCs), radon gas and polychlorinated biphenyle (PCBs). Upon request by Sublandlord from time to time, Subtenant shall certify in writing to Sublandlord that no portion of the Sublet Premises has been or is then being used by Subtenant or by anyone claiming under Subtenant for the use, generation, treatment, storage, or disposal of Hazardous Substances and Premises except those set forth in such certification.

7. Assignment and Subletting. Subtenant shall not assign, transfer, mortgage or pledge this Sublease, nor sublet all or any part of the Sublet Premises, or enter into any other license or occupancy arrangement, whether voluntary or involuntary or by operation of law (collectively a "Transfer") without Sublandlord's prior written consent, which consent shall not be unreasonably withheld by Sublandlord.

No Transfer, nor any collection of rent by Sublandlord from any person or entity other than Subtenant, shall relieve Subtenant of its obligations to fully observe and perform the terms, covenants, and conditions hereof. No consent by Sublandlord in a particular instance shall be deemed a waiver of the obligation to obtain Sublandlord's consent in another instance. Subtenant shall pay to Sublandlord as received any excess of amounts received pursuant to an assignment, subletting, license or other occupancy arrangement in excess of the Rent due hereunder. For the purposes of this Sublease, the transfer of a majority ownership interest in Subtenant shall be deemed a Transfer.

8. Insurance. Subtenant shall maintain in full force and effect during the Sublease Term a commercial general liability insurance policy with a combined single Emit not less than $2,000,000 for personal injury/bodily injury and property damage, under which Subtenant, Sublandlord, Landlord and Landlord's mortgagees are named as insured. Such policy shall be in a form which shall specifically include contractual liability coverage insuring Subtenant's obligations under this Sublease. Such policy shall be issued by a responsible insurance company with an A.M. Best rating of B+ or better and which is authorized to do business in the state in which the Sublet Premises are located. Subtenant shall deliver certificates of such insurance to Sublandlord before the Commencement Date and thereafter within ten (10) days after a request by Sublandlord. Subtenant shall use reasonable efforts to obtain insurance policies which shall not be canceled, non-renewed, or materially changed without thirty (30) days' prior written notice to Sublandlord, Landlord and Landlord's mortgagees. Sublandlord and Subtenant each waive all claims and rights against the other and their respective officers, directors, employees, contractors, servants and agents, for any damage to or destruction of real or personal property of Sublandlord or Subtenant, regardless of cause or origin and regardless of any proceeds or recoveries from any

insurance policies, and all insurance policies carried by Subtenant shall include a waiver of its right of subrogation against Sublandlord. All such insurance shall be obtained at Subtenant's sole cost and expense. Sublandlord shall have no responsibility or liability for any loss or damage to personal property or trade fixtures of Subtenant, damage to all such property and fixtures being Subtenant's sole risk.

In the event that Sublandlord receives a notice of cancellation of such insurance policy, Sublandlord may, in addition to and without thereby waiving any other remedies therefor, either (i) pay the premiums necessary to prevent such cancellation or (ii) obtain substitute insurance, and bill Subtenant therefor. Subtenant shall reimburse Sublandlord therefor by paying such amount to Sublandlord, as Additional Rent, within ten (10) days after demand by Sublandlord.

9. Indemnification. To the maximum extent that this agreement may be made effective according to law, but subject to the waiver of subrogation in Section 8 above, Subtenant agrees that it will defend and indemnify Sublandlord and save Sublandlord harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against Sublandlord by reason of (a) any accident, injury to, or death of persons, or damage to or loss of property other than that of Sublandlord and Subtenant, in or about the Sublet Premises to the extent not caused by any negligence or willful misconduct of Sublandlord, or (b) any failure on the part of Subtenant to perform, fulfill or observe any of Subtenant's representations, warranties or agreements set forth in this Sublease. This indemnification shall survive expiration or earlier termination of this Sublease. To the extent that any action, suit or proceeding is brought against Sublandlord by reason of any such occurrence, Subtenant, upon Sublandlord's request, shall at Subtenant's expense, cause such action, suit or proceeding to be resisted and defended by counsel reasonably satisfactory to Sublandlord.

10. Maintenance and Services. Subtenant hereby agrees that, except as otherwise provided in this Section 10, it is relying directly on Landlord's obligations under the Prime Lease for (i) all repairs and replacements to all structural elements of or associated with the Building (as provided in Article XI, Section 2 of the Original Lease), (ii) all capital expenditures throughout the Sublease Term which may be required to keep the Building in good repair and maintenance and in compliance with all Laws (except for compliance of Interior Improvements and Alterations) and the maintenance and repair of the mechanical, electrical, conveying, plumbing and other systems within the Building, except for any portion of the HVAC system serving the Sublet Premises which was installed by or at the expense of Sublandlord (as provided in Article XI, Section 3 of the Original Lease), and (iii) all water, gas, electricity, sewer and telephone lines up to the connection points of the Building (as provided in Article VL Section 1 of the Original Lease).

Sublandlord shall maintain in good order, condition and repair all portions of the HVAC system serving the Sublet Premises which were installed by or at the expense of Sublandlord, and the paved and landscaped portions of the Land shall provide five (5) day per week janitorial service to the Sublet Premises, and shall perform all necessary landscaping, repairing, replacing, painting, lighting, and cleaning with respect to the Land and the exterior of the Building

(collectively "Sublandlord's Maintenance Obligations"). No failure or delay by Sublandlord in supplying any service or performing any maintenance required under the preceding sentence shall give Subtenant any right to terminate this Lease or shall give rise to any claim for set-off or any abatement of rent or additional rent or of any of Subtenant's obligations under this Sublease when such failure or delay is caused by the act or omission of Subtenant or by any cause beyond the control of Sublandlord.

Subtenant shall, at its expense, maintain the interior non-structural portions of the Building and the Telecommunications Equipment in good order and condition, except for reasonable wear and tear and damage caused by fire or other casualty, Taldng, default by Sublandlord hereunder, or by any negligent act or omission or willful act or omission by Sublandlord, its officers, directors, employees, contractors, servants or agents.

11. Prime Lease.

a. Incorporation of Prime Lease. Except as otherwise expressly provided herein, Sublandlord grants to Subtenant, to share in common with Sublandlord, all of Sublandlord's rights, benefits, and interests with respect to the Sublet Premises, and Subtenant agrees to accept from Sublandlord and hereby assumes all of Sublandlord's obligations and burdens under the Prime Lease with respect to the Sublet Premises, as if all of such rights and obligations were set forth herein in their entirety, provided that the terms and conditions hereof shall be controlling whenever the terms and conditions of the Prime Lease are contradictory to or inconsistent with terms and conditions hereof, and provided further that those provisions of the Prime Lease which are protective and for the benefit of the Landlord shall in this Sublease be deemed to be protective and for the benefit of the Landlord and Sublandlord. Notwithstanding the foregoing sentence, the terms, covenants and conditions of the full Sections of the First Amendment are expressly deleted from this Sublease: Sections 3, 4, 5, 6, 7 and 8; and the following Articles, Sections and Exhibits of the Original Lease are expressly deleted from this Sublease: Article I, Sections 1, (d), (e), (f) and (l), Article II, Sections 1 and 2, Article III, Sections 2 and 3, Article IV, Sections 3 and 4, Article V, Sections 7, 8, 9, Article VI, Section 4, Article VII, Section 2, Article VIII, Article IX, Sections 2 and 3, Article X, Article XI, Sections 4 and 5, Article XIV, Article XV, Article XVI, Article XVII, Article XIX, Article XX, Article XXI, Article XXII, Article XXIII, Article XXIV, Article XXV, Article XXVI, Article XXVIII, Article XXIX, Article XXXI, Sections 1, 6, 9, 10, 12, 15 and 20, and Exhibits E, F, G, H and I.

Subtenant represents that it has read and is familiar with the terms of the Prime Lease.

b. Performance of Prime Lease. Subtenant covenants and agrees faithfully to observe and perform all of the terms, covenants and conditions of the Prime Lease on the part of Sublandlord to be performed with respect to the Sublet Premises, and neither to do nor cause to be done, nor suffer, nor permit any act or thing to be done which would or might cause the Prime Lease to be canceled, terminated, forfeited or surrendered, or which would or might make Sublandlord liable for any damages, claims or penalties.

c. Consents. Sublandlord shall not be required to give any consent required or permitted under the terms of this Sublease with respect to any matter on which the Prime Lease

requires the consent of Landlord until it has first obtained the written consent of the Landlord with respect to such matter. Upon written request by Subtenant, Sublandlord agrees to use reasonable efforts (not involving the payment of money, unless Subtenant pays such money) to obtain such consent of the Landlord in a timely manner.

d. No Sublandlord Obligation. Except as otherwise specifically provided herein, Sublandlord shall not have any obligation to construct, maintain, alter, restore or repair the Sublet Premises, the Building, the Telecommunications Equipment, or any parking area or other facility or improvement appurtenant thereto or to provide Subtenant with any service of any kind or description whatsoever, nor shall Sublandlord be responsible for the performance of Landlord's obligations under the Prime Lease or be liable in damages or otherwise for any negligence of Landlord or for any damage or injury suffered by Subtenant as a result of any act or failure to act by Landlord or any default by Landlord in fulfilling its obligations under the Prime Lease. Upon written request by Subtenant, Sublandlord agrees to use reasonable efforts (not involving the payment of money, unless Subtenant pays such money) to cause Landlord to perform its obligations under the Prime Lease in a timely manner. Subtenant hereby waives all claims for consequential damages against Sublandlord arising out of any breach or failure by Sublandlord to perform or observe the requirements and obligations created by this Sublease.

e. Termination. If the Prime Lease is terminated pursuant to any provision of the Prime Lease or otherwise, (i) this Sublease shall terminate simultaneously therewith, and (ii) any unearned rent paid in advance shall be refunded to Subtenant unless such termination was the result of a breach by Subtenant of any term, covenant, or condition of this Sublease. Notwithstanding the preceding sentence, in the event that Sublandlord or an affiliate thereof acquires title to the Building, this Sublease shall remain in full force and effect.

12. Alterations. Subtenant may, from time to time, at its own cost and expense and without the consent of Sublandlord, make alterations, additions or improvements (collectively herein called "Alterations") of a non-structural nature to the interior of the Sublet Premises whose cost in any one instance is $25,000 or less, provided Subtenant gives Sublandlord fifteen (15) days prior written notice of any such Alterations. To the extent that Subtenant obtains plans and specifications for any such Alterations whose cost is $25,000 or less, Subtenant shall provide Sublandlord with copies of such plans and specifications for Sublandlord's information. If Subtenant desires to make any non-structural Alterations to the interior of the Sublet Premises costing in excess of $25,000 in any one instance, Subtenant must first obtain the consent of Sublandlord and Landlord thereto, which consent by Sublandlord shall not be unreasonably withheld or delayed. Any non-structural Alterations to the interior of the Sublet Premises costing in excess of $25,000 in any one instance shall include written plans and specifications for the Alterations. At the end of the Sublease Term, Subtenant may elect to remove or to leave any such Alterations, provided that Subtenant must give Sublandlord written notice of its election as to each Alteration no less than ten (10) months prior to the expiration of the Term. If Subtenant elects to remove any such Alterations, Subtenant's only responsibility upon removal is to repair any damage caused by the removal and not to restore the Sublet Premises.

All Alterations shall be done by Sublandlord's designated contractors and engineers in accordance with the terms and conditions of the Prime Lease. Without limiting the foregoing, Subtenant shall obtain all necessary licenses and permits, shall perform all Alterations in accordance with all laws, by-laws, rules, regulations, licenses and permits.

13. Defaults and Remedies. The occurrence of any of the following shall constitute an "Event of Default" hereunder: (i) if Subtenant fails to pay any Rent when due and such failure continues for 10 days after written notice of such failure, provided, however, that Subtenant shall not be entitled to such notice if Sublandlord has give notice to Subtenant of one or more previous such failures within a 12-month period, in which event such failure shall constitute a default hereunder upon the expiration of 10 days after such payment was due, or (ii) if Subtenant fails to perform or observe any of the terms of this Sublease other than those requiring the payment of Rent and such failure continues for 15 days after Sublandlord gives written notice of said failure; provided, however, that if the grace period for such default provided to Sublandlord under the Prime Lease is shorter than 15 days, the length of Subtenant's grace period shall be one-half of Sublandlord's grace period; or (iii) if the subleasehold hereby created shall be taken on execution, or by other process of law, or if any assignment shall be made of Subtenant's property for the benefit of creditors, or if a receiver, guardian, conservator, trustee in bankruptcy or similar officer shall be appointed to take charge of all or any part of Subtenant's property by a court of competent jurisdiction, or if a petition is filed by Subtenant under any bankruptcy or insolvency law, or if a petition is filed against Subtenant under any bankruptcy law and the same shall not be dismissed within 30 days from the date upon which it is filed.

If an Event of Default occurs, Sublandlord may at its option immediately or at any time thereafter exercise any one or more of the remedies provided in the Prime Lease with respect to a default thereunder by Sublandlord. Notwithstanding the foregoing, and in addition thereto, Sublandlord may at its option immediately or at any time thereafter exercise one or more of the following remedies, consecutively or simultaneously, without notice or demand.

(a) Sublandlord may bring suit for damages or specific performance for the collection of unpaid Rent or the performance of any of Subtenant's obligations, all either with or without entering into possession or terminating this Sublease.

(b) Sublandlord may, at its option, give Subtenant a notice terminating this Sublease on a date not less than 3 business days after Sublandlord gives such notice, and upon such date this Sublease shall terminate and all rights of Subtenant shall cease without further notice or lapse of time, Subtenant hereby waiving all statutory rights, including rights of redemption, if any. Upon termination of this Sublease, Subtenant shall surrender the Sublet Premises to Sublandlord in accordance with the terms of this Sublease, Subtenant's liability hereunder shall survive such termination and Subtenant shall indemnify and hold Sublandlord harmless from all claims, losses, costs, expenses, damages or liabilities arising out of or in connection with such termination.

(c) If, after such termination, Sublandlord elects to relet all or any part of the Sublet Premises, such reletting may be on such terms and conditions as Sublandlord in its reasonable

discretion may determine. Sublandlord may retain for itself all rents from reletting, and Sublandlord shall not be liable for any failure to relet all or any part of the Sublet Premises. The rent obtained from such reletting shall be, for purposes of subsection 13(d)(2), prima facie evidence of the fair rental value for the part of the Sublet Premises so relet during the term of the reletting. The proceeds of reletting shall be applied first to pay all Sublandlord's reletting expenses, including, without limitation, all repossession costs, alteration costs, brokerage commissions, advertising expenses and reasonable attorneys' fees ("Reletting Expenses"), then to pay any cost to Sublandlord of curing Subtenant's defaults, then to pay Rent, any balance then to be kept by Sublandlord.

(d) After such termination, Subtenant shall:

(1) pay Sublandlord monthly on the days on which Base Rent would have been payable, as damages for Subtenant's default, the difference between: (i) the amount of Rent which would be payable under this Sublease by Subtenant if this Sublease were still in effect, less (ii) the net proceeds of any reletting, after deducting Sublandlord's Reletting Expenses and Sublandlord's costs incurred in curing Subtenant's defaults; or

(2) at Sublandlord's election, whether or not Sublandlord shall have collected any payments under the preceding paragraph (1), pay Sublandlord, on demand, an amount equal to: (i) the present value, discounted at the discount rate at which one-year Treasury bills have then most recently sold, of the difference between (a) all Rent which would have been payable from the date of such termination until the last day of the term of this Sublease, and (b) the fair rental value of the Sublet Premises for the same period; plus (c) Sublandlord's reasonable estimate of Reletting Expenses.

(e) If an Event of Default occurs, Sublandlord shall have the right, but not the obligation, without the necessity of terminating this Sublease, to enter the Sublet Premises and perform any of Subtenant's obligations notwithstanding that no specific provision for such substituted performance by Sublandlord is made in this Sublease. All sums so paid by Sublandlord, and all costs and expenses incurred by Sublandlord in connection with the performance of Subtenant's obligations, plus interest thereon at the rate of 18% per annum (or, if less, the maximum rate of interest permitted at such time by law), shall be deemed Additional Rent and shall be payable to Sublandlord immediately upon demand.

The rights and remedies granted to Sublandlord herein are cumulative and in addition to any others Sublandlord may be entitled to at law or in equity.

Should Sublandlord prevail in the enforcement of any provision in this Sublease, Subtenant shall pay on demand all of Sublandlord's costs and expenses incurred in connection with said enforcement, including without limitation, reasonable attorneys' fees and court costs.

All sums not paid by Subtenant when due hereunder (regardless of whether or not the applicable grace period has expired) shall bear interest at a rate equal to the lesser of (i) 1-1/2%

per month or (ii) the highest rate permitted by law (the "Default Rate of Interest"), which interest shall be payable to Sublandlord as Additional Rent hereunder immediately upon demand.

The occurrence of the following shall constitute a "Sublandlord Event of Default" hereunder; if Sublandlord fails to perform or observe any of the terms of this Sublease and such failure continues for ten (10) business days after Subtenant gives Sublandlord written notice of said failure, provided, however, that in the event Sublandlord cannot reasonably cure the default within the ten (10) business day time period but has commenced to cure and proceeded diligently, the ten (10) business day time period shall be extended so long as Sublandlord continues to cure the default. In the event of a Sublandlord Event of Default, Subtenant shall have all rights available at law or in equity.

14. Surrender. Upon the expiration or earlier termination of the Sublease Term, Subtenant shall surrender the Sublet Premises and the Telecommunications Equipment free and clear of all tenants and occupants, and in good order and condition, reasonable wear and tear and damage by casualty or taking only excepted. Subtenant's Work shall be removed if required pursuant to Section 3 hereof, and all other alterations, additions and improvements shall remain part of the Sublet Premises and shall not be removed unless Sublandlord so requests such removal by notice to Subtenant at least thirty (30) days prior to the expiration or earlier termination date. Subtenant shall repair any damage to the Sublet Premises caused by the removal of its property. Any property of Subtenant not removed at or prior to the expiration or earlier termination of the Sublease Term may be removed and stored or disposed of by Sublandlord as it deems appropriate in its sole discretion. Subtenant agrees to reimburse Sublandlord for all of Sublandlord's costs resulting from such removal and storage or disposition, less any proceeds received by Sublandlord as a result of the disposition.

15. Notices. All notices relating to this Sublease or the Sublet Premises shall be in writing and addressed, if to Subtenant, to the Sublet Premises, or to such other address as Subtenant shall designate in writing; and if to Sublandlord:

Digital Equipment Corporation, 305 Rockrimmon Boulevard, South, Mailstop CX03-D12, Colorado Springs, CO 80919-2398, Attention: Property Development Center, Real Estate Administrator, and with a copy to: Digital Equipment Corporation, 111 Powdermill Road, Mailstop 02-3/F13, Maynard, MA 01754-1514, Attention: Real Estate Law Group, or to such other address as Sublandlord shall designate in writing.

No notice from Subtenant to Landlord shall be effective as to Sublandlord unless Subtenant delivers a copy of such notice in the manner set forth in this section to Sublandlord simultaneously with delivery of such notice to Landlord. Any notice shall be deemed duly given (i) when delivered by hand, if so delivered and a receipt obtained, or (ii) four (4) days after being deposited with the U.S. Postal Service addressed to such address, postage prepaid, registered or certified mail, return receipt requested, or (iii) the next business day after being delivered to an overnight courier with acceptance signature required.

16. Effect. This Sublease shall be binding upon the parties hereto and their respective successors and assigns.

17. Applicable Law. This Sublease shall be governed by and construed in accordance with the laws of the state in which the Sublet Premises are located.

18. Modification, etc. Neither this Sublease nor any provision hereof may be waived, modified, amended, discharged or terminated, except by an instrument in writing signed by both parties. This Sublease constitutes the entire agreement of the parties hereto with respect to the Sublet Premises.

19. Severability. If any term or provision of this Sublease or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Sublease or the application of such term or provision to other persons or circumstances shall not be affected thereby, and each term and provision of this Sublease shall be valid and enforceable to the fullest extent permitted by law.

20. No Waiver. No failure by Sublandlord or Subtenant to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent by Sublandlord during the continuance of such breach, shall constitute a waiver of any such breach or of any such term. Sublandlord's consent in one instance hereunder shall not relieve Subtenant of the requirement of obtaining Sublandlord's consent in any other instance.

21. Broker. Sublandlord shall be responsible for paying the brokerage commissions due to Julien J. Studley, Inc. and CB Commercial Real Estate Services (the "Brokers") in connection with this Sublease. Subtenant and Sublandlord each represent and warrants to the other that it has not dealt with any broker or agent in connection with this Sublease other than the Brokers and it shall indemnify, defend (with counsel reasonably satisfactory to the indemnified party) and hold the other party hereto harmless from and against all claims, liabilities, leases, damages, costs and expenses arising from a breach of such representation and warranty.

22. Mechanics Liens. Subtenant shall not cause or permit any liens for labor or materials to attach to the Sublet Premises as a result of any work performed by or on behalf of Subtenant, and shall immediately discharge any such liens which may so attach.

23. Confidentiality. All terms and conditions of this Sublease shall be kept confidential by all parties and shall not be disclosed without the consent of the other parties, provided, however, that either party may disclose the terms and conditions of this Sublease to their respective legal counsels, accountants, lenders, real estate brokers, prospective purchasers, and prospective subtenants and assignees, provided that each such entity shall be instructed to keep the terms and conditions of this Sublease confidential.

24. Abatement. Provided that (i) Subtenant is not in default hereunder, (ii) Subtenant vacates the entire Sublet Premises at any time between July 1, 1996 and January 31, 2001, and

(iii) Subtenant gives Sublandlord ninety (90) days advance written notice of such vacation, then in such event Subtenant shall be entitled to a one-time abatement of Base Rent commencing upon such vacation, and continuing for 11 months thereafter. After the commencement of this 11 month Base Rent abatement period, Subtenant shall not reoccupy the Sublet Premises prior to the end of said eleven (11) month abatement period.

25. Quiet Enjoyment. Subject to the terms and provisions contained in this Sublease, Sublandlord covenants and agrees with Subtenant that upon Subtenant paying the Rent and observing and performing all of the terms and conditions to be observed and performed by Subtenant under this Sublease, Subtenant may peacefully and quietly enjoy the Sublet Premises during the Sublease Term without molestation or interference from Sublandlord or anyone claiming through Sublandlord.

26. Compliance With Legal Requirements. Subtenant hereby agrees that, except as otherwise provided in this Section 26, it is relying directly on Landlord's obligations under the Prime Lease to conform the Building (other than the interior improvements and any Alterations) to all Legal Requirements of which the Building (other than the interior improvements and any Alterations) would otherwise be in violation (as provided in Article IX, Section 1 of the Original Lease).

Notwithstanding the foregoing, Sublandlord shall, at its sole expense, comply with all Legal Requirements if such compliance is related to the interior improvements in the Sublet Premises in their condition as of the Commencement Date, provided however, that Subtenant, at its sole expense, shall be responsible for compliance with all Legal Requirements necessitated by Subtenant's Alterations or Subtenant's special use of the Sublet Premises.

27. Early Occupancy. At any time after the mutual execution and delivery of this Sublease, Subtenant shall have the option, exercisable by providing seven (7) days advance written notice to Sublandlord, to occupy all or any portion of the ground floor of the Building for the Permitted Uses. Such occupancy shall be subject to all of the terms and conditions of this Sublease, provided, however, that Subtenant shall have no obligation to pay Rent for any period prior to the Commencement Date.

IN WITNESS WHEREOF, the parties hereto have caused this Sublease to be executed under seal by their duly authorized officers as of date first above written.

Sublandlord:

DIGITAL EQUIPMENT CORPORATION
By:
Name: D.E. Sliwinski
Title: Manager, Property Development Center, West

Subtenant:
TEKNEKRON SOFTWARE SYSTEMS, INC.
By:

Name: DAVID W. RICE
Title: EXEC. VICE PRESIDENT / CFO

EXHIBIT B

AMENDED AND RESTATED LEASE

between

RICHARD R. KELLEY, JR.,
CHARLES E. HANGER AND FAYE E. HANGER
AND
HARE, BREWER & KELLEY, INC.

"Landlord"

and

DIGITAL EQUIPMENT CORPORATION,
a Massachusetts corporation

"Tenant"

TABLE OF CONTENTS

ARTICLE I

ARTICLE I

BASIC LEASE TERMS

1. Summary of Lease Provisions. Reference in this Lease to any of the terms listed below shall be deemed to incorporate and be a reference to the data set forth next to such term in this Article.

(a) Address of Demised Premises: 335 Bryant Street, Palo Alto, California 94301.

(b) Building: That certain building located at 335 Bryant Street, Palo Alto, California 94301, comprised of nine thousand two hundred eighty-four (9,284) rentable square feet.

(c) Demised Premises:

(i) Commencing December 1, 1990, the entire Building, less Suite 100 currently occupied by Dr. Allan Sidle containing four hundred sixty-two (462) rentable square feet, as indicated on Exhibit A, for a total of eight thousand eight hundred twenty-two (8,822) rentable square feet.

(ii) In addition, Suite 100, commencing when Landlord delivers possession of Suite 100 to Tenant and Tenant accepts possession of Suite 100, on the terms provided in Article II, Paragraph 2(b) of this Lease. Tenant shall be required to pay Rent with respect to Suite 100 commencing sixty (60) days after Landlord delivers possession of Suite 100 to Tenant.

(d) Date of Execution: _____, 1990.

(e) Extended Term: See Article III.

(f) Interior Improvements: See Article VIII and Exhibit B.

(g) Primary Term: Twelve (12) years, commencing December 1, 1990 and terminating November 30, 2002.

(h) Use: See Article VII.

(i) Land: That certain real property, more particularly described in Exhibit C, on which the Building is located.

(j) Landlord: Richard R. Kelley, Jr., a married man as his separate property, Charles E. Hanger and Faye E. Hanger, husband and wife as community property and Hare, Brewer & Kelley, Inc., a California corporation. Such parties have entered into

an Agreement Between Co-owners dated the same date as this Lease governing their relationship as co-owners of the Land and Building, and shall promptly record a memorandum of such Agreement.

(k) Landlord's Address: c/o Premier Properties
532 Emerson Street
Palo Alto, CA 94301

(l) Base Rent:

Monthly for Lease Year 1: $2.10 per rentable square foot.

Monthly for Lease Years 2-12 As of the commencement of each lease year, monthly base rent hereunder shall be increased by five (5) percent of the previous lease year's base rent.

(m) Additional Rent: See Article IV.

(n) Rent During Extended Term: See Article III.

(o) Tenant: Digital Equipment Corporation, a Massachusetts corporation.

(p) Tenant's Address: Digital Equipment Corporation, 1110 Chapel Hills Drive, Colorado Springs, Colorado 80920-3995 Attention: Western Property Development Center Manager.

(q) Tenant's Share: If Tenant has not received possession of Suite 100, then Tenant's Share shall equal 95%. If Tenant has received possession of the entire Building including Suite 100, then Tenant's Share shall equal 100%.

(r) Term: Primary Term and/or any Extended Term as the context may require.

(s) Beginning Liability Insurance Coverage Amount: $3,000,000.

2. Exhibits. The Exhibits listed below are attached hereto and are incorporated in this Lease by reference herein.

(a) EXHIBIT A - Demised Premises

(b) EXHIBIT B - Interior Improvements

(c) EXHIBIT C - Legal Description of Land

(d) EXHIBIT D - Existing Lease

(e) EXHIBIT E - Subordination, Recognition and Non-Disturbance Agreement

(f) EXHIBIT F - Permitted Encumbrances

(g) EXHIBIT G - Tenant's Personal Property

(h) EXHIBIT H - Memorandum of Lease and Option

(i) EXHIBIT I - Roof Space

ARTICLE II

AMENDMENT AND RESTATEMENT OF LEASE: CONDITIONS PRECEDENT: DESCRIPTION OF DEMISED PREMISES

1. Amendment and Restatement of Lease. Landlord and Tenant previously entered into an Office Space Lease dated April 6, 1990 and amended October 10, 1990 and November 14, 1990 (as amended, the "Existing Lease") a copy of which is attached hereto as Exhibit D, by which Landlord leased to Tenant all of the Building other than Suite 100 currently occupied by Dr. Allan Sidle. Landlord and Tenant hereby amend and restate the Existing Lease in its entirety to extend its term, incorporate additional space and set forth other terms and conditions agreed to by Landlord and Tenant. Tenant shall continue to occupy the premises which are demised pursuant to the Existing Lease on the terms set forth in the Existing Lease during the period from October 7, 1990 through November 30, 1990, except that Tenant shall not be required to pay any rent for the period October 7, 1990 through October 31, 1990 other than its share of operating costs and real estate taxes on the terms set forth in the Existing Lease.

2. Conditions Precedent. This Lease shall not take effect unless the following conditions have been satisfied, or waived by both Landlord and Tenant, on or before December 1, 1990:

(a) Receipt by Landlord from the holder of the existing first deed of trust encumbering the Land and Building of a written waiver of any rights such holder may have, as a result of Landlord's entering into this Lease, to accelerate the indebtedness secured by such deed of trust or otherwise declare a default under such deed of trust; and

(b) Execution by Landlord and Tenant of an Agreement for Acquisition of Co-Tenant's Interest in Real Property providing for the sale of the interest in the Land and Building held by Hare, Brewer & Kelley, Inc.

3. Description of Demised Premises. Landlord hereby leases to Tenant and Tenant hereby takes from Landlord:

(a) Commencing December 1, 1990, the entire Building, less Suite 100 currently occupied by Dr. Allan Sidle containing four hundred sixty-two (462) rentable square feet, as indicated on Exhibit A, for a total of eight-thousand eight hundred twenty-two (8,822) rentable square feet. Until Landlord has delivered possession of Suite 100 to Tenant, Tenant shall allow the lessee of Suite 100 (along with his employees, guests and invitees) to use, in common with Tenant, the Building entry lobby, the second-floor restrooms, and stairway and hallway access routes from Suite 100 to and from the second-floor restrooms.

(b) In addition, Suite 100, commencing when Landlord delivers possession of Suite 100 to Tenant and Tenant accepts possession of Suite 100. Landlord shall be required to offer to deliver possession of Suite 100 to Tenant upon each and every expiration or termination of any lease of Suite 100 at any time during the Term. Landlord agrees not extend or renew the lease of the current tenant of Suite 100, Dr. Allan Sidle, beyond the term (with extensions) provided for in the currently effective lease between Landlord and Dr. Sidle, without first offering Suite 100 to Tenant. If Landlord offers to and delivers possession of Suite 100 to Tenant on or before May 1, 1991, Tenant shall be required to accept possession of Suite 100 on the terms otherwise set forth in this Lease, except that Tenant shall not be required to pay Base Rent and Additional Rent with respect to Suite 100 until sixty (60) days after Landlord delivers possession of Suite 100 to Tenant. If Landlord offers to deliver possession of Suite 100 to Tenant at any time after May 1, 1991, Landlord shall notify Tenant in writing of the date on which Landlord is prepared to deliver possession of Suite 100, at least twenty (20) days prior to such date. Tenant shall then have the option to accept or reject Suite 100 by giving written notice to Landlord of Tenant's acceptance or rejection, such notice to be given within twenty (20) days after receipt by Tenant of Landlord's notice. If Tenant does not give notice of acceptance or rejection within such period, Tenant shall be deemed to have rejected Suite 100 at such time. If Tenant accepts such offer, Tenant shall take possession of Suite 100 on the terms otherwise set forth in this Lease, except that Tenant shall not be required to pay Base Rent and Additional Rent with respect to Suite 100 until sixty (60) days after Landlord delivers possession of Suite 100 to Tenant. If Tenant rejects such offer, Landlord may then lease Suite 100 to any other party for such rent and on such conditions as Landlord may choose, so long as (i) the tenant of Suite 100 is not engaged in the design, manufacture or sale of computer hardware or software, (ii) the use to be made of Suite 100 by the lessee thereof is a use which would be permitted under this Lease, and (iii) any such lease entered into prior to November 30, 1999 (or after such date if Tenant has exercised its Purchase Option) shall have a term (including options to renew) which does not extend beyond November 30, 2000.

ARTICLE III
TERM

1. Term. The term of this Lease shall be for the period set forth in Article I hereof ("Primary Term"), except as hereinafter provided otherwise.

2. Option to Extend. Tenant has two (2) consecutive options to extend this Lease for a term(s) of five (5) year(s) each (each an "Extended Term"), provided Tenant shall give to Landlord written notice of the exercise of (i) the first option to extend the term on or before November 30, 2001, and (ii) the second option no later than one hundred twenty (120) days prior to the expiration of the first Extended Term. Each such Extended Term shall be upon the same terms, covenants and conditions hereof, except for Base Rent.

3. Lease Commencement. The Primary Term shall commence on December 1, 1990 ("Term Commencement Date"). For purposes of this Lease, each "Lease Year" shall commence on the same calendar date as the Term Commencement Date.

ARTICLE IV

RENT

1. Base Rent. The Base Rent for the Demised Premises shall be paid in equal monthly installments as set forth in Article I of this Lease on the first day of each month during the Primary Term commencing with the Term Commencement Date (subject to abatement as described below).

Rental payments shall be made at the address set forth in Article I or at such other address as Landlord may from time to time designate in writing. Except as otherwise specified in this Lease, all other payments required by this Lease to be made by Tenant to Landlord during the Term hereof are Additional Rent and shall be paid as elsewhere in this Lease set forth. Additional Rent shall begin accruing and be payable commencing on the Term Commencement Date. Base Rent and Additional Rent are collectively referred to herein as "Rent" or "Rents."

2. Payment. All Rent payable by Tenant pursuant to this Lease shall be paid without set off, adjustment, deduction or abatement except as otherwise in this Lease provided.

If on two consecutive occasions in any Lease Year Landlord has not received any installment of Base Rent or any other sum due from Tenant hereunder within ten (10) days after the due date thereof and Tenant has received written notice of such delinquency, then if any subsequent installment of Base Rent or any other sum due from Tenant hereunder in the same Lease Year is not received by Landlord within (i) ten (10) days after the due date thereof and (ii) five (5) days after the date of Tenant's receipt of written notice from Landlord, Tenant shall pay to Landlord a late charge equal to five percent (5%) of the amount overdue, to compensate Landlord for processing and accounting charges and any other charges that may be incurred by Landlord.

3. Base Rent During Extended Term(s). Base Rent for any Extended Term(s) shall be as hereinafter provided. During the first Lease Year of each Extended Term hereof, Base Rent for the Demised Premises shall be equal to ninety-five percent (95%) of the then current fair market rent for similar properties in downtown Palo Alto taking into account the

The Base Rent payable during the third Lease Year of each Extended Term shall be an amount equal to one hundred five percent (105%) of the Base Rent payable during the second Lease Year of such Extended Term.

The Base Rent payable during the fourth Lease Year of each Extended Term shall be an amount equal to one hundred five percent (105%) of the Base Rent payable during the third Lease Year of such Extended Term.

The Base Rent payable during the fifth Lease Year of each Extended Term shall be an amount equal to one hundred five percent (105%) of the Base Rent payable during the fourth Lease Year of such Extended Term.

4. Minimum Rent. Notwithstanding any other provisions of this Lease allowing for abatement, set-off or other reduction in Base Rent, other than pursuant to Article VIII, Paragraph 2(b), Article XII, Paragraph 8 or Article XIII, Paragraph 4, Tenant shall be required to pay a minimum amount of Base Rent (the "Minimum Base Rent) equal to (a) if Tenant has not received possession of Suite 100, Fifteen Thousand Two Hundred Dollars ($15,200) per month; (b) if Tenant has received possession of the entire Building including Suite 100, Sixteen Thousand Dollars ($16,000) per month.

ARTICLE V

OPERATING COSTS, CAPITAL EXPENDITURES AND REAL ESTATE TAXES

1. Operating Costs. During the Term of this Lease, Tenant shall pay to Landlord, as Additional Rent, certain costs and expenses incurred by Landlord in connection with the operation, repair and maintenance of the Building ("Operating Costs").

(a) Items Included. The term "Operating Costs" shall include, but not be limited to (i) the Annual Amortization (defined in paragraph 1(c)(ii) below) of certain capital expenditures, described in paragraph l(c)(ii) below; (ii) compensation (including normal and customary vacation time, health benefits, reasonable sick leave and employment taxes) of all persons who perform duties connected with the operation, maintenance and repair of the Building, excluding any executive above the level of building manager; (iii) accounting fees incurred in connection with the determination and allocation of Operating Costs; (iv) a management and overhead fee equal to one and three-quarter (1.75%) per year of Tenant's annual Base Rent hereunder, which shall include all fees for Landlord's direct personnel and office expenses; (v) insurance premiums for the insurance coverage required to be carried by Landlord pursuant to Article XVI, paragraph 1; and (vi) any deductibles under the insurance coverage required to be carried by Landlord pursuant to Article XVI, paragraph 1. The computation of Operating Costs shall be made in accordance with Generally Accepted Accounting Principles.

b. Items Excluded. Operating Costs shall not include any costs recoverable under insurance coverage. Operating Costs shall also exclude, by way of illustration and not limitation, (i) repair and replacement resulting from inferior or deficient workmanship, materials, or equipment in the Building or from the negligent acts or omissions of Landlord; (ii) the cost of the Interior Improvements, or of any additions to the Building; (iii) depreciation, amortization, and interest on and capital retirement of debt; (iv) leasing commissions; (v) repairs or other work of a capital nature (or reimbursed by insurance proceeds, exclusive of reasonable deductibles) occasioned by fire, windstorm or other casualty; (vi) any expenses for repairs or maintenance which are covered by warranties or service contracts (excluding deductibles); (vii) attorney's fees, costs and disbursements and other expenses incurred in connection with negotiations or disputes with tenants, other occupants, or prospective tenants or other occupants of the Building; (viii) costs incurred in renovating or otherwise improving or decorating or redecorating space for tenants or other occupants of the Building; (ix) Landlord's cost of services provided to tenants, which services are not standard for the Building and the cost of which is payable directly by such tenants to Landlord; (x) capital expenditures as described in paragraph (c) below (except for Annual Amortization); (xi) structural repairs as described in Article XI, paragraph 2 below; (xii) expenses in connection with services or other benefits of a type which are not standard for the Building and which are not available to Tenant without specific charge therefor, but which are provided to another tenant or occupant of the Building, whether or not such other tenant or occupant is specifically charged therefor by Landlord; (xiii) costs incurred due to the violation by Landlord of any valid, applicable building code, regulation or law or incurred due to the Building being in violation of any such code, regulation or law; (xiv) amounts paid to affiliates of Landlord for services to the Building, to the extent that such amounts exceed competitive costs for such services rendered by persons or entities of similar skill, competence and experience; (xv) costs of Landlord's general administration (other than as specifically set forth in this Article V, paragraph 1(a)(iv); (xvi) any compensation paid to clerks, attendants or other persons in commercial concessions, if any, operated by Landlord; (xvii) rentals and other related expenses, if any, incurred in leasing air conditioning systems, elevators or other capital equipment, except equipment which is used in conjunction with an energy management system and except for rentals and expenses incurred in emergency leasing of such equipment; (xviii) all items and services for which Tenant or other tenants specifically reimburse Landlord other than through payment of Operating Costs; (xix) costs incurred in installing, operating and maintaining any specialty improvement not normally installed, operated, and maintained in buildings comparable to the Building and not necessary for Landlord's operation, repair, maintenance, and providing of required services for the Building; (xx) costs incurred in advertising and promotional activities for marketing of the Building; and (xxi) when and if any service (such as janitorial service) which is normally provided by Landlord to tenants of the Building is not provided by Landlord pursuant to agreement with Tenant in the Demised Premises under the specific terms of this Lease, then in determining Operating Costs for Tenant, the cost of that service shall be excluded. Further, if any facilities, services or utilities for the operation, repair and maintenance of the Building are provided from another building or other buildings owned or operated by Landlord, or for the operation, repair and maintenance of another building or other buildings owned or operated by Landlord are provided from the Building, the net costs,

charges and expenses therefor shall be allocated by Landlord among the Building and the other building or buildings on a fair and equitable basis.

(c) Capital Expenditures.

(i) For purposes of this Lease, "capital expenditure" shall mean the acquisition of a prior nonexistent asset or the replacement of a pre-existing asset not acquired in the ordinary course of business and not characterized as an operating cost or expense within generally accepted accounting principles, provided that the acquired asset must enhance the value of the real estate over its useful life, be permanently affixed to the real estate and excludes all personalty and removable trade fixtures. "Capital expenditure"" shall not mean any costs incurred by Landlord in order to comply with any laws, ordinances, regulations, insurance requirements or building codes applicable to the Land, Building or Demised Premises.

(ii) If, during the term of this Lease, Landlord shall make a capital expenditure (A) for an improvement made by Landlord which produces a cost savings in operating the Land, Building, or Demised Premises and of which Landlord has given information reasonably satisfactory to Tenant demonstrating a cost savings equal to or greater than the Annual Amortization of such improvement as stated in the following sentence; or (B) for capital item replacement made by Landlord to the Building, except for any such capital expenditure made as a result of an obligation of Landlord pursuant to Article XI, paragraph 2 of this Lease, which shall be done at Landlord's sole expense without any reimbursement from Tenant, then Tenant shall pay the Annual Amortization of such capital expenditure. "Annual Amortization" shall be determined by fully amortizing the original capital expenditure at the interest rate then being charged for long-term mortgages by institutional lenders on like properties within the locality in which the Demised Premises are located, over a period equal to the number of years of the economic useful life of the capital expenditure.

With respect to capital expenditures, Tenant shall commence payment as Additional Rent of one-twelfth (1/12th) of the annual amount shown in Landlord's notice given pursuant to the immediately preceding sentence with the next and each succeeding installment of Rent becoming due during the Term, provided that the item for which the expenditure was made has been fully completed on the date of Tenant's first payment and further provided that Tenant has received notice of such amount at least fifteen (15) days prior to the month in which payment is first due or if not so received, then Tenant's payment shall commence as of the following month. If Tenant exercises its option to purchase the Property as set forth in Article XXIX below, the purchase price shall include an amount equal to any portions of the costs of capital expenditures which have not been amortized as of the close of escrow for said purchase but, in the case of capital expenditures made during the seventh, eighth, ninth or tenth years of the Primary Term, only if Landlord has obtained the written consent of Tenant before making such capital expenditures.

2. Payment of Operating Costs. Landlord shall reasonably estimate the Operating Costs for each calendar year wholly or partially included within the Term of this Lease and

shall send notice of said estimate to Tenant within thirty (30) days after the Term Commencement Date for the remaining portion of the first such calendar year and thereafter at least thirty (30) days prior to the commencement of each subsequent calendar year. During each calendar year thereafter included in the Term, Tenant shall pay, as Additional Rent, one twelfth of the applicable estimate each month to Landlord together with the Base Rent. If Landlord does not give Tenant an estimate within the time periods stated above, then Tenant shall continue to make estimated payments based upon the preceding year's estimate and within thirty (30) days after receipt of the new estimate for the current calendar year, Tenant shall commence payment of the new estimated monthly amount and shall pay in a lump sum any retroactive amounts due from the beginning of the new calendar year.

It is agreed between the parties that Landlord in good faith may revise its estimate of Operating Costs once a calendar year to reflect increased costs and shall give notice to Tenant thereof no later than the tenth (10th) day of the month preceding the month in which said increased Operating Costs will be applicable. All payments of estimated Operating Costs and all payments pursuant to any accounting made hereunder shall be paid to Landlord as stated in this Lease.

3. Annual Statement. Within one hundred twenty (120) days after the
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expiration of each calendar year included in the Term, Landlord shall make a determination of the actual Operating Costs for such year. Landlord shall submit to Tenant a written statement, certified by Landlord, in sufficient detail for verification by Tenant and a summary showing Operating Costs on a line item basis by category, which statement shall include the amount of actual Operating Costs for such calendar year and any amounts owed by either Landlord or Tenant to the other for such year. Within thirty (30) days after delivery of such statement, including any statement delivered after the expiration or termination of this Lease, Tenant shall pay to Landlord the difference, if any, between the amount paid by Tenant as estimated Operating Costs and the amount owed by Tenant for the actual Operating Costs for such calendar year. If Tenant's payment of the estimated Operating Costs was greater than the amount owed by Tenant of the actual Operating Costs, then Landlord shall, at Tenant's election, either credit such amount against the next due installments of Base Rent and/or Additional Rent or pay the same to Tenant all within thirty (30) days after receipt of Landlord's annual statement.

Notwithstanding the foregoing, Tenant may at any time give Landlord written notice of its intent to inspect, examine and audit Landlord's records pertaining to Operating Costs for the calendar year covered by such statement (Audit notice"). Tenant shall have the right, upon delivery of an Audit Notice to Landlord, to inspect, audit and/or copy at Tenant's expense Landlord's books, records and accounts pertaining to Operating Costs for the calendar year specified in the Audit Notice, and Landlord shall make such books, records and accounts available to Tenant and its agents, and accountants for review during regular business hours at Landlord's principal place of business. Any overpayment or underpayment of Operating Costs revealed by Tenant's audit shall be adjusted within thirty (30) days after Tenant delivers written notice of such overpayment or underpayment to Landlord but only if such underpayment or overpayment pertains to a year for which Landlord's annual statement was delivered to Tenant within two (2) years prior to Tenant's delivery of an Audit Notice

for such year. If Tenant's audit discloses that Tenant's Percentage Share of Operating Costs has been overstated by two percent (2%) or more, Landlord shall pay the cost of such audit. If Tenant delivers an Audit Notice to Landlord within thirty (30) days after the date of Tenant's receipt of Landlord's annual statement, the time period for payment of the difference between the actual Operating Costs and the amount paid by Tenant as estimated Operating Costs shall be tolled until Tenant gives Landlord written notice that its audit is completed.

Landlord hereby waives any right to collect from Tenant any items of Operating Costs of which Landlord fails to notify Tenant within two (2) years following the expiration of the calendar year in which such items were incurred. Tenant waives any right to collect from Landlord any overpayment of Operating Costs for any year provided that Tenant has not delivered to Landlord an Audit Notice respecting said year within two (2) years after Landlord's annual statement respecting said year has been delivered to Tenant.

4. Real Estate Taxes. As used herein, "Real Estate Taxes" shall mean real estate taxes and general and special assessments. Real Estate Taxes shall exclude, without limitation, any income, franchise, gross receipts, corporation, capital levy, excess profits, revenue, rent, inheritance, devolution, gift, estate, payroll or stamp tax by whatsoever authority imposed or howsoever designated or any tax upon the sale, transfer and/or assignment of Landlord's title or estate which at any time may be assessed against or become a lien upon all or any part of the Land or the Building. In addition, Real Estate Taxes shall exclude any liens or taxes, penalties or interest which are levied or assessed against the Land or the Building for a period of time prior to the commencement of the Term unless Tenant was obligated to pay but has failed to pay such Real Estate Taxes pursuant to the Existing Lease. Landlord shall pay on or before December 1, 1991 all real property taxes which are in default on the Date of Execution, along with all penalties and interest due thereon.

5. Change in Laws. If at any time during the Term the laws concerning the methods of real property taxation prevailing at the commencement of the Term are changed so that a tax or excise on rents or any other such tax, however described, is levied or assessed against Landlord as a direct substitute in whole or in part for any Real Estate Taxes, Tenant shall pay as described in paragraph 7 hereof (but only to the extent that it can be ascertained that there has been a substitution and that as a result Tenant has been relieved from the payment of Real Estate Taxes it would otherwise have been obligated to pay) the substitute tax or excise on rents.

6. Separate Assessment. The Land and the Building are currently assessed as a single and separate tax parcel. Throughout the Term of this Lease, Landlord shall cause the Land and the Building to remain separately assessed and maintained within a single and separate tax parcel or lot by the applicable governmental taxing authority, so that Real Estate Tax bills shall issue solely with respect to the Real Estate Taxes applicable only to the Land and the Building.

7. Payment of Real Estate Taxes. The total assessed value of the Land and Building for the 1989-1990 tax year, as shown on the secured property tax roll for Santa

Clara County, was One Million Two Hundred Thirty-Seven Thousand One Hundred Fifty-Nine Dollars ($1,237,159). The total amount of real property taxes due for such year, including assessments collected with real property taxes, was Sixteen Thousand Five Hundred Twenty-Three Dollars and Eighty-Four Cents ($16,523.84), due in two equal installments. In addition, supplemental taxes assessed pursuant to Chapter 3.5 of the California Revenue and Taxation Code for the 1989-1990 tax year totaled Eighty-Seven Dollars and Twenty-Two Cents ($87.22), due in two equal installments. Landlord shall use its best efforts to cause the tax bills for the Land and Building to be sent directly to Tenant from the county assessor or other applicable taxing authority. If tax bills are sent directly to Tenant, Tenant shall provide copies of such bills to Landlord within thirty (30) days after their receipt by Tenant. Tenant shall pay directly to the applicable governmental taxing authority, as Additional Rent without any abatement, set-off or other reduction pursuant to any other provision of this Lease, all Real Estate Taxes assessed for each tax period or portion thereof included within the Term of this Lease, and which are during such Term levied, or imposed upon or become a lien or liens upon the Land and the Building. Tenant shall pay all Real Estate Taxes within fifteen (15) business days of its receipt of the appropriate tax bill(s) from Landlord or from the taxing authority but not earlier than thirty (30) days prior to the delinquency date of any such taxes. Tenant shall furnish Landlord with evidence of payment of same within thirty (30) days thereafter. Landlord shall pay all interest and penalties assessed with respect to such Real Estate Taxes, unless such interest or penalties are assessed as a result of the failure of Tenant to timely pay such Real Estate Taxes, in which event Tenant shall pay such interest and penalties directly to the applicable governmental taxing authority as Additional Rent.

The foregoing notwithstanding, Tenant shall not be responsible to pay any portion of any increase in Real Estate Taxes attributable to an increase in valuation resulting or arising by virtue of a change of ownership of the Land and/or the Building occurring during the first five (5) Lease Years of the Primary Term. Tenant shall pay any increase in Tenant's Share of Real Estate Taxes attributable to an increase in valuation resulting or arising from any change in ownership of the Land and/or the Building occurring during the remainder of the Primary Term or Extended Term(s).

Real Estate Taxes for the tax year in which the Term of this Lease commences and for the tax year in which such Term expires shall be apportioned between Landlord and Tenant in accordance with the number of days thereof falling within the Term of this Lease.

8. Contest. Tenant shall, at Tenant's sole expense, have the right to contest or review (in the name of Tenant, or of Landlord, or both, as Tenant shall elect, but with the cooperation of Landlord if requested) by appropriate proceedings (which may be instituted either during or after the Term of this Lease) any valuation of the Land and/or the Building for Real Estate Tax assessment purposes and/or any increase in the tax rate. In furtherance of the foregoing, Landlord shall without limitation furnish, on a timely basis, such data, documents, information and assistance and make such appearances as may be reasonably required by Tenant. Landlord agrees to execute all necessary instruments in connection with any such protest, appeal or other proceedings. If any such proceeding may only be instituted and maintained by Landlord then Landlord shall do so at the request and expense of Tenant.

Landlord shall not settle any such appeal or other proceeding without obtaining Tenant's prior written approval in each such instance. Tenant shall not abandon any such appeal without first offering to Landlord the right to prosecute such appeal at Landlord's expense.

Tenant shall be entitled to Tenant's Share of any refund (net of Tenant's or Landlord's expenses in obtaining same) obtained by reason of any such proceeding or otherwise, whether obtained during or after the expiration of the Term and whether obtained by Landlord or Tenant, except that if such refund shall relate to the year in which the Term of this Lease commences or expires, such refund (after deducting all costs of Landlord or Tenant in obtaining same) shall be equitably apportioned between Landlord and Tenant.

Tenant shall not be responsible to pay any portion of any increase in Real Estate Taxes attributable to an increase in valuation unless Landlord shall have delivered to Tenant a copy of the applicable Real Estate Tax bill or notification of valuation increase in sufficient time to enable Tenant to contest such Real Estate Taxes if Tenant so desires.

9. Payment in Installments. If, by law, any Real Estate Taxes may be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), such Real Estate Taxes, at Tenant's option, shall be paid in installments in accordance with paragraph 10 hereof. Tenant shall pay to Landlord any installments coming due during the Term prorated for any fraction of an installment period included within the Term, including interest, becoming due at the end of such period.

10. Amortization. Real Estate Taxes shall include betterment assessments for municipal improvements levied against the Land and the Building during the Term of this Lease. Such assessments shall be amortized over the maximum period provided under the law and shall be payable in the maximum number of installments permitted under the law and as described in paragraph 7 and 9 hereof.

11. Landlord's Action. Except to the extent provided in paragraph 7 above, if Landlord, solely by its action, causes the Real Estate Taxes and/or assessments levied against the Land and/or the Building to increase, Tenant shall not be responsible for said increase unless Tenant has been notified in writing of such action and has agreed to same.

12. Minimum Additional Rent. Notwithstanding any other provisions of this Lease, the portion of Operating Costs consisting of insurance premiums for the insurance coverage required to be carried by Landlord pursuant to Article XVI and all Real Estate Taxes (collectively, the "Minimum Additional Rent") shall not be subject to any abatement, set-off or other reduction pursuant to any other provision of this Lease.

13. Operating Costs With Respect to Suite 100. Unless and until Tenant takes possession of Suite 100, Tenant shall be entitled to a credit against the Rent otherwise payable by Tenant to Landlord equal to five percent (5%) of the, sum of (a) the Operating Costs and Real Estate Taxes to be paid by Tenant pursuant to this Article V, (b) costs of water, electricity, gas, sewer and trash collection service to the Building paid by Tenant pursuant to Article VI, (c) costs of janitorial service to the Building provided by Tenant, and (d) costs of maintenance of the Building and grounds provided by Tenant pursuant to the second sentence of Paragraph 4 of Article XI. Such credit shall compensate Tenant for the payment by Tenant of Operating Costs, Real Estate Taxes, utilities charges, maintenance expenses and other costs arising out of the occupancy and use of Suite 100. The amount of such credit shall be estimated by Tenant for each calendar year in the same manner as Operating Costs are estimated by Landlord pursuant to Paragraph 2 of this Article V. The initial credit for the month of December, 1990, shall be Three Hundred Seven Dollars ($307) per month.

ARTICLE VI

UTILITIES AND SERVICES

1. Utilities and Services Provided by Landlord. Landlord will provide, at no cost to Tenant, at or prior to the commencement of the Primary Term, the following utility lines to and within the Demised Premises: water, electricity, gas, sewer, and telephone (provided that telephone lines shall be provided up to the connection points of the Building with installation of telephones within the Demised Premises being the responsibility of Tenant, and that any utility lines incorporated within the Demised Premises shall be Tenant's responsibility) in such capacity as to meet general office use building code requirements. Telephone service for the Demised Premises and Suite 100 shall be separately metered. Electricity, gas and water shall be metered to the Building as a whole (including Suite 100). The installation of any new utility meters required for separate metering, as well as the maintenance of all existing and new utility meters, shall be at Tenant's expense.

2. Security. Landlord shall not be responsible for providing any security protection for the Demised Premises, the Land or the Building, and Tenant shall at its own expense provide or obtain any security system or services that it desires, if any.

3. Separate Utilities. Tenant shall make arrangements with the public utility companies or other service provider serving the Building for telephone service to the Demised Premises, electricity, gas, water, sewer, trash collection and all other services required for occupancy and use of the Building and shall pay when due any and all charges for such services directly to the companies providing same. Tenant shall provide janitorial service to the Building.

Tenant's failure to pay such charges shall not constitute a default under this Lease entitling Landlord to exercise any rights or remedies it may have in the event of default except that if Landlord is notified that service to Suite 100 will be terminated at any time before Tenant has received possession of Suite 100, or that a lien will be placed upon the

Demised Premises as a result of Tenant's nonpayment of any such utility charge, then to protect the real estate Landlord may pay such charges, notify Tenant thereof and the same shall be paid by Tenant as Additional Rent with the next installment of Base Rent becoming due. In no event shall Landlord be responsible for charges for any telephone service used by Tenant at the Demised Premises.

Tenant shall supply to Landlord upon request copies of the most recent invoices for utilities services provided to the Building.

4. Interruption of Services.

(a) If, for any reason whatsoever other than a negligent act or omission or a willful act or omission of Tenant, its officers, directors, employees, contractors, servants or agents, or a default by Tenant hereunder, any utilities or services which are required for Tenant's use of the Premises for the Permitted Uses are interrupted, Tenant shall promptly so notify Landlord. Notwithstanding any other provision to the contrary contained in this Lease, in the event that Tenant reasonably determines that the existing situation constitutes an emergency which either threatens imminent injury to persons or material damage to property or materially impairs Tenant's then-current use of the Premises or a material portion thereof, Tenant may give such notice by any means including, without limitation, by telephone.

(b) If resumption of such utilities or services does not occur within thirty (30) days after the commencement of such interruption, and the lack of such utilities or services continues to materially impair Tenant's then-current use of the Premises or a material portion thereof, Tenant shall have the right to terminate this Lease at any time thereafter while such interruption continues by giving to Landlord a written notice of termination stating the date on which this Lease shall terminate.

(c) If the unavailability of such utilities or services materially impairs Tenant's then-current use of the Premises or a material portion thereof for a period of more than five (5) days, Rent shall be abated proportionately according to the extent to which the Tenant's use and occupancy of the Premises are so affected, for the period commencing on the date such utilities or services became unavailable and ending on the date on which such condition is cured or this Lease terminates, as the case may be.

ARTICLE VII

USE OF DEMISED PREMISES

1. Use. Tenant may use the Demised Premises for all uses reasonably compatible with office uses including but not limited to general office; research and development including prototype assembly; customer/employee training; sales and services; computer rooms, a cafeteria, and all related and accessory uses customarily incidental thereto.

2. Permits. Except as expressly provided below, Landlord shall procure all authorizations and permits which may be required for the Demised Premises including but not limited to certificates of occupancy and variances (if required) prior to the time Tenant occupies the Demised Premises. All authorizations and permits required for the construction and occupancy of the Interior Improvements and of any Alterations are the responsibility of Tenant. Any special business permits or licenses which may be required of Tenant to conduct its particular business in the state or locality where the Demised Premises are located are the responsibility of Tenant.

3. Compliance With Laws. Nothing shall be done upon or about the Demised Premises by Tenant, Landlord, or their agents, servants, employees or invitees which shall be contrary to any law, ordinance, regulation or requirement of any public authority having jurisdiction. Tenant will keep the Demised Premises reasonably clean. Tenant will not do, nor suffer to be done, nor keep or suffer to be kept, anything in or upon the Demised Premises or the Building which may prevent the obtaining of any insurance on the Demised Premises or the Building or on any property therein, including, but without limitation of the generality of the foregoing, fire, extended coverage and public liability insurance, or which may make void any such insurance. If such actions do create any extra premiums for or increase the rate of any such insurance, then Tenant shall pay the increased cost of the same to Landlord upon written demand therefor.

ARTICLE VIII

PREPARATION OF DEMISED PREMISES

1. Roof Repairs

(a) Tenant shall repair the roof of the Building and replace the roof membrane (the "Roof Repairs"), unless Landlord elects to perform the Roof Repairs and Tenant consents to Landlord's performance of the Roof Repairs. If Landlord elects to perform the Roof Repairs, Landlord shall so notify Tenant and provide to Tenant on or before January 1, 1991 information regarding Landlord's proposed Roof Repair method which is reasonably sufficient for Tenant to evaluate the suitability of such method. Tenant, shall, within two (2) business days after receipt of such information, give Landlord notice whether Tenant consents to Landlord's proposed Roof Repair method, which consent shall not be unreasonably withheld. If Tenant does not give such notice within such two (2) business day period, Tenant shall be deemed to have consented.

(b) If Tenant consents (or is deemed to consent) to Landlord's Roof repair method, Landlord shall perform the Roof Repairs at Landlord's sole cost and expense during the period from April 15, 1991 through May 1, 1991. Landlord warrants and represents that the Roof Repairs, if performed by Landlord, will be constructed in a good and workmanlike manner and in compliance with all Laws. Landlord has the entire and sole responsibility to correct any portion of the Roof Repairs performed by Landlord which is not in compliance with Laws.

(c) If Landlord does not elect to perform the Roof Repairs or Tenant does not consent to Landlord's proposed Roof Repair method, then:

(i) Tenant shall perform the Roof Repairs, in a good and workmanlike manner and in compliance with all Laws;

(ii) Landlord shall pay to Tenant Twenty Thousand Dollars ($20,000) on the later of December 1, 1990 or the completion of the Roof Repairs, to pay for a portion of the Roof Repairs; and

(iii) Tenant shall be responsible for paying all costs of the Roof Repairs in excess of such amount.

2. Interior Improvements.

(a) Construction of Interior Improvements. From and after the Date of Execution, Tenant shall construct and install its interior improvements ("Interior improvements") in the Demised Premises. The Interior Improvements will be constructed in accordance with plans and specifications prepared by Tenant. Landlord shall have the right to approve the plans and specifications for the Interior Improvements, which approval shall not be unreasonably withheld or delayed. Landlord's consent shall be deemed given if Landlord does not respond to Tenant's request for such consent within ten (10) days after the date of Landlord's receipt of plans and specifications for the Interior Improvements together with Tenant's request for approval of such plans and specifications. If Landlord disapproves the plans and specifications, Landlord shall give Tenant written notice of such disapproval specifying the reasons and basis for its disapproval within ten (10) days after the date of Landlord's receipt of the plans and specifications. The parties shall thereafter confer and negotiate in good faith to reach agreement on the plans and specifications for the Interior Improvements. Tenant shall comply with Article X, Paragraphs 3 through 8, inclusive, in constructing the Interior Improvements. Tenant shall have no obligation to remove the Interior Improvements upon the expiration or earlier termination of the Lease.

(b) Interior Improvement Allowance. Landlord shall pay to Tenant an improvement allowance for use in construction of the Interior Improvements equal to Two Hundred Seventy-Eight Thousand Two Hundred Twenty Dollars ($278,220) ("Improvement Allowance"). If and when Landlord delivers possession of Suite 100 to Tenant as provided in Article II, paragraph 2, then the Improvement Allowance shall be increased by Four Thousand Six Hundred Twenty Dollars ($4,620). Landlord shall pay the Improvement Allowance to Tenant upon the closing of a refinancing by Landlord of the existing first deed of trust on the Land and Building, provided that no mechanics' liens or similar liens for labor or material supplied to the Interior Improvements have been filed or asserted against the Demised Premises (unless releases of such liens are obtained upon payment of the Improvement Allowance). Landlord shall use its best efforts to obtain such refinancing within nine (9) months after the Date of Execution. The unpaid balance of the Improvement Allowance shall be increased by one percent (1%) for each month that payment of the Improvement Allowance is delayed beyond nine (9) months after the Date of Execution,

prorated for any partial month on the basis of a thirty (30) day month. Notwithstanding, the provisions of Article IV, Paragraph 4, if payment of the Improvement Allowance is delayed beyond twelve (12) months after the Date of Execution, Tenant may deduct the Improvement Allowance or any remaining balance of the Improvement Allowance from the next payments of Rent coming due according to the following schedule: (i) Tenant may deduct all but Ten Thousand Dollars ($10,000) from the first such Base Rent payment and all but the Minimum Additional Rent from the first such Additional Rent payment, (ii) Tenant may deduct all but Five Thousand Dollars ($5,000) from the next such Base Rent payment and all but the Minimum Additional Rent from the next such Additional Rent payment, and (iii) Tenant may deduct all of each remaining Base Rent payment and all but the Minimum Additional Rent from each remaining Additional Rent payment, until Tenant has recovered the remaining unpaid balance of the Improvement Allowance. Tenant shall be responsible for payment of all Improvement Costs in excess of the Improvement Allowance.

4. Entry by Tenant. The date on which Tenant may enter the Demised Premises for purposes of constructing the Interior Improvements (and the Roof Repairs, if performed by Tenant) shall be the Date of Execution. From and after the Date of Execution, Tenant shall have access to the Demised Premises for purposes of planning, constructing and installing the Interior Improvements. Tenant's occupancy of the Demised Premises for the construction of the Interior Improvements shall be subject to all of the provisions of this Lease except that Rent shall not be payable until the Term Commencement Date.

5. Insurance. During the period of construction of the Interior Improvements (and the Roof Repairs, if performed by Tenant), Tenant or its general contractor shall procure and maintain in effect the following insurance coverages with an insurance company or companies authorized to do business in California and the following agreements shall apply:

(a) Worker's Compensation - statutory limits for the state in which the work is to be performed, together with "ALL STATES" and "VOLUNTARY COMPENSATION" coverage endorsements;

(b) Employer's Liability Insurance with a limit of not less than One Hundred Thousand Dollars ($100,000);

(c) Comprehensive Liability - at least Three Million Dollars ($3,000,000) combined single limit, including personal injury, contractual and products/completed operations liability. Coverage must include the following: (i) premises - operations; (ii) elevators and hoists; (iii) independent contractor; (iv) contractual liability assumed under this contract; (v) completed operations - products; and (vi) explosion, underground and collapse (XUC) coverage;

(d) Automobile Liability - including owned, hired and non-owned vehicles of at least Two Million Dollars ($2,000,000) combined single limit for bodily injury or

property damage. Coverage must include the following: (1) owned vehicles; (2) leased vehicles; (3) hired vehicles; and (4) non-owned vehicles;

(e) Standard builder's risk insurance in an amount at least equal to the Improvements Allowance;

(f) Tenant shall furnish Landlord with certificates of insurance evidencing such coverage prior to the commencement of the Interior Improvements. All insurance shall be carried in companies having a Best's Guide rating of A- or better. The following statement shall appear in each certificate of insurance provided Landlord by Tenant hereunder: "It is agreed that in the event of any material change in, cancellation or non-renewal of this policy, thirty (30) days prior notice will be given to:

Richard R. Kelley, Jr.
c/o Premier Properties
532 Emerson Street
Palo Alto, California 94301

(g) The carrying of any of the insurance required hereunder shall not be interpreted as relieving Tenant of any responsibility to Landlord.

ARTICLE IX

COMPLIANCE WITH LAW

1. Compliance by Landlord. Landlord at its sole expense shall comply with and shall from time to time conform the Building (other than the Interior Improvements and any Alterations) to all Laws of which the Building (other than the Interior Improvements and any Alterations) would otherwise be in violation (other than the Interior Improvements and any Alterations) required by law, except for compliance necessitated by reason of Tenant's special use of the Demised Premises. Landlord shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands that may in any manner arise out of or be imposed because of the failure of Landlord to comply with the provisions of this Paragraph 1.

2. Compliance By Tenant. Tenant shall comply, at Tenant's sole expense, with all Laws if such compliance is related to the Interior Improvements or Alterations or necessitated by reason of Tenant's special use of the Demised Premises. The foregoing notwithstanding, Tenant shall not be required to make any structural, exterior or roof alterations of any nature whatsoever necessitated by reason of its special use of the Demised Premises, but in such event Landlord shall so comply and Tenant shall reimburse Landlord for the actual out-of-pocket cost thereof within thirty (30) days after demand therefor, provided Tenant is in receipt of an itemized invoice regarding same and the work has been performed, regardless of whether or not the alteration is a capital expenditure. Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands that

may in any manner arise out of or be imposed because of the failure of Tenant to comply with the provisions of this Paragraph 2.

3. Right to Contest. Landlord and Tenant shall each have the right upon giving notice to the other to contest any obligations imposed upon either pursuant to the provisions of this Article and to defer their respective compliance during the pendency of such contest, provided the enforcement of such requirement or law is stayed during such contest and such contest will not subject the other party to civil or criminal penalty or materially interfere with Tenant's use and occupancy of the Demised Premises or jeopardize the title to or use and enjoyment of the Land and the Building. Each party shall cooperate with the other in such contest and shall execute any documents reasonably required in the furtherance of such purpose. If either party is contesting as aforesaid, then such party shall not be in default hereunder until and unless it is determined that such party must perform such obligation and fails to do so by the date upon which all applicable appeal periods have expired or if such party has duly appealed any such determination and enforcement is stayed pending appeal, then until all such appeals have been finally decided against said party and said party fails to comply therewith.

ARTICLE X

ALTERATIONS, ADDITIONS AND IMPROVEMENTS

1. Non-Structural Alterations. Tenant may, from time to time, at its own cost and expense and without the consent of Landlord make alterations, additions or improvements (collectively herein called "Alterations") of a non-structural nature to the interior of the Demised Premises whose cost in any one instance is Twenty-Five Thousand Dollars ($25,000) or less, provided Tenant gives Landlord five (5) days written notice of any such Alterations. To the extent that Tenant obtains plans and specifications for any such Alterations the cost of which is Twenty-Five Thousand Dollars ($25,000) or less, Tenant shall provide Landlord with copies of such plans and specifications for Landlord's information. If Tenant desires to make any Alterations to the exterior of the Demised Premises, or any non-structural Alterations to the interior of the Demised Premises costing in excess of Twenty-Five Thousand Dollars ($25,000) in any one instance, Tenant must first obtain the consent of Landlord thereto, and which consent shall not be unreasonably withheld or delayed and which is hereby deemed given if Landlord does not respond to Tenant's request for such consent within ten (10) days from receipt of such request. Any request by Tenant to make Alterations to the exterior of the Demised Premises, or any non-structural Alterations to the interior of the Demised Premises costing in excess of Twenty-Five Thousand Dollars ($25,000) in any one instance shall include written plans and specifications for the Alterations. At the end of the Term (including any extensions), Tenant may elect to remove or to leave any such Alterations, provided that Tenant must give Landlord written notice of its election as to each Alteration no less than nine (9) months prior to the expiration of the Term (including any extensions). If Tenant elects to remove any such Alterations, Tenant's only responsibility upon removal is to repair any damage caused by the removal and not to restore the Demised Premises. If Tenant (i) fails to give Landlord the notice provided herein or (ii) fails to obtain Landlord's prior approval (whether actual or deemed) when

required hereunder, for any non-structural alterations to the interior of the Demised Premises, such failure shall not constitute a default by Tenant hereunder.

2. Structural Alterations. If Tenant desires to make any structural Alterations to the Demised Premises, Tenant must first obtain the prior written consent of Landlord thereto which shall not be unreasonably withheld and at such time Landlord shall advise Tenant if such Alterations must either remain or be removed at the end of the Term. It shall be reasonable for Landlord to withhold such consent if such structural Alterations would, for example, diminish the value of the Building or Land or increase the cost of maintaining or repairing the Building. If Landlord does not respond within ten (10) business days of receipt of Tenant's request for such consent or, if Landlord responds by consenting to the request, but such response does not address the issue of removal, such consent is hereby deemed given and Tenant may either remove or leave such Alterations at the end of the Term (including any extensions) as Tenant elects, provided that Tenant must give Landlord written notice of its election as to each Alteration no less than nine (9) months prior to the expiration of the Term (including any extensions). If removal of any such Alteration is required by Landlord or elected by Tenant at the end of the Term, Tenant must only repair any damage caused by removal and not restore the Demised Premises.

3. Contractor. Alterations may be done by any contractor chosen by Tenant provided any such contractor is reputable, bondable by reputable bonding companies, and carries the kinds of insurance and in the amounts set forth in Article VIII, Paragraph 4 of this Lease.

4. Performance of Work. Tenant in making any Alterations shall cause all work to be done in a good and workmanlike manner using materials equal to or better than those used in the construction of the Demised Premises and shall comply with or cause compliance with all laws and with any direction given by any public officer pursuant to law. Tenant shall obtain or cause to be obtained and maintain in effect, as necessary, all building permits, licenses, temporary and permanent certificates of occupancy and other governmental approvals which may be required in connection with the making of the Alternations. Landlord shall cooperate with Tenant in the obtaining thereof and shall execute any documents reasonably required in furtherance of such purpose, provided any such cooperation shall be without expense and/or liability to Landlord.

5. Removal. At any time during the Term of this Lease, Tenant may, at its option, remove any Alterations which are removable by Tenant upon termination of the Lease. In the event of a removal of any Alterations by Tenant, Tenant shall, at its sole cost, repair any damage to the Demised Premises caused by such removal.

6. Insurance. During the period of construction of any Alterations costing in excess of One Hundred Thousand Dollars ($100,000), Tenant or its general contractor shall procure and maintain in effect the insurance coverage set forth in Article VIII, Paragraph 6 of this Lease, to the extent such insurance is applicable to Tenant's Alterations.

7. Mechanic's Liens. Landlord shall pay promptly for all labor and materials supplied to Landlord in connection with any construction or alteration on the Land or Building and shall not cause or permit any liens for such labor or materials to attach to the Land or Building. Tenant shall pay promptly for all labor and materials supplied to Tenant in connection with any construction or alteration on the Land or Building and shall not cause or permit any liens for such labor or materials to attach to the Land or Building. In the event of any such lien, the party to the contract for the work or materials giving rise to such lien shall cause the same to be discharged, at its expense and within ten (10) days following its receipt of notice thereof, by filing of a release bond meeting the requirements of California Civil Code section 3143, by payment, by satisfaction or otherwise. Any monetary amounts paid to Landlord by Tenant in connection with any Alterations performed by Landlord or Landlord's contractor on behalf of Tenant shall not be construed as Rent.

8. Notices of Non-responsibility. Tenant shall give Landlord five (5) days written notice prior to the commencement of any Alterations in order to allow Landlord to post notices of non-responsibility with respect to such Alterations.

ARTICLE XI
CONDITION, REPAIR AND MAINTENANCE OF THE BUILDING

1. Condition of Building. Landlord represents and warrants that on the Date of Execution, to Landlord's knowledge, without any inspection or investigation having been undertaken by Landlord to confirm such matters, the structural elements of the Building (including the HVAC, electrical and mechanical systems) comply with applicable laws, ordinances, rules and regulations, including, but not limited to building and zoning laws, health and fire codes of the state, local and federal governments, agencies, and boards, and with requirements and regulations of Boards of Fire Underwriters having jurisdiction and of insurance carriers of all insurance on the Demised Premises (collectively called "Laws"). Landlord, at its sole cost and expense and without cost or charge to or contribution by Tenant, shall throughout the Term be responsible for and make all repairs, replacements and perform all maintenance which may be necessitated by defective design or construction of the Building, and all equipment and systems associated therewith and/or incorporated therein, or which may be necessitated by latent defects in any of the foregoing or by the negligence or willful misconduct of Landlord.

2. Landlord's Responsibilities. Landlord at its sole cost and expense shall make all repairs and replacements to all structural elements of or associated with the Building as needed to keep same in good order, condition and repair. Such structural elements include, but are not limited to, (i) all footings, foundations, floor slabs, columns, girders, mullions, beams, loadbearing and non-loadbearing exterior walls; (ii) all utility lines located outside of the Building; (iii) roof and roofing system of the Building, including, without limitation, support members, membrane assembly, roof deck, flashing, roof insulation assembly, curbs, walkways, hatches, skylights, sleeves, vents, brackets and drain fixtures; (iv) exterior lighting, landscaping, walkways, drives and curbs, and any other improvements on the Land

outside of the Building; (v) sewer lines up to and including the connection for the Building; and (vi) exterior facade of the Building. The foregoing notwithstanding, routine maintenance with respect to nonstructural elements concerning item (iv) shall be included as Operating Costs unless Tenant performs such routine maintenance itself pursuant to Paragraph 4 of this Article XI.

3. Capital Expenditures: Building Systems. Subject to reimbursement of Landlord as specified in Article V, Landlord shall make all capital expenditures throughout the Term which may be required to keep the Building in good repair and condition and in compliance with all Laws (except for compliance of the Interior Improvements and Alterations with Laws, which shall be Tenant's responsibility), and Landlord shall maintain and repair the mechanical, electrical, conveying, plumbing and all other systems within the Building (except for any portion of the HVAC System serving the Demised Premises which is installed by or at the expense of Tenant). In addition, Landlord shall perform any other repairs and maintenance not specifically allocated to Tenant hereunder.

4. Tenant's Responsibility. Tenant shall repair and maintain (i) the interior of the Demised Premises, (ii) the Interior Improvements and any Alterations, and (iii) all portions of the HVAC system serving the Demised Premises which are installed by or at the expense of Tenant, in good order, condition, and repair and in compliance with all Laws, ordinary wear and tear and damage by casualty excepted, throughout the Term. Tenant shall perform at its own expense all (i) landscaping, repairing, replacing, painting, lighting, cleaning, and similar items with respect to the Building and its associated grounds; (ii) normal maintenance of mechanical and electrical equipment in the Building, including heating, ventilating and air conditioning and elevator equipment; (iii) operating, repairing and maintaining life safety systems in the Building, including, without limitation, sprinkler systems; (iv) obtaining materials and supplies for repair or maintenance of items which are Tenant's responsibility; (vi) exterior window washing. Except as otherwise provided in Article IX, paragraph 2, and except to the extent the need for such maintenance or repair is caused by the Tenant's negligence or willful misconduct, Tenant shall be required to perform only nonstructural, noncapital items of repair and maintenance, and shall not be responsible for any Building systems (other than those portions of the HVAC System serving the Demised Premises installed by or at the expense of Tenant for which Tenant shall be solely responsible).

5. Assignment of Warranties. Landlord shall assign to Tenant any assignable warranties and guarantees which Landlord has obtained with respect to the portions of the Improvements as to which Tenant has maintenance and repair responsibilities. Landlord shall cooperate with and assist Tenant in the enforcement of any such warranties and guaranties as may be required during the Term, provided that such cooperation and assistance shall be given at no cost to Landlord therefor. Landlord shall do no act which would impair or nullify any such warranty or guaranty.

6. Performance of Work. All work to be performed by either party under this Article shall:

(a) be made as soon as reasonably possible but in any event within twenty-four (24) hours in any emergency (as defined below) and within twenty (20) days for all other repairs. If the work cannot be completed within twenty-four (24) hours or twenty (20) days, as the case may be, it shall be commenced within said period and prosecuted continuously and diligently thereafter until completion; and

(b) be done at the sole cost and expense of the party who has responsibility for same hereunder subject to Landlord's reimbursement rights with respect to Operating Costs, or any other rights of either Landlord or Tenant to reimbursement or set-off as provided in this Lease.

For purposes of this paragraph, the word "emergency" shall mean a situation which (1) threatens the physical well-being of persons within the Demised Premises or (2) materially disrupts the Tenant's use and/or occupancy of the Demised Premises, ingress or egress to the Demised Premises, or any portion thereof.

Notwithstanding anything contained herein to the contrary, if any repairs and/or replacements are necessitated as a result of the negligence of either party, its agents, employees, or contractors, said party shall be responsible for any such repairs and replacements, at its sole expense.

ARTICLE XII

DAMAGE AND DESTRUCTION

1. Damage or Destruction. In the event of damage or destruction to all or part of the Demised Premises or if Tenant's access to the Building ("Access") is obstructed or hindered, Tenant shall notify Landlord thereof as soon as possible after Tenant becomes aware thereof. It shall be Landlord's obligation, at Landlord's cost and expense to repair such damage and destruction to the Demised Premises, and to restore such Access to the condition that existed prior to such damage or destruction (collectively "Repair and Restoration"), except as expressly provided otherwise in this Article XII.

2. Estimate. Landlord shall within a period of twenty (20) calendar days from receipt of Tenant's notice described above deliver to Tenant a good faith estimate of the time and cost required to complete such Repair and Restoration ("Estimate"). If the damage results from a casualty for which Landlord is required to insure under Article XVI and the Estimate is for a period equal to or more than one hundred twenty (120) days, the damage is hereby deemed substantial ("Substantial"). If the damage results from a casualty for which Landlord is required to insure under Article XVI and the Estimate is for a period of less than one hundred twenty (120) days, the damage is hereby deemed partial ("Partial").

3. Partial Damage. If the damage is Partial, Landlord shall forthwith complete the Repair and Restoration. If Landlord does not complete the Repair and Restoration within one hundred thirty-five (135) days ("Partial Damage Restoration Date"), Tenant shall have the right to terminate this Lease on ten (10) days written notice to Landlord which notice

must be delivered by Tenant to Landlord within ten (10) days after the Partial Damage Restoration Date. If Landlord does not complete the Repair and Restoration within fifteen (15) days after the date stated in the Estimate, Tenant may complete the Repair and Restoration for Landlord's account. If Tenant completes the Repair and Restoration, Tenant shall be entitled to receive any insurance proceeds available for such purpose in excess of those required to reimburse Landlord for the Repair and Restoration undertaken by Landlord. If the amount expended by Tenant to complete the Repair and Restoration (subject to the limit provided above) exceeds the insurance proceeds available to Tenant, Tenant shall be entitled to recover the remainder of such amount by reimbursement from Landlord on demand or, if Landlord does not pay such reimbursement within thirty (30) days after demand by Tenant, by set-off against the Base Rent payments next due, subject to payment of Minimum Base Rent and Minimum Additional Rent.

4. Substantial Damage. If the damage is Substantial, Tenant may elect to terminate the Lease within ten (10) days after receipt of Landlord's Estimate. If Tenant does not elect to terminate the Lease, Landlord shall forthwith complete the Repair and Restoration. If Landlord does not complete the Repair and Restoration within sixty (60) days after the end of the period stated in the Estimate ("Substantial Damage Restoration Date"), Tenant shall have the right to either (a) terminate this Lease on ten (10) days written notice to Landlord which notice must be delivered by Tenant to Landlord within ten (10) days after the Substantial Damage Restoration Date; or (b) complete the Repair and Restoration for Landlord's account. If Tenant completes the Repair and Restoration, Tenant shall be entitled to receive any insurance proceeds available for such purpose in excess of those required to reimburse Landlord for the Repair and Restoration undertaken by Landlord. If the amount expended by Tenant to complete the Repair and Restoration (subject to the limit provided above) exceeds the insurance proceeds available to Tenant, Tenant shall be entitled to recover the remainder of such amount by reimbursement from Landlord on demand or, if Landlord does not pay such reimbursement within thirty (30) days after demand by Tenant, by set-off against the Rent payments next due, subject to payment of Minimum Base Rent and Minimum Additional Rent.

5. Uninsured Damage. If the estimated cost of the damage to the Demised Premises or Tenant's Access is Two Hundred Fifty Thousand Dollars ($250,000) or less and is caused by a casualty for which Landlord is not required to insure under Article XVI and has not otherwise elected to obtain insurance coverage, the damage is hereby deemed "Partial Uninsured" If the estimated cost of the damage is over Two Hundred Fifty Thousand Dollars ($250,000) and is caused by a casualty for which Landlord is not required to insure under Article XVI and has not otherwise elected to obtain insurance coverage, the damage is hereby deemed "Substantial Uninsured" Notwithstanding the other provisions of this Article XII, if any damage caused by a casualty for which Landlord is not required to insure under Article XVI and has not otherwise elected to obtain insurance coverage, and is due to the negligence or wilful misconduct of Tenant or its agents, officers, employees, subtenants, assignees, guests or invitees, the repair and restoration of such casualty shall be at Tenant's expense.

6. Partial Uninsured Damage. If the damage is Partial Uninsured, Landlord shall deliver Tenant an Estimate and forthwith complete the Repair and Restoration. If Landlord does not complete the Repair and Restoration within one hundred thirty-five (135) days ("Partial Uninsured Damage Restoration Date"), Tenant shall have the right to terminate this Lease on ten (10) days written notice to Landlord which notice must be delivered by Tenant to Landlord within ten (10) days after the Partial Uninsured Damage Restoration Date. If Landlord does not complete the Repair and Restoration within fifteen (15) days after the date stated in the Estimate, Tenant may complete the Repair and Restoration for Landlord's account. If Tenant completes the Repair and Restoration, Tenant shall be entitled to receive any insurance proceeds available for such purpose in excess of those required to reimburse Landlord for the Repair and Restoration undertaken by Landlord. If the amount expended by Tenant to complete the Repair and Restoration (subject to the limit provided above) exceeds the insurance proceeds available to Tenant, Tenant shall be entitled to recover the remainder of such amount by reimbursement from Landlord on demand or, if Landlord does not pay such reimbursement within thirty (30) days after demand by Tenant, by set-off against the Rent payments next due, subject to payment of Minimum Base Rent and Minimum Additional Rent.

7. Substantial Uninsured Damage. If the damage is Substantial Uninsured, Landlord may elect to terminate this Lease by delivering written notice of such termination within twenty (20) calendar days after the date of the damage. If Landlord elects to terminate the Lease, then Tenant's Purchase Option pursuant to Article XXIX, Paragraph 2 shall be accelerated on the following terms:

(a) Tenant must exercise the Purchase Option, if at all, by notice to Landlord within ninety (90) days after Landlord gives notice of termination;

(b) The Close of Escrow shall occur within one hundred eighty (180) days after Tenant elects to accelerate the Purchase Option but in no event before sixty (60) days after a final damage estimate has been determined pursuant to Paragraph (c), below;

(c) The Purchase Price shall be computed by substituting in Article XXIX, Paragraph 2(a)(i), the Base Rent for the entire Building (including Suite 100) for the Lease Year in which the termination occurs and by deducting the cost of repairing the damage as determined below. Landlord and Tenant shall attempt to agree on the cost of repairing the damage. If they are unable to agree within sixty (60) days after Tenant elects to accelerate the Purchase Option, each shall select a contractor or other estimator (the "Estimator") to determine the cost of repairing the damage. The Estimators shall be required to estimate such cost within thirty (30) days after their appointment. If the two cost estimates so determined do not differ by more than 10%, then the average of such two cost estimates shall be the cost of repair. If the two cost estimates differ by more than 10%, then the two Estimators shall select a third Estimator who shall estimate the cost of repair within thirty (30) days after his appointment. The two closest of the three appraised cost estimates shall then be averaged to determine the cost of repair. The fees of each of the first two Estimators shall be borne by the party who appointed each, the fees of any third Estimator shall be borne 50% by Landlord and 50% by Tenant; and

(d) Landlord shall assign to Tenant any insurance proceeds to which Landlord is entitled with respect to the casualty giving rise to the termination, and the Purchase Price shall be increased by the amount of such proceeds, if any.

If Landlord does not elect to terminate the Lease, Landlord shall deliver to Tenant an Estimate. If the Estimate is for a period of one hundred twenty (120) days or more, Tenant shall have the right to terminate the Lease within ten (10) days after the date of receipt of Landlord's Estimate. If Tenant does not elect to terminate the Lease, Landlord shall forthwith complete the Repair and Restoration. If Landlord does not complete the Repair and Restoration within sixty (60) days after the end of the period stated in the Estimate ("Substantial Uninsured Damage Restoration Date"), Tenant shall have the right to either (a) terminate this Lease on ten (10) days' written notice to Landlord which notice must be delivered by Tenant to Landlord within ten (10) days after the Substantial Uninsured Damage Restoration Date; or (b) complete the Repair and Restoration for Landlord's account. If Tenant completes the Repair and Restoration, Tenant shall be entitled to receive any insurance proceeds available for such purpose in excess of those required to reimburse Landlord for the Repair and Restoration undertaken by Landlord. If the amount expended by Tenant to complete the Repair and Restoration (subject to the limit provided above) exceeds the insurance proceeds available to Tenant, Tenant shall be entitled to recover the remainder of such amount by reimbursement from Landlord on demand or, if Landlord does not pay such reimbursement within thirty (30) days after demand by Tenant, by set-off against the Rent payments next due, subject to payment of Minimum Base Rent and Minimum Additional Rent.

8. Rent Abatement. From the date of such damage or destruction or obstruction or hindrance of Access, a proportionate part of Base Rent and Additional Rent according to the nature and extent of the Building rendered unusable by Tenant thereby shall be abated until the completion of the Repair and Restoration. In the event this Lease is terminated as hereunder provided, Tenant shall pay the Base Rent and Additional Rent apportioned to the date of such damage or destruction and thereafter Tenant shall be relieved of all further liability for the payment thereof.

9. Damage Near End of Term. Notwithstanding anything to the contrary in this Lease, if the Estimate is for a period extending beyond the remainder of the Term, either Landlord or Tenant may terminate this Lease upon thirty (30) days written notice to the other delivered within sixty (60) days after the date of Tenant's receipt of the Estimate, provided, however, except in the case of Uninsured Substantial Damage, Landlord may not exercise this right if Tenant has previously exercised or exercises within said sixty (60) day period its Purchase Option pursuant to Article XXIX, Paragraph 2, or an option to extend the Term contained in this Lease, provided, further, however that Tenant's rights contained in paragraphs 3, 4, 6, and 7 of this Article remain in effect.

10. Waiver. Tenant waives the provisions of California Civil Code sections 1932(2), 1933(4), 1941 and 1942 and any similar or successor statues relating to the termination of leases in the event of damage or destruction, Landlord's obligations for tenantability and Tenant's right to make repairs and deduct the expenses of such repairs from

rent, and agrees that the parties' rights and obligations in such event shall instead be governed by this Lease.

ARTICLE XIII

CONDEMNATION

1. Total Taking. In the event of a taking by condemnation or by the exercise of the power of eminent domain by a public or quasi-public authority or entity or conveyance in lieu thereof (all hereinafter referred to as "Taking") of the entire Demised Premises, this Lease shall terminate as of the earlier of (a) the date of the vesting of title in the Taking authority or entity or (b) the date of the taking of possession by such authority or entity so as to deprive Tenant of the use thereof without the necessity for any further act or notice by either party hereto (said earlier date being herein the "Taking Date").

2. Substantial Taking. In the event either of the following occurs: (i) a Taking occurs of a portion of the Demised Premises or the Building such that undue hardship or substantial interference is caused in the conduct of Tenant's business operations in the Demised Premises or (ii) a Taking occurs of a portion of the Demised Premises or Building such that Tenant's access to the Demised Premises is denied or interfered with substantially, Tenant shall have the right to terminate this Lease upon written notice to Landlord given within thirty (30) days of the Taking Date, which notice shall specify the effective date of such termination, but which date shall not be more than fifteen (15) days after the date of such notice. In the event that a Taking occurs of a substantial portion of the Building resulting in undue hardship or substantial interference in the conduct of business operations in the Building, Landlord shall have the right to terminate this Lease upon written notice to Tenant given within thirty (30) days of the Taking Date, which notice shall specify the effective date of such termination, but which date shall not be more than fifteen (15) days after the date of such notice. If Landlord elects to terminate the Lease, then Tenant's Purchase Option pursuant to Article XXIX, Paragraph 2 shall be accelerated on the following terms:

(a) Tenant must exercise the Purchase Option, if at all, by notice to Landlord within ninety (90) days after Landlord gives notice of termination;

(b) The Close of Escrow shall occur within one hundred eighty (180) days after Tenant elects to accelerate the Purchase Option;

(c) The Purchase Price shall be computed by substituting in Article XXIX, Paragraph 2(a)(i), the scheduled Base Rent for the entire Building (including Suite 100) for the Lease Year in which the termination occurs; and

(d) The Purchase Price shall be reduced as provided in Article XXIX, Paragraph 2(e)(iii)(B).

3. Continuance of Lease. In the event this Lease is not canceled and terminated as a result of a Taking: (i) Base Rent and Additional Rent payable hereunder shall abate from the Taking Date; such abatement in Base Rent and Additional Rent shall be in proportion to the amount of the Demised Premises subject to a Taking (and shall be permanent in the case of divestiture of title); (ii) Landlord shall commence the work of repairing and restoring the Building to a complete architectural unit and the work of restoring the remainder of the Demised Premises as nearly as possible to the condition existing immediately prior to the Taking and to restore Tenant's access to the Building and Demised Premises or provide alternative access thereto, all such work including the planning to be commenced promptly following the Taking Date, and shall complete such work within one hundred twenty (120) days after the Taking Date. If Landlord fails to complete the work of repair and restoration within one hundred thirty-five (135) days after the Taking Date ("Final Work Date"), Tenant shall have the right to either (a) terminate this Lease by written notice given to Landlord within ten (10) days after the Final Work Date effective on the date specified in the notice, which date shall not be more than ten (10) days from the date of the notice; or (b) complete the repair and restoration for Landlord's account. If Tenant completes the repair and restoration, Tenant shall be entitled to receive any condemnation award available for such purpose in excess of those required to reimburse Landlord for the repair and restoration undertaken by Landlord. If the amount expended by Tenant to complete the repair and restoration (subject to the limit provided above) exceeds the condemnation award available to Tenant, Tenant shall be entitled to recover the remainder of such amount by reimbursement from Landlord on demand or, if Landlord does not pay such reimbursement within thirty (30) days after demand by Tenant, by set-off against the Rent payments next due, subject to payment of Minimum Base Rent and Minimum Additional Rent. Landlord shall use its best efforts to obtain and retain the maximum amount of condemnation award available for reconstruction of the Premises in accordance with this paragraph 3.

4. Refund of Rent; Allocation of Award. In event of a Taking: (i) Tenant shall, within ten (10) days after the effective date of the termination of this Lease or after the effective date of abatement of Base Rent and Additional Rent, as the case may be, receive a refund from Landlord of the appropriate Base Rent and Additional Rent amount paid by Tenant for any period subsequent to the effective date of termination or abatement, (ii) Landlord shall be entitled to receive the entire condemnation award; provided, however, that Tenant may pursue a separate claim against the condemning authority for Tenant's moving expenses, the value of Tenant's leasehold estate, the value of Tenant's trade fixtures and equipment and any interruption or damage to Tenant's business, and (iii) Landlord shall pay to Tenant promptly after receipt thirty percent (30%) of any amount by which (a) any condemnation award received by Landlord exceeds (b) the cost of repairing and restoring the Demised Premises as required pursuant to paragraph 3 of this Article XIII plus the Purchase Price that would apply pursuant to Article XXIX, Paragraph 2(a) if computed using the scheduled Base Rent for the Lease Year immediately following the Lease Year in which the Taking occurs.

5. Cancellation and Termination Rights. Landlord and Tenant may exercise any rights of cancellation and termination herein granted even though their respective right, title, or interest may have been taken or divested.

ARTICLE XIV

SUBORDINATION, RECOGNITION, NON-DISTURBANCE AND ATTORNMENT

1. Subordination. This Lease (including Tenant's Purchase Option pursuant to Article XXIX, Paragraph 2) shall be subject and subordinate to the lien of any mortgage or deed of trust ("Mortgage") of all or a portion of the fee interest of the Demised Premises to (i) any institute or entity which in the ordinary course of its business extends financing secured by real estate, including without limitation, lending, thrift or banking institutions, pension funds or insurance companies, or (ii) individuals who have at least five (5) years experience in the management or development of real property and have a net worth of at least Five Million Dollars ($5,000,000) ("Mortgagee"), to provide construction and/or permanent financing and any renewals, modifications or extensions thereof, provided that the total liens on the Property pursuant to all Mortgages shall not exceed eighty percent (80%) of the Purchase Price which would apply pursuant to Article XXIX, Paragraph 2(a), if computed using the Base Rent in effect at the time any such additional Mortgage is granted, and that a Subordination, Recognition and Non-Disturbance Agreement substantially in the form of Exhibit F attached hereto and with such additional provisions as are reasonably required by the Mortgagee and reasonably acceptable to Tenant, is executed, acknowledged and delivered by such Mortgagee to Tenant.

Tenant shall execute and send to Landlord any such Agreement within fifteen (15) days of receipt of same if such Agreement contains substantially the provisions set forth in Exhibit F and such additional provisions as are reasonably required by the Mortgagee and reasonably acceptable to Tenant, or within fifteen (15) days after agreement of the parties to said Agreement of the contents of same.

2. Priority of Mortgage. If the holder of any Mortgage of the Land and/or Building requires that this Lease have priority over such Mortgage, Tenant shall, upon request of such holder, execute, acknowledge and deliver to such holder an agreement acknowledging such priority.

3. Existing Mortgage. In the event of the existence of any Mortgage at the time this Lease is executed and to which this Lease would be subordinate, Landlord shall obtain the type of agreement mentioned in this Article in favor of Tenant. If such agreements with respect to existing Mortgages are not obtained within fifteen (15) days after the Execution Date, Tenant may terminate this Lease by written notice to Landlord at any time within forty-five (45) days after the Date of Execution.

ARTICLE XV

LANDLORD'S WARRANTIES AND FINANCIAL INFORMATION

1. Warranties. To induce Tenant to execute this Lease, and in consideration thereof, Landlord warrants and represents and covenants and agrees as follows:

(a) Landlord is the fee owner of the Land and the Building.

(b) On the Date of Execution of this Lease, there are no liens, restrictions or encumbrances placed upon the Building or Land other than those shown on Exhibit F ("Permitted Encumbrances"). Landlord further represents to its best knowledge that none of the liens, restrictions or encumbrances listed on Exhibit F does or shall materially adversely affect Tenant's use and occupancy of the Demised Premises. Landlord agrees that it shall not consent or agree to the creation of, and shall not itself create, any liens and encumbrances on the Building or Land except for the Permitted Encumbrances and the Mortgages permitted pursuant to Article XIV, Paragraph 1 and except for those to which Tenant consents in advance or which do not materially adversely affect Tenant's use and occupancy of the Demised Premises or the value of the Building or the Land.

(c) To Landlord's best knowledge, the Land and Building are in compliance with zoning, setback and other land-use laws, ordinances, rules and regulations, and there are no restrictions or other legal impediments either imposed by law (including applicable zoning and building ordinances) or by any instrument, which would prevent Tenant from using the Building for the uses and in the manner contemplated in Article VII of this Lease.

(d) This Lease and the Building shall not be in violation of the provisions of any instrument executed by Landlord or any instrument which places any restrictions and burdens on the Land and/or Building.

(e) Landlord holds all easements required to provide for access or utilities to the Building as such access and utilities are currently used.

(f) On the Date of Execution of this Lease, (a) Landlord is not in default under any lease of the Land or Building, or any other agreement affecting the Land or the Building or any Mortgage which encumbers the Land or the Building, (b) this Lease and the Permitted Uses hereunder do not and will not constitute a violation of any such agreement, lease or Mortgage, and (c) all consents or approvals required by the terms of any such lease or Mortgage for this Lease have been duly obtained by Landlord.

If Landlord breaches any of the representations or warranties listed above or in the event any such representation or warranty proves to be false in any material respect, Tenant shall have the right, at its option, in addition to any other right hereunder or at law or equity, to terminate this Lease without liability therefor if Landlord does not cure such breach or falsity to Tenant's reasonable satisfaction within the period prescribed in Article

XXI, Section 1 and if such breach has a material adverse effect on Tenant's use and occupancy of the Building or to cure such breach as provided in Article XXI.

2. Financial Information. Each Landlord (including, for purposes of this Paragraph 2, the successors and assigns of each Landlord) will provide to Tenant within sixty (60) days after the close of each calendar year during the Term of this Lease (including any extensions) a balance sheet for such Landlord prepared by a certified public accountant, which fairly and accurately represents such Landlord's assets and liabilities as of the end of such calendar year. Each Landlord shall also give written notice to Tenant if at any time there is a material adverse change in such Landlord's financial position from that reported in the most recent annual balance sheet provided to Tenant, and such Landlord shall include in such notice a description of the change. If, upon review of such balance sheet or such notice of change, Tenant reasonably concludes that the financial status of any Landlord other than Hare, Brewer & Kelley, Inc. ("HBK") has been materially impaired in a manner which would adversely affect the ability of Tenant to enforce its Purchase Option pursuant to Article XXIX, Paragraph 2 of this Lease, then Tenant's Purchase Option pursuant to Article XXIX, Paragraph 2 shall be accelerated on the following terms:

(a) Tenant must exercise the Purchase Option, if at all, by notice to Landlord within sixty (60) days after receiving Landlord's balance sheet or notice of change;

(b) Tenant's notice of exercise of the Purchase Option shall contain a statement of the basis for Tenant's conclusion that Landlord's financial status has been materially impaired in a manner which would adversely affect the ability of Tenant to enforce its Purchase Option;

(c) The Close of Escrow shall occur within one hundred eighty (180) days after Tenant elects to accelerate the Purchase Option;

(d) The Purchase Price shall be computed by substituting in Article XXIX, Paragraph 2(a)(i), the scheduled Base Rent for the entire Building (including Suite 100) for the Lease Year in which Tenant elects to accelerate the Purchase Option.

ARTICLE XVI

INSURANCE: WAIVER OF SUBROGATION

1. Landlord's Insurance. Landlord shall obtain and maintain throughout the Term the following insurance coverage, the cost of which shall be an Operating Cost:

(a) Fire and extended coverage insurance, including all risk of physical loss and damage, upon the Building and the Common Area on a full replacement basis as reasonably determined by Landlord and consented to by Tenant, such consent not to be unreasonably withheld;

(b) Comprehensive liability coverage with respect to the Building and the Common Area throughout the Term with combined single limit coverage of Three Million Dollars ($3,000,000), and said policy shall contain a contractual liability endorsement insuring Landlord's indemnity under this Lease.

Landlord shall, on the Term Commencement Date (and thereafter within thirty (30) days after Tenant's request), deliver certificates of such policies to Tenant evidencing the coverage required hereunder, which shall provide that the insurance indicated therein shall not be materially changed, canceled or non-renewed without at least thirty (30) days prior written notice to Tenant.

2. Tenant's Insurance. The Tenant shall maintain comprehensive general liability insurance, including contractual liability endorsement, with respect to the Demised Premises throughout the Term with combined single limit coverage of Three Million Dollars ($3,000,000). The Tenant shall deliver to the Landlord within thirty (30) days of Landlord's request a certificate evidencing the aforesaid coverage issued by insurance companies authorized to do business in the state wherein the Demised Premises are located and providing that the insurance indicated therein shall not be materially changed, canceled or non-renewed without at least thirty (30) days prior written notice to Landlord.

3. General Requirements. Each party shall give prompt notice to the other party of all losses, damages, or injuries to any person or to property of Tenant, Landlord or third persons which may be in any way related to the Lease and for which a claim might be made against the other party. Each party shall promptly report to the other party all such claims of which the first party has notice, whether related to matters insured or uninsured. No settlement or payment for any claim for loss, injury or damage or other matter as to which either party may be charged with an obligation to make any payment or reimbursement, shall be made by either party without the written approval of the other party. Both parties shall assist and cooperate with any insurance company in the adjustment or litigation of all claims arising under the terms of this Lease. In the event of any damage or destruction caused by a casualty for which Landlord is required to maintain insurance under this Article XVI, Landlord shall use its best efforts to obtain and retain the maximum amount of insurance proceeds available for application to the cost of Repair and Restoration.

4. Waiver of Claims, Subrogation. Landlord and Tenant hereby waive all causes and rights of recovery against each other, their agents, officers and employees for any loss occurring to the real or personal property of Landlord or Tenant, regardless of cause or origin, to the extent of any recovery from any policy(s) of insurance. Landlord and Tenant agree that any policies presently existing or obtained on or after the date hereof (including renewals of present policies) shall include a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the insured to recover thereunder.

5. Excess Insurance Proceeds. Landlord shall pay to Tenant promptly after completing repair and restoration of any insured casualty thirty percent (30%) of any amount by which any proceeds received by Landlord with respect to the Land and/or Building from

casualty insurance required to be carried by Landlord pursuant to paragraph 1 of this Article XVI exceed the cost of repair and restoration of such casualty.

ARTICLE XVII

INDEMNIFICATION

1. Indemnity by Tenant. Tenant shall defend, indemnify and hold Landlord harmless from and against any and all suits, claims, and demands arising out of injury or damage occurring at the Demised Premises because of the negligence or willful acts of Tenant, its agents, servants, employees, or invitees, because of Tenant's breach of any obligation under this Lease, or because of any other occurrence for which Tenant is required to maintain insurance coverage under this Lease.

If Landlord is notified of a claim, action or proceeding, or becomes aware of an occurrence, which may result in indemnification by Tenant of Landlord as provided above, Landlord shall give prompt written notice thereof to Tenant. Landlord shall immediately forward to Tenant every demand, notice, summons or other process received by Landlord or its representatives.

Tenant has the exclusive right and obligation to defend any claim, action, or proceeding wherein Landlord is entitled to indemnification under the provisions of this Article, but Tenant may settle any such claim, action, or proceeding only with Landlord's prior written consent or approval, which shall not be unreasonably withheld. Landlord will fully cooperate with Tenant in the defense or settlement of any claim, action or proceeding.

2. Indemnity by Landlord. Landlord shall defend, indemnify and hold Tenant harmless from and against any and all suits, claims, and demands arising out of injury or damage occurring at the Demised Premises or the Building because of the negligence or willful acts of Landlord, its agents, servants, employees, or invitees or because of Landlord's breach of any obligation under this Lease. Landlord shall defend, indemnify and hold Tenant harmless from and against any and all suits, claims and demands by any other tenant of the Building arising out of the performance of Tenant's obligations pursuant to this Lease to provide utilities, janitorial and maintenance services to the Building and its associated grounds.

In the event Tenant is notified of a claim, action or proceeding, or becomes aware of an occurrence, which may result in indemnification by Landlord of Tenant as provided above, Tenant shall give prompt written notice thereof to Landlord. Tenant shall immediately forward to Landlord every demand, notice, summons or other process received by Tenant or its representatives.

Landlord has the exclusive right and obligation to defend any claim, action, or proceeding wherein Tenant is entitled to indemnification under the provisions of this Article, but Landlord may settle any such claim, action or proceeding only with Tenant's prior

written consent or approval, which shall not be unreasonably withheld. Tenant will fully cooperate with Landlord in the defense or settlement of any claim, action, or proceeding.

3. Consequential Damages. Each party hereby waives any and all claims it may have against the other party for consequential damages arising out of the act or omission or breach or alleged breach of this Lease by such other party.

ARTICLE XVIII

ASSIGNMENT AND SUBLETTING

1. Assignment and Subletting. Landlord hereby grants to Tenant the right to sublet all or any portion of the Demised Premises throughout the Term, including extensions thereof, and without first obtaining Landlord's consent, provided that (a) the use made of the Demised Premises by any subleases is permitted under Article VII of this Lease, and (b) Tenant remains primarily liable for and retains management and control over the performance of any and all maintenance, repair or restoration which Tenant is required or permitted to perform pursuant to the terms of this Lease. Landlord hereby grants to Tenant the right to assign this Lease throughout the Term, including extensions thereof, provided Tenant first obtains Landlord's consent to such assignment in writing. Landlord's consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, it shall be reasonable for Landlord to deny consent to a proposed assignment (a) if the use to be made of the Demised Premises by the proposed assignee would be prohibited by this Lease, or (b) if the financial condition of the proposed assignee is not reasonably satisfactory to Landlord. Landlord's consent or refusal of consent shall be in writing and, if Landlord refuses consent, the reasons for such refusal are to be stated with particularity. Landlord's consent to an assignment shall be accompanied by a statement addressed to Tenant and the assignee, upon which statement Tenant and the assignee may conclusively rely, stating that Tenant is not in default under the Lease (or setting forth in what respects Tenant is in default), that this Lease has not been amended or modified (or setting forth such amendments or modifications), the expiration date of this Lease, and the date to which Rent has been paid to Landlord hereunder. Any permitted assignment shall not be effective unless and until the assignee delivers to Landlord an express assumption by the assignee of all of Tenant's liabilities and obligations pursuant to this Lease. Tenant shall be relieved of liability for its obligations pursuant to this Lease only if (a) the permitted assignee is a corporation with a net worth (as reflected in its audited financial statements issued as of a date no more than ninety (90) days prior to the effective date of the assignment) of at least Twenty Million Dollars ($20,000,000) and (b) the holder of the mortgage having first priority on the Land and Building consents to such release, such consent not to be unreasonably withheld. In the case of any other assignment or subletting, regardless of whether Landlord consents to such assignment or subletting, Tenant shall remain fully liable for all of its obligations pursuant to this Lease.

2. Deemed Consent. If Landlord does not respond to the written request for consent to assignment within fifteen (15) days after the date of such request from Tenant, Landlord's consent is hereby deemed given.

3. Permitted Transfers. Notwithstanding anything to the contrary herein contained Tenant may assign or sublet all or any portion(s) of the Demised Premises at any time to a subsidiary of Tenant, to the entity with which or into which Tenant may merge, whether or not Tenant is the survivor of such merger, or to any affiliate of Tenant without the need for Landlord's consent to such assignment or subletting. For purposes of this Lease, the term "affiliate" means any corporation which directly or indirectly controls, is controlled by, or is under common control with Tenant. In the event of any such assignment or subletting, Tenant shall remain fully liable for all of its obligations pursuant to this Lease.

ARTICLE XIX

TENANT'S PROPERTY

1. Tenant's Property. Tenant's trade fixtures and personal property described on Exhibit G attached hereto (collectively, "Tenant's Property") however installed or located on the Demised Premises shall be and remain the property of Tenant and may be removed at any time and from time to time during the Term, except that Tenant may not remove any portions of Tenant's Property which are incorporated in the HVAC system or electrical, plumbing or mechanical systems of the Building and installed by or at the expense of the Tenant prior to the completion of the Interior Improvements. Tenant shall be entitled to all depreciation and other tax benefits incidental to the ownership of Tenant's Property. Tenant shall repair any damage caused by such removal or installation.

2. Removal. Upon the expiration or termination of this Lease, Tenant will remove Tenant's Property from the Demised Premises. If within ten (10) days after such expiration or termination, Tenant shall not have removed same, it shall be deemed abandoned, whereupon Landlord shall remove and store the same in accordance with applicable law, including Tenant's right to redeem the same. Tenant shall pay to Landlord upon demand the reasonable costs and expenses incurred by Landlord in removing and storing Tenant's Property and shall pay the reasonable cost of repairing any damage caused to the Demised Premises by the removal of same.

3. Waiver of Lien. In no event (including a default under this Lease) shall Landlord have any lien or other security interest in any of Tenant's Property located in the Demised Premises or elsewhere and Landlord hereby expressly waives and releases any such lien or other security interest however created or arising.

ARTICLE XX

TENANT'S DEFAULT

1. Events of Default. Tenant shall be deemed in default of this Lease if any of the following occur:

(a) If Tenant shall default in the payment of Rent and shall fail to cure said default within ten (10) days after receipt of written notice of said default from the Landlord; or

(b) if Tenant shall default in the performance or observance of any other agreement or condition of this Lease to be performed or observed by Tenant, and if Tenant shall fail to cure said default within ninety (90) days after receipt of written notice of said default from Landlord (or if said default cannot reasonably be cured within ninety (90) days, if Tenant fails to commence to cure said default within ninety (90) days after receipt of written notice thereof and thereafter diligently prosecute the cure to completion); or

(c) if Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any arrangement, composition, liquidation or dissolution under any present or future Federal, State, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or of the Demised Premises, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(d) if a court shall enter an order, judgment or decree approving a petition filed against the Tenant seeking any arrangement, composition, liquidation, dissolution or similar relief under the present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated or unstayed for sixty (60) days.

2. Landlord's Remedies. In the event of any such default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity, the right to do the following:

(a) Termination. In the event of any default by Tenant, then after complying with Code of Civil Procedure section 1161, Landlord may immediately terminate this Lease and Tenant's right to possession of the Demised Premises by giving Tenant written notice that this Lease is terminated, in which event this Lease shall terminate and Landlord may recover from Tenant:

(i) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(iv) any reasonable expenses incurred by Landlord in connection with obtaining possession of the Demised Premises, with removing from the Demised Premises property of Tenant and persons claiming under it (including warehouse charges), with putting the Demised Premises into the condition required under Article XXVI of the Lease, and with any reletting, including but without limitation, reasonable attorney's fees and broker's fees, but excluding the cost of any additional interior improvements or tenant rent concessions. All monies collected from any reletting shall be applied first to the foregoing expenses and then to the payment of Rent and all other payments due from Tenant to the Landlord under this Lease. In no event shall Tenant be liable for consequential damages to Landlord and Landlord shall have no right to recover damages under Civil Code section 1951.2(a)(4). Landlord shall use its best efforts to relet the Demised Premises by actively offering the same for rent in order to mitigate damages which may be incurred because of Tenant's default; or

(b) Continue Lease. Have this Lease continue in effect for so long as Landlord does not terminate this Lease and Tenant's right to possession of the Demised Premises, in which event Landlord shall have the right to enforce all of Landlord's rights and remedies under this Lease, including the right to recover all rentals payable by Tenant under this Lease as they become due.

As used in subparagraphs 2(a)(i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the maximum rate permitted by law per annum. As used in subparagraph 2(a)(iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(c) Right to Cure. If Tenant shall at any time fail, after written notice and the expiration of any applicable grace period, to perform any obligation required of Tenant hereunder, then Landlord may, at its option, and upon giving written notice to Tenant, perform such obligation to the extent Landlord deems reasonably necessary, and may pay any and all reasonable expenses incidental thereto. No such action by Landlord shall be deemed a waiver by Landlord of any of Landlord's rights or remedies, or a release of Tenant from performance of such obligation. All sums so paid by Landlord shall be due and payable by Tenant to Landlord within Twenty (20) days after the date of Landlord's invoice therefor. Landlord shall have the same rights and remedies for the nonpayment of any such sums as for default by Tenant in the payment of Rent.

(d) Remedies Not Exclusive. No remedy or election hereunder shall be deemed exclusive but shall wherever possible be cumulative with all other remedies available; provided, however, nothing contained herein shall permit Landlord to recover consequential damages as a result of Tenant's default hereunder.

(e) Termination, Surrender and Abandonment. No acts or conduct of Landlord, including, without limitation, efforts to relet the Demised Premises, an action in unlawful detainer or service of notice upon Tenant or surrender of possession by Tenant pursuant to such notice or action, shall extinguish the liability of Tenant to pay rent or other sums due hereunder or terminate this Lease, unless Landlord notifies Tenant in writing of Landlord's election to terminate this Lease. No act or conduct of Landlord, including the acceptance of the keys to the Demised Premises, other than a written acknowledgment of acceptance of surrender signed by Landlord, shall be deemed to be or constitute an acceptance of the surrender of the Demised Premises by Tenant prior to the expiration of the Lease term. The surrender of this Lease by Tenant, voluntarily or otherwise, shall, at Landlord's option, operate as an assignment to Landlord of any and all existing assignments and subleases, or, except for any assignments which are permitted or which Landlord has given consent in accordance with Article XVIII, Landlord may elect to terminate any or all of such assignments and subleases by notifying the assignees and sublessees of its election within fifteen (15) days after such surrender.

ARTICLE XXI

LANDLORD'S DEFAULT

1. Landlord's Default. If Landlord shall default in the performance or observance of any agreement, obligation, or condition in this Lease requiring the payment of money and shall not cure such default within ten (10) days after receipt of written notice thereof from Tenant or if Landlord shall default in the performance or observance of any agreement, obligation or condition in this Lease other than one requiring the payment of money and shall not cure such default within thirty (30) days after receipt of written notice thereof from Tenant (or if such cure cannot reasonably be effected within thirty (30) days, shall not within said period commence to cure and thereafter prosecute the curing of such default to completion with due diligence), Tenant may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such default for the account of Landlord. In effecting such cure, Tenant may, without limitation, hire repairmen, pay bills, and generally perform any other act which Landlord is required to perform hereunder. All costs incurred by Tenant in curing such default shall be paid to the applicable party by Landlord. If, however, Tenant pays any costs or expenses on account of such cure, Landlord shall immediately reimburse Tenant on demand for such payments. If Landlord has not made such reimbursement to Tenant by the date Base Rent or Additional Rent is next due, Tenant may deduct such amounts from Base Rent or Additional Rent until Tenant has been fully reimbursed, provided that Tenant shall continue to pay in any event the Minimum Base Rent required under Article IV, Paragraph 4 and the Minimum Additional Rent required under Article V, Paragraph 12.

EXHIBIT E

RECOGNITION AND ATTORNMENT AGREEMENT

THIS RECOGNITION AND ATTORNMENT AGREEMENT (this "Agreement") is made as of
1996, by and between Richard R. Kelley, Jr., Charles E. Hangar and
- -----------
Faye E. Hangar, and Harry L. Fox (as successor-in-interest to Hare, Brewer and Kelly, Inc.) ("Landlord"), TIBCO, Inc., a Delaware Corporation ("Sublessor") and Artemis Research, a California corporation ("Sublessee").

A. Digital Equipment Corporation ("DEC") is the tenant under a certain Amended and Restated Lease ("Original Lease") from Landlord executed November 26, 1990, which Original Lease, was amended by First Amendment to Amended and Restated Lease ("First Amendment") (such Original Lease, as amended by the First Amendment is referred to hereafter as the "Prime Lease") and DEC is the sublandlord and Sublessor is the subtenant under a certain Sublease dated February 17, 1995 (the "Prime Sublease"). The premises leased under the Prime Lease and subleased under the Prime Sublease are the land, with the building and improvements thereon, at 335 Bryant Street, Palo Alto, California, 94301 (as more particularly described in the Prime Lease, the "Premises").

B. Sublessor has entered into or is entering into a sublease of the Premesis (the "Sublease") with Sublessee.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord, Sublessor and Sublessee hereby agree as follows:

1. The Sublease is subject and subordinate to the Prime Lease.

2. Landlord agrees to give Sublessee written notice of the occurrence of any default by DEC under the Prime Lease and to accept as a cure of such default, any cure by Sublessee of such default within the applicable cure period provided for in the Prime Lease, which cure period, for purposes hereof, shall commence on the date of delivery to Sublessee of the notice of default.

3. If the Prime Lease is surrendered to Landlord or if the Prime Lease is terminated as a result of a default by DEC that by its nature is personal to DEC and not curable by Sublessee, then Landlord agrees that so long as Sublessee is not in default under the Sublease, which default has not been cured or is not in the process of being cured within any applicable grace period provided under the Sublease, the following shall apply:

(i) Sublessee shall not be evicted, not shall Sublessee be joined in any eviction or unlawful detainer action or proceeding instituted or taken by Landlord; and

(ii) Landlord shall succeed to the interest of Sublessor in the Sublease and Sublessee shall be bound to Landlord under all of the terms, covenants and conditions of the Sublease, for the remaining term thereof, with the same force and effect as if Landlord were the Sublessor under the Sublease, and Sublessee does hereby agree to attorn to Landlord, such attornment to be effective and self operative without the execution of any further instruments on the part of any of the parties to this Agreement, immediately upon Landlord succeeding to the interest of Sublessor under the Sublease.

4. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors, and assigns of the parties hereto.

5. In the event that any party fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, whichever the case may be, shall pay any and all costs and expenses incurred by the other parties in enforcing or establishing their rights hereunder, including court costs and reasonable attorneys' fees.

6. This Agreement shall not be modified or amended except by a written instrument executed by all of the parties hereto.

7. This agreement shall not be nor be deemed to be a consent or waiver or amendment of the Prime Lease with respect to any other or future transaction, whether similar or dissimilar, and any other or future transaction shall require Landlord's written consent, which consent, except as otherwise expressly provided in the Prime Lease, may be given or withheld in Landlord's sole discretion.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

LANDLORD

Richard R. Kelly, Jr.

Charles E. Hangar

Faye E. Hangar

Harry L. Fox

TIBCO INC.

By

Print Name

Its

TENANT

ARTEMIS RESEARCH

By

Print Name

Its

If Tenant has cured a default of Landlord and is entitled to a set-off against Rent (whether pursuant to this Article XXI, Paragraph 1 or any other provision of this Lease), and the amount to be recovered by set-off exceeds One Hundred Thousand Dollars ($100,000), Tenant may require Landlord to execute, acknowledge and deliver to Tenant an interest-free promissory note in the total principal amount of the reimbursement due Tenant, payable in installments corresponding to the portions of Rent payments which Tenant is entitled to setoff but subject to acceleration and full reimbursement upon the Close of Escrow for Tenant's purchase of the Land of Building pursuant to its Purchase Option if exercised, as well as a deed of trust on the Land and Building securing such note.

If Tenant has cured a default of Landlord and is entitled to a set-off against Rent (whether pursuant to this Article XXI, Paragraph 1 or any other provision of this Lease), and the amount to be recovered by set-off is such that Tenant would not recover the full amount within the remaining Original Term of this Lease, then Tenant may accelerate its Purchase Option pursuant to Article XXIX, Paragraph 2 on the following terms:

(a) Tenant must exercise the Purchase Option, if at all, by notice to Landlord within sixty (60) days after set-off Rent commences;

(b) The Close of Escrow shall occur within one hundred eighty (180) days after Tenant elects to accelerate the Purchase Option;

(c) The Purchase Price shall be computed by substituting in Article XXIX, Paragraph 2(a)(i), the schedule Base Rent for the entire Building (including Suite 100) for the Lease year in which Tenant elects to accelerate the Purchase Option.

2. Emergency. In the event of an emergency which threatens imminent injury to persons or material damage to property, Tenant may use any means including, without limitation, telephone to notify Landlord of such emergency. Tenant shall have no other obligation to act with respect to such emergency, but Tenant shall have the right to commence cure pursuant to Paragraph 1 of this Article XXI immediately, without waiting for Landlord to commence cure.

3. Acquisition of HBK Interest. If HBK's interest in Land and Building has not been acquired on or before December 1, 1991 on the terms set forth in an Agreement for Acquisition of Co-Tenant's Interest in Real Property entered into between Landlord and Tenant (the "Acquisition Agreement") by a party to the Acquisition Agreement or another buyer authorized pursuant to the Acquisition Agreement, then Tenant shall have the option to terminate this Lease or accelerate its Purchase Option pursuant to Article XXIX, Paragraph 2 upon thirty (30) days written notice to Landlord, provided that such notice is given no later then January 1, 1992. If Tenant elects to accelerate its Purchase Option, the Purchase Option should be exercised on the following terms:

(a) The Close of Escrow shall occur within one hundred eighty (180) days after Tenant elects to accelerate the Purchase Option;

(b) The Purchase Price shall be computed by substituting in Article XXIX, Paragraph 2(a)(i), the schedule Base Rent for the entire Building (including Suite 100) for the Lease Year in which Tenant elects to accelerate the Purchase Option.

ARTICLE XXII

NOTICES

1. In Writing. All notices, demands, requests and other instruments which may or are required to be given by either party to the other under this Lease shall be given in writing.

2. Notice to Tenant. All notices, demands, requests and other instruments from Landlord to Tenant shall be deemed to have been given upon receipt if sent by United States Registered or Certified Mail, postage prepaid, return receipt requested, or by overnight courier service, addressed to the Tenant at Tenant's Address with a copy to Tenant's counsel at 111 Powder Mill Road, Maynard, Massachusetts, 01754, Attention: General Counsel.

3. Notice to Landlord. All notices, demands, requests and other instruments from Tenant to Landlord shall be deemed to have been properly given upon receipt if sent by United States Registered or Certified Mail, postage prepaid, return receipt requested, or by overnight courier service, addressed as follows:

Richard R, Kelley, Jr.
314 Raymundo Way
Woodside, California 94025

with a copy to:

Premier Properties
532 Florence Street
Palo Alto, California 94301

ARTICLE XXIII

QUIET ENJOYMENT

Landlord covenants and agrees with Tenant that upon Tenant paying the Rent and observing the terms, covenants and conditions on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises demised hereby.

ARTICLE XXIV

HOLDING OVER

If Tenant or anyone claiming under Tenant shall remain in possession of the Demised Premises or any part thereof after expiration of the Term of this Lease without any agreement in writing between Landlord and Tenant with respect thereto, such possession shall be deemed a month to month tenancy under all the terms, covenants and conditions of this Lease except that such tenancy may be terminated upon thirty (30) days written notice from one party to the other. It is hereby agreed by and between Landlord and Tenant that if Tenant or anyone claiming under Tenant leaves any property in the Demised Premises at the expiration of the Term or any renewal or extension thereof, such shall not constitute a holding over by Tenant.

ARTICLE XXV

MEMORANDUM OF LEASE AND OPTION

At the time of the execution of this Lease, Landlord and Tenant shall execute an instrument in the form of Exhibit H attached hereto. Tenant may record the same.

ARTICLE XXVI

SURRENDER OF DEMISED PREMISES

Tenant shall, at the expiration of the Term of this Lease, peaceably yield up to Landlord the demised Premises in good repair in all respects, damage by fire or other casualty (unless Tenant is responsible for such damage pursuant to the terms of this Lease), reasonable wear and tear, or other conditions for which Tenant is not responsible under this Lease excepted.

ARTICLE XXVII

ESTOPPEL CERTIFICATES

Upon the request of either party, at any time and from time to time, Landlord and Tenant agree to execute and deliver to the other within fifteen (15) business days after receipt of such request, a written instrument, duly executed and (i) certifying that this Lease has not been modified and is in full force and effect or, if there has been a modification of this Lease, that this Lease is in full force and effect or, if there has been a modification of this Lease, that this lease is in full force and effect as modified, stating such modifications; (ii) specifying the date to which the Rent has been paid; (iii) stating whether or not to the best knowledge, information and belief of the party executing such instrument, the other party hereto is in default and, if such party is in default, stating the nature of such default;

(iv) stating the Term Commencement Date; and (v) stating which options to extend the Term have been exercised, if any.

ARTICLE XXVIII

HAZARDOUS SUBSTANCES

1. Definitions.

(a) "Demised Premises" includes, for purposes of this Article only, the Building, other improvements and the Land on which they are located.

(b) "Environmental Laws" shall mean all federal, state and local statutes, laws, ordinances, rules and regulations and judicial and administrative orders, rulings and decisions relating to pollution or protection of human health or the environment, including, without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

(c) "Hazardous Substances" means any chemical, substance, waste, material, gas or emission which is deemed hazardous, toxic, a pollutant or contaminant, under any federal, state or local statute, law, ordinance, rule, regulation, or judicial or administrative order or decisions, now or hereafter in effect, or which have been shown to have significant adverse effects on human health or the environment. "Hazardous Substances" include, but are not limited to, petroleum and petroleum products, asbestos, polychlorinated biphenyls (PCBs) and radon gas.

(d) "Hazardous Substance on the Demised Premises" means any Hazardous Substance present in or on the Demised premises including, without limitation, in or on the surface or beneath the Demised Premises, the surface water or groundwater, and in or on any improvement or part thereof at or beneath the surface of the Demised Premises.

(e) "Underground Storage Tank" means any one or combination of tanks (including underground pipes connected thereto), the total volume of which (including the volume of the underground pipes connected thereto) is ten percent (10% or more beneath the surface of the ground.

2. Representations and Warranties. To induce Tenant to execute this Lease, and represents that, to Landlord's knowledge on the Date of Execution, without any inspection or investigation having been undertaken by Landlord to confirm such matters:

(a) Compliance with Law. Except as otherwise disclosed in writing to Tenant, all activities on the Demised Premises undertaken by Landlord or its employees and agents have been undertaken in full compliance with all Environmental Laws. Landlord has disclosed to Tenant all threatened or pending litigation or administrative actions relating to the use or disposal of Hazardous Substances on the Demised Premises.

(b) Hazardous Substances. Except as otherwise disclosed in writing to Tenant, no Hazardous Substances are in or on the Demised Premises, no Hazardous Substances are being released into the environment by Landlord from, in, or on, the Demised Premises, Landlord has not arranged for the off-site disposal of any Hazardous Substances generated on the Demised Premises, nor have wastes from Hazardous Substances been generated, treated or disposed of on the Demised Premises during Landlord's ownership of the Demised Premises.

(c) Indoor Environment. The air and water supplies of the Demised Premises do not release, circulate or introduce any substances that pose a hazard to human health or an impediment to working conditions. Landlord has not taken, or caused to be taken, any action with respect to the air and water supplies of the Demised Premises that would release, circulate, or introduce any substances that pose a hazard to human health or an impediment to working conditions.

(d) Underground Storage Tanks. There are no Underground Storage Tanks on the Demised Premises.

(e) PCBs. There are no transformers, capacitors, switches, or other equipment on the Demised Premises which contain PCBs.

(f) Asbestos. Except as otherwise disclosed in writing by Landlord to Tenant, there is no asbestos currently located on or about the Demised Premises.

Notwithstanding anything to the contrary stated herein, all representations contained in this paragraph 2 shall continue to be valid for the entire Term of the Lease. In the event (i) Landlord breaches any of the representations or warranties listed above, or (ii) any such representation or warranty proves to be false, then in each of the foregoing instances, (x) Landlord shall remedy such breach at Landlord's expense, (y) on the fifth (5th) day after Tenant gives Landlord written notice of the breach or falsity, Rent shall abate in full until the breach is remedied, and on the thirtieth (30th) day after Tenant gives Landlord written notice of the breach or falsity, Tenant shall have the additional right, at its option and in addition to any other right hereunder or at law or in equity, to terminate this Lease without liability therefor. Notwithstanding the foregoing, Tenant shall not be entitled to abate rent or to terminate this Lease as a result of the presence upon or about the Demised Premises of any Hazardous Substance which presence is disclosed to Tenant in writing by Landlord prior to the execution hereof.

3. Landlord's Indemnity. Landlord, its employees, agents, contractors, guests, invitees or licensees, shall not generate, store, dispose of, release or otherwise handle any

Hazardous Substance on the Demised Premises in any fashion contrary to Environmental Laws. Landlord shall remove, cleanup and remedy any Hazardous Substance on or under the Demised Premises to the extent required by Environmental Law unless such Hazardous Substance resulted from the generation, storage, treatment, handling, transportation, disposal, or release by Tenant, its employees, agents, contractors, guests, invitees or licensees. Landlord agrees to defend, indemnify and hold harmless Tenant, its officers, directors, employees and agents, from and against any and all liability, loss, suits, claims, actions, causes of action, proceedings, demands, costs, penalties, fines and expenses, including without limitation attorneys' fees, consultants' fees, litigation costs, and cleanup costs, asserted against or incurred by Tenant at any time and from time to time by reason of or arising out of the presence of any Hazardous Substance on the Demised Premises unless such Hazardous Substance resulted from the generation, storage, treatment, handling, transportation, disposal, or release by Tenant, its employees, agents, contractors, guests, invitees or licensees. The foregoing obligation of Landlord shall survive the expiration or sooner termination of this Lease.

4. Tenant's Obligations and Indemnity. Tenant, its employees, agents, contractors, subtenants, assignees, guests, invitees or licensees, shall not generate, store, dispose of, release or otherwise handle any Hazardous Substance on the Demised Premises in any fashion contrary to Environmental Laws. Tenant shall remove, cleanup and remedy any Hazardous Substance on or under the Demised Premises to the extent required by Environmental Law provided that such Hazardous Substance resulted from the generation, storage, treatment, handling, transportation, disposal, or release by Tenant, its employees, agents, contractors, subtenants, assignees, guests, invitees or licensees.

Tenant shall indemnify, defend and hold harmless landlord from and against any and all liability, loss, suits, claims, actions, causes of action, proceedings, demands, costs, penalties, fines and expenses, including without limitation attorneys' fees, consultants' fees, litigation costs and cleanup costs asserted against or incurred by Landlord at any time and from time to time arising out of the generation, storage, treatment, handling, transportation, disposal or release of any Hazardous Materials on or under the Demised Premises by Tenant, its agents, employees, contractors, subtenants, assignees, guests, invitees or licensees. The foregoing obligation of Tenant shall survive the expiration or sooner termination of this Lease.

ARTICLE XXIX

RIGHT OF FIRST REFUSAL; OPTION TO PURCHASE

1. Right of First Refusal. If during the Term of this Lease Landlord desires to sell or exchange its ownership interest in the Land and/or Building (the "Property"), or receives a bona fide offer to purchase or exchange the Property to anyone (the "Other Buyer") and Landlord desires to accept such offer (the "Outside Offer".) Landlord shall first offer in writing to sell or exchange the Property to Tenant on the same terms and conditions and at the same price as set forth in the Outside Offer or, if no Outside Offer has been received, on the terms and conditions and at the price at which Landlord desires to sell or

exchange its ownership interest in the Property (such terms, conditions and price, whether set forth in the Outside Offer or as determined by Landlord without any Outside Offer, are referred to herein as the "Offer"). Tenant shall have twenty (20) business days from the delivery of written notice of the Offer to elect in writing to exchange for or purchase the Property upon the terms and conditions of the Offer. Should Tenant elect not to exchange for or purchase the Property on such terms and conditions or should Tenant fail to respond in writing within said twenty (20) business days, Landlord may sell or exchange the Property to the Other Buyer or any other party on substantially the terms and conditions and at not less than ninety-five percent (95%) of the price set forth in the Offer, provided that the closing occurs within one hundred eighty (180) days after the date of the Offer. If there are changes in the price or the terms of the Offer exceeding those allowed in the preceding sentence or if the transaction is not closed within said one hundred eighty (180) day period, Landlord shall not sell or exchange the Property without first offering to sell or exchange the Property to Tenant pursuant to this Article XXIX.

2. Option to Purchase. In consideration of the execution by Tenant of this Lease, Landlord hereby grants to Tenant the option to purchase the Property (the "Purchase Option"), at the price and upon the terms set forth in this Article XXIX, paragraph 2, by giving written notice (the "Notice of Exercise") to Landlord on or before November 30, 1999, provided that this Lease is still in full force and effect. The date on which such notice is given is hereinafter referred to as the "Exercise Date."

Notwithstanding any provision of this Article XXIX, paragraph 2 to the contrary, if at the time Tenant gives the Notice of Exercise Tenant is in default of this Lease pursuant to paragraph 1(a), 1(c) or 1(d) of Article XX (but as to paragraph 1(a), only if the payments as to which Tenant is in default exceed One Hundred Thousand Dollars ($100,000) and are not paid by Tenant, including payment under protest, within thirty (30) days after Tenant gives the Notice of Exercise), then the Notice of Exercise shall be totally ineffective, the rights of Tenant under this Article XXIX, paragraph 2 shall terminate and Landlord and Tenant shall thereupon be relieved of all further obligation or liability in connection with the Purchase Option, but rights and obligations of Landlord and Tenant under all provisions of this Lease other than the provisions of this Article XXIX, paragraph 2 shall continue.

(a) Purchase Price. The purchase price for the Property (the "Purchase Price") shall be the total of:

(i) a sum computed by multiplying the total of the scheduled Base Rent under this Lease for the entire Building (including Suite 100) payable for the period December 1, 2000 through November 30, 2001 by one hundred two and one-half percent (102.5%); and dividing the product resulting from the previous calculation by a factor of eight hundredths (.08); and multiplying the result of such division by ninety-seven percent (97%);

plus (ii) that portion of all capital expenditures incurred by Landlord which have not been reimbursed to Landlord by the tenants of the Property through direct payment or amortization of such capital expenditures,

The Purchase Price shall be paid on the Closing Date (as hereinafter defined) in cash or by Federal Reserve Bank wire transfer, with appropriate Closing adjustments as provided in paragraph (i) below.

(b) Closing. If Tenant gives the Notice of Exercise, the delivery of the deed to the Property, the payment of the Purchase Price and the closing of the purchase of the Property by Tenant pursuant to this Article XXIX, paragraph 2 (the "Closing") shall occur at 10:00 a.m. at the offices of Aufmuth, Fox & Baigent, on or about November 30, 2000 (such date, as the same may be extended as hereinafter expressly provided, is hereinafter referred to as the "Closing Date"). It is agreed that time is of the essence of this Article XXIX, paragraph 2.

(c) Title. At the Closing, Landlord shall convey the Property by a grant deed running to Tenant, or to such grantee as Tenant may designate by notice given to Landlord at least three (3) business days before the Closing Date, and the deed shall convey title to the Property free from encumbrances except:

(i) Taxes as are not delinquent on the Closing Date or for which Tenant has assumed the obligation to pay pursuant to Article V, paragraph 7;

(ii) Assessments for municipal or other betterments as are not delinquent on the Closing Date or for which Tenant has assumed the obligation to pay pursuant to Article V, paragraph 7;

(iii) Those Permitted Encumbrances as shown on Exhibit F which are non-monetary encumbrances;

(iv) Such other non-monetary encumbrances as are permitted pursuant to Article XV, Paragraph 2; and

(v) Such other matters as Tenant may approve in writing at or prior to the Closing Date.

Items (i) through (v) of this Paragraph 2(c) are referred to herein collectively as the "Permitted Exceptions". The grant deed shall be in a form sufficient to convey marketable and insurable title to Tenant. The words "insurable title" shall mean title which may be insured under a standard ALTA owner's policy of title insurance subject to the Permitted Exceptions.

(d) Condition of Premises. On the Closing Date Landlord shall deliver to Tenant possession of the Property subject to the rights of any tenants of the Property which are subtenants or assignees of Tenant, and the Building to be in compliance with all laws and in the same condition as it now exists on the Term Commencement Date, reasonable use and wear thereof excepted, all Shell Improvements excepted, and all Interior Improvements and Alterations made by Tenant excepted.

(e) Perfection of Title or Condition.

(i) Landlord shall be obligated to remove defects in title on the following terms:

(A) Landlord shall at its sole expense remove from title at or prior to the Close of Escrow, all monetary encumbrances which existed at the Date of Execution or which were voluntarily granted by Landlord after the Date of Execution.

(B) Landlord shall as its sole expense either (I) remove from title at or prior to the Close of Escrow or (II) secure prior to Close of Escrow a commitment from the issuer of title insurance, to issue title insurance and/or endorsement insuring Tenant against loss due to all monetary encumbrances arising after the Date of Execution which are not among the Permitted Exceptions granted by Landlord.

(C) If Landlord does not remove or obtain insurance against all title defect at or before Close of Escrow as provided in paragraph (A) and (B), above, then Tenant may remove such encumbrances itself at the Close of Escrow and deduct from the Purchase Price the reasonable costs incurred by Tenant in removing such encumbrances. If such costs incurred by Tenant exceed the Purchase Price, Landlord shall pay the excess to Tenant at the Close of Escrow.

(ii) If on the Closing Date, Landlord shall have failed to make the Premises conform, as required in this Article XXIX, paragraph 2, then Tenant may elect, by written notice given to Landlord on or before the extended Closing Date:

(A) to accept the Property in its then existing condition and to pay therefor the Purchase Price with the appropriate deduction (except in the event of a casualty if Taking as provided in Article XXIX, paragraph 2(e)(iii)(A) or (B) hereinbelow); or

(B) to rescind Tenant's Notice of Exercise and Landlord and Tenant shall thereupon be relieved of all further obligation or liability in connection with the Option to Purchase, but such rescission shall not affect the continued rights and obligations of Landlord and Tenant under all provisions of this Lease other than those of this Article XXIX, paragraph 2.

(iii) If, on the Closing Date, the Building shall have been damaged by fire or casualty insured against and shall not have been repaired or restored to its former condition, and Tenant agrees to accept such title and possession as Landlord can deliver and to accept the Property in its then condition pursuant to Article XXIX, paragraph 2(e)(ii)(A) if this Lease, then:

(A) Landlord shall either (1) pay over or assign to Tenant, at the Closing, all amounts recovered or recoverable on account of such insurance, or (2) if a holder of a Mortgage on the Land shall not permit the insurance proceeds or a part thereof to

be used to restore the Building to its former condition or to be so paid or assigned to Tenant, give to Tenant a credit against the Purchase Price equal to the amount of the insurance proceeds retained by the Mortgagee, less in either case, any amounts expended or incurred by Landlord in the repair or restoration of the Building; and

(B) if any portion of the Land and/or Building shall have been the subject of a Taking, the Purchase Price shall be reduced by an amount agreed upon by Landlord and Tenant to reflect the value of the portion of the Land and/or Building so taken. Landlord shall be entitled to retain the proceeds of such Taking, subject to the provisions of Article XIII, paragraph 4 of this Lease.

(f) Use of Purchase Money. To enable Landlord to convey the Property as required in this Article XXIX, paragraph 2, Landlord may, on the Closing Date, use the Purchase Price or any portion thereof to clear title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the grant deed, except for Mortgage discharges from institutional lenders which may be recorded when received provided that satisfactory arrangements are agreed upon by Landlord and Tenant at the Closing for the payment of all indebtedness secured by such Mortgages.

(g) Inspections. Tenant, its employees, contractors, consultants, servants and agents shall have the right, at all reasonable times and at Tenant's sole cost and expense, prior to and after the Exercise Date, to conduct such surveys, tests, and inspections, including, without limitation, soil borings, water sampling, environmental studies and assessments, as Tenant determines necessary to evaluate the Property. In the exercise of such rights, Tenants shall not disturb the occupancy of any other tenant of the Building or interfere with any business conducted on the Property. Following the completion of each such survey, test and inspection, Tenant shall promptly restore the Property and every part thereof to its condition existing immediately prior to the conduct of such survey, test or inspection. Tenant shall indemnify, defend and hold harmless Landlord, and its partners, employees, contractors, servants and agents, from and against all loss, costs, fines and expenses, including without limitation reasonable attorneys' fees and litigation costs, arising from the conducting of such surveys, tests, or inspections including, but not limited to, injury or death of any person or damage to property; provided, however, that this indemnity shall not apply to any loss, costs, damages, claims, proceedings, demands, liabilities, penalties, fines or expenses arising from the discovery of Hazardous Substances on the Land or in the Building which are not the responsibility of Tenant pursuant to Article XXVIII, paragraph 4 of this Lease. Tenant, its employees, contractors, consultants, servants and agents, upon prior written notice to Landlord, shall have the right to inquire at any and all governmental authorities regarding the Property.

Prior to the Exercise Date, Tenant shall have the rights, at its sole cost and expense, to perform or have performed an environmental site assessment ("Site Assessment") of the Land and the Building.

Within thirty (30) days after written request by Tenant, Landlord shall supply Tenant with copies of all Mortgages, agreements and other instruments or documents, which Tenant

would take subject to upon acquisition of the Land and Building or which affect the provision of services to or operation of the Land and Building.

(h) Landlord's Closing Obligations. At the Closing, Landlord shall deliver to Tenant:

(i) The grant deed conveying title to the Property in accordance with the provisions of Article XXIX, paragraph 2(c) of this Lease;

(ii) A bill of sale with warranty of title, in form and content reasonably satisfactory to Tenant, conveying and transferring title to Landlord's presonal property used solely in connection with the ownership, maintenance and operation of the Property;

(iii) An assignment, in form and content reasonably satisfactory to Tenant, of all of Landlord's right, title and interest in and to all service, maintenance and management contracts (to the extent that Tenant, at its option, has elected to assume the same by written notice given to Landlord not later than thirty (30) days prior to the Closing Date) affecting or relating to the Property, together with the original of each such contract;

(iv) An assignment, in form and content reasonably satisfactory to Tenant, of all permits, authorizations and approvals which have been issued for or with respect to the Property by governmental authorities having jurisdiction thereof, together with the originals or photocopies of such permits, authorizations and approvals;

(v) A set of "as-built" plans and specifications for the Building to the extent that the Landlord has possesion thereof;

(vi) An assignment, in form and content reasonably satisfactory to Tenant, of all of Landlord's right, title and interest in and to all guaranties and warranties relating to the Building, together with the original of each such guaranty and warranty;

(vii) A certificate of non-foreign status for Landlord;

(viii) All keys to the Building, appropriately tagged for identification; and

(ix) All maintenance records and operating manuals pertaining to the Building and copies of the books of Landlord with respect of the Building.

(i) Merger. The recording of the grant deed in the records of the County Recorder of Santa Clara County, California, shall be deemed to be a full performance and discharge of every agreement and obligation contained or expressed in this Article XXIX, paragraph 2, except as to those which by their terms are to be performed after the delivery of the grant deed.

(j) Adjustments. Adjustments of Base Rent, Operating Costs, Real Estate Taxes, costs of operating and maintaining the Premises, utility charges and all other items of cost payable under this Lease shall be prorated as of the Closing Date and the net amount thereof shall be added to or deducted from the Purchase Price. Landlord and Tenant shall each pay at the Closing one-half (1/2) of all costs, fees, taxes and charges imposed as the result of the purchase of the Property by Tenant including, but not limited to, title policy and endorsement premiums (except as specifically provided in paragraph 2(e)(i)(B) of this Article XXIX), survey costs, transfer taxes, monument fees, escrow fees, document preparation fees and recording costs.

(k) Broker. Neither Landlord nor Tenant shall have any obligation to pay a broker's fee or commission to any party as a result of the exercise of the Purchase Option or the purchase of the Property, except for any broker's fee or commission which is the result of an agreement between such party and the claiming broker. Landlord shall indemnify, defend and hold harmless Tenant, its officers, directors, employees, contractors, servants or agents, from and against all loss, costs, damages, claims, proceedings, demands, liabilities or expenses, including without limitation reasonable attorneys' fees and litigation costs, incurred by them resulting from a claim by any person for a commission or fee relating to Tenant's exercise of the Purchase Option or purchase of the Property and arising out of the actions of Landlord. Tenant shall indemnify, defend and hold harmless Landlord, its officers, directors, employees, contractors, servants or agents, from and against all loss, costs, damages, claims, proceedings, demands, liabilities or expenses, including without limitation reasonable attorneys' fees and litigation costs, incurred by them resulting from a claim by any person for a commission or fee relating to Tenant's exercise of the Purchase Option or purchase of the Property other than claims by the Brokers described in Article XXXI, paragraph 2.

(l) Recording Notice of Exercise. At the request of either party, the parties shall execute, acknowledge and deliver a notice of Tenant's exercise of the Purchase Option, in recordable form, which notice shall state the Closing Date (including the circumstances under which it may be extended). Either party may record the notice.

(m) Failure to Purchase. If Tenant shall give the Notice of Exercise to Landlord and thereafter shall fail to purchase the Property in accordance with the terms of this Article XXIX, paragraph 2, this Lease shall remain in full force and effect. If such failure by Tenant occurs despite the fulfillment of all conditions to closing for Tenant's benefit contained in this Article XXIX, Paragraph 3, Tenant shall be liable to Landlord for all damage incurred by Landlord as the result of Tenant's failure to so purchase the Property; and Tenant shall deliver to Landlord at no charge copies of all surveys, tests, investigations, studies, reports and analyses performed by Tenant or its employees, contractors, consultants, servants and agents in connection with Tenant's investigation of the Property. If Landlord fails to sell the Property to Tenant despite the fulfillment of all conditions to closing for Landlord's benefit contained in this Article XXIX, paragraph 3, Landlord shall be liable to Tenant for all damage incurred by Tenant as the result of Landlord's failure to so sell the Property, or Tenant may pursue specific performance of its Purchase Option.

(n) General. All notices given under this Article XXIX, paragraph 2 shall be given in the manner and shall be effective as provided in Article XXII of this Lease. Tenant may assign this Purchase Option only in connection with an Assignment of all of Tenant's other rights under this Lease either before or after giving the Notice of Exercise. The Purchase Option set forth in this Article XXIX, paragraph 2 shall terminate at midnight on November 30, 1999 unless Tenant shall have given a Notice of Exercise on or before that date.

3. Exchange. Landlord may elect to fulfill its obligations to dispose of the Property pursuant to this Article XXIX through an exchange intended to qualify under Internal Revenue Code section 1031. Tenant agrees to cooperate with such an exchange and execute all documents reasonably required by Landlord's attorney or tax advisor, provided that: (a) any such documents are delivered to Tenant for review at least thirty (30) days prior to the Close of Escrow; (b) any such documents are reasonably acceptable to Tenant's counsel; and (c) the exchange shall be at no cost or liability to Tenant. Landlord agrees to indemnify and hold Tenant harmless from any liability, damages or costs, including reasonable attorney's fees (including for the review of exchange documents), that may arise from Tenant's participation in the exchange.

ARTICLE XXX

SATELLITE DISH

1. Roof Space. Tenant shall have the right to use for the purposes of this Article certain roof space on the Building in the location shown on Exhibit I (the "Roof Space") for the Term of this Lease. Tenant's right to use the Roof Space shall be appurtenant to the Premises and not Additional Rent shall be payable with respect to such use.

2. Equipment and Cables. Tenant may install, use and maintain, on the Roof Space certain equipment, including a satellite dish(s) and related equipment (the "Equipment") and may run cables and related equipment (the "Cables") between the Roof Space and the Premises. The Equipment and the Cables are described in Exhibit I. The Equipment and Cables shall be deemed Tenant's Personal Property for the purposes of this Lease and shall be subject to the terms of this Lease with respect thereto.

3. Installation. Tenant shall have the right to select the contractor to install and maintain the Equipment and Cable, subject to Landlord's delayed. Tenant and/or its contractor shall install, use, and maintain the Equipment and Cables in a manner that does not interfere with Landlord's operation of the Building and that does not interfere with quiet enjoyment of the tenants of the Building. Tenant shall bear all expenses in connection with the installation, use and maintenance of the Equipment and the Cables and the removal thereof. Tenant shall ensure that no mechanic's or materialmen's liens are placed on the Roof Space or the Building and will promptly remove any such liens so placed within ten (10) days after receiving notice of such liens. Tenant shall maintain (including the necessary

power) the Equipment and the Cable at all times in a state of good repair and good and safe condition.

4. Indemnity. Tenant shall indemnify and save harmless Landlord, its officers, directors, employees, contractors, servants, guests, business invitees and agents, from and against all loss, costs, damages, claims, proceedings, demands, liabilities, penalties, fines and expenses, including without limitation reasonable attorney's fees and litigation costs, arising from injury or death of any person or damage to property from Tenant's installation, use and maintenance of the Equipment and/or the Cables and the removal thereof or from any use made by Tenant of the Roof Space resulting from the failure of Tenant to perform and discharge its covenants under this Agreement. Landlord shall not be liable for any loss or damage due to imperfect or unsatisfactory communications experienced by Tenant for any reason whatsoever.

5. Insurance. Tenant shall include the Equipment and Cables in the insurance required from Tenant pursuant to Article X, Paragraph 6 and shall furnish Landlord with a certificate of insurance showing such coverage prior to Tenant's exercise of its rights hereunder, including, without implied limitation, the commencement of any work by Tenant.

6. Legal Requirements. Tenant and its contractors shall comply with all Legal Requirements and obtain all Authorizations in connection with the installation, use and maintenance of the Equipment and Cables.

7. Access. Landlord agrees to permit Tenant reasonable access during Building Hours to the Roof Space and such other areas of the Building necessary to facilitate the installation, use and maintenance of the Equipment and the Cables and the removal thereof.

8. Taxes. In the event that any Taxes are assessed with respect to the Building by any Governmental Authority (whether assessed against Landlord, Tenant, the Roof Space or the Equipment), Tenant shall pay the same in a timely manner before any lien or penalty is assessed thereon.

9. No Interference. Tenant warrants that the installation and operation of the Equipment and the Cables will not cause television transmitting or receiving interference, radio interference, or noise or annoyance to tenants of the Building, and that Tenant will correct such interference at once if it should occur.

ARTICLE XXXI

ADDITIONAL PROVISIONS

1. Broker Commission. Landlord warrants to Tenant that the only broker retained by Landlord in connection with the negotiation and consummation of this Lease is Hare, Brewer & Kelley, Inc., and Tenant warrants to Landlord that the only broker retained by Tenant in connection herewith is Cooper/Brady Commercial Real Estate (collectively, the aforementioned brokers shall be referenced as the "Broker(s)"). Landlord covenants that it

shall pay any and all commissions, fees and amounts owing to the Broker(s) arising from the negotiation and/or consummation of this Lease.

2. Landlord's Access. Upon not less than twenty-four (24) hours prior notice to Tenant and at times mutually convenient to Landlord and Tenant, Landlord and its agents shall have the right to enter the Demised Premises for purposes of inspecting the same, showing the Demised Premises to prospective purchasers, posting notices of nonresponsibility, or making repairs, alterations or additions to any portion of the Building. At any time within four (4) months prior to the expiration of the Term, Landlord shall have the right upon twenty-four (24) hours prior notice, at times mutually convenient to Landlord and Tenant and not more than three (3) times per week, to enter the Demised Premises, to show the Demised Premises to prospective tenants. In entering the Demised Premises for any purpose, Landlord shall comply with any security measures required by Tenant.

3. Signage. Tenant shall not erect or place on any part of the exterior of the Building or on any Common Area any sign, radio or television antenna, or other structure, without first obtaining the written consent of Landlord, which consent shall not unreasonably withheld or delayed. Landlord acknowledges that Tenant intends to place antennae and a microwave dish on the roof of the Building. Installation of said items, including appropriate screening therefor, shall be subject to approval by the City of Palo Alto, and shall be performed by Landlord's roofing contractor at Tenant's expense. Upon the expiration of the Term of this Lease, Tenant shall remove any antennae, microwave or other dishes and all screening materials and shall repair any damages or roof penetrations caused thereby. Any signs installed by Tenant shall conform with all applicable Laws, and shall be fabricated and installed at Tenant's expense.

4. Binding Effect. The covenants and agreements herein contained shall, subject to the provisions hereof, bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, and its successors and assigns.

5. Validity. It is agreed that if any provisions of this Lease shall be determined to be void by any court of competent jurisdiction in the state where the Demised Premises are located, that such determination shall not affect any other provision of this Lease, all of which other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

6. Entire Agreement. This instrument contains the entire and only agreement between the parties as to the Demised Premises, and no oral statements or representations or prior written matter (including but not limited to unsigned drafts of this Lease) not contained in this instrument shall have any force or effect. This Lease shall not be modified in any way except by writing subscribed by both parties. This Lease shall not be effective unless fully executed by both parties.

7. Exhibits. All Exhibits attached to this Lease shall be deemed incorporated herein by the individual reference to each such Exhibit, and all such Exhibits shall be deemed a part of this Lease as though set forth in full. In the event of any conflict between the terms of this Lease and the terms of any Exhibit, the terms of this Lease shall control.

8. Acts at Own Cost. Whenever in this Lease provision is made for the doing of any act by any person, it is understood and agreed that said act shall be done by such person at his own cost and expense unless a contrary intent is expressed.

9. Governing Law. This Lease shall be governed by and construed and enforced in accordance with the laws of the state where the Demised Premises are located.

10. Waiver/Consent. Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver of any rights hereunder. No waiver by either party at any time, express or implied, or any breach of any provisions of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action of any party shall require the consent or approval of the other party, the consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion, and such consent or approval shall not be unreasonably withheld or delayed.

11. Cumulative Rights and Remedies. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; no one of them whether exercised by the other party or not, shall be deemed to be exclusive of any other, and any two or more of all of such rights and remedies may be exercised at the same time; provided, however, nothing contained herein shall entitle a party to recover consequential damages from the other party arising out of any act or omission or breach of this Lease by such other party, except to the extent expressly permitted by this Lease.

12. Payment/Performance Under Protest. It is agreed that if at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions of this Lease, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said party to institute suit for the recovery of such sum, and if it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease; and if at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions hereof, the party against whom the work is asserted may perform such work and pay the cost thereof "under protest" and the performance of such work shall in no event be regarded as a voluntary performance and there shall survive the right on the part of said party to institute

suit for the recovery of the costs of such work, and if it shall be adjudged that there was no legal obligation on the part of said party to perform the same or any part thereof, said party shall be entitled to recover the cost of such work or the cost of so much thereof as said party was not legally required to perform under the provisions of this Lease.

13. Words and Phrases. Words and phrases used in the singular shall be deemed to include the plural and vice versa, and nouns and pronouns used in any particular gender shall be deemed to include any other gender.

14. Definition of Terms. The various terms which are defined in Articles of this Lease or are defined in Exhibits annexed hereto shall have the meanings specified in such Articles and such Exhibits for all purposes of this Lease and all agreements supplemental thereto, unless the contest clearly indicates the contrary.

15. Effective Date of Lease. This Lease shall not be effective or binding on the parties to it until it has been signed by both Landlord and Tenant. Furthermore, if Landlord has not returned a fully executed copy of this Lease to Tenant within 15 days of execution by Tenant, this Lease is null and void and of no force and effect.

16. Authority. Each party represents to the other that the person signing this Lease on its behalf is properly authorized to do so.

17. Commencement/Expiration Dates. Landlord and Tenant shall execute within thirty (30) days of Term Commencement Date a certificate setting forth the Term Commencement Date and the expiration dates of the Primary Term and of any extended terms.

18. Force Majeure. Performance by Landlord or Tenant of their obligations hereunder shall be extended by the period of delay caused by force majeure. Force majeure is hereby deemed to include war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any such similar cause beyond the reasonable control of the party who is obligated to render performance.

19. Attorneys' Fees. If any party to this Lease shall institute an action to enforce the terms hereof, the prevailing party shall be entitled to reasonable attorneys' fees. Reasonable attorneys' fees shall be as fixed by the court. The "prevailing party" shall be the party which by law is entitled to recover its costs of suit, whether or not the action proceeds to final judgment. If the party which shall have instituted suit shall dismiss it as against the other party without the concurrence of the other party, the other party shall be deemed the prevailing party.

20. Confidentiality. All of the terms and conditions of this Lease shall be kept confidential and shall not be disclosed to third parties by either party without the consent of the other party, except as otherwise provided in this Paragraph 20. Either Landlord or Tenant may disclose such terms and conditions to their attorneys, accountants and other

EXHIBIT A

AMENDED AND RESTATED LEASE

between

RICHARD R. KELLEY, JR.,
CHARLES E. HANGER AND FAYE E. HANGER
AND
HARE, BREWER & KELLEY, INC.

"Landlord"

and

DIGITAL EQUIPMENT CORPORATION,
a Massachusetts corporation

"Tenant"

TABLE OF CONTENTS

FIRST AMENDMENT TO AGREEMENT BETWEEN CO-OWNERS

The First Amendment to Agreement Between Co-Owners is entered into by and between Richard R. Kelley, Jr., Charles E. Hanger, Faye E. Hanger and Harry L. Fox ("Co-Owners"), are Hare, Brewer and Kelley, Inc., a California corporation ("HBK"), effective as of July 8, 1991.

RECITALS

A. Richard R. Kelley, Jr., Charles E. Hanger, Faye E. Hanger and HBK entered into an Agreement Between Co-Owners dated effective December 1, 1990 (the "Agreement"), concerning their common ownership of the property located at 335 Bryant Street, Palo Alto, California (the "Property"). All terms used in this First Amendment shall have the same meaning ascribed to them in the Agreement unless expressly defined herein.

B. Harry L. Fox has acquired all of HBK's undivided 8.34% interest in the Property pursuant to a Trustee's Deed Upon Sale dated July 8, 1991 and recorded July 16, 1991 in the official records of Santa Clara County, Claifornia, as document No. 10972564. The parties desire to amend the Agreement to reflect the substitution of Fox in place of HBK.

AGREEMENT

NOW, THEREFORE, the Co-owners and HBK hereby agree that the Agreement shall be and hereby is amended as follows:

1. Harry L. Fox is substituted in place of HBK for all purposes under the Agreement. Harry L. Fox agrees to be bound by all provisions of the Agreement as a Co-Owner as to his ownership share in the Property.

2. The Address of Fox for delivery of notices pursuant to the Agreement shall be:

Harry L. Fox
314 Lytton Ave., Suite 200
Palo Alto, CA 94301

IN WITNESS WHEREOF, the Co-owners and HBK have executed this First Amendment effective as of the date first above written.

"Co-Owners"

/s/ Richard R. Kelley, Jr.

Richard R. Kelley, Jr.

/s/ Charles E. Hanger

Charles E. Hanger

/s/ Harry L. Fox

Harry L. Fox

"HBK"

Hare, Brewer & Kelley, Inc., a California corporation

By:/s/ Richard Kelley

Title: President

FIRST AMENDMENT TO COMMERCIAL PROPERTY MANAGEMENT AGREEMENT

This First Amendment to Commercial Property Management Agreement is entered into by and between Richard R. Kelley, Jr., Charles E. Hanger, Faye E. Hanger and Harry L. Fox ("Owners"), Premier Properties Management, a California corporation ("Agent"), and Hare, Brewer and Kelley, Inc., a California corporation ("HBK"), effective as of July 8, 1991.

RECITALS

A. Richard R. Kelley, Jr., Charles E. Hanger, Faye E. Hanger and HBK entered into a Commercial Property Management Agreement with Agent dated effective October 1, 1990 (the "Agreement"), for the property located at 335 Bryant Street, Palo Alto, California (the "Premises"). All terms used in this First Amendment shall have the same meaning ascribed to them in the Agreement unless expressly defined herein.

B. Harry L. Fox has acquired all of HBK's undivided 8.34% interest in the premises pursuant to a Trustee's Deed Upon Sale dated July 8, 1991 and recorded July 16, 1991 in the official records of Santa Clara County, California, as document No. 10972564. The parties desire to amend the Agreement to reflect the substitution of Fox in place of HBK.

AGREEMENT

NOW, THEREFORE, Owners and Agent hereby agree that the Agreement shall be and hereby is amended as follows:

1. Harry L. Fox is substituted in place of HBK for all purposes under the Agreement. Harry L. Fox agrees to be bound by all provisions of the Agreement as an Owner as to his ownership share in the Premises.

2. Monthly statements and disbursements under Section 2.5 of the Agreement are to be delivered to Fox in accordance with the following percentage at the following address:

Harry L. Fox (8.34%)
314 Lytton Ave., Suite 200
Palo Alto, CA 94301

IN WITNESS WHEREOF, Owners and Agent have executed this First Amendment effective as of the date first above written.

"Owners"

/s/ Richard R. Kelley, Jr.

Richard R. Kelley, Jr.

/s/ Charles E. Hanger

Charles E. Hanger

/s/ Faye E. Hanger

Faye E. Hanger

/s/ Harry L. Fox

Harry L. Fox

"Agent"

Premier Properties Management, a California corporation

By: /s/ James E. Baer, President

James E. Baer, President

"HBK"

Hare, Brewer & Kelley, Inc., a California corporation

By: /s/ Richard Kelley

Title: President

Author: Beverly Bellows
Date: 04-Oct-1990
Posted-date: 05-Oct-1990

FIRST LEASE AMENDMENT

THIS AMENDMENT is made this 10 day of October, 1990 by and between RICHARD KELLEY, CHARLES HANGAR and HARE, BREWER, & KELLEY, INC., a California Limited Partnership ("Landlord") and DIGITAL EQUIPMENT CORPORATION, a Massachusetts Corporation ("Tenant").

WITNESSETH

Landlord and Tenant are parties to a OFFICE SPACE LEASE dated April 6, 1990 ("Lease") which leases property in the building commonly known as 335 Bryant Street, Palo Alto, California ("Premises"). Landlord and Tenant hereby agree that the Lease shall be amended in consideration of the mutual covenants set forth hereinafter and in accordance with the terms and conditions set forth herein:

1. ARTICLE 1. TERM of the Lease is hereby amended to add the following:

> The term of this Lease shall be extended from October 6, 1990 and shall now expire on October 31, 1990.

2. ARTICLE 4. RENT is hereby amended to add the following:

> The extended term from October 7, 1990 to October 31, 1990 shall be at no monthly rent as defined in this Article. If Landlord and Tenant do not enter into a long-term lease of the Premises on or before March 1, 199_, Tenant shall pay rent for such period at the rate provided in the Lease.

All other terms and conditions of the Lease shall remain in full force and effect.

In Witness hereof, the parties hereto have set their hands to this Amendment as of the day and date first above written.

LANDLORD:
RICHARD KELLEY, CHARLES HANGAR, HARE, BREWER & KELLEY, INC.
Tenants-in-Common

By: /s/ Richard Kelley

Richard Kelley

By: /s/ Charles Hangar

Charles Hangar

By: /s/ Hare, Brewer & Kelley, Inc.

Hare, Brewer & Kelley, Inc.

TENANT:
DIGITAL EQUIPMENT CORPORATION,
a Massachusetts Corporation

By: /s/ Don Sliwinski

Property Development Manager

OFFICE SPACE LEASE

335 BRYANT STREET
PALO ALTO, CA 94301

This Lease dated April 6, 1990, is entered into by and between Richard Kelley, Charles Mangar and Hare, Brewer, & Kelley, Inc., a California Limited Partnership as Landlord, and Digital Equipment Corporation as Tenant.

ARTICLE 1. TERM

The term ("Term") of this Lease shall be for six (6) months commencing April 7, 1990 and expiring October 6, 1990.

ARTICLE 2. PREMISES

(a) The Premises consists of 8,426 rentable square feet of space on floors 1, 2, and 3 as shown on Exhibit A attached hereto and made a part hereof (Premises). It is understood that said Premises does not include approximately 462 rentable square feet occupied by Dr. Alan Bidle, Suite 100.

ARTICLE 3. USE

The Premises may be used for computer laboratories, conference rooms, offices, repair and service of computers and associated equipment and the storage thereof, and all other uses permitted by law. Tenant is also given the right to use in common with others the lobbies, entrances, stairs, elevators, restrooms and other public portions of the Building within the following exceptions:

(1) the garden area immediately adjacent to suite 100.

(2) The 1st floor lobby shall be used for ingress and egress only.

ARTICLE 4. RENT

The monthly rent payable to the Landlord for the Premises is Seventeen Thousand Six Hundred Ninety-Four and 60/100 ($17,694.60) payable on the first day of each month with the rent prorated for any portion of a month included within the Term. Tenant recognizes that late payment of any Rent or other sum due hereunder from Tenant to Landlord will result in administrative expenses to Landlord, the extent of such additional expenses being extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if Rent or any other payment due hereunder from Tenant to Landlord remains unpaid five (5) days after said amount is due, the amount of such unpaid Rent or other payment shall be increased by a late charge to be paid

to Landlord by Tenant in the amount of the maximum annual interest rate per annum permitted by law together with a daily administrative charge of twenty-five dollars ($25.00). Tenant agrees that such amount is a reasonable estimate of such loss and expense and may be charged by Landlord to defray such loss and expense. The amount of the late charge to be paid Landlord by Tenant on any unpaid Rent or other payment shall be reassessed and added to Tenant's obligation for each successive monthly period accruing after the date on which the late charge is initially imposed. The remedy provided in this article are in addition to any other remedies available to landlord at law or in equity by statute or otherwise.

ARTICLE 5. ADDITIONAL RENT

Tenant shall pay as additional rent hereunder, its prorata share of the agreed upon operating costs of the building, common area and real estate taxes.

Tenant hereby agrees to pay Landlord's base Cost for Operating Costs for the term of the Lease, which cost is $.72 per square foot of rentable space per month. It is agreed that for this sum all utilities and HVAC costs shall be paid. Said amount has been agreed to whether the cost as shall actually be incurred by Landlord during the Lease term is actually greater or less than the amount.

ARTICLE 6. SERVICES

Landlord covenants that Landlord shall supply or cause to be supplied to or for the use of the Premises, hot and cold running water for lavatory and drinking purposes, sewer services and electricity at current capacity and shall furnish heat and air conditioning to the standard set forth below, during the hours hereinafter set forth. Unless prevented by causes beyond Landlord's control, the services to be rendered by Landlord set forth in this Article 6, shall be provided twenty-four hours a day, seven days a week.

(a) The heating system of the Premises will be adequate to heat all areas of the Premises to an inside temperature of seventy-five (75) degrees Fahrenheit when outside temperature is zero (0) degrees Fahrenheit.

(b) The air conditioning system of the Premises will be adequate to cool all areas of the Premises serviced thereby to seventy-five (75) degrees Fahrenheit + or - two (2) degrees when relative humidity is fifty percent (50%) + or - five percent (5%) and the outside temperature is ninety-five (95) degrees D3 seventy three (73) degrees WE. Unless prevented by causes beyond Landlord's control, the services to be rendered by Landlord set forth in this Paragraph shall be provided between the hours of 7 o'clock AM and 6 o'clock P.M. Monday through Friday, and between 7 o'clock AM and 1 o'clock P.M. on Saturday, except holidays.

(c) Landlord, at its sole cost and expense, and without any condition by Tenant, shall throughout the Term of the Lease perform all interior and exterior maintenance and make all interior and exterior repairs and replacements within and to the Premises, common areas, Building and all other improvements, Land and to all systems and utilities within Landlord's control, and to any and all portions thereof - electrical, mechanical, plumbing, heating, ventilating, and air conditioning - as needed to keep them or it in good working order and conditioning and operating to design capacity. Whether structural or nonstructural in nature, and whether ordinary or extraordinary or foreseen or unforeseen. This provision is not intended to release or relieve Tenant from payment for any such repair or replacement to the extent necessitated by the negligence or willful acts of Tenant, its agents, servants or employees.

ARTICLE 7. INSURANCE

Tenant shall maintain throughout the Term hereof Comprehensive General Liability Insurance, including Contractual Liability coverage, with respect to the Premises, in the amount of $1,000,000 combined single limit for bodily injury and property damage. A Certificate of Insurance shall be provided by Tenant upon request.

Tenant shall, upon timely receipt of written notice, defend and save the Landlord harmless from and against any all suits, claims, and demands arising out of injury or demand occurring in the Premises because of negligence or willful acts of Tenant, its agents, servants, or employees. In the event the Landlord is notified of a claim, action or proceeding, or becomes aware of an occurrence, which may result in indemnification by Tenant as provided in this Article 7, the Landlord shall give immediate written notice to Tenant and provide complete particulars known by the Landlord. The Landlord shall immediately forward to the Tenant every demand, notice, summons or other process received by Landlord or his representatives.

Tenant has the exclusive right and obligation to defend any action or proceeding wherein Landlord is entitled to indemnification hereunder and Tenant may settle any such claim, aim action or proceeding without Landlord's consent or approval. The Landlord will fully cooperate with the Tenant at no cost to Landlord in the defense or settlement of any claim, action, or proceeding. Landlord's failure to comply with its obligations under this Article releases Tenants from the obligation to indemnify Landlord hereunder. The provisions hereof do not and shall not relieve Landlord of the responsibility of liability for acts, neglect, fault or omission of Landlord, its agents, servants, employees or contractors which cause injury or death to persons or damage to property in, on, or about the Premises, Building or Land.

Landlord shall, throughout the Term, procure and carry at its sole cost and expense, a comprehensive liability policy in the same amounts and affording the same coverage that Tenant is required to provide hereunder and said policy shall contain a contractual liability endorsement insuring Landlord's indemnity under this Lease. Said insurance shall be carried with a responsible company authorized to do business in the State of California. A certificate evidencing such coverage shall be provided to Tenant at the commencement of this Lease.

Landlord agrees to maintain insurance coverage with a responsible insurance company authorized to do business in the State of California on the entire Building in which the Premises are located in an amount not less than the full replacement value of the Building. Such coverage shall insure against All Risks excluding flood and earthquake. Upon the request of Digital, Landlord will furnish a certificate of insurance evidencing the casualty coverage stated in this Article 7.

Landlord and Tenant hereby waive all causes of action and rights of recovery against each other and their respective agents, officers and employees for any loss occurring to the real or personal property of either of them regardless of cause or origin, to the extent of any recovery by either of them from any policy(s) of insurance. Landlord and Tenant agree that any property policies presently existing or obtained on or after the date hereof (including renewals of present policies) shall include a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right to recover thereunder.

Landlord shall, upon timely receipt of written notice, defend and save Tenant harmless from and against any all suits, claims, and demands arising out of injury or damage occurring on, in or about the Premises, Building or Land because of the negligence or willful acts of Landlord, its agents, servants, employees or contractors. In the event the Tenant is notified of a claim, action or proceeding, or becomes aware of an occurrence which may result in indemnification by Landlord as provided in this Article 7, the Tenant shall give immediate written notice to Landlord and provide complete particulars known by the Tenant. The Tenant shall immediately forward to the Landlord every demand, notice, summons or other process received by Tenant or his representatives. The Tenant will fully cooperate with the Landlord in the defense or settlement of any claim, action or proceeding. The provisions hereof do not and shall not relieve Tenant of the responsibility for the acts, neglect, fault or omission of Tenant its agents, servants, employees or contractors which cause injury or death to persons or damage to property in, or about the Premises, Building or Land.

ARTICLE 8. ENTRY BY LANDLORD

Landlord may enter the Premises at reasonable hours with minimum of one (1) hour notice to (a) inspect the same, (b) exhibit the same to prospective purchasers, lenders or tenants, (c) determine whether Tenant is complying with all of Tenant's obligations hereunder, (d) supply janitor service and any other service to be provided by landlord to Tenant hereunder, (e) post notices of non responsibility and (f) make repairs required of Landlord under the terms hereof or repairs to any adjoining space or utility service or make repairs, alterations or improvements to any other portion of the Building, provided, however, that all such work shall be done as promptly as possible and, so as to cause as little interference to Tenant as reasonably possible. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry. Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof. The Tenant is hereby granted the right of twenty-four (24) hour access to the Premises.

Tenant is hereby granted the right to change or install lock(s) on the interior door(s) of the Premises and at the end of the Term Tenant shall surrender the keys to such locks to Landlord.

ARTICLE 9. DAMAGE OR DESTRUCTION

In the event of any damage to any portion of the Premises or of the Building from fire or other casualty, insured or uninsured; or in the event of a taking of any portion of the Premises or of the Building or the Land by the exercise of the power of eminent domain or condemnation or the taking for a public or quasi-public use of any portion of the Premises, the Building or Land, this Lease shall terminate as of the date of the damage or the vesting of title or the taking of possession, actual or constructive, without the necessity of notice of termination from one party to the other. In such event, the rent payable hereunder shall be apportioned to the date of such damage, vesting, or taking and thereafter this Lease shall cease and determine and shall be of no further force and effect.

ARTICLE 10. LIENS

The Landlord hereby waives any lien upon Tenant's property in the Premises whether such lien is created by common law, by statute or otherwise and whether such lien may presently exist or may be

created in the future. Tenant shall keep the premises and Building free of any mechanics liens or other liens.

ARTICLE 11. DEFAULTS

In the event of a default by either party hereunder, the non-defaulting party shall send written notice to the defaulting party specifying the nature of the default. The defaulting party shall have twenty (20) days from the date of such notice to cure the default or if such default is of such a nature that it cannot be cured within said twenty (20) day period, then the defaulting party shall promptly commence the curing thereof within said twenty (20) day period and shall thereafter proceed with due diligence to cure the same. If the default creates an emergency, the twenty (20) day period shall not be applicable thereto and non-defaulting party may immediately take all reasonable measures to cure the default and the defaulting party shall reimburse the non-defaulting party therefor upon presentation of receipted bills. In the event Landlord does not reimburse Tenant pursuant to the immediately preceding sentence, Tenant shall have the right to deduct the cost thereof from the next and succeeding installments of rent. In the event of a dispute between Landlord and Tenant as to the correctness of Tenant's invocation of its right of self-help herein contained, it is hereby agreed that Landlord shall not have the right to evict Tenant from the Premises if it is determined by a court that Tenant has incorrectly invoked its right to self-help, and Landlord agrees that its only remedy is such instances is for Tenant to pay to Landlord the withheld rental amounts within fifteen (15) days of any determination that Tenant was incorrect in invoking its right to self-help.

ARTICLE 12. ALTERATIONS

(a) Tenant may make any non structural interior alterations desired during the Term of the Lease if the costs of such alterations do not exceed $25,000.00 in any one instance. Any structural alterations or alterations costing in excess of $25,000 in any one instance, shall require the consent of Landlord which consent shall not be unreasonably withheld or denied and which shall be deemed given if not denied within ten (10) days. At the request of Landlord at lease termination Lessee shall restore the space to a standard office area.

(b) Any alteration, additions, or improvement shall be made promptly and in a good workman like manner and in compliance with all applicable permits and authorizations and building and zoning laws and with all other laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and offices. The costs of any such alteration, addition or improvement shall be paid by Tenant, so that the Premises and any improvements at anytime located thereon shall at all times be free of liens for services performed, labor and material supplied or claimed to

have been [ ]. Before any alteration, additional improvement shall be commenced, Tenant shall pay the amount of any increase in premiums on insurance policies (provided for under this Lease) on account of endorsement to be made thereon covering the risk during the course of such alteration, addition or improvement.

ARTICLE 13. INTERRUPTION OF SERVICES

In the event that the utilities or services which Landlord is obligated hereunder to provide to the Premises are interrupted such that they are provided only intermittently or such utilities or services altogether cease to be provided to the Premises for any reason whatsoever for a period of five (5) consecutive days, Tenant at the end of such period ("Non-Service Period") has the right to cancel and terminate this Agreement by giving written notice to the Landlord within ten (10) days of the end of the Non-Service Period, and this Agreement shall be canceled and terminated on the date set forth in such notice, provided such date shall be no more than fifteen (15) days from the date of the notice. If the Tenant or anyone claiming under the Tenant shall remain in possession of the Premises or any part thereof after expiration of the term of this Agreement, or any extension thereof, without any agreement in writing between the Landlord and the Tenant with respect thereto, such possession shall be deemed a month to month tenancy under all terms, covenants and conditions of this Agreement except that such tenancy may be terminated upon thirty (30) days written notice from one party to the other.

At any time and from time to time during the term of this Lease during normal business hours and whether or not Tenant is in default hereunder, the Tenant may remove any or all of the Tenant's property from the Premises. Upon the expiration or earlier termination of this Lease, the Tenant will remove all of its property from the Premises; if within ten (10) days after such expiration or termination, Tenant shall not have removed its property it shall be deemed abandoned by Tenant. During such ten (10) day period Tenant shall pay to Landlord rent. Tenant shall pay the reasonable costs to repair any damage caused to the Premises or to the Building by the removal of Tenant's property. Landlord covenants and agrees with Tenant that upon Tenant paying the rent and observing the terms, covenants and conditions on Tenant's part to be observed and performed, Tenant paying the rent and observing the terms, covenants and conditions on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises demised hereby.

The Tenant shall, at the expiration of the Term of this Lease, peaceably yield up to the Landlord the Premises and all additions made upon the same by the Landlord, in as good repair as at the commencement of the Term, damage by fire or other casualty, reasonable wear and tear and any damage that is not the responsibility of Tenant hereunder excepted.

ARTICLE 14. NOTICE

All notices, demands, and requests, hereunder shall be sent in writing by certified or registered mail, return receipt requested, postage prepaid as follows:

Landlord to Tenant:

Jim Robbins, Manager
Northern California Administration
Digital Equipment Corporation
800 El Camino Real
Mountain View, California

with a copy to:

Manager, U.S. Property Development
2352 Main Street
Concord, Massachusetts 01742

Tenant to Landlord:

Hare, Brewer & Kelley, Inc.
Property Management Department
305 Lytton Avenue
Palo Alto, CA 94301

with a copy to:

Richard Kelley
C/O Hare, Brewer & Kelley, Inc.

ARTICLE 15. HAZARDOUS SUBSTANCES

(a) "HAZARDOUS SUBSTANCE" means any substance, waste or material which is deemed hazardous, toxic, a pollutant or contaminant, under any federal, state or local statute, law, ordinance, rule regulation, or judicial or administrative order or decision, now or hereunder in effect.

"HAZARDOUS SUBSTANCE ON THE PREMISES" means any hazardous substance present in or on the Premises including, without imitation, in or on the surface or beneath the Premises, the surface water or under ground water, and in or on any improvement or part thereof at or beneath the surface of the Premises.

"APPLICABLE LAW" shall mean all federal, state and local statutes, laws, ordinances, rules and regulations and judicial and administrative orders, rulings and decisions that are applicable now or in the future to the Premises or any portion thereof or to any activity which shall take place thereon.

"PREMISES" for purposes of this Article 15, only, Premises includes the
- ----------
Building, other improvements and the Land on which they are located.

(b) Landlord has never generated, stored, disposed of or otherwise handled any Hazardous Substance on the Premises in any fashion contrary to Applicable Law and Landlord shall not generate, store, dispose of or otherwise handle any Hazardous Substance on the Premises in any fashion contrary to Applicable Law. Landlord is, to the best of its knowledge, not aware of the generation, storage, disposal or other handling of any Hazardous Substance on the Premises by anyone else in any fashion contrary to Applicable Law. Landlord also is, to the best of its knowledge, not aware of the presence of any Hazardous Substance on the Premises which may require remedial action under Applicable Law or may pose a threat to human health or the environment. Landlord hereby grants Tenant the right to perform environmental testing at the Premises throughout the term of this Lease including but not limited to removal and analysis of ground water, surface water and soil, which testing shall be performed by a company mutually acceptable to both parties. Tenant shall restore any areas on the Premises affected by such testing to the grade which existing immediately prior to such testing.

(c) Landlord is not aware of any underground storage tanks on the Premises and is not aware of any asbestos currently located at the Premises.

(d) There are no transformers or other equipment on the Premises which contain PCBs, and Landlord shall not bring any such equipment onto the Premises during the term of this Lease.

(e) Landlord shall defend, indemnify and hold harmless Tenant from and against any and all liability, loss, suits, claims, actions, causes of action, proceedings, demands, costs, penalties, fines and expenses, including, without limitations, attorneys' fees, consultants' fees, and clean-up costs, resulting from the presence of any Hazardous Substance on the Premises, or arising out of the generation, storage, treatment, handling, transportation, disposal or release, other than by Tenant, of any Hazardous Substance at or near the Premises, or arising out of any violation(s) other than by Tenant, of any Applicable Law regarding Hazardous Substances.

In the event Landlord breaches any of the representations or warranties listed above or in the event any such representation or warranty proves to be false or in the event there is the presence of any Hazardous Substance on the Premises providing such presence is not the result of Tenant's breach of its covenants in this Paragraph, then in each of the foregoing instances, Tenant shall have the additional right, at its option and in addition to any other right hereunder or at law or in equity, to terminate this Lease without liability therefor.

EXHIBIT C

Plan of Sublet Premises

[GRAPHIC APPEARS HERE]

Business Enterprise Cluster

UCB - 335 BRYANT ST. - FIRST FLOOR

[GRAPHIC APPEARS HERE]

Business Enterprise Cluster

UCB - 335 BRYANT ST. - THIRD FLOOR

(f) Tenant's Warranties/Reps: Tenant shall not generate, store, dispose of or otherwise handle any Hazardous Substance on the Premises in any fashion contrary to Applicable Law.

Landlord will not create or permit to be created or if created, to remain in effect as a result of work done for or materials supplied to Landlord in or for the Premises or for the Building or Land and/or other improvements, including any work being performed by Landlord on behalf of Tenant, and Landlord will discharge or will bond, any such lien, encumbrance, or charge arising therefrom which may be a lien or encumbrance upon the Premises, Building or Land.

ARTICLE 16. MISCELLANEOUS

Landlord represents and warrants to Tenant that it is the owner of the Premises, the Building and the Land and has full power and authority to enter into and perform under this Lease. Landlord further represents and warrants that all requisite approvals and consents have been obtained for the execution and delivery of and performance by Landlord hereunder.

Tenant hereby agrees to pay Hare, Brewer & Kelley upon execution of this Lease Agreement the lump sum payment of Ten Thousand Dollars and no cents ($10,000.00) as consideration for costs associated with the existing tenant in these premises vacating said premises by the commencement date of this Lease Agreement. Hare, Brewer & Kelley, Inc. hereby agrees to analyze the costs of its move including the costs of furniture movers, telephone charges and computer move and hook up and to rebate any excess over cost and beneath the $10,000.00 to Digital.

DIGITAL EQUIPMENT CORPORATION

BY: /s/ Edward B. Reiss

Edward B. Reiss, Manager
U.S. Property Manager

This Lease is agreed to and accepted this 6th day of April , 1990.

/s/ Richard R. Kelley, Jr.

Richard Kelley

/s/ Charles Hangar

Charles Hangar

/s/ William K. Kelley

Hare, Brewer & Kelley, Inc.

EXHIBIT C

FIRST AMENDMENT TO AMENDED AND RESTATED LEASE

This First Amendment to Amended and Restated Lease is entered into by and between Richard R. Kelley, Jr., Charles E. Hanger, Faye E. Hanger and Harry L. Fox ("Landlord") and Digital Equipment Corporation, a Massachusetts corporation ("Tenant") effective as of November 1, 1991.

RECITALS

A. This First Amendment to Amended and Restated Lease (this "First Amendment") modifies that certain Amended and Restated Lease by and between Richard R. Kelley, Jr., Charles E. Hanger, Faye E. Hanger and Hare, Brewer and Kelley, Inc. and Tenant effective December 1, 1990 (the "Lease"), for the property located at 335 Bryant Street, Palo Alto, California. All terms used in this First Amendment shall have the same meaning ascribed to them in the Lease unless expressly defined herein.

B. In further consideration of efforts by Landlord to secure a refinancing of the property subject to the Lease, Landlord and Tenant have agreed to make certain modifications to the Lease.

C. All capitalized terms not defined in this First Amendment shall have the meanings assigned to them in the Lease.

AGREEMENT

NOW, THEREFORE, Landlord and Tenant hereby agree that the Lease shall be and hereby is amended as follows:

1. Amendment of Article I. Paragraphs 1(c), 1(d), 1(j) and 1(q).

Paragraphs 1(c), 1(j) and 1(q) of Article I of the Lease are deleted in their entirety and there shall be inserted in their place the following:

(c) Demised Premises: The entire Building containing a total of nine thousand two hundred eighty-four (9,284) rentable square feet.

(d) Date of Execution: As of December 1, 1990.

(j) Landlord: Richard R. Kelly, Jr., a married man as his separate property, Charles E. Hanger and Faye E. Hanger, husband and wife as community property and Harry L. Fox, a single man. Such parties are bound by an Agreement Between Co-owners dated December 1, 1990 and amended by the First Amendment thereto dated as of July 8, 1991 governing their relationship as co-owners of the Land and Building. A memorandum of such Agreement was

recorded February 7, 1991, and a memorandum of such First Amendment to such Agreement shall be recorded promptly.

(q) Tenant's Share: Tenant's Share shall equal 100%.

2. Amendment of Article II. Paragraphs (2) and (3). Paragraphs (2) and (3) of Article II of the Lease are deleted in their entirety and there shall be inserted in their place the following:

2. No Conditions Precedent. There are no unsatisfied conditions to the effectiveness of the Lease.

3. Description of Demised Premises. Landlord hereby leases to Tenant and Tenant hereby takes from Landlord the entire Building containing a total of nine thousand two hundred eighty-four (9,284) rentable square feet.

3. Amendment of Article IV. Paragraph 4. Paragraph 4 of Article IV of the Lease is deleted in its entirety and there shall be inserted in its place the following:

4. Minimum Rent. Notwithstanding any other provisions of this Lease allowing for abatement, set-off or other reduction in Base Rent, other than pursuant to Article VIII, Paragraph 2(b), Article XII, Paragraph 8 or Article XIII, Paragraph 4, Tenant shall be required to pay a minimum amount of Base Rent (the "Minimum Base Rent") equal to Sixteen Thousand Dollars ($16,000) per month.

4. Amendment of Article VIII, Paragraph 2(b). of Article VIII of the Lease shall be deleted in its entirety and there shall be inserted in its place the following:

(b) Interior Improvement Allowance. Landlord shall pay to Tenant an improvement allowance for use in construction of the Interior Improvements equal to Two Hundred Eighty-Two Thousand Eight Hundred Forty Dollars ($282,840) ("Improvement Allowance"). Landlord shall pay the Improvement Allowance to Tenant upon the closing of a refinancing by Landlord of the existing monetary encumbrances on the Land and Building, provided that no mechanics' liens or similar liens for labor or material supplied to the Interior Improvements have been filed or asserted against the Demised Premises. Landlord shall use its best efforts to obtain such refinancing within nine (9) months after the Date of Execution. The unpaid balance of the Improvement Allowance shall be increased by one percent (1%) for each month that payment of the Improvement Allowance is delayed beyond nine (9) months after Date of Execution, prorated for any partial month on the basis of a thirty (30) day month. Notwithstanding the provisions of Article IV, Paragraph 4, if payment of

the Improvement Allowance is delayed beyond twelve (12) months after the Date of Execution, Tenant may deduct the remaining balance of the Improvement Allowance from the net payments of Rent coming due according to the following schedule: (i) Tenant may deduct all but Ten Thousand Dollars ($10,000) from the first such Base Rent payment all but the Minimum Additional Rent from the first such Additional Rent payment, (ii)Tenant may deduct all but Five Thousand Dollars ($5,000) from the next such Base Rent payment and all but the Minimum Additional Rent from the next such Additional Rent payment, and (iii) Tenant may deduct all of each remaining Base Rent payment and all but the Minimum Additional Rent from each remaining Additional Rent payment, until Tenant has recovered the remaining unpaid balance of the Improvement Allowance. Tenant shall be responsible for payment of all Improvement Costs in excess of the Improvement Allowance.

5. Amendment of Article XV, Paragraph 2. The third sentence of Paragraph 2 of Article XV of the Lease is amended to read as follows:

If, upon review of such balance sheet or such notice of change, Tenant reasonably concludes that the financial status of any Landlord has been materially impaired in a manner which would adversely affect the ability of Tenant to enforce its Purchase Option pursuant to Article XXIX, Paragraph 2 of this Lease, then Tenant's Purchase Option pursuant to Article XXIX, Paragraph 2 shall be accelerated on the following terms:

6. Amendment of Article XXI, Paragraph 3. Paragraph 3 of Article XXI of the Lease is deleted in its entirety and there shall be inserted in its place the following:

3. Landlord Default Under Allstate Loan. Landlord proposes to enter into a Mortgage of the Property with Allstate Life Insurance Company ("Allstate"). If Allstate gives any notice of default pursuant to the Allstate Mortgage to Landlord, Landlord shall provide a copy of such notice to Tenant and shall also appraise Tenant of Landlord's plans (if any) for curing such default and with evidence of any payments made by Landlord to Allstate or other actions taken by Landlord to cure such default. If a default by Landlord pursuant to the Allstate Mortgage is not cured by Landlord within the allowable cure periods contained therein, a material adverse change in Landlord's financial position shall be deemed to have occurred which shall entitle Tenant to accelerate its Purchase Option on the terms set forth in Paragraph 2 of Article XV. Tenant may at its option cure any monetary default by Landlord pursuant to the Allstate Mortgage, during the period that Landlord is entitled to cure such default under the Allstate Mortgage. If landlord does not reimburse Tenant for the cost of any such cure by Tenant of a monetary default pursuant to the Allstate Mortgage which does not also constitute a default by Tenant pursuant to this Lease, on or before the date

monthly Base Rent is next due under this Lease, then Tenant may deduct such amounts from Base Rents until Tenant has been fully reimbursed, provided that Tenant shall continue to pay in any event monthly Base Rent at least equal to 100% of the monthly debt service payments then due pursuant to the Allstate Mortgage. In no event shall Tenant have any obligation to cure any default of Landlord under the Allstate Mortgage, or to repeatedly cure any such default that Tenant has once cured.

7. Amendment of Article XXIX, Paragraph 2. The first sentence of Paragraph 2 of Article XXIX is amended to read as follows:

In consideration of the execution by Tenant of this Lease, Landlord hereby grants to Tenant the one-time option to purchase the Property (the "Purchase Option"), at the price and upon the terms set forth in this Article XXIX, Paragaraph 2, by giving written notice (the "Notice of Exercise") to Landlord no earlier than December 1, 1998 and no later than November 30, 1999, provided that this Lease is still in full force and effect.

8. Amendment of Article XXIX, Paragraph 2(m). Paragraph 2(m) of Article of XXIX is amended to read as follows:

(m) Failure to Purchase: If Tenant shall give the Notice of Exercise to Landlord and thereafter shall fail to purchase the Property in accordance with the terms of this Article XXIX, Paragraph 2, this Lease shall remain in full force and effect. If such failure by Tenant occurs despite the fulfillment of all conditions to closing for Tenant's benefit contained in this Article XXIX, Paragraph 2, Tenant shall have no further right pursuant to this Lease to purchase the Property from Landlord, and Tenant shall be liable to Landlord for all damage incurred by Landlord as the result of Tenant's failure to so purchase the Property; and Tenant shall deliver to Landlord at no charge copies of all surveys, tests, investigations, studies, reports and analyses performed by Tenant or its employees, contractors, consultants, servants and agents in connection with Tenant's investigation of the Property. If Landlord fails to sell the Property to Tenant despite the fulfillment of all conditions to closing for Landlord's benefit contained in this Article XXIX, Paragraph 2, Landlord shall be liable to Tenant for all damage incurred by Tenant as the result of Landlord's failure to sell the Property, or Tenant may pursue specific performance of its Purchase Option.

9. No Conflict. Except as amended by this First Amendment, the terms and conditions of the Lease shall remain in full force and effect and are hereby ratified, affirmed and approved. In the event of any conflict between the terms of the Lease and this First Amendment, this First Amendment shall govern and control. This First Amendment shall be interpreted and construed in accordance with the laws of the State of California, and shall be

binding upon and inure to the benefit of the parties hereto and to their respective permitted successors and assigns under the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Amendment effective as of the date first above written.

"Landlord"

Date: 11/27/91 /s/ Richard R. Kelley, Jr.
Richard R. Kelley, Jr.

Date: 12/2/91 /s/ Charles E. Hanger
Charles E. Hanger

Date: 12/2/91 /s/ Faye E. Hanger
Faye E. Hanger

Date: 11/27/97 /s/ Harry L. Fox
Harry L. Fox

"Tenant"

Digital Equipment Corporation, a Massachussets corporation

Date: By:

Its:

binding upon and inure to the benefit of the parties hereto and to their respective permitted successors and assigns under the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Amendment effective as of the date first above written.

"Landlord"

Date: _____ _____
Richard R. Kelley, Jr.

Date: _____ _____
Charles E. Hanger

Date: _____ _____
Faye E. Hanger

Date: _____ _____
Harry L. Fox

"Tenant"

Digital Equipment Corporation, a Massachusetts corporation

Date: Nov 25, 1991 By: [SIGNATURE APPEARS HERE]

Its: US Development Manager

EXHIBIT D

Telecommunications Equipment Inventory

Telephone Switch:	Northern Telecom Model M1 Option 21
Software:	Ver/Rel-XII Gen 1011 Res. 17.71
Signaling Information:	Type (TT or MF)
	Start Dial signal to PBX-Wink
	Start Dial signal from PBX-ground
Battery Back-up:	6 hours
Available Ports:	Digital: 75
	Analog: 7
Trunks:	Outgoing: 12 (for 305 Lytton Avenue)
	Incoming: 20 DID's

Northern Telecom Handsets:	Model#	Quantity
	2008	18
	2616 (without display)	8
	Unity	1
	500	2

professional advisors. Tenant may disclose such terms and conditions to prospective assignees and subtenants of Tenant. Landlord may disclose such terms and conditions to prospective lenders and purchasers of the Property. When any permitted disclosure is made pursuant to this paragraph 20, the party making the disclosure shall do so only on the condition that the third party receiving the disclosure agrees to keep such terms and conditions confidential.

21. No Other Tenant a Third Party Beneficiary. No tenant of the Building other than Tenant and its permitted subtenants and assignees may claim the benefits of any provision of this Lease.

IN WITNESS WHEREOF, the parties have duly executed this Lease as of this _____ day of _____, 1990.

LANDLORD:

/s/ Richard R. Kelley, Jr.

Richard R. Kelley, Jr.

/s/ Charles E. Hanger

Charles E. Hanger

/s/ Faye E. Hanger

Faye E. Hanger

HARE, BREWER & KELLEY, INC.,
a California corporation

By: [SIGNATURE APPEARS HERE]

Its: President

TENANT:

DIGITAL EQUIPMENT
CORPORATION, a Massachusetts
corporation.

By:

Its:
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professional advisors. Tenant may disclose such terms and conditions to prospective assignees and subtenants of Tenant. Landlord may disclose such terms and conditions to prospective lenders and purchasers of the Property . When any permitted disclosure is made pursuant to this paragraph 20, the party making the disclosure shall do so only on the condition that the third party receiving the disclosure agrees to keep such terms and conditions conditional.

21. No Other Tenant a Third Party Beneficiary. No tenant of the Building other than Tenant and its permitted subtenants and assignees may claim the benefits of any provision of this Lease.

IN WITNESS WHEREOF, the parties have duly executed this Lease as of this___ day of _____, 1990.

LANDLORD:

Richard R. Kelley, Jr.

Charles E. Hanger

Faye E. Hanger

HARE, BREWER & KELLEY, INC.,
a California corporation

By: /s/ Richard R. Kelley, Jr.

Its. President

TENANT:

DIGITAL EQUIPMENT
CORPORATION, a Massachusetts
corporation,

By: [SIGNATURE APPEARS HERE]

Its: US Development Manager

EXHIBIT C

Legal Description of Land

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA, CITY OF PALO ALTO AND IS DESCRIBED AS FOLLOWS:

PARCEL A AS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED DECEMBER 28, 1979 IN BOOK 456, PAGE 44 OF MAPS, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

EXHIBIT D

OFFICE SPACE LEASE

335 BRYANT STREET
PALO ALTO, CA 94301

This Lease dated April 6, 1990, is entered into by and between Richard Kelley, Charles Hangar and Hare, Brewer, & Kelley, Inc., a California Limited Partnership as Landlord, and Digital Equipment Corporation as Tenant.

ARTICLE 1. TERM

The term ("Term") of this Lease shall be for six (6) months commencing April 7, 1990 and expiring October 6, 1990.

ARTICLE 2. PREMISES

(a) The Premises consists of 8,426 rentable square feet of space on floors 1, 2, and 3 as shown on Exhibit A attached hereto and made a part hereof (Premises). It is understood that said Premises does not include approximately 462 rentable square feet occupied by Dr. Alan Sidle, Suite 100.

ARTICLE 3. USE

The Premises may be used for computer laboratories, conference rooms, offices, repair and service of computers and associated equipment and the storage thereof, and all other uses permitted by law. Tenant is also given the right to use in common with others the lobbies, entrances, stairs, elevators, restrooms and other public portions of the Building within the following exceptions:

(1) the garden area immediately adjacent to suite 100.

(2) The 1st floor lobby shall be used for ingress and egress only.

ARTICLE 4. RENT

The monthly rent payable to the Landlord for the Premises is Seventeen Thousand Six Hundred Ninety-Four and 60/100 ($17,694.60) payable on the first day of each month with the rent prorated for any portion of a month included within the Term. Tenant recognizes that late payment of any Rent or other sum due hereunder from Tenant to Landlord will result in administrative expenses to Landlord, the extent of such additional expenses being extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if Rent or any other payment due hereunder from Tenant to Landlord remains unpaid five (5) days after said amount is due, the amount of such unpaid Rent or other payment shall be increased by a late charge to be paid

to Landlord by Tenant in the amount of the maximum annual interest rate per annum permitted by law together with a daily administrative charge of twenty-five dollars ($25.00). Tenant agrees that such amount is a reasonable estimate of such loss and expense and may be charged by Landlord to defray such loss and expense. The amount of the late charge to be paid Landlord by Tenant on any unpaid Rent or other payment shall be reassessed and added to Tenant's obligation for each successive monthly period accruing after the date on which the late charge is initially imposed. The remedy provided in this article are in addition to any other remedies available to landlord at law or in equity by statute or otherwise.

ARTICLE 5. ADDITIONAL RENT

Tenant shall pay as additional rent hereunder, its prorata share of the agreed upon operating costs of the building, common area and real estate taxes.

Tenant hereby agrees to pay Landlord's base Cost for Operating Costs for the term of the Lease, which cost is $.72 per square foot of rentable space per month. It is agreed that for this sum all utilities and HVAC costs shall be paid. Said amount has been agreed to whether the cost as shall actually be incurred by Landlord during the Lease term is actually greater or less than the amount.

ARTICLE 6. SERVICES

Landlord covenants that Landlord shall supply or cause to be supplied to or for the use of the Premises, hot and cold running water for lavatory and drinking purposes, sewer services and electricity at current capacity and shall furnish heat and air conditioning to the standard set forth below, during the hours hereinafter set forth. Unless prevented by causes beyond Landlord's control, the services to be rendered by Landlord set forth in this Article 6, shall be provided twenty-four hours a day, seven days a week.

(a) The heating system of the Premises will be adequate to heat all areas of the Premises to an inside temperature of seventy-five (75) degrees Fahrenheit when outside temperature is zero (0) degrees Fahrenheit.

(b) The air conditioning system of the Premises will be adequate to cool all areas of the Premises serviced thereby to seventy-five (75) degrees Fahrenheit + or - two (2) degrees when relative humidity is fifty percent (50%) + or - five percent (5%) and the outside temperature is ninety-five (95) degrees DB seventy three (73) degrees WB. Unless prevented by causes beyond Landlord's control, the services to be rendered by Landlord set forth in this Paragraph shall be provided between the hours of 7 o'clock AM and 6 o'clock P.M. Monday through Friday, and between 7 o'clock AM and 1 o'clock P.M. on Saturday, except holidays.

(c) Landlord, at its sole cost and expense, and without any condition by Tenant, shall throughout the Term of the Lease perform all interior and exterior maintenance and make all interior and exterior repairs and replacements within and to the Premises, common areas, Building and all other improvements, Land and to all systems and utilities within Landlord's control, and to any and all portions thereof - electrical, mechanical, plumbing, heating, ventilating, and air conditioning - as needed to keep them or it in good working order and conditioning and operating to design capacity. Whether structural or nonstructural in nature, and whether ordinary or extraordinary or foreseen or unforeseen. This provision is not intended to release or relieve Tenant from payment for any such repair or replacement to the extent necessitated by the negligence or willful acts of Tenant, its agents, servants or employees.

ARTICLE 7. INSURANCE

Tenant shall maintain throughout the Term hereof Comprehensive General Liability Insurance, including Contractual Liability coverage, with respect to the Premises, in the amount of $1,000,000 combined single limit for bodily injury and property damage. A Certificate of Insurance shall be provided by Tenant upon request.

Tenant shall, upon timely receipt of written notice, defend and save the Landlord harmless from and against any all suits, claims, and demands arising out of injury or demand occurring in the Premises because of negligence or willful acts of Tenant, its agents, servants, or employees. In the event the Landlord is notified of a claim, action or proceeding, or becomes aware of an occurrence, which may result in indemnification by Tenant as provided in this Article 7, the Landlord shall give immediate written notice to Tenant and provide complete particulars known by the Landlord. The Landlord shall immediately forward to the Tenant every demand, notice, summons or other process received by Landlord or his representatives.

Tenant has the exclusive right and obligation to defend any action or proceeding wherein Landlord is entitled to indemnification hereunder and Tenant may settle any such claim, aim action or proceeding without Landlord's consent or approval. The Landlord will fully cooperate with the Tenant at no cost to Landlord in the defense or settlement of any claim, action, or proceeding. Landlord's failure to comply with its obligations under this Article releases Tenants from the obligation to indemnify Landlord hereunder. The provisions hereof do not and shall not relieve Landlord of the responsibility of liability for acts, neglect, fault or omission of Landlord, its agents, servants, employees or contractors which cause injury or death to persons or damage to property in, on, or about the Premises, Building or Land.

Landlord shall throughout the Term, procure [ ] carry at its sole cost and expense, a comprehensive liability policy in the same amounts and affording the same coverage that Tenant is required to provide hereunder and said policy shall contain a contractual liability endorsement insuring Landlord's indemnity under this Lease. Said insurance shall be carried with a responsible company authorized to do business in the State of California. A certificate evidencing such coverage shall be provided to Tenant at the commencement of this Lease.

Landlord agrees to maintain insurance coverage with a responsible insurance company authorized to do business in the State of California on the entire Building in which the Premises are located in an amount not less than the full replacement value of the Building. Such coverage shall insure against All Risks excluding flood and earthquake. Upon the request of Digital, Landlord will furnish a certificate of insurance evidencing the casualty coverage stated in this Article 7.

Landlord and Tenant hereby waive all causes of action and rights of recovery against each other and their respective agents, officers and employees for any loss occurring to the real or personal property of either of them regardless of cause or origin, to the extent of any recovery by either of them from any policy(s) of insurance. Landlord and Tenant agree that any property policies presently existing or obtained on or after the date hereof (including renewals of present policies) shall include a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right to recover thereunder.

Landlord shall, upon timely receipt of written notice, defend and save Tenant harmless from and against any all suits, claims, and demands arising out of injury or damage occurring on, in or about the Premises, Building or Land because of the negligence or willful acts of Landlord, its agents, servants, employees or contractors. In the event the Tenant is notified of a claim, action or proceeding, or becomes aware of an occurrence which may result in indemnification by Landlord as provided in this Article 7, the Tenant shall give immediate written notice to Landlord and provide complete particulars known by the Tenant. The Tenant shall immediately forward to the Landlord every demand, notice, summons or other process received by Tenant or his representatives. The Tenant will fully cooperate with the Landlord in the defense or settlement of any claim, action or proceeding. The provisions hereof do not and shall not relieve Tenant of the responsibility of liability for the acts, neglect, fault or omission of Tenant its agents, servants, employees or contractors which cause injury or death to persons or damage to property in, or about the Premises, Building or Land.

ARTICLE 8. ENTRY BY LANDLORD

Landlord may enter the Premises at reasonable hours with minimum of one (1) hour notice to (a) inspect the same, (b) exhibit the same to prospective purchasers, lenders or tenants, (c) determine whether Tenant is complying with all of Tenant's obligations hereunder, (d) supply janitor service and any other service to be provided by landlord to Tenant hereunder, (e) post notices of non responsibility and (f) make repairs required of Landlord under the terms hereof or repairs to any adjoining space or utility service or make repairs, alterations, or improvements to any other portion of the Building, provided, however, that all such work shall be done as promptly as possible and, so as to cause as little interference to Tenant as reasonably possible. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry. Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof. The Tenant is hereby granted the right of twenty-four (24) hour access to the Premises.

Tenant is hereby granted the right to change or install lock (a) on the interior door(s) of the Premises and at the end of the Term Tenant shall surrender the keys to such locks to Landlord.

ARTICLE 9. DAMAGE OR DESTRUCTION

In the event of any damage to any portion of the Premises or of the Building from fire or other casualty, insured or uninsured; or in the event of a taking of any portion if the Premises or of the Building or the Land by the exercise of the power of eminent domain or condemnation or the taking for a public or quasi-public use of any portion of the Premises, the Building or Land, this Lease shall terminate as of the date of the damage or the vesting of title or the taking of possession, actual or constructive, without the necessity of notice of termination from one party to the other. In such event, the rent payable hereunder shall be apportioned to the date of such damage, vesting, or taking and thereafter this Lease shall cease and determine and shall be of no further force and effect.

ARTICLE 10. LIENS

The Landlord hereby waives any lien upon Tenant's property in the Premises whether such lien is created by common law, by statute or otherwise and whether such lien may presently exist or may be

created in the future. Tenant shall keep the premises and Building free of any mechanics liens or other liens.

ARTICLE 11. DEFAULTS

In the event of a default by either party hereunder, the non-defaulting party shall send written notice to the defaulting party specifying the nature of the default. The defaulting party shall have twenty (20) days from the date of such notice to cure the default or if such default is of such a nature that it cannot be cured within said twenty (20) day period, then the defaulting party shall promptly commence the curing thereof within said twenty (20) day period and shall thereafter proceed with due diligence to cure the same. If the default creates an emergency, the twenty (20) day period shall not be applicable thereto and non-defaulting party may immediately take all reasonable measures to cure the default and the defaulting party shall reimburse the non-defaulting party therefor upon presentation of receipted bills. In the event Landlord does not reimburse Tenant pursuant to the immediately preceding sentence, Tenant shall have the right to deduct the cost thereof from the next and succeeding installments of rent. In the event of a dispute between Landlord and Tenant as to the correctness of Tenant's invocation of its right of self-help herein contained, it is hereby agreed that Landlord shall not have the right to evict Tenant from the Premises if it is determined by a court that Tenant has incorrectly invoked its right to self-help, and Landlord agrees that its only remedy in such instances is for Tenant to pay to Landlord the withheld rental amounts within fifteen (15) days of any determination that Tenant was incorrect in invoking its right to self-help.

ARTICLE 12. ALTERATIONS

(a) Tenant may make any non structural interior alterations desired during the Term of the Lease if the costs of such alterations do not exceed $25,000.00 in any one instance. Any structural alterations or alterations costing in excess of $25,000 in any one instance, shall require the consent of Landlord which consent shall not be unreasonably withheld or denied and which shall be deemed given if not denied within ten (10) days. At the request of Landlord at lease termination Lessee shall restore the space to a standard office area.

(b) Any alteration, additions, or improvement shall be made promptly and in a good workman like manner and in compliance with all applicable permits and authorizations and building and zoning laws and with all other laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and offices. The costs of any such alteration, addition or improvement shall be paid by Tenant, so that the Premises and any improvements at anytime located thereon shall at all times be free of liens for services performed, labor and material supplied or claimed to

have been supplied. Before any alterations, additions or improvement shall be commenced, Tenant shall pay the amount of any increase in premiums on insurance policies (provided for under this Lease) on account of endorsement to be made thereon covering the risk during the course of such alteration, addition or improvement.

ARTICLE 13. INTERRUPTION OF SERVICES

In the event that the utilities or services which Landlord is obligated hereunder to provide to the Premises are interrupted such that they are provided only intermittently or such utilities or services altogether cease to be provided to the Premises for any reason whatsoever for a period of five (5) consecutive days, Tenant at the end of such period ("Non-Service Period") has the right to cancel and terminate this Agreement by giving written notice to the Landlord within ten (10) days of the end of the Non-Service Period, and this Agreement shall be canceled and terminated on the date set forth in such notice, provided such date shall be no more than fifteen (15) days from the date of the notice. If the Tenant or anyone claiming under the Tenant shall remain in possession of the Premises or any part thereof after expiration of the term of this Agreement, or any extension thereof, without any agreement in writing between the Landlord and the Tenant with respect thereto, such possession shall be deemed a month to month tenancy under all terms, covenants and conditions of this Agreement except that such tenancy may be terminated upon thirty (30) days written notice from one party to the other.

At any time and from time to time during the term of this Lease during normal business hours and whether or not Tenant is in default hereunder, the Tenant may remove any or all of the Tenant's property from the Premises. Upon the expiration or earlier termination of this Lease, the Tenant will remove all of its property from the Premises; if within ten (10) days after such expiration or termination, Tenant shall not have removed its property it shall be deemed abandoned by Tenant. During such ten (10) day period Tenant shall pay to Landlord rent. Tenant shall pay the reasonable costs to repair any damage caused to the Premises or to the Building by the removal of Tenant's property. Landlord covenants and agrees with Tenant that upon Tenant paying the rent and observing the terms, covenants and conditions on Tenant's part to be observed and performed, Tenant paying the rent and observing the terms, covenants and conditions on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises demised hereby.

The Tenant shall, at the expiration of the Term of this Lease, peaceably yield up to the Landlord the Premises and all additions made upon the same by the Landlord, in as good repair as at the commencement of the Term, damage by fire or other casualty, reasonable wear and tear and any damage that is not the responsibility of Tenant hereunder excepted.

ARTICLE 14. NOTICES

All notices, demands, and requests, hereunder shall be sent in writing by certified or registered mail, return receipt requested, postage prepaid as follows:

Landlord to Tenant:

Jim Robbins, Manager
Northern California Administration
Digital Equipment Corporation
800 El Camino Real
Mountain View, California

with a copy to:

Manager, U.S. Property Development
2352 Main Street
Concord, Massachusetts 01742

Tenant to Landlord:

Hare, Brewer & Kelley, Inc.
Property Management Department
305 Lytton Avenue
Palo Alto, CA 94301

with a copy to:

Richard Kelley
C/O Hare, Brewer & Kelley, Inc.

ARTICLE 15. HAZARDOUS SUBSTANCES

(a) "HAZARDOUS SUBSTANCE" means any substance, waste or material which is deemed hazardous, toxic, a pollutant or contaminant, under any federal, state or local statute, law, ordinance, rule regulation, or judicial or administrative order or decision, now or hereafter in effect.

"HAZARDOUS SUBSTANCE ON THE PREMISES" means any hazardous substance present in or on the Premises including, without limitation, in or on the surface or beneath the Premises, the surface water or under ground water, and in or on any improvement or part thereof at or beneath the surface of the Premises.

"APPLICABLE LAW" shall mean all federal, state and local statutes, laws, ordinances, rules and regulations and judicial and administrative orders, rulings and decisions that are applicable now or in the future to the Premises or any portion thereof or to any activity which shall take place thereon.

"PREMISES" for purposes of this Article 15 only, Premises includes the Building,
 ----
other improvements and the Land on which they are located.

(b) Landlord has never generated, stored, disposed of or otherwise handled any Hazardous Substance on the Premises in any fashion contrary to Applicable Law and Landlord shall not generate, store, dispose of or otherwise handle any Hazardous Substance on the Premises in any fashion contrary to Applicable Law. Landlord is, to the best of its knowledge, not aware of the generation, storage, disposal or other handling of any Hazardous Substance on the Premises by anyone else in any fashion contrary to Applicable Law. Landlord also is, to the best of its knowledge, not aware of the presence of any Hazardous Substance on the Premises which may require remedial action under Applicable Law or may pose a threat to human health or the environment. Landlord hereby grants Tenant the right to perform environmental testing at the Premises throughout the term of this Lease including but not limited to removal and analysis of ground water, surface water and soil, which testing shall be performed by a company mutually acceptable to both parties. Tenant shall restore any areas on the Premises affected by such testing to the grade which existed immediately prior to such testing.

(c) Landlord is not aware of any underground storage tanks on the Premises and is not aware of any asbestos currently located at the Premises.

(d) There are no transformers or other equipment on the Premises which contain PCBs, and Landlord shall not bring any such equipment onto the Premises during the term of this Lease.

(e) Landlord shall defend, indemnify and hold harmless Tenant from and against any and all liability, loss, suits, claims, actions, causes of action, proceedings, demands, costs, penalties, fines and expenses, including, without limitation, attorneys' fees, consultants' fees, and clean-up costs, resulting from the presence of any Hazardous Substance on the Premises, or arising out of the generation, storage, treatment, handling, transportation, disposal or release, other than by Tenant, of any Hazardous Substance at or near the Premises, or arising out of any violation(s) other than by Tenant, of any Applicable Law regarding Hazardous Substances.

In the event Landlord breaches any of the representations or warranties listed above or in the event any such representation or warranty proves to be false or in the event there is the presence of any Hazardous Substance on the Premises providing such presence is not the result of Tenant's breach of its covenants in this Paragraph, then in each of the foregoing instances, Tenant shall have the additional right, at its option and in addition to any other right hereunder or at law or in equity, to terminate this Lease without liability therefor.

(f) Tenant's Guaranties/Reps: Tenant shall not generate, store, dispose of or otherwise handle any Hazardous Substance on the Premises in any fashion contrary to Applicable Law.

Landlord will not create or permit to be created or if created, to remain in effect as a result of work done for or materials supplied to Landlord in or for the Premises or for the Building or Land and/or other improvements, including any work being performed by Landlord on behalf of Tenant, and Landlord will discharge or will bond , any such lien, encumbrance, or charge arising therefrom which may be a lien or encumbrance upon the Premises, Building or Land.

ARTICLE 16. MISCELLANEOUS

Landlord represents and warrants to Tenant that it is the owner of the Premises, the Building and the Land and has full power and authority to enter into and perform under this Lease. Landlord further represents and warrants that all requisite approvals and consents have been obtained for the execution and delivery of and performance by Landlord hereunder.

Tenant hereby agrees to pay Hare, Brewer, & Kelley upon execution of this Lease Agreement the lump sum payment of Ten Thousand Dollars and no cents ($10,000.00) as consideration for costs associated with the existing tenant in these premises vacating said premises by the commencement date of this Lease Agreement. Hare, Brewer & Kelley, Inc. hereby agrees to analyze the costs of its move including the costs of furniture movers, telephone charges and computer move and hook up and to rebate any excess over cost and beneath the $10,000.00 to Digital.

DIGITAL EQUIPMENT CORPORATION

BY: /s/ Edward B. Reiss

Edward B. Reiss, Manager
U.S. Property Manager

This Lease is agreed to and accepted this 6 day of April, 1990.

/s/ Richard R. Kelley, Jr.

Richard Kelley

/s/ Charles Hangar

Charles Hangar

[SIGNATURE APPEARS HERE]

Hare, Brewer, & Kelley, Inc.

FIRST LEASE AMENDMENT

THIS AMENDMENT is made this 10 day of October, 1990 by and between RICHARD KELLEY, CHARLES HANGAR AND HARE, BREWER, & KELLEY, INC., a California Limited Partnership ("Landlord") and DIGITAL EQUIPMENT CORPORATION, a Massachusetts Corporation ("Tenant").

WITNESSETH

Landlord and Tenant are parties to a OFFICE SPACE LEASE dated April 6, 1990 ("Lease") which leases property in the building commonly known as 335 Bryant Street, Palo Alto, California ("Premises"). Landlord and Tenant hereby agree that the Lease shall be amended in consideration of the mutual covenants set forth hereinafter and in accordance with the terms and conditions set forth herein:

1. ARTICLE 1. TERM of the Lease is hereby amended to add the following:

> The term of this Lease shall be extended from October 6, 1990 and shall now expire on October 31, 1990.

2. ARTICLE 4. RENT is hereby amended to add the following:

> The extended term from October 7, 1990 to October 31, 1990 shall be at no monthly rent as defined in this Article. If Landlord and Tenant do not enter into a long-term lease of the Premises on or before March 1, 1994, Tenant shall pay rent for such period at the rate provided in the Lease.

All other terms and conditions of the Lease shall remain in full force and effect.

In Witness hereof, the parties hereto have set their hands to this Amendment as of the day and date first above written.

LANDLORD:
RICHARD KELLEY, CHARLES HANGAR
HARE, BREWER & KELLEY, INC.
Tenants-in-Common

By: /s/ Richard Kelley

Richard Kelley

By: /s/ Charles Hangar

Charles Hangar

By: [SIGNATURE APPEARS HERE]

Hare, Brewer & Kelley, Inc.

TENANT:
DIGITAL EQUIPMENT CORPROATION,
a Massachusetts Corporation

By: /s/ Don Sliwinski

Don Sliwinski
Property Development
Manager

SECOND LEASE AMENDMENT

THIS AMENDMENT is made this 14 day of November, 1990 by and between RICHARD KELLEY, CHARLES HANGAR AND HARE, BREWER, & KELLEY, INC., a California Partnership ("Landlord") and DIGITAL EQUIPMENT CORPORATION, a Massachusetts Corporation ("Tenant").

WITNESSETH

Landlord and Tenant are parties to a OFFICE SPACE LEASE dated April 6, 1990 ("Lease"), and a FIRST LEASE AMENDMENT dated October 10, 1990, which leases property in the building commonly known as 335 Bryant Street, Palo Alto, California ("Premises"). Landlord and Tenant hereby agree that the Lease shall be amended in consideration of the mutual covenants set forth hereinafter and in accordance with the terms and conditions set forth herein:

1. ARTICLE 1. TERM of the Lease is hereby amended to add the following:

   The term of this Lease shall be extended from November 1, 1990 and shall now expire on November 30, 1990.

2. ARTICLE 4. RENT is hereby amended to add the following:

   The extended term from November 1, 1990 to November 30, 1990 shall be at the monthly rent of Seventeen Thousand Six Hundred Ninety-Four and 60/100 Dollars ($17,694.60) as defined in this Article.

All other terms and conditions of the Lease shall remain in full force and effect.

In Witness hereof, the parties hereto have set their hands to this Amendment as of the day and date first above written.

LANDLORD:
RICHARD KELLEY, CHARLES HANGAR, HARE, BREWER & KELLEY, INC.
a California Limited Partnership

By: /s/ Richard R. Kelley, Jr.

Richard Kelley

By: /s/ Charles Hangar

Charles Hangar

By: /s/ Hare Brewer & Kelley, Inc.

Hare Brewer & Kelley, Inc.

TENANT:
DIGITAL EQUIPMENT CORPORATION,
a Massachusetts Corporation

By: /s/ Don Sliwinski

Don Sliwinski
Property Development Manager

EXHIBIT E

SUBORDINATION, RECOGNITION, AND NON-DISTURBANCE AGREEMENT

(Mortgagee)

Date:

Lender:

Lender's Address:

Landlord:

Landlord's Address:

Tenant:	Digital Equipment Corporation, a Massachusetts corporation
Tenant's Address:	Digital Equipment Corporation _____ _____ Attention: [Name of U.S. Area Attorney with Real Estate Responsibility]
Property:	[Street Address of property subject to the Mortgage]
Mortgage:	A deed of trust from Landlord to _____ ("Trustee") for the benefit of Lender encumbering the Property dated _____, 19__, and recorded with _____ in Book _____, Page _____, together with any extensions, replacements, amendments or consolidations thereof
Premises:	[Description of the leased premises making reference to the Property]
Lease:	A lease of the Premises from Landlord to Tenant dated _____, 19__, together with any extensions, renewals, replacements or amendments thereof

In consideration of the mutual covenants and agreements made herein, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, Lender and Tenant agree:

1. Subordination. The Lease, including all rights to purchase the Property which are contained therein, is subject and subordinate to the Mortgage and to all advances now or hereafter made thereunder, with the same force and effect as if the Mortgage had been executed, delivered, recorded, and all advances had been made thereunder, prior to execution and delivery of the Lease.

2. Non-disturbance. Provided Tenant is not then in default under the Lease beyond all applicable periods of grace or cure thereunder (so as to entitle Landlord to exercise its rights and remedies under the Lease):

(a) the Lease shall not be terminated and shall continue in full force and effect and Tenant's possession of the Premises shall not be disturbed;

(b) in the event Lender forecloses the Mortgage, exercises its rights to sell the Property at a trustee's sale, accepts a deed in lieu thereof, or enters into possession or collects rent from the tenants of the Property, Lender will not name Tenant as a party in any action or proceeding with respect to the Mortgage, whether to foreclose the Mortgage or to exercise any of its other rights under the Mortgage, under the note, bond, or any other document secured thereby, or under law; and

(c) Tenant's rights under the Lease, including all rights to purchase the Property which are contained therein, will not be impaired by any sale of the property pursuant to foreclosure, trustee's sale or otherwise.

3. Attornment and Recognition. If Lender succeeds to the rights of Landlord under the Lease, whether because Lender acquires the Property at a foreclosure or trustee's sale or accepts a deed in lieu thereof, Tenant will attorn to and recognize and be bound to Lender as landlord under the Lease, and Lender will accept such attornment and recognition, for the unexpired term of the Lease, subject to all of the terms of the Lease, including without limitation, all rights and options to extend the Term and to purchase the Property, and the Lease shall continue in full force and effect, without the necessity of executing any new document, as a direct lease between Tenant and Lender.

4. Consent. Lender hereby confirms its approval of and consent to the Lease.

5. Restoration. All condemnation awards and insurance proceeds paid or payable with respect to the Premises and the Property and received by Lender shall be applied to the repair and restoration of the Premises and the Property, whether by Landlord or Tenant, unless the Lease is terminated pursuant to the terms thereof.

6. Tenant's Personal Property. Lender hereby agrees that Tenant's Personal Property, as such term is defined in the Lease, however installed in or affixed to the Premises, shall at all times remain the property of Tenant and may be removed by Tenant at any time and from time to time. In no event, including without limitation, default under the Lease or Mortgage, shall Lender have any lien, right or claim in Tenant's Personal Property. Lender expressly waives all rights of levy, distraint, or execution with respect to Tenant's Personal Property.

7. Notice of Default. Notwithstanding any provision of the Lease to the contrary, no notice by Tenant to Landlord of any default by Landlord, if the default is of such a nature as to give Tenant a right to terminated the Lease, shall be effective against Lender unless and until Tenant gives Lender written notice of such default.

8. Successors and Assigns. The term "Lender", as used herein, unless the context requires otherwise, shall include the successors and assigns of Lender and any persons or entity which shall become the owner of the Property by reason of a foreclosure or trustee's sale under the Mortgage or an acceptance of a deed or an assignment in lieu of foreclosure or otherwise. The term "Tenant" as used herein shall include its successors and assigns.

9. Notices. All notices given hereunder shall be in writing and shall be delivered in hand, by recognized overnight courier, or by depositing with the United States Postal Service, postage prepaid, certified or registered mail, return receipt requested. All such communications shall be addressed to Tenant and Lender at their addresses appearing on the first page hereof, or to such other address or addresses as the parties may from time to time specify by notice so given. Notices shall be deemed received:

(a) if delivered by hand, when actually received, as evidenced by a signed receipt;

(b) if sent by recognized overnight courier, the next Business Day; and

(c) if sent by the United States Postal Service, on the earlier of (i) the third business day following the mailing thereof, or (ii) the business day it is received.

10. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the state of California.

11. Changes in Writing. This Agreement may not be changed, waived, or terminated except in a writing signed by the party against whom enforcement of the change, waiver, or termination is sought.

12. Partial Invalidity. If any provision of this Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each covenant and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Executed as of the date first above written.

LENDER:

By: _____

Name : _____

Title: _____

TENANT:

By: _____

Name : _____

Title: _____

[ADD ACKNOWLEDGEMENTS IN LOCAL FORM FOR ALL PARTIES]

EXHIBIT F

Permitted Encumbrances

1. PROPERTY TAXES, INCLUDING ANY ASSESSMENTS COLLECTED WITH TAXES, TO BE LEVIED FOR THE FISCAL YEAR 1990 - 1991 WHICH ARE A LIEN NOT YET PAYABLE.

2. THE LIEN OF SUPPLEMENTAL TAXES, IF ANY, ASSESSED PURSUANT TO THE PROVISIONS OF CHAPTER 3.5 (COMMENCING WITH SECTION 75) OF THE REVENUE AND TAXATION CODE OF THE STATE OF CALIFORNIA.

3. AN AGREEMENT ON THE TERMS AND CONDITIONS CONTAINED THEREIN,

FOR:	PARKING
DATED:	NONE SHOWN
EXECUTED BY:	CITY OF PALO ALTO, A MUNICIPAL CORPORATION AND RICHARD KELLEY JR.
RECORDED:	OCTOBER 3, 1979, BOOK E843, OFFICIAL RECORDS. PAGE 168
SERIES NO.:	NONE SHOWN

4. A DEED OF TRUST TO SECURE AN INDEBTEDNESS IN THE AMOUNT SHOWN BELOW, AND ANY OTHER OBLIGATIONS SECURED THEREBY:

AMOUNT:	$1,200,000.00
DATED:	JULY 2, 1986
TRUSTOR:	CHARLES E. HANGER AND FAYE E. HANGER AND RICHARD R. KELLEY, JR., AND HARE, BREWER & KELLEY, INC., A CALIFORNIA CORPORATION
TRUSTEE:	GATEWAY MORTGAGE CORPORATION, A CALIFORNIA CORPORATION
BENEFICIARY:	FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION, A CORPORATION
RECORDED:	AUGUST 7, 1986, OFFICIAL RECORDS
SERIES NO.:	8892533
LOAN NO.:	21-02-2011298 JK
TYPE LOAN:	NONE SHOWN
ADDRESS:	600 NORTH BRAND BLVD., GLENDALE, CA

AN ASSIGNMENT

ASSIGNED TO:	FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION, A CORPORATION
RECORDED:	AUGUST 7, 1986, BOOK J796, OFFICIAL RECORDS PAGE 1010
SERIES NO.:	8892534

OF CERTAIN OF THE LESSOR'S INTEREST UNDER LEASES REFERRED TO THEREIN, WHICH ASSIGNMENT RECITES, AMONG OTHER THINGS, THAT IT IS GIVEN AS ADDITIONAL SECURITY FOR THE DEED OF TRUST.

5. A DEED OF TRUST TO SECURE AN INDEBTEDNESS IN THE AMOUNT SHOWN BELOW, AND ANY OTHER OBLIGATIONS SECURED THEREBY:

AMOUNT:	$50,000
DATED:	APRIL 14, 1988
TRUSTOR:	HARE, BREWER & KELLEY, INC.
TRUSTEE:	FIRST AMERICAN TITLE INSURANCE COMPANY, A CALIFORNIA CORPORATION
BENEFICIARY:	NORA R. MIELKE
RECORDED:	MAY 26, 1988, BOOK K549, OFFICIAL RECORDS PAGE 292
SERIES NO.:	9705785
LOAN NO.:	NONE SHOWN
TYPE LOAN:	NONE SHOWN
ADDRESS:	305 LYTTON AVENUE, PALO ALTO, CA

6. AN ATTACHMENT ISSUED BY THE COURT AS SET OUT BELOW.

PLAINTIFF:	EARL WATKINS
DEFENDANT:	HARE, BREWER & KELLEY, A CALIFORNIA CORPORATION
COUNTY:	SANTA CLARA
COURT:	SUPERIOR COURT
CASE NO:	699084
RECORDED:	JUNE 1, 1990, BOOK L374, OFFICIAL RECORDS PAGE 2058
SERIES NO.:	10542961

ATTORNEY FOR PLAINTIFF: LINDA HENDRIX MCPHARLIN, MCPHARLIN & MAUL, 50 WEST SAN FERNANDO ST., SUITE 810, SAN JOSE, CA 95113. (408) 293-1900

7. AN ABSTRACT OF JUDGEMENT FOR THE AMOUNT SHOWN BELOW AND ANY OTHER AMOUNTS DUE.

DEBTOR:	HARE, BREWER & KELLEY, INC.
CREDITOR:	EARL WATKINS
DATE ENTERED:	JUNE 19, 1990
COUNTY:	SANTA CLARA
COURT:	SUPERIOR COURT OF SANTA CLARA COUNTY
CASE NO.	699084
AMOUNT:	$160,699.84
RECORDED:	JUNE 20, 1990, BOOK L393, OFFICIAL RECORDS PAGE 1053
SERIES NO.:	10563618

ATTORNEY FOR JUDGEMENT CREDITOR: LINDA HENDRIX MCPHARLIN, MCPHARLIN & MAHL, 50 W. SAN FERNANDO, STE. 810, SAN JOSE, CA 95113

AN ATTACHMENT ISSUED OUT OF SAID ACTION WAS

RECORDED:	JUNE 1, 1990, BOOK L374, OFFICIAL RECORDS PAGE 2058
SERIES NO.:	10542961

AN ABSTRACT OF JUDGEMENT FOR THE AMOUNT SHOWN BELOW AND ANY OTHER AMOUNTS DUE.

DEBTOR:	HARE, BREWER & KELLEY, INC.
CREDITOR:	PENTAGON APARTMENTS
DATE ENTERED:	MAY 30, 1990
COUNTY:	SAN MATEO
COURT:	SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
CASE NO.	348187
AMOUNT:	$54,235.61
RECORDED:	JUNE 18, 1990, BOOK L390, OFFICIAL RECORDS PAGE 197
SERIES NO.:	10559712

ATTORNEY FOR JUDGEMENT CREDITOR: DOUGLAS W. HOLT, ESQ., 1450 CHAPIN AVENUE, P.O. BOX 1695, BURLINGAME, CA 94011-1695

9. AN ABSTRACT OF JUDGEMENT FOR THE AMOUNT SHOWN BELOW AND ANY OTHER AMOUNTS DUE.

DEBTOR:	HARE, BREWER & KELLEY, INC.
CREDITOR:	GERI MADORSKY
DATE ENTERED:	MAY 8, 1990
COUNTY:	SANTA CLARA
COURT:	SANTA CLARA COUNTY MUNICIPAL COURT
CASE NO.	FC 90 051191
AMOUNT:	$19,172.81
RECORDED:	JUNE 22, 1990, BOOK L396, OFFICIAL RECORDS PAGE 774
SERIES NO.:	10566329

ATTORNEY FOR JUDGEMENT CREDITOR: GLENN H. WECHSLER, BELZER, JACKL, KATZEN, HULCHIY, MURRAY & BALAMUTH, 2033 NORTH MAIN STREET, SUITE 700, WALNUT CREEK, CA 94596

10. AN UNRECORDED LEASE WITH CERTAIN TERMS, COVENANTS, CONDITIONS AND PROVISIONS SET FORTH THEREIN

LESSOR:	RICHARD KELLEY
LESSEE:	DIGITAL EQUIPMENT CORP.
DISCLOSED BY:	NOTICE OF NON-RESPONSIBILITY
RECORDED:	JUNE 26, 1990, BOOK L398, OFFICIAL RECORDS PAGE 1961
SERIES NO.:	10568894

THE PRESENT OWNERSHIP OF THE LEASEHOLD CREATED BY SAID LEASE AND OTHER MATTERS AFFECTING THE INTEREST OF THE LESSEE ARE NOT SHOWN HEREIN.

1. AN ABSTRACT OF JUDGEMENT FOR THE AMOUNT SHOWN BELOW AND ANY OTHER AMOUNTS DUE.

DEBTOR:	HARE, BREWER & KELLEY, INC.
CREDITOR:	WEST COAST PLUMBING PROFIT SHARING PLAN
DATE ENTERED:	MAY 30, 1990
COUNTY:	SAN MATEO
COURT:	SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
CASE NO.	348194
AMOUNT:	$96,245.39
RECORDED:	JUNE 28, 1990, BOOK L402, OFFICIAL RECORDS PAGE 224
SERIES NO.:	10572053

ATTORNEY FOR JUDGEMENT CREDITOR: DOUGLAS W. HOLT, ESQ., 1450 CHAPIN AVENUE, P.O. BOX 1695, BURLINGAME, CA 94011-1695

2. AN ABSTRACT OF JUDGEMENT FOR THE AMOUNT SHOWN BELOW AND ANY OTHER AMOUNTS DUE.

DEBTOR:	HARE, BREWER & KELLEY, INC.
CREDITOR:	PENINSULA AIR CONDITIONING, INC.
DATE ENTERED:	JUNE 21, 1990
COUNTY:	SAN MATEO
COURT:	SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
CASE NO.	348722
AMOUNT	$39,697.78
RECORDED:	JULY 17, 1990, BOOK L419, OFFICIAL RECORDS PAGE 1383
SERIES NO.:	10590857

ATTORNEY FOR JUDGEMENT CREDITOR: DENNIS JOHN DURKIN, BURLIN, DURKIN & WHITE, P.O. BOX 1177, REDWOOD CITY, CA 94064

3. AN ABSTRACT OF JUDGEMENT FOR THE AMOUNT SHOWN BELOW AND ANY OTHER AMOUNTS DUE.

DEBTOR:	HARE, BREWER & KELLEY, INC., RYLAND KELLEY AND WILLIAM K. KELLEY
CREDITOR:	S. DAVID NORMAN, AVA E. NORMAN AND RUSSELL NORMAN
DATE ENTERED:	JULY 18, 1990
COUNTY:	SANTA CLARA
COURT:	MUNICIPAL COURT, SUNNYVALE FACILITY
CASE NO.	EC 90 050542
AMOUNT:	$18,495.53
RECORDED:	JULY 26, 1990, BOOK L430, OFFICIAL RECORDS PAGE 0702
SERIES NO.:	10603097

ATTORNEY FOR JUDGEMENT CREDITOR: STEVEN D. HOFFMAN, ESQ., 20370 TOWN CENTER LANE, SUITE 100, CUPERTINO, CA 95014

14. AN ABSTRACT OF JUDGEMENT FOR THE AMOUNT SHOWN BELOW AND ANY OTHER AMOUNTS DUE.

DEBTOR:	HARE, BREWER & KELLEY, INC.
CREDITOR:	IRENE R. CHERNISS
DATE ENTERED:	AUGUST 3, 1990
COUNTY:	SAN FRANCISCO
COURT:	SAN FRANCISCO MUNICIPAL COURT
CASE NO.	041 116
AMOUNT:	$23,236.00
RECORDED:	AUGUST 9, 1990, BOOK L444, OFFICIAL RECORDS PAGE 0651
SERIES NO.:	10617963

ATTORNEY FOR JUDGEMENT CREDITOR; LAWRENCE M. PINES, ESQ., ONE POST ST., SUITE 2100, SAN FRANCISCO, CA 94104-5200

15. AN ABSTRACT OF JUDGEMENT FOR THE AMOUNT SHOWN BELOW AND ANY OTHER AMOUNTS DUE.

DEBTOR:	HARE, BREWER & KELLEY, INC.
CREDITOR:	PAUL S. HEATH
DATE ENTERED:	JULY 3, 1990
COUNTY:	SANTA CLARA
COURT:	SUPERIOR COURT OF CALIFORNIA
CASE NO.	598613
AMOUNT:	$87,882.40
RECORDED:	AUGUST 22, 1990, BOOK L457, OFFICIAL RECORDS PAGE 0203
SERIES NO.:	10632150

ATTORNEY FOR JUDGEMENT CREDITOR: LEONARD J. SIEGAL, ESQ, ATKINSON-FARASYN, 660 WEST DANA ST., P.O. BOX 279, MOUNTAIN VIEW, CA 94042. (415) 967-69411

EXHIBIT G

TENANT'S PERSONAL PROPERTY

All of Tenant's furniture, furnishings, equipment, fixtures trade fixtures, and personal property of every kind from time to time in or upon the Demised Premises, however or whether or not affixed or installed thereto, including, without limitation:

Free-standing HVAC units, including condensers
All cafeteria equipment, including dishwashers, sinks, walk-in freezers, refrigerators, ovens, grills, etc.
Plug-in type lights
Telephone equipment
Paging equipment
Buss duct
Cable tray
Motor generator system
Security equipment (cardreaders, cameras, monitors, etc.)
Vending machines
Halon systems
Computer room raised flooring
De-mountable partitions and ethernet components
Humidifier systems
White marker boards
Lobby receptionist desk
Copy/coffee center millwork

EXHIBIT H

Recording requested by,)
and when recorded return to:)
)
Harry L. Fox)
Aufmuth, Fox & Baigent)
314 Lytton Ave, Suite 200)
Palo Alto, CA 94301)
)
)

MEMORANDUM OF LEASE WITH PURCHASE OPTION

This memorandum of Lease with Purchase Option is made _____, 1990, by Richard R. Kelley, Jr., Charles E. Hanger and Faye E. Hanger, and Hare, Brewer & Kelley, Inc. (collectively, "Landlord"), who agrees as follows:

1. Term and Premises. Landlord leases to Digital Equipment Corporation, a Massachusetts corporation ("Tenant") the real property located in the City of Palo Alto, Santa Clara County, California, described in Exhibit A attached to this memorandum of lease (the "Property"), for a term of twelve (12) years, commencing December 1, 1990, which term is subject to extension by Tenant, for up to two (2) consecutive additional terms of five (5) years each, on the terms and provisions of the Lease between the parties dated November _____, 1990 (the "Lease"). The terms and provisions of the Lease are incorporated into this Memorandum of Lease with Purchase Option by reference.

2. Tenant's Right of First Refusal. Reference is made to Article XXIX, paragraph 1 of the Lease, in which Landlord grants Tenant a right of first refusal to acquire the Property. That paragraph provides, among other terms, that if Landlord desire to sell the Property or has received an offer to purchase the Property, Landlord must first offer to sell the Property to Tenant on the same terms as have been offered to Landlord or on the terms under which Landlord is prepared to sell the Property, and that Tenant shall have twenty (20) business days to accept or reject Landlord's offer.

3. Tenant's Option to Purchase Property. Reference is made to Article XXIX, paragraph 2 of the Lease, in which Landlord grants to Tenant an option to purchase the Property, provided the option is exercised on or before November 30, 1999. That paragraph provides, among other terms, that the conveyance of the Property to Tenant upon exercise of the purchase option shall be free and clear

of all encumbrances unless expressly consented to by Tenant or otherwise permitted pursuant to the Lease.

4. Purpose of Memorandum of Lease. This memorandum of lease is prepared for the purpose of recordation, and it in no way modifies the provisions of the Lease.

LANDLORD

Richard R. Kelley, Jr.

Charles E. Hanger

Faye E. Hanger

Hare, Brewer & Kelley, Inc.

By:

Its:

State of California)
) ss.
County of Santa Clara)

On _____, 1990, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard R. Kelley, Jr., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

- ---

State of California)
) SS.
County of Santa Clara)

On _____, 1990, before me, the undersigned, a Notary Public in and for said State, personally appeared Charles E. Hanger, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

_____

State of California)
) SS.
County of Santa Clara)

On _____, 1990, before me, the undersigned, a Notary Public in and for said State, personally appeared Faye E. Hanger, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

_____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On this___ day of _____, before me a Notary Public for the State of California, personally appeared - _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as _____ on behalf of the corporation therein named and acknowledged to me that the corporation executed it.

_____
Notary Public

SECOND LEASE AMENDMENT

THIS AMENDMENT is made this 14 day of November, 1990 by and between RICHARD KELLEY, CHARLES HANGAR and HARE, BREWER, & KELLEY, INC. a California Partnership ("Landlord") and DIGITAL EQUIPMENT CORPORATION, a Massachusetts Corporation ("Tenant").

WITNESSETH

Landlord and Tenant are parties to a OFFICE SPACE LEASE dated April 6, 1990 ("Lease"), and a FIRST LEASE AMENDMENT dated October 10, 1990, which leases property in the building commonly known as 335 Bryant Street, Palo Alto California ("Premises"). Landlord and Tenant hereby agree that the Lease shall be amended in consideration of the mutual covenants set forth hereinafter and in accordance with the terms and conditions set forth herein:

1. ARTICLE 1. TERM of the Lease is hereby amended to add the following:

> The term of this lease shall be extended from November 1, 1990 and shall now expire on November 30, 1990.

2. ARTICLE 4. RENT is hereby amended to add the following:

> The extended term from November 1, 1990 to November 30, 1990 shall be at the monthly rent of Seventeen Thousand Six Hundred Ninety-Four and 60/100 Dollars ($17,694.60) as defined in this Article.

All other terms and conditions of the Lease shall remain in full force and effect.

In Witness hereof, the parties hereto have set their hands to this Amendment as of the day and date first above written.

LANDLORD:
RICHARD KELLEY, CHARLES HANGAR,
HARE, BREWER & KELLEY, INC.
a California Limited Partnership

By: /s/ Richard R. Kelley, Jr.

Richard Kelley

By: /s/ Charles Hangar

Charles Hangar

By: /s/ [SIGNATURE APPEARS HERE]

Hare Brewer & Kelley, Inc.

TENANT:
DIGITAL EQUIPMENT CORPORATION,
a Massachusetts Corporation

By: /s/ Don Sliwinski

Don Sliwinski
Property Development
Manager

AMENDMENT - 335 BRYANT, PALO ALTO

From: NAME: BEVERLY BELLOWS
FUNC: WESTERN AREA LAW GROUP
TEL: 521-3458
[BELLOWS. BEVERLY AT A1WR1FOR AT WR1FOR @WRO]
To: WILLIAMSAM @COMET @VMSMAIL

Amelia,

Attached is an Amendment to extend the 6 months lease for 335 Bryant in Palo Alto until the end of October. I drafted this at the request of John Brady and Molly Brennan. The time is needed to finalize the acquisition of the building.

Consider this memo approval for Don to sign the Amendment. Then please FAX a signed copy of the Amendment to John Brady at FAX number, 408.554.0704. John will get the Landlords' signature.

Please note that the extension is at no monthly rent cost.

Regards,

EXHIBIT D

CONSENT TO SUBLEASE AND
RECOGNITION AND ATTORNMENT AGREEMENT

THIS RECOGNITION AND ATTORNMENT AGREEMENT (this "Agreement" is made as of _____ 1996, by and between by and between Digital Equipment Corporation ("DEC"), TIBCO Inc., a Delaware corporation ("Sublessor") and Artemis Research, a California corporation ("Sublessee").

A. DEC is the tenant under a certain Amended and Restated Lease ("Original Lease" from Richard R. Kelley, Jr., Charles E. Hangar and Faye E. Hangar, and Harry L. Fox (as successor-in-interest to Hare, Brewer and Kelly, Inc.) ("Landlord") executed November 26, 1990, which Original Lease, was amended by First Amendment to Amended and Restated Lease ("First Amendment") (such Original Lease, as amended by the First Amendment is referred to hereafter as the "Prime Lease") and DEC is the sublandlord and Sublessor is the subtenant under a certain Sublease dated February 17, 1995 (the "Prime Sublease"). The premises leased under the Prime Lease and subleased under the Prime Sublease are the land, with the building and improvements thereon, at 335 Bryant Street, Palo Alto, California, 94301 (as more particularly described in the Prime Lease, the "Premises").

B. Sublessor has entered into or is entering into a sublease of the Premises (the "Sublease") with Sublessee.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DEC, Sublessor and Sublessee hereby agree as follows:

1. Subject to the following provisions of this Agreement, DEC hereby consents to Sublessor's sublease of the Premises to Sublessee pursuant to the Sublease. Without limitation of the foregoing, DEC consents to the use of the Premises for general office use, network operations, research and development and any other use permitted under the Prime Lease.

2. The Sublease is subject and subordinate to the Prime Sublease.

3. DEC agrees to give Sublessee written notice of the occurrence of any default by Sublessor under the Prime Sublease and to accept as a cure of such default, any cure by Sublessee of such default within the applicable cure period provided for in the Prime Sublease, which cure period, for purposes hereof, shall commence on the date of delivery to Sublessee of the notice of default.

4. If the Prime Sublease is surrendered to DEC or if the Prime Sublease is terminated as a result of a default by the Sublessor that by its nature is personal to Sublessor and not curable

by Sublessee, then DEC agrees that so long as Sublessee is not in default under the Sublease, which default has not been cured or is not in the process of being cured within any applicable grace period provided under the Sublease, the following shall apply:

(i) Sublessee shall not be evicted, nor shall Sublessee be joined in any eviction or unlawful detainer action or proceeding instituted or taken by DEC; and

(ii) DEC shall succeed to the interest of Sublessor in the Sublease and Sublessee shall be bound to DEC under all of the terms, covenants and conditions of the Sublease, for the remaining term thereof, with the same force and effect as if DEC were the Sublessor under the Sublease, and Sublessee does hereby agree to attorn to DEC, such attornment to be effective and self operative without the execution of any further instruments on the part of any of the parties to this Agreement, immediately upon DEC succeeding to the interest of Sublessor under the Sublease.

5. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors, and assigns of the parties hereto.

6. In the event that any party fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, whichever the case may be, shall pay any and all costs and expenses incurred by the other parties in enforcing or establishing their rights hereunder, including court costs and reasonable attorneys' fees.

7. This Agreement shall not be modifies or amended except by a written instrument executed by all of the parties hereto.

8. This agreement shall not be nor be deemed to be a consent or waiver or amendment of the Prime Sublease with respect to any other or future transaction, whether similar or dissimilar, and any other or future transaction shall require DEC's written consent, which consent, except as otherwise expressly provided in the Prime Sublease, may be given or withheld in DEC's sole discretion.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

DIGITAL EQUIPMENT CORPORATION

By

Print Name

Its

TIBCO INC.

By

Print Name

Its

TENANT

ARTEMIS RESEARCH

By

Print Name

Its

Exhibit 10.5

LYTTON AVENUE
PALO ALTO, CALIFORNIA
COMMERCIAL LEASE

SUMMARY

The information contained in this "Office Commercial Lease Summary" is incorporated into the terms of the attached "Commercial" Lease.

I. LANDLORD W. Jack Kidder and Kurt L Reitman

As individuals

II. TENANT: WebTV Networks, Inc.
III. PREMISES: 151 Lytton Avenue, the entire building consisting of approximately
5,000 square feet plus 750 square feet of basement
IV. TERM:

Lease Term: Sixty (60)months
Tenant's Right to Terminate December 31st, 1999 with 180 days prior written notice. &e Paragraph 2.3.
Lease Commencement: The Lease Term shall commence January 6, 1997
Lease Expiration: The Lease Term shall expire December 31, 2001
V. OPTION TO EXTEND: None

VI. RENT AND REIMBURSEMENTS:

Initial Base Rent: Monthly Base Rent is Ten Thousand Seven Hundred and Fifty Dollars ($10,750).
Rental Adjustment Schedule: Annual 3% increase on January 1st of each year.
Expense Reimbursements See Section 3.2 and 6.3. Initial monthly Operating Expenses are estimated to be
Two Thousand Five Hundred Dollars ($2500)
per month.
Tenant's Allocable Share: 100% of Building operating expenses
Security Deposit: Ten Thousand Seven Hundred and Fifty Dollars ($10,750)
VII. TENANT USE: General Office Uses Consistent With Section 4.1 of This Lease Agreement

VIII. EXECUTION: The Landlord and Tenant agree to the provisions of the Commercial Lease dated for reference purposes as December 15,1996, including the attached Exhibits.

Landlord: W. Jack Kidder
By

TABLE: OF Contents

COMMERCIAL LEASE
151 LYTTON AVENUE
PALO ALTO,
CALIFORNIA

This Lease is made and entered by and between "Landlord" and "Tenant" as these terms are defined in the "Commercial Lease Summary", which Commercial Lease Summary constitutes and is numbered as page 1 of this Lease and which for reference purposes is dated December 15,1996.

1. Premises.

1.1 Description of Premises. Landlord leases the "Premises" (as hereinafter defined) to Tenant for Tenant's exclusive use, and Tenant leases the Premises from Landlord for the term, at the rental, and upon all of the conditions set forth herein and in the Lease Summary. A floor plan showing the "Premises" is attached as Exhibit A. The Premises consist of the entire building of approximately 5,000 square feet plus a 750 square foot basement. The land upon which the Building is located is referred to herein as the "Property".

- 1.2 Landlord's Work. Landlord shall provide the Premises to Tenant in "as is " condition and makes no representation that the existing conditions are free from defects. During the term of the Lease Landlord may upgrade the exterior of the Building provided Tenant shall have the right to reasonably approve the plans for the exterior improvements, and provided futherthat no work performed by Landlord shall be disruptive to Tenant's ability to conduct its business at the Premises.

1.3 Surrender of Premises. At the end of the term of this Lease or upon any earlier termination pursuant to this Lease, Tenant shall surrender the Premises to Landlord in the same condition as existed on the Commencement Date, subject to reasonable wear and tear and damage by casualty except that all articles of personal property and all business and trade fixtures, machinery, equipment, furniture owned by Tenant and installed by Tenant at its expense in the Premises shall remain the Property of the Tenant and may be removed by Tenant at any time during the Lease term. If Tenant fails to remove all of Tenant's Property from the Premises upon termination of the Lease for any cause whatsoever, Landlord may, at its option, any time within thirty (30) days of the lease termination and after ten (10) days written notice to Tenant of its intention to remove Tenant's Property, remove same in any manner Landlord shall choose and store such effects without liability to Tenant for loss thereof, and Tenant shall pay Landlord upon demand any and all reasonable expenses incurred in connection with such removal, including court costs, reasonable attorney fees, and reasonable storage charges incurred which such effects were in Landlord's possession. Tenant shall not damage the wood paneling of the large offices located along the western wall of the Premises.

1.4 Tenant's Contribution to Tenant Improvements. Tenant shall invest not less than One Hundred Thousand Dollars ($100,000) in improvements to the Building ("Tenant Improvements"). The Tenant Improvements to be constructed by Tenant shall be subject to Landlord's reasonable approval, which approval or rejection shall be provided by Landlord within ten (10) days of submittal of plans, specifications and a contractor's budget estimate to Landlord. The reasonableness of Landlord's approval shall be based on the value of the Tenant Improvements to Landlord for general office users, and not for improvements that are specific to Tenant's particular use. Investment in electrical service, cabling and telecommunications are to be comparable to investment in these items which would be made by a professional office user and not to investment by a technology user. The Tenant Improvements shall specifically include upgrading at lease one toilet room so that there is handicap access. The large wood-paneled offices may not be modified, except for increased electrical outlets and telecommunications. It is anticipated that the Tenant Improvements shall include opening

up a significant portion of the central area and eastern offices located in the Premises. The investment in Tenant Improvements shall be verified by Landlord after delivery to Landlord of copies of invoices for Tenant Improvement work performed by Tenant which work must be performed at competitive rates not at a premium notes for overtime. If Tenant has invested less than One Hundred Thousand Dollars ($100,000) in Tenant Improvements, as reasonably approved by Landlord, then Tenant shall pay to Landlord on termination of the Lease, including an early termination under Paragraph 2.3, if applicable, the difference between One Hundred Thousand Dollars ($100,000) and the amount actually invested by Tenant in approved Tenant Improvements.

1.5 Parking. None Provided

2. Term. This Lease shall begin on January 6,1997, the "Commencement Date" and shall continue for a term of sixty (60) months, expiring December 31st, 2001 as stated in the Lease Summary, in accordance with the following:

2.1 Postponement. Intentionally Omitted

2.2 Option to Extend. Intentionally Omitted

2.3 Tenant's Right to Terminate. Tenant shall have the right to terminate this Lease with the termination to be effective as of December 31,1999, provided each of the following conditions shall have been satisfied:

(a) Tenant shall have provided Landlord One Hundred Eighty (180) days prior written notice;
(b) Tenant shall have paid Landlord a termination fee equal to Thirty Six Thousand Dollars ($36,000); and
(c) Tenant shall have satisfied the requirements of Paragraph 1.4 of this Lease.

3. Rent.

3.1 Payment of Rent. Tenant shall pay to Landlord the Rent as stated in the Lease

Summary, without deduction, offset, prior notice or demand, in advance on the first day of each calendar month of the term of this Lease. Rent shall be payable in lawful money of the United States to Landlord at such place as Landlord may designate in writing. Tenant's obligation to pay rent for the initial and any subsequent partial month shall be prorated on the basis of a thirty (30) day month.

3.2 Expense Reimbursements.

(a) Tenant shall pay to Landlord during the term hereof, in addition to the Base Rent, as additional rent (the "Additional Rent");

(i) Tenant's "Allocable Share" (as described in Paragraph 3.2(d)) of Operating Expenses, as set forth in Paragraph 6.3(b) herein;

(ii) Tenant's Allocable Share of all Real Property Taxes relating to the Property, as set forth in Paragraph 7.2 herein;

(iii) Tenant's Allocable Share of insurance premiums, as set forth in Paragraph 11.3 and 11.4, but not in excess of the premiums for insurance carried by landlords of other comparable quality office buildings in Palo Alto ("Comparable Buildings"); and

(iv) All charges, costs and expenses which Tenant is required to pay hereunder, together with all late charges, interest, costs and expenses including attorneys' fees, that may accrue thereto in the event of Tenant's failure to pay such amounts, and all damages, reasonable costs and expenses which Landlord may incur by reason of Tenant's default or breach of this Lease.

(b) In the event of nonpayment by Tenant of Additional Rent, Landlord shall have all the rights and remedies with respect thereto as Landlord has for nonpayment of Base Rent.

(c) From and after the Commencement Date, Tenant shall pay to Landlord on the first day of each calendar month of the Lease Term an amount reasonably estimated by Landlord to

be the monthly amounts attributable to clauses (i), (ii), and (iii) of Paragraph 3(a) (collectively, "Expense Reimbursements"). Within ninety (90) days following the end of each calendar quarter Landlord shall furnish Tenant a statement of the actual expenses incurred by Landlord in the calendar quarter and the payments made by Tenant with respect to such period, complete with all of Landlord's invoices, bills, copies of canceled checks, and other evidence of expense substantiating all such expenses (such statement of actual Expense Reimbursements, together with all required substantiating documentation is referred to herein as the "Statement"). If Tenant's payments are less than the amount of the actual expenses properly allocable to Tenant, Tenant shall pay Landlord the deficiency within thirty (30) days after receipt of such statement. If Tenant's payments exceed the actual expenses properly allocable to Tenant, Landlord shall offset the excess against the Base Rent and Additional Rent next thereafter to become due to Landlord; provided that if the Lease Term shall have expired, Landlord shall refund the excess to Tenant within thirty (30) days. The initial "Estimated Expense Reimbursements" for the Premises is set forth on the Lease Summary. The Estimated Expense Reimbursements may be adjusted by Landlord's providing thirty (30) days written notice to Tenant of the changed Estimated Expense Reimbursements. Tenant shall have the right to audit Landlord's books and records to verify Expense Reimbursements for a period of up to six (6) months following receipt of Landlord's Statement. Such audit shall be conducted at Landlord's offices, during normal business hours, and on no less than ten (10) days prior written notice. Tenant's payment of any amount pursuant to this Paragraph 3.2(c) shall not preclude Tenant from later auditing the correctness of such payment.

(d) Tenant's "Allocable Share" shall be one hundred percent (100%).

3.3 Late Payment: Interest. If any installment of Rent, Additional Rent or any other sum due from Tenant is not received by Landlord within ten (10) days after the due date, Tenant shall pay to Landlord as liquidated damages an additional sum equal to Three Hundred Dollars ($300) to compensate Landlord for reasonably foreseeable processing and accounting charges, and any charges that may be incurred by Landlord with regard to any financing secured by the Property. Should Tenant fail to make any payment within the specified time limits, then Landlord's acceptance of any late charge shall not constitute a waiver by Landlord of Tenant's default with respect to the overdue amount.

3.4 Security Deposit:. Tenant has deposited the Security Deposit with Landlord as security for the full and faithful performance by Tenant of every term and covenant of this Lease. In the event Tenant defaults in the performance of any of its obligations hereunder, Landlord may use or apply any portion of the Security Deposit to cure the default or to compensate Landlord for its damages from the default, in which event Tenant shall promptly deposit with Landlord the sum necessary to restore

the Security Deposit to its original amount. Upon termination of this Lease and performance of all of Tenant's obligations hereunder, Landlord shall return the Security Deposit or any balance thereof to Tenant. Tenant shall not be entitled to any interest on the Security Deposit, and Landlord shall be entitled to commingle the Security Deposit with its general funds.

4. Uses.

4.1 Use of the Premises. The Premises shall be used only for general office uses or any other lawful purpose consistent with City of Palo Alto zoning ordinances for the Premises. Tenant will engage in no activity on the Premises that would, in the judgment of any insurer of the Premises, increase the premium on any of Landlord's insurance over the amount otherwise charged thereforor cause such insurance to be canceled. Tenant will comply with all applicable laws and governmental regulations pertaining to its use and occupancy of the Premises. Tenant will not cause any excessive loads to be placed upon the floor slabs or the walls of the Premises by the placement of its furnishings or equipment or otherwise. Tenant will commit no nuisance or waste on the Premises and will not cause any unreasonable odors, noise, smoke, vibration, electronic emissions, or any other item to emanate from the Premises so as to damage the Property or any other person's property.

4.2 No Exterior Uses. No area outside of the Building or the EXTERIOR OF THE BUILDING is leased to or may be used by Tenant except for signage in accordance with Paragraph 14 and parking and

access. No rubbish containers may be stored outside of the Premises except in areas specifically identified by Landlord. No materials may be stored outside of the Premises by Tenant.

4.3 Hazardous Materials.

(a) Tenant shall not cause or permit to be discharged from OR ABOUT the Premises or the Building any materials identified by any federal, state, or local governmental body or agency as hazardous materials (collectively, "Hazardous Materials"). Tenant shall at its sole expense comply with all applicable governmental rules, regulations, codes, ordinances, statutes and other requirements respecting Hazardous Materials in connection with Tenant's activities on or about the Premises or the Property. Tenant shall at its sole cost perform all clean-up and remedial actions which may be required of Tenant by any governmental authority pertaining to any discharge of such materials by Tenant.

(b) Tenant shall indemnify and hold Landlord harmless from all costs, claims, judgments, losses, demands, causes of action, proceedings or hearings, including without limitation Landlord's reasonable attorneys' fees and court costs, relating to the storage, placement or use of Hazardous Materials by Tenant on or about the Premises, including without limitation (i) losses in or reductions to rental income resulting from Tenant's use, storage, or disposal of Hazardous Materials; (ii) all costs of clean-up or other alterations to the Premises necessitated by Tenant's use, storage, or disposal of Hazardous Materials; and (iii) any diminution in the fair market value of the Property caused by Tenant's use, storage, or disposal of Hazardous Materials. The obligations of Tenant under this Paragraph 4.3 shall survive the expiration of the Lease term.

(c) Tenant hereby acknowledges that asbestos or building materials containing asbestos may be present in the Premises. Tenant further acknowledges that it shall be incumbent upon Tenant to conduct its own investigation as to the presence or absence of asbestos in the Premises. Landlord shall have absolutely no liability to Tenant with regard to the presence and/or release of asbestos in the Premises. Notwithstanding anything to the contrary contained herein, Landlord shall, at its sole cost, assume full responsibility for any removal or encapsulation of asbestos required by any governmental or regulatory agency due to Tenant's use or occupancy of the Premises, and

any and all removal or encapsulation shall be conducted in compliance with the provisions of this Section 4.3.

(d) Landlord shall indemnify and hold Tenant harmless from all costs, claims, judgments, losses, damages, demands, causes of action, proceedings and hearings, including without limitation, Tenant's reasonable attorney's fees and court costs, arising out of or resulting from any Hazardous Materials on the Property or alleged to be on the Property and that were not brought on to the Property by Tenant or Tenant's agents or employees. The obligations of Landlord under this paragraph 4.4 survive the expiration of the Lease term.

5. Alterations and Additions. Tenant shall not make any alteration, addition or utility installation (collectively "Changes") to the Premises without Landlord's prior written consent which can be exercised using its sole discretion. Notwithstanding the immediately preceding sentence (and other than for investment in Tenant Improvements under Paragraph 1.4, which require Landlord's approval), Tenant shall have the right to make interior, non structural alterations within the Premises without Landlord's approval, provided that (i) such alterations do not exceed Twenty Five Thousand Dollars ($25,000) in cost per project; (ii) prior to commencing such alterations, Tenant shall give 15 days prior written notice to Landlord specifying the work to be done and the area of the Premises affected by such work; and (iii) Tenant shall obtain all necessary governmental permits and approvals prior to commencing such work. In making any changes hereunder, Tenant shall comply with all applicable building codes and other governmental requirements. Tenant shall be solely responsible for any requirements imposed on the Building due to City, County, State or Federal regulations as a

consequence of such alterations. Unless Landlord has specifically waived this provision in writing prior to the installation of the Changes, such Changes (i) shall be removed from the Premises, and all damage resulting from such removal repaired by Tenant prior to the expiration or sooner termination of the Lease term, or (ii) shall remain on the Premises at the end of the Lease term and become the property of the Landlord, at Landlord's sole election. In making all Changes, Tenant shall hold Landlord harmless from mechanics' liens and all other liability resulting therefrom. Tenant shall provide five (5) days advance written notice to Landlord, in order that Landlord may post on the Premises appropriate notices to avoid any liability or liens by reason thereof.

6. Maintenance and Repair.

6.1 Tenant's Obligations. Except for those portions of the Building which Landlord is obligated to maintain and repair pursuant to Paragraph 6.2 below, Tenant, at its sole cost, shall maintain the Premises comparable to the current condition of the Premises.

6.2 Landlord's Obligations. Subject to Tenant's obligations pursuant to Paragraph 6.3, and the provisions of this Lease dealing with damage or destruction and condemnation, Landlord shall repair and maintain in good working order the roof, roof membrane, and all structural portions of the Premises and the Building, the heating, ventilation, air-conditioning and other equipment serving the Premises, the plumbing and electrical systems (including utility LINES AND conduits) AND EQUIPMENT, exterior surfaces or the building, sidewalks and landscaping for the building. If Landlord fails to perform its maintenance and repair obligations hereunder and, as a consequence, Tenant's use of the Premises is impaired, Tenant shall have the right to cause the necessary repairs to be performed and to seek reimbursement from Landlord for the cost thereof. In addition, Tenant may offset any such costs against one-third (1/3) of Base Rent subject to the provisions of Paragraph 17.7.

6.3 Tenant's Obligation to Reimburse.

(a) Tenant shall pay Tenant's Allocable Share of all "Operating Expenses" (as defined below) as may be paid or incurred by Landlord during the term of this Lease. All Operating

Expenses shall be prorated as of the Commencement Date and Expiration Date to reflect any portion of a calendar year occurring within the Lease Term

(b) The term "Operating Expenses" shall mean all costs and disbursements which Landlord shall pay or become obligated to pay in connection with the Real Property Taxes described in Paragraph 7.2, the insurance described in Paragraphs 11.3 and 11.4 below, and the maintenance, repair and operation of the Property, including, but not limited to all labor, materials, supplies and services, including the cost of all maintenance contracts, used or consumed in performing Landlord's maintenance obligations hereunder provided such costs are incurred for the purpose of maintaining the Building. Operating Expenses shall also include wages and salaries of all employees, accounting personnel, and consultants engaged in the operation and maintenance of the Building, and property management and general and administrative expenses. The total amount payable for the services set forth in the immediate proceeding sentence shall be Four Hundred Dollars ($400) per month. Operating Expenses shall also include all costs and disbursements which Landlord shall pay or become obligated to pay in connection with the maintenance, repair and operation of the outside area of the Building, including landscaping costs unless Tenant assumes responsibility for Landscaping activity for the building, with the approval of Landlord.

(c) Operating Expenses will not include any charges for regular building janitorial service or the monthly utility charges from the City of Palo Alto. These charges will-be contracted for and billed directly to Tenant at Tenant's sole cost and responsibility.

(d) Operating Expenses will not include any of the following expenses:

(i) marketing costs, leasing commissions, finders' fees, attorneys' fees, costs and disbursements, and other expenses incurred in connection with negotiations with prospective tenants or the sale or refinancing of the Building, or legal fees incurred in connection with this Lease;

(ii) depreciation and amortization, except for depreciation or amortization of capital improvements otherwise provided in Paragraph 6.3 (b);

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(iii) payment of principal, interest, late fees, prepayment fees or other charges on any debt or amortization payments on any mortgage or mortgages executed by Landlord covering the Building now or in the future, rental concessions or negative cash flow guaranties, or rental payments under any ground or underlying lease or leases;

(iv) except as otherwise provided in Paragraph 6.3 (b), Landlord's general administrative overhead expenses;

(v) any cost, fines, or penalties incurred due to violations by Landlord of any governmental rule or authority;

(vi) charitable or political contributions;

(vii) Any cost of capital improvements or any cost imposed on Landlord under this Lease or which under Generally Accepted Accounting Principles would not be subject to reimbursement by Tenant as an expense.

(e) In addition to the foregoing, Tenant shall reimburse Landlord in full for any damages to the Premises or the Building which are caused solely by Tenant, its agents, employees

or contractors but not repaired by Tenant or covered by insurance carried or required to be carried b Landlord pursuant to Paragraph 11.2.

7. Taxes.

7.1 Tenant's Personal Property Taxes. Tenant shall pay prior to delinquency all taxes, license fees, and public charges assessed or levied against Tenant, Tenant's estate in this Lease or Tenant's leasehold improvements, trade fixtures, furnishings, equipment and other personal property.

7.2 Real Property Taxes. Tenant shall pay Tenant's Allocable Share of "Real Property Taxes" (as defined in Paragraph 7.3 below) during the Lease term; provided, however, that Landlord reserves the right to adjust Tenant's liability for payment of Real Property Taxes respecting the Property to reflect the portion thereof which is equitably allocable to Tenant based on the tax assessor's worksheets. Tenant's liability to pay Real Property Taxes shall be prorated on the basis of a 365-day year to account any fractional portion of a tax year included in the lease term at the commencement or expiration hereof.

7.3 Definition. The term "Real Property Taxes" shall mean all taxes, general and special assessments, and other charges imposed by any taxing authority and collection of rental income therefrom (excepting only estate taxes, inheritance taxes, and includes all entities having taxing or assessment authority by law or by virtue of any recorded instrument binding on the owner of the Property.

7.4 Supplemental Assessments. Tenant shall be liable for Tenant's Percentage Share of Real Property Taxes of any supplemental assessments levied against the Property which are applicable to any portion of the lease term. Tenant's liability for supplemental assessments shall survive the expiration or earlier termination of the lease term. Tenant shall pay Landlord such amounts within thirty (30) days of Tenant's receipt of Landlord's invoice for supplemental assessments.

8. Utilities and Services. All utilities servicing and metered to the Premises shall be paid by the Tenant directly to the charging authority. No failure or interruption of any such utilities or service shall entitle Tenant to terminate this Lease or to withhold rent or other sums due hereunder and Landlord shall not be liable to Tenant for any such failure or interruption unless caused by the willful misconduct of Landlord. If the interruption in utility services results due to a failure of equipment, and continues for five (5) business days, then commencing on the sixth (6th) business day, Tenant shall be entitled to an abatement of rent to the extent of the interference with Tenant's use and occupancy or the Premises. Landlord shall not be responsible for providing any security protection for all or any portion of the Property and Tenant shall at its own expense provide or obtain any security services that it desires.

9. Indemnity.

(a) Tenant hereby agrees to indemnify and hold Landlord harmless from and against any and all claims, demands, liabilities, and expenses, including reasonable attorneys' fees to the extent, arising from Tenant's use of the Premises or from any act permitted, or any omission to act, in or about the Premises or the Property by Tenant or its agents, employees, contractors, or invitees, or from any material breach or default by Tenant of this Lease, or from any injury to person or property, except to the extent caused by the negligence or willful misconduct of Landlord or Landlord's agents, contractors, or employees. In the event any action or proceeding shall be brought against Landlord by reason of any such claim, Tenant shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord.

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b) Landlord hereby agrees to indemnify and hold Tenant harmless from and against any and all costs, claims, judgments, losses, damages, demands, causes of action, proceedings and hearings, including without limitation, Tenant's reasonable attorney's fees to the extent arising from the negligence or willful misconduct of Landlord or Landlord's agents, contractors, or employees, or from the material breach or default by Landlord of this Lease.

10. Waiver of Maims. Tenant hereby waives any claims against Landlord for injury to Tenant's business or any loss of income therefrom, for damage to Tenant's property, or for injury or death of any other person in or about the Premises or the Property from any cause whatsoever, except to the extent caused by the negligence or willful misconduct of Landlord or Landlords agents, contractors, or employees or for the material breach or default of this Lease by Landlord.

11. Insurance.

11.1 Tenant's Liability Insurance. Tenant shall, at its expense, obtain and keep in force during the term of this Lease a policy of comprehensive public liability insurance insuring Landlord and Tenant against any liability arising out of the operation of Tenant's business and the condition, use, occupancy or maintenance of the Premises. Such insurance policy shall have a combined single limit for both bodily injury and property damage in an amount not less than Two Million Dollars ($2,000,000). The policy shall contain cross liability endorsements (to the extent available on commercially reasonable terms) and shall include contractual liability. The limits of said insurance shall not limit the liability of Tenant hereunder.

11.2 Tenant's Property Insurance. Tenant shall, at its expense, keep in force during the term of this Lease, a policy of fire and property damage insurance, including protection for glass and

windows to the Premises, in an "all risk" form, insuring Tenant's inventory, fixtures, equipment, personal property, and leasehold improvements within the Premises (whether installed by Landlord or Tenant) for the full replacement value thereof.

11.3 Landlord's Liability Insurance. Landlord shall maintain a policy of comprehensive general liability insurance in an amount of coverage the Landlord deems advisable insuring Landlord (and such other entities as designated by Landlord) against liability for personal injury, bodily injury or death and damage to property occurring or resulting from an occurrence in, on, or about the Property with such coverage as Landlord may from time to time deem advisable.

11.4 Landlord's Property Insurance. Landlord shall maintain a policy or policies of insurance covering loss or damage to the Property, including protection from rental loss and coverage for operating expenses resulting from loss or damage to the Building, and such other hazards in the industry in such amounts and with such coverage as Landlord deems advisable, but in no event for less than 90% of replacement value (except for earthquake coverage). All proceeds under such policies shall be payable exclusively to Landlord.

11.5 Waiver of Subrogation. Tenant and Landlord each hereby waives, and shall seek to cause their respective insurers to similarly waive, any and all rights of recovery against the other, or against the officers, employees, partners, agents and representatives of the other, for loss of or damage to the property of the waiving party or the property of others under its control, to the extent such loss or damage is (or would have been) insured against under any insurance policy carried (or required to be carried) by Landlord or Tenant hereunder.

11.6 Insurance Policies. All of Tenant's insurance shall be primary insurance written in a form satisfactory to Landlord by companies acceptable to Landlord and shall specifically provide by endorsements reasonably acceptable to Landlord that such policies shall: (i) not be subject to

cancellation or other change except after at least thirty (30) days' prior written notice to Landlord; (ii) be primary insurance; (iii) specifically waive subrogation pursuant to this Lease. All liability

. policies maintained by Tenant hereunder shall name Landlord and Landlord's property management

company as additional insured parties. Copies of the policies or certificates evidencing the policies, together with satisfactory evidence of payment of premiums shall be deposited with Landlord on or prior to the Commencement Date, and upon each renewal of such policies, which shall be effected not less than thirty (30) days prior to the expiration date of the term of such coverage.

12. Damage. Except as provided for Paragraph 12.1, if damage occurs to any portion of the Premises, providing that (i) such damage is insured against or required to be insured against under Landlords insurance policies, (ii) such damage does not render the Premises unusable, and (iii) such damage does not occur within THE LAST TWELVE (12) MONTHS OF THE LEASE TERM, Landlord WILL CAUSE SUCH damage to be repaired with reasonable diligence, subject to delays in the obtaining and disbursement of insurance proceeds and delays caused by inclement weather, governmental action or inaction, and shortage of materials or services. If such damage is not required to be insured against, or if the damage occurs within the last twelve (12) months of the lease term, Landlord may elect, at its option exercised by written notice to Tenant within thirty (30) days of the date that Landlord learns of the damage, to either complete the repair at its expense or elect to terminate this Lease as of the date of damage. If at any time a portion of the Premise is damaged or destroyed by any cause thereby rendering the Premises unusable, even if such damage is required to be insured against pursuant to Paragraph 11 above, - Landlord shall notify Tenant in writing as to the estimated time for repairing the damage within thirty (30) days of the date on which Landlord learns of the damage. If Landlord reasonably estimates that the time required for repair exceeds six (6) months, from the date of damage, then Tenant shall be entitled to terminate this Lease by delivering written notice of termination to the other party within 10 (ten) days after receipt of the estimation. Regardless of the total repair time, if this lease is not terminated, rent will

abate during the period until the Premises are repaired and ready for Tenant's full use and occupancy. Under no scenario will Landlord have liability on account of the damage.

12.1 Tenant's Property. Landlord's obligation to rebuild or restore shall not include Tenant's trade fixtures, equipment, merchandise, or any improvements, alterations or additions made by Tenant to the Premises.

13. Condemnation. If any part of the Premises shall be taken for any public, or quasi-public use, under any statute or by right of eminent domain or purchase in lieu thereof, and a part thereof remains which is susceptible to occupation hereunder, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor or purchaser, and the rent payable hereunder shall be adjusted so that Tenant shall be required to pay for the remainder of the Lease term only such portion of such rent as the value of the part remaining after such taking bears to the value of the entire Premises prior to such taking, but in such event Landlord shall have the option to terminate this Lease as of the date when title to the part so taken vests in the condemnor or purchaser. If all of the Premises, or such part thereof be taken so that there does not remain a portion susceptible to occupation hereunder, this Lease shall thereupon terminate. All compensation awarded upon any taking hereunder shall belong exclusively to the Landlord. Notwithstanding any provision to the contrary contained herein, Tenant shall have the right to make a separate claim against the appropriate governmental authority for condemnation proceeds allocable to the unamortized costs of the leasehold improvements made at the cost of Tenant, the removal of Tenant's trade fixtures or removable personal property, and relocation expenses if and only to the extent that such separate claim does not diminish Landlord's condemnation award.

14. Advertisements and Signs. Tenant shall not place or maintain any sign, advertisement, notice or other marking whether temporary or permanent on the exterior or visible from the exterior of

LANDLORD INITIAL 14 TENANT INITIALS

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the Premises or the Property, without the approval of the City of Palo Alto, if necessary, and the prior written consent of Landlord. The Landlord's consent shall not be unreasonably withheld.

15. Entry by Landlord. Landlord and its agents shall have the right to enter the Premises on reasonable prior written notice (except in an emergency) to Tenant at the Premises, subject to Tenant's security requirements, only for the purpose of inspecting the same, showing the premises to prospective purchasers or others, posting notices of non-responsibility, or making repairs, alterations or additions to any portion of the Building (but not to the Premises, except when Landlord is required to do so by this Lease or by law). In making any such entry, Landlord shall minimize its interference with Tenant's use and occupancy to the extent reasonable under the circumstances surrounding such entry. Landlord and its agents may, at any time within ninety (90) days prior to the expiration of the lease term, place upon Premises "For Lease" signs and, on reasonable written or oral notice to Tenant at the Premises only, exhibit the Premises to prospective tenants.

16. Assignment and Subletting.

16.1 Landlord's Consent Required. Tenant may assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in the Lease or in the Premises, subject to Landlord's prior written consent, which shall not be unreasonably withheld or delayed. It shall be reasonable for Landlord to deny consent if (a) the use to be made of the Premises by the proposed assignee or sublessee would be prohibited by any other term of this Lease; or (b) the financial condition of the proposed assignee or sublessee are not satisfactory to Landlord based on the ability of the proposed Assignee or Sublessee to fulfill the Tenant's obligations under this Lease.

16.2 Documentation. Prior to any assignment or sublease, Tenant shall provide to Landlord the proposed assignee's or sublessee's name, address, financial statements for the previous three (3) years, (if available) and copies of all documents relating to Tenant's proposed assignment or sublease.

16.3 Terms and Conditions. In connection with any proposed assignment or sublease, Tenant shall pay to Landlord all processing costs and attorneys' fees incurred by Landlord (not to exceed One Thousand Dollars ($1,000)), regardless of whether Landlord consents to such assignment or sublease. Each assignment or sublease shall be in form satisfactory to Landlord and shall be subject and subordinate to the provisions of this Lease. Once approved by Landlord, such assignment or sublease shall not be modified without Landlord's prior written consent. Each assignee or sublessee shall agree to perform all of the obligations of Tenant hereunder (except those previously fulfilled by Tenant) and shall acknowledge that the termination of this Lease shall, at Landlord's sole election, constitute a termination of every such assignment or sublease. If Landlord approves an Assignee, Tenant shall be relieved of any liability under this Lease for acts or omissions occurring subsequent to the date of assignment of the Lease. Landlord may accept Rent from a proposed assignee or sublessee without waiving its right to withhold consent to a proposed assignment or subletting.

16.4 Landlord's Remedies. Any assignment or sublease without Landlord's prior written consent where such consent is required shall be void, and shall constitute a default under this Lease. The consent by Landlord to any assignment or sublease shall not constitute a waiver of the provisions of this Paragraph 16 with respect to any subsequent assignment or sublease.

17. Default.

17.1 Event of Default. The occurrence of any of the following events (an "Event of Default") shall constitute a default and breach of this Lease by Tenant:

LANDLORD INITIAL 15 TENANT INITIALS

(a) The failure by Tenant to make any payment of rent or any other required payment, as and when due, and such failure shall not have been cured within five (5) days after written notice thereof from Landlord;

(b) Tenant's failure to perform any other term, covenant or condition contained in this Lease and such failure shall have continued for thirty (30) days after written notice of such failure is given to Tenant; PROVIDED THAT WHERE SUCH FAILURE CANNOT REASONABLY BE CURED WITHIN said thirty (30) day period, Tenant shall not be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently pursues all reasonable efforts to complete said cure until completion thereof;

(c) TENANT'S ASSIGNMENT OF ITS ASSETS FOR THE BENEFIT OF ITS CREDITORS; THE filing of a petition by or against Tenant, where such action is not dismissed within thirty (30) days, seeking adjudication or reorganization under the Bankruptcy Code; the appointment of a receiver to take possession of, or a levy by way of attachment or execution upon, substantially all of Tenant's assets at the Premises.

(d) Tenant abandons the Premises.

- 17.2 Remedies. Upon any Event of Default, which is not cured, Landlord shall have the following remedies, in addition to all other remedies now or hereafter provided by law or equity:

(a) Landlord shall be entitled to keep this Lease in full force and effect and Landlord may enforce all of its rights and remedies under this Lease, including the right to recover rent and other sums as they become due, plus interest at the highest rate then allowed by law, from the due date of each installment of rent or other sum until paid; or

(b) Landlord may terminate Tenant's right to possession by giving Tenant written notice of termination, whereupon this Lease and all of Tenant's rights in the Premises shall terminate. Any termination under this paragraph shall not release Tenant from the payment of any sum then due Landlord or from any claim for damages or rent accrued.

In the event this Lease is terminated pursuant to this Paragraph 17.2(b), Landlord may recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including but not limited to: (i) The cost of recovering possession of the Premises; (ii) Expenses of reletting, including necessary renovation and alteration of the Premises; (iii) Reasonable attorneys' fees, any real estate commissions actually paid and that portion of any leasing commission paid by Landlord applicable to the unexpired term of this Lease; (iv) The worth at the time of award of the unpaid rent which had been earned at the time of termination; (v) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss for the same period that Tenant proves could have been reasonably avoided; (vi) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided; and (vii) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom except for utilities and other expenses that would cease wish the closure of the restaurant business.

The "worth at the time of award" of the amounts referred to in subparagraphs (iv) and (v) of this Paragraph 17.2(b) shall be computed by allowing interest at the maximum rate then permitted by law. The "worth at the time of award" of the amount referred to in subparagraph (vi) of This Paragraph 17.2(b) shall be computed by discounting such amount at the discount rate of the Federal

Reserve Bank of San Francisco at the time of award plus one percent (1%). The term "rent" as used in this paragraph shall include all sums required to be paid by Tenant to Landlord pursuant to the terms of this Lease.

17.3 No Relief From Forfeiture After Default. Tenant waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, and under any other present or future law, in the event Tenant is evicted or Landlord otherwise lawfully takes possession of the Premises by reason of any Event of Default.

17.4 Landlord's Right to Perform Tenant's Obligations. If Tenant shall at any time fail to perform any obligation required of Tenant hereunder, and provided Tenant has been provided a thirty (30) day notice from Landlord concerning such obligation, then Landlord may, AT ITS OPTION, perform such obligation to the extent Landlord deems desirable, and may pay any and all expenses incidental thereto and employ counsel. No such action by Landlord shall be deemed a waiver by Landlord of any of Landlord's rights or remedies, or a release of Tenant from performance of such obligation. All sums so paid by Landlord shall be due and payable by Tenant to Landlord on the day immediately following Landlord's payment thereof. Landlord shall have the same rights and remedies for the nonpayment of any such sums as for default by Tenant in the payment of rent.

17.5 Remedies Not Exclusive. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies available.

17.6 Termination. Surrender and Abandonment. No act or conduct of Landlord, including, without limitation, efforts to relet the Premises, an action in unlawful detainer or service of notice upon Tenant or surrender of possession by Tenant pursuant to such notice or action, shall extinguish the liability of Tenant to pay rent or other sums due hereunder or terminate this Lease, unless

Landlord notifies Tenant in writing of Landlord's election to terminate this Lease. No act or conduct of Landlord, including the acceptance of the keys to the Premises, other than a written acknowledgment of acceptance of surrender signed by Landlord, shall be deemed to be or constitute an acceptance of the surrender of the Premises by Tenant prior to the expiration of the Lease term. The surrender of this Lease by Tenant, voluntarily or otherwise, shall, at Landlord's option, operate as an assignment to Landlord of any and all existing assignments and subleases, or Landlord may elect to terminate any or all of such assignments and subleases by notifying the assignees and subleases of its election within fifteen (15) days after such surrender.

17.7 Landlord's Default. Nothing under this Section 17.7 shall hurt Tenant's rights under Section 6 of this Lease. In the event of any failure by Landlord to perform any of Landlord's obligations under this Lease, Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall thereupon have thirty (30) days in which to cure any such default. Unless and until Landlord fails to so cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof. If a default by Landlord remains uncured after the expiration of the thirty (30) day period (except for obligations of Landlord which reasonably require greater than thirty (30) days to fulfill, and provided Landlord has initiated performance of any such obligation within such thirty (30) day period and has thereafter diligently acted to fulfill any such obligation), then Tenant shall have the right, to either (i) bring an action for damages. If Landlord fails to pay any such amounts owed to Tenant within thirty (30) days after written demand therefore, Tenant shall have the right to offset such amounts from its next due installment(s) of Base Rent hereunder until Tenant has been fully reimbursed, provided Tenant shall not offset more than one- third (1/3) of its total monthly payment of Base Rent from any single installment. All obligations of Landlord hereunder will be construed as covenants, not conditions; and all such obligations will be binding upon Landlord only during the period of Landlord's ownership of the building and not thereafter.

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18. Effect of Conveyance. The term "Landlord" as used in this Lease, means only the current owner(s) of the Building so that in the event of any sale or other transfer of the Building, the transferor shall be deemed to be relieved of all obligations of the Landlord hereunder from and after the date of such sale, and the transferee shall be deemed to have assumed and agreed to perform any and all obligations of Landlord hereunder ARISING FROM AND AFTER SAID DATE.

19. Instruments Required by Lender. Upon written request from Landlord, Tenant agrees to forthwith execute and deliver to Landlord, such instruments, including a current statement of Tenant's financial condition, as may be reasonably required by any mortgagee or holder of a deed of trust or other encumbrance on the Property.

20. Tenant's Estoppel Certificate. Tenant shall, from time to time, within ten (10) days after receipt by Tenant from Landlord of written request therefor, deliver a duly executed and acknowledged and factually accurate estoppel certificate to Landlord in a form reasonably satisfactory to Landlord and Tenant.

21. Subordination Attornment and Quiet Enjoyment. Tenant agrees that this Lease may, at the option of Landlord, be subject and subordinate to any mortgage, deed of trust, any other instrument of security, or ground lease which has been or shall be placed on the Property, provided, so long as tenant is not in default under this Lease, no foreclosure or other right or remedy exercised by the lender holding such security shall terminate this Lease. This subordination is hereby made effective without any further act of Tenant. Tenant shall, at any time hereafter, on demand, execute any instruments, releases, or other documents that may be required by any mortgagee, mortgagor, or trustor or beneficiary under any security instrument for the purpose of subjecting and subordinating this lease to the lien of such instrument, provided, so long as tenant is not in default under this Lease, no foreclosure or other right or remedy exercised by the mortgagee, mortgagor, or trustor or beneficiary shall terminate this Lease. Tenant shall attorn to any third party purchasing or otherwise acquiring the Premises at any sale or other proceeding or pursuant to the exercise of any rights, powers or remedies under any instruments of

security or ground leases now or hereafter encumbering all or any part of the Premises, as if such third party had been named as Landlord under this Lease.

22. Notices. All notices, demands or requests to be given to Tenant or Landlord shall be in writing, delivered personally or by commercial courier or by United States mail, postage prepaid, certified return receipt requested and addressed (a) to Tenant c/o Valerie Gardner, Web TV, 305 Lytton Avenue, Palo Alto, CA 94301 or (b) to Landlord c/o Premier Properties, 172 University Avenue, Palo Alto, CA 94301 or any subsequent address as it may FROM TIME TO TIME designate to Tenant in writing. Each such notice, demand or request shall be deemed to have been received by Tenant or Landlord upon actual delivery. The address for notices may be changed by each party on ten (10) days written notice to each other.

23. No Accord and Satisfaction. No payment by Tenant, or receipt by Landlord, of an amount which is less than the full amount of Base Rent and all other sums payable by Tenant hereunder at such time shall be deemed to be other than on account of (a) the earliest of such other sums due and payable, and thereafter (b) to the earliest Base Rent or other sum due and payable hereunder. No endorsement or statement on any check or any letter accompanying any payment of Base Rent or such other sums shall be deemed an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to Landlord's right to receive payment of the balance of such rent and/or other sums, or Landlord's right to pursue Landlord's remedies.

24. Attorneys' Fees. If any action or proceeding at law or in equity, or an arbitration proceeding (collectively, an "Action"), shall be brought to recover any rent under this Lease, or for or on

account of any breach of or to enforce or interpret any of the terms, covenants, or conditions of this Lease, or for the recovery of possession of the Premises, the "Prevailing Party" shall be entitled to recover from the other party as a part of such action or in a separate action brought for that purpose, its reasonable attorneys' fees and costs and expenses incurred in connection with the prosecution or defense of such action. "Prevailing Party" within the meaning of this paragraph shall include, without limitation, a party who brings an action against the other after the other is in breach or default, if such action is dismissed upon the other's payment of the sums allegedly due or upon the performance of the covenants allegedly breached, or if the party commencing such action or proceeding obtains substantially the relief sought by it in such action, whether or not such action proceeds to a final judgment or determination. In addition, each party agrees to reimburse the other party for all of such other party's legal fees and expenses incurred in the enforcement and protection of all of such other party's rights under the Lease and applicable laws, whether or not an action has been brought, including reasonable attorneys' fees without limitation and costs incurred in any out-of-court settlement or in connection with the filing of a bankruptcy petition by or against the first party.

25. Holding Over. This Lease shall terminate without further notice at the expiration of the lease term. Any holding over after the expiration of the lease term, with the prior written approval of Landlord, shall be construed to be a tenancy from month to month, at a monthly rental of one hundred ten percent (110%) of the last applicable Base Rent, and shall otherwise be on the terms and conditions herein specified. If however, Landlord does not consent to continued occupancy by the Tenant after the lease termination date with prior written approval, such hold over shall be construed to be a tenancy from month to month, at a monthly rental of one hundred fifty percent (150%) of the last applicable Base Rent, and shall otherwise be on the terms and conditions herein specified

26. Landlord Liability. Tenant agrees that if Landlord shall fail to perform any covenant or obligation on its part to be performed, and as a consequence thereof, or if on any other claim by Tenant concerning the Premises or this Lease, Tenant shall recover a money judgment against Landlord, then such judgment shall be satisfied only out of Landlord's estate in the Property, and Landlord shall have no personal or further liability whatsoever with respect to any such default or judgment.

27. General Provisions.

27.1 Entire Agreement. This instrument, together with the exhibits attached hereto, constitutes the entire agreement made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all of the parties hereto or their respective successors in interest.

27.2 Timeliness. Time is of the essence with respect to the performance of each and every provision of this Lease in which time of performance is a factor. Whenever the provisions of this Lease provide that the consent of the party must be obtained, except as otherwise specifically provided, such party agrees to act reasonably and in a timely manner in determining whether to grant or withhold its consent.

27.3 Captions. The captions of the numbered paragraphs of this Lease are inserted solely for the convenience of the parties hereto and shall have no effect upon the construction or interpretation of any part hereof.

27.4 California Law. This Lease shall be construed and interpreted in accordance with the laws of the State of California.

:

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27.5 Partial Invalidity. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof

. shall nonetheless continue in full force and effect.

27.6 No Warranties. Any agreements, warranties or representations not expressly contained herein shall not bind either Landlord or Tenant.

27.7 Joint and Several Liability. If Landlord or Tenant is more than one person or entity, each such person or entity shall be jointly and severally liable under the Lease.

27.8 Binding on Successors. The covenants and conditions herein contained, subject to the provisions as to assignment, shall apply to and be binding upon the parties hereto and their respective successors in interest.

27.9 Authority. The parties hereby represent and warrant that they have all necessary power and authority to execute and deliver this Lease on behalf of Landlord and Tenant, respectively.

27.10 No Light. Air or View Easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to or in the vicinity of the Building shall in no way affect this Lease, entitle Tenant to any reduction of rent or impose any liability upon Landlord.

27.11 Brokers. Landlord agrees to pay a brokerage commission to Premier Properties Management, Inc., a California corporation and Spallino Reid under separate agreement. Neither Landlord nor Tenant have engaged any other broker, finder or agent. Each party hereby agrees to indemnify and hold the other harmless from any claims for commissions arising from its dealings with any other broker or agent.

27.12 Force Majeure. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, inability to procure materials, restrictive governmental laws or regulations, delay by the other party hereto or other cause

without fault and beyond the control of the party obligated to perform (financial inability excepted), then upon notice to the other party, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equal to the period of such delay; provided, however, the party so delayed or prevented from performing shall exercise good faith efforts to remedy any such cause of delay or cause preventing performance, and nothing in this Section shall excuse Tenant from the prompt payment of any rental or other charges required of Tenant except as may be expressly provided elsewhere in this Lease.

LANDLORD INITIAL 20 TENANT INITIALS

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the dates specified below immediately adjacent to their respective signatures. Delivery of this Lease to Landlord, duly executed by Tenant, constitutes an offer by Tenant to lease the Premises as herein set forth, and under no circumstances shall such delivery be deemed to create an option or reservation to lease the Premises for the benefit of Tenant. This Lease shall only become effective and binding upon execution of this Lease by Landlord and delivery of a signed copy to Tenant.

Landlord: W. Jack Kidder

By:

Date: , 1997

Kurt L Rei
B

Date: 7,
Tenant: WebTV Inc.

Date:

LANDLORD 21 TENANT INITIALS

EXHIBIT A
- ---------

PREMISES
- --------

Landlord In: 22 TENANT INITIALS

EXHIBIT B

RENT ADJUSTMENT
SCHEDULE

For ease of reference, the term "Commencement Date" as used in this Rent Adjustment Schedule shall mean the first day of the first month following the Commencement Date (as defined in the Lease), unless the Commencement Date (as defined in the Lease) occurs on the first day of the

month, in which event the Commencement Date as used in this Rent Adjustment Schedule shall have the same meaning as used in the Lease.

Also for ease of reference, the successive months of the Lease Term are referred to in this Rent Adjustment Schedule by a number, with Month 1 meaning the first month of the Lease Term commencing with the Commencement Date as defined in this Rent Adjustment Schedule, Month 12 being the twelfth month of the Lease Term, and so on.

Base Rent shall be determined in accordance with the following schedule:

Months	Monthly Base Rent
1 - 12	$10,750
13 - 24	$11,073
25 - 36	$11,405
37 - 48	$11,747
49 - 60	$12,099

Exhibit 10.6

SUBLEASE

THIS SUBLEASE ("Sublease"), dated December 10, 1996 for reference purposes only, is entered into by and between SEOCAL INCORPORATED, a California corporation ("Seocal") and WEBTV NETWORKS, INC. a California corporation, ("WebTV").

RECITALS

A. Seocal leases certain premises located at 361 Lytton Avenue, Palo Alto, California, from First Nationwide Bank, a Federal Savings Bank ("First Nationwide") pursuant to that certain Sublease dated August 2, 1996 (the "First Nationwide Sublease"), as more particularly described therein (the "Premises"). First Nationwide leases the Premises from Lytton Partners ("Prime Landlord") pursuant to a lease dated December 8, 1987 ("Prime Lease"). Capitalized terms used but not defined herein have the same meanings as they have in the First Nationwide Sublease.

B. Seocal desires to sublease a portion of the Premises to WebTV, and WebTV desires to sublease a portion of the Premises from Seocal on the terms and provisions hereof.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, Seocal and WebTV covenant and agree as follows:

AGREEMENT

1. SUBLEASED PREMISES. On and subject to the terms and conditions below, Seocal hereby leases to WebTV, and WebTV hereby leases from Seocal those certain premises located on the first floor of the building (the "Building") located at 361 Lytton Avenue, Palo Alto, California and described in Exhibit A (the "Subleased Premises"). The Subleased Premises contain approximately 2900 square feet.

2. TERM. This Sublease shall commence on the earlier of (a) December 1, 1996 or (b) that date upon which WebTV takes possession of the Premises for the purpose of conducting its business (the "Commencement Date") and shall expire, at 11 :59 p.m. on July 31, 1998.

3. RIGHT OF EARLY ENTRY. Provided the Prime Landlord and First Nationwide have consented to this Sublease, WebTV shall have the right to enter the Subleased Premises prior to the Commencement Date to prepare for its occupancy of the Subleased Premises, including the installation of its trade fixtures, furnishings and telephone and computer equipment. Any such installations, refurbishments and other alterations shall comply with all requirements of the Prime Lease and Sublease; and such early entry shall be subject to all of the terms and conditions of this Sublease, except that

WebTV shall not be required to pay any rent on account thereof. WebTV shall indemnify, defend and protect Seocal, Prime Landlord and First Nationwide from and against any and all claims, liabilities, costs, damages, actions, losses and expenses, including but not limited to attorneys' fees, arising from, relating to or in connection with WebTV's exercise of its rights under this Section 3.

4. POSSESSION. If for any reason Seocal cannot deliver possession of the Subleased Premises to WebTV on the Commencement Date, Seocal shall not be subject to any liability therefor, nor shall such failure affect the validity of this Sublease or the obligations of WebTV hereunder or extend the term hereof.

5. RENT. Commencing on the Commencement Date and thereafter on the first day of each month awing the term of this Sublease, WebTV shall pay rent ("Rent") to Seocal. From the Commencement Date through July 31, 1997, Rent shall be Eight Thousand Eight Hundred Forty Five Dollars ($8845.00) per month. From August 1, 1997 through July 31, 1998, Rent shall be Nine Thousand Two Hundred Eighty Dollars ($9280.00) per month. Rent shall be payable to Seocal in lawful money of the United States, in advance, without prior notice, demand, or offset, on or before the first day of each calendar month during the term hereof. All Rent shall be paid to Seocal at the address specified for notice to Seocal in Section 13, below. If the Commencement Date does not fall on the first day of a calendar month, Rent for the first month shall be prorated on a daily basis based upon a thirty day calendar month. It is the intention of the parties hereto that the foregoing Rent shall constitute gross rent (fully serviced) and WebTV shall not be liable for any additional rent, operating charges, insurance, maintenance or taxes, except utilities, which WebTV shall pay in accordance with Section 8 below.

6. CONDITION OF SUBLEASED PREMISES. WebTV has used due diligence in inspecting the Subleased Premises and agrees to accept the Subleased Premises in "as-is" condition and with all faults as of the date of WebTV's execution of this Sublease, without any representation or warranty of any kind or nature whatsoever, or any obligation on the part of Seocal to modify, improve or otherwise prepare the Subleased Premises for WebTV's occupancy except as otherwise provided in Section 7 hereof. By entry hereunder, WebTV accepts the Subleased Premises in their present condition and without representation or warranty of any kind by Seocal. WebTV hereby expressly waives the provisions of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code and all rights to make repairs at the expense of Seocal as provided in Section 1942 of said Civil Code.

7. TENANT IMPROVEMENTS. Seocal agrees to remove the existing teller line and bank vault door from the Subleased Premises prior to the Commencement Date, and to repair the carpet. Except as provided in the foregoing sentence, Seocal shall have no obligation to make any improvements or alterations to the Subleased Premises.

8. UTILITIES. During the term of this Sublease, WebTV shall contract in its own name and promptly pay directly to the utility companies all charges for utilities, including electricity, gas, fuel, telephone and any other services or utilities used on the Subleased Premises.

9. USE. WebTV may use the Subleased Premises only for general office purposes and any lawful use incidental thereto, and for no other purpose. WebTV shall promptly comply with all applicable statutes, ordinances, rules, regulations, orders, restrictions of record, and requirements in effect during the term of this Sublease governing, affecting and regulating the Subleased Premises, including but not limited to the use thereof. WebTV shall not use or permit the use of the Subleased Premises in a manner that will create waste or a nuisance, interfere with or disturb other tenants in the Building or violate the provisions of the Prime Lease and First Nationwide Sublease.

10. INCORPORATION OF SUBLEASE.

(a) All of the terms and provisions of the First Nationwide Sublease, except as provided in subsection (b) below, are incorporated into and made a part of this Sublease and the rights and obligations of the parties under the First Nationwide Sublease are hereby imposed upon the parties hereto with respect to the Subleased Premises, Seocal being substituted for the "Sub-Landlord" in the First Nationwide Sublease, and WebTV being substituted for the "Subtenant" in the First Nationwide Sublease. It is further understood that where reference is made in the First Nationwide Sublease to the "Premises," the same shall mean the Subleased Premises; where reference is made to the "Commencement Date," the same shall mean the Commencement Date; and where reference is made to "this Sublease," the same shall mean this Sublease. To the extent any of the provisions of the First Nationwide Sublease may conflict or be inconsistent with the provisions of any other paragraph of this Sublease, as to the parties of this Agreement, the provisions of this Sublease shall prevail and control.

(b) The following Sections of the First Nationwide Sublease are not incorporated herein: Sections 3, 4, 5, 7, 9, 14, and 15.

(c) WebTV hereby assumes and agrees to perform for Seocal's benefit, during the term of this Sublease, all of Seocal's obligations with respect to the Subleased Premises under the First Nationwide Sublease, except as otherwise provided herein. WebTV shall not commit or permit to be committed any act or omission which violates any term or condition of the First Nationwide Sublease or the Prime Lease.

11. INSURANCE. WebTV shall be responsible for insuring its personal property, tenant improvements and equipment in the amount of their full replacement value and shall maintain comprehensive general liability insurance in the amount of $2,000,000 per occurrence respecting the use and occupancy of the Subleased Premises.

Such insurance shall insure the performance by WebTV of its indemnification obligations hereunder and shall name Prime Landlord, First Nationwide and Seocal as additional insureds. All insurance required under this Sublease shall contain an endorsement requiring thirty (30) days written notice from the insurance company to WebTV and Seocal before cancellation or change in the coverage, people or amount of any policy. WebTV shall provide Seocal with certificates of insurance evidencing such coverage prior to the commencement of this Sublease.

12. DEFAULT. In addition to defaults contained in the First Nationwide Sublease and the Prime Lease, failure of WebTV to make any payment of Rent when due hereunder shall constitute an event of default hereunder.

13. NOTICES. The addresses specified in the First Nationwide Sublease for receipt of notices to each of the parties are deleted and replaced with the following:

To Seocal at: Seocal Incorporated
361 Lytton Avenue
Palo Alto, CA
Attn: Cheryl Lathrop

With copy to: Cooley Godward LLP
5 Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
Attn: Toni P. Wise

To WebTV at: WebTV Networks, Inc.
305 Lytton Avenue
Palo Alto,CA 94301
Attn: Valerie Gardner

14. SEOCAL'S OBLIGATIONS.

(a) To the extent that the provision of any services or the performance of any maintenance or any other act is the responsibility of First Nationwide (collectively "First Nationwide Obligations"), upon WebTV's request, Seocal shall make reasonable efforts to cause First Nationwide to perform such First Nationwide Obligations, provided, however, that in no event shall Seocal be liable to WebTV for any liability, loss or damage whatsoever in the event that First Nationwide should fail to perform the same, nor shall WebTV be entitled to withhold the payment of Rent or terminate this Sublease. It is expressly understood that the services and repairs which are incorporated herein by reference, including but not limited to, cleaning, painting, window washing, or other

services will in fact be furnished by Prime Landlord and/or First Nationwide, and not by Seocal, except to the extent otherwise provided in the First Nationwide Sublease. In addition, Seocal shall not be liable for any maintenance, restoration (following casualty or destruction) or repairs in or to the Building or Subleased Premises, other than its obligation hereunder to use reasonable efforts to cause First Nationwide to perform its obligations under the First Nationwide Sublease.

(b) To the extent that the provision of any services or the performance of any maintenance or any other act is the responsibility of Prime Landlord (collectively "Prime Landlord Obligations"), upon WebTV's request, Seocal shall use reasonable efforts to cause First Nationwide to enforce the Prime Landlord's obligations under the Prime Lease for the benefit of WebTV; provided, however, that in no event shall Seocal be liable to WebTV for any liability, loss or damage whatsoever in the event that Prime Landlord should fail to perform the same, nor shall WebTV be entitled to withhold the payment of Rent or terminate this Sublease.

(c) Except as otherwise provided herein, Seocal shall have no other obligations to WebTV with respect to the Subleased Premises or the performance of the First Nationwide Obligations or Prime Landlord Obligations.

15. EARLY TERMINATION OF SUBLEASE. If, without the fault of Seocal or WebTV, the Sublease should terminate prior to the expiration of this Sublease, neither party shall have any liability to the other party. To the extent that the First Nationwide Sublease grants Seocal any discretionary right to terminate the Sublease, whether due to casualty, condemnation, or otherwise, Seocal shall be entitled to exercise or not exercise such right in its complete and absolute discretion.

16. CONSENT OF FIRST NATIONWIDE AND SEOCAL. If WebTV desires to take any action which requires the consent or approval of Seocal pursuant to the terms of this Sublease, prior to taking such action, including, without limitation, making any alterations, then, notwithstanding anything to the contrary herein, (a) Seocal shall have the same rights of approval or disapproval as First Nationwide has under the First Nationwide Sublease, (b) WebTV shall not take any such action until it obtains the consent of both Seocal and First Nationwide and (c) WebTV shall request that Seocal obtain First Nationwide's consent on WebTV's behalf, unless Seocal agrees that WebTV may contact First Nationwide directly with respect to the specific action for which First Nationwide's consent is required. This Sublease shall not be effective unless and until any required written consent of the First Nationwide and Prime Landlord shall have been obtained.

17. BROKERS. Each party hereto represents and warrants that it has dealt with no broker, in connection with this Sublease and the transactions contemplated herein. Each party shall indemnify, protect, defend and hold the other party harmless from- all

costs and expenses (including reasonable attorneys' fees) arising from or relating to a breach of the foregoing representation and warranty.

18. SECURITY DEPOSIT. Upon execution of this Sublease, WebTV shall deposit with Seocal the sum of Eight Thousand Eight Hundred Forty Five Dollars ($8845.00) as a security deposit ("Security Deposit"). If WebTV fails to pay Rent or other charges when due under this Sublease, or fails to perform any of its other obligations hereunder, Seocal may use or apply all or any portion of the Security Deposit for the payment of any Rent or other amount then due hereunder and unpaid, for the payment of any other sum for which Seocal may become obligated by reason of WebTV's default or breach, or for any loss or damage sustained by Seocal as a result of WebTV's default or breach. If Seocal so uses any portion of the Security Deposit, WebTV shall restore the Security Deposit to the full amount originally deposited within ten (10) days after Seocal's written demand. Seocal shall not be required to keep the Security Deposit separate from its general accounts, and shall have no obligation or liability for payment of interest on the Security Deposit. The Security Deposit, or so much thereof as had not theretofore been applied by Seocal, shall be returned to WebTV within thirty (30) days of the expiration or earlier termination of this Sublease.

19. SURRENDER OF SUBLEASED PREMISES. Upon the expiration or earlier termination of this Sublease, WebTV shall surrender the Subleased Premises in the same condition as they were in on the Commencement Date, except for ordinary wear and tear.

"SEOCAL"	"WEBTV"
SEOCALINCORPORATED	WEBTV, INC
	BY:

December 20, 1996

Seocal Incorporated
361 Lytton Avenue
Palo Alto, CA 94301
Attn: Cheryl Lathrop, President
Re: Consent to Sub-Sublease with Web TV Networks, Inc./361 Lytton Avenue, Palo Alto, California (the "Building")

Dear Ms. Lathrop:

This Letter Agreement is delivered in response to your request for consent from 361 Lytton Partners, a California limited partnership ("Landlord") to a sub-sublease (the "Sublease") by and between Seocal Incorporated ("Sublessor") and Web TV Networks, Inc. ("Sublessee"). The Sublease shall be made under and subject to the terms and conditions of that certain Lease (the "Original Lease") dated December 8, 1987, by and between Landlord and the predecessors in interest of First Nationwide Bank ("Tenant'), which currently holds the lessee's interest under the Original Lease, respecting the premises located at 361 Lytton Avenue, Palo Alto, California, as more particularly described in the Original Lease. The Original Lease has been amended by that certain: (i) Amendment to Lease dated effective as of September 17, 1991, by and between Landlord and Tenant's predecessors in interest, (ii) Second Amendment to Lease dated February 20, 1992, by and between Landlord and Tenant's predecessors in interest, and (iii) Third Amendment to Lease dated effective as of January 24, 1995, by and between Landlord and Tenant. The Original Lease and the amendments described above shall be collectively referred to herein as the "Lease." Tenant has entered into that certain Sublease Agreement with Sublessor (the "Master Sublease") by which Sublessor subleases 3400 square feet of the building from Tenant. The Sublease shall also be made under and subject to the Master Sublease. The premises subject to the Sublease (the "Premises") consist of approximately 2,900 square feet located on the ground floor of the Building.

1. Consent. Landlord hereby consents to the Sublease by and between Sublessor and Sublessee, on the terms set forth in that certain Sublease dated December 10, 1996, executed by Sublessor and Sublessee, a copy of which was delivered to Landlord, subject to the terms and conditions set forth in this Letter Agreement, including the following:

(a) Landlord's consent set forth herein shall not be a consent to any further assignment or subletting by Tenant, Sublessor or Sublessee;

(b) Neither Tenant nor Sublessor shall be released from any liability or obligation of Tenant or Sublessor under the Lease or the Master Sublease, respectively;

(c) Tenant, Sublessor and Sublessee each acknowledge and agree Tenant's option to extend the term of the Lease set forth in Paragraph 55 of the Original Lease (as mod)ifide by the Paragraph 2 d. of the Amendment to Lease, Paragraph 4 of the Second Amendment to Lease and Paragraph 4 of the Third Amendment to Lease) was terminated by the Letter Agreement dated October 16, 1996, by and among Landlord, Tenant and Sublessor, with the result that the term of the Lease, the Master Sublease and the Sublease shall each expire July 31, 1998;

(d) Tenant, Sublessor and Sublessee acknowledge and agree Tenant's right of first refusal set forth in Paragraph 56 of the Original Lease was terminated by the Letter Agreement described in Paragraph 1(c) above; and

(e) Landlord shall not be bound by or obligated to perform any of the provisions of the Sublease, and no contractual relationship, privily of estate or similar relationship shall be created between Landlord and either Sublessor or Sublessee as a result of the Sublease or this Letter Agreement, except to the extent expressly set forth herein.

2. Payments After Default. In the event of any default by either Tenant or Sublessor under the Lease or the Master Sublease, as applicable, Landlord may deliver written notice of such default to Sublessee and require that all future payments or performance due Tenant or Sublessor under the Master Sublease or the Sublease, respectively, be delivered directly to, or performed for the benefit of, Landlord, and Sublessor hereby releases Sublessee from any claims for payments which Sublessee delivers to Landlord in accordance with any such written notice.

3. Commissions. Landlord shall have no obligation to pay any real estate commission in connection with the transaction contemplated by the Sublease, and Sublessor and Sublessee shall indemnify, defend and hold Landlord harmless from any claim or expense incurred by or asserted against Landlord in connection with commissions payable with respect to the Sublease.

4. Modification to Premises. Landlord acknowledges that Sublessor and/or Sublessee, at their sole cost, desire to perform certain modifications to the Premises in order to accommodate the transaction contemplated by the Sublease. Sublessor and/or Sublessee shall deliver reasonably detailed plans and specifications for the desired mod)ifictions to Landlord for its review. If Landlord approves thereof, Sublessor and/or Sublessee shall also deliver to Landlord a copy of the building permit authorizing construction of the approved improvements to the Premises. Sublessor and/or Sublessee shall provide Landlord with a minimum of ten (10) days prior written notice before the commencement of the approved improvements in order to permit Landlord to post notices of non-responsibility in the Premises in accordance with applicable law. Landlord shall require the removal of the improvements which Sublessor and/or Sublessee install in the Premises and restoration of the Premises to the condition existing prior to the installation of such improvements on or before the expiration or earlier termination of the Lease, the Master Sublease and the Sublease. Notwithstanding the immediately preceding sentence, such restoration shall not include replacement of the existing teller line and bank vault door which Sublessor shall remove pursuant to Paragraph 7 of the Sublease.

Upon Landlord's receipt of four copies of this Letter Agreement which have been fully executed by Tenant, Sublessor and Sublessee, Landlord shall execute this Letter Agreement and return one fully executed copy to each of the other parties hereto. The fully executed copies may be sent to Landlord for Landlord's execution care of Ventana Property Services, 259 University Avenue, Suite 208, Palo Alto, California 94301, Attn: Gem Escano.

Very truly yours,

361 LYTTON PARTNERS, a California limited partnership

By: Ventana Property Services, Inc., its authorized agent

By:

Its:

The undersigned Tenant, Sublessor and Sublessee hereby agree to the terms and conditions of the Landlord's consent to Sublease set forth above in this Letter Agreement.

TENANT:
First Nationwide Bank a Federal Savings Bank

Date: _____ By:
Its:

Seocal Incorporated, a California Corporation

Date: _____ By:
Its:

Date:

Web TV Network, Inc.
By:
Its:

EXHIBIT 11.1

STATEMENT REGARDING COMPUTATION OF NET LOSS PER SHARE

	PERIOD FROM INCEPTION (JUNE 30, 1995) TO MARCH 31, 1996	NINE MONTHS ENDED DECEMBER 31, 1996
Net loss	$(3,232,410)	$(26,118,792)
Shares used in calculation of net loss per share:		
Weighted average common shares outstanding	13,462,963	17,563,288
Shares used in computing net loss per share	13,462,963	17,563,288
Net loss per share	$ (0.24)	$ (1.49)
Calculation of shares outstanding for computing proforma net loss per share:		
Weighted average common shares outstanding	13,462,963	17,563,288
Adjusted to reflect effect of assumed conversion of preferred stock from date of issuance	1,083,924	9,417,729
Shares used in computing proforma net loss per share	14,546,887	26,981,017
Proforma net loss per share	$ (0.22)	$ (0.97)

EXHIBIT 23.1

CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

We consent to reference to our firm under the captions "Selected Financial Data" and "Experts" and to the use of our report dated June 7, 1996, with respect to the financial statements of WebTV Networks, Inc. included in the Registration Statement (Form S-4).

Ernst & Young LLP

Palo Alto, California
May 1, 1997

EXHIBIT NO.	DESCRIPTION	PAGE OR FOOTNOTE
3.1	Restated Articles of Incorporation of Microsoft Corporation	(3)
3.2	Bylaws of Microsoft Corporation	(1)
5.1*	Opinion of Preston Gates & Ellis LLP	
8.1*	Tax Opinion of Preston Gates & Ellis	
13.1	Quarterly and Market Information Incorporated by Reference to Page 28 of 1996 Annual Report to Shareholders ("1996 Annual Report")	(2)
13.2	(Intentionally Omitted)	
13.3	Management's Discussion and Analysis of Financial Condition and Results of Operations Incorporated by Reference to Pages 16-19, 22, and 23 of 1996 Annual Report	(2)
13.4	Financial Statements Incorporated by Reference to Pages 1, 15, 20, 21, 24-29, and 31 of 1996 Annual Report	(2)
23.1	Consent of Deloitte & Touche LLP	
23.2	Consent of Preston Gates & Ellis LLP (contained in Exhibit 5.1)	
24.1	Power of Attorney	II-6

- --------
* To be filed by amendment.
(1) Incorporated by reference to Microsoft's Form 10-K for the fiscal year ended June 30, 1994.
(2) Incorporated by reference to Microsoft's Form 10-K for the fiscal year ended June 30, 1996.
(3) Incorporated by reference to Microsoft's Regulation Statement on Form S-3 (Commission File No. 333-17143)

EXHIBIT 23.1

INDEPENDENT AUDITORS' CONSENT

We consent to the incorporation by reference in this Registration Statement of Microsoft Corporation on Form S-4 of our report dated July 22, 1996, appearing in and incorporated by reference in the Annual Report on Form 10-K of Microsoft Corporation for the year ended June 30, 1996. We also consent to the reference to us under the headings "Selected Financial Data of Microsoft" and "Experts" in such Registration Statement.

Deloitte & Touche, LLP

Seattle, Washington
April 30, 1997