

08-14-2001

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings



U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

CB Technologies, Inc.

8-7-0

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)

Name: Commerce Bank, N.A.

Internal

Address: 7

Street Address: 200 Lancaster Avenue

City: Devon State: PA Zip: 19333

- Individual(s) citizenship Association National Banking Association General Partnership Limited Partnership Corporation-State Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: July 10, 2001

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) 75/943761

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: James R. Meyer, Esq.

Internal Address:

Schnader Harrison Segal & Lewis LLP

Suite 3600

Street Address: 1600 Market St.

City: Philadelphia State: PA Zip: 19103

6. Total number of applications and registrations involved: 5

7. Total fee (37 CFR 3.41): \$ 140.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number: 13-3405

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

James R. Meyer, Esq.

Name of Person Signing

Signature

7/26/2001 Date

Total number of pages including cover sheet, attachments, and document: 66

08/13/2001 BYRME 00000225 75943761

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

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**Rider to Recordation Cover Sheet**

Name of Conveying Party: CB Technologies, Inc.

Name of Receiving Party: Commerce Bank, N.A.

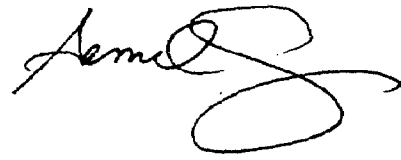
4. A. Application Numbers (Continued):

76/114290

76/219183

76/219315

76/227910



**AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

By and Between

CB TECHNOLOGIES, INC.

and

COMMERCE BANK, N.A.

Committed Line  
Equipment Line  
Discretionary Line

July 10, 2001

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## LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (the "Agreement") is made as of this 10<sup>th</sup> day of July 2001, by, between and among COMMERCE BANK, N.A., a national banking association ("Bank"); and CB TECHNOLOGIES, INC., a Delaware corporation (the "Borrower"), the successor by merger to CB Technologies, Inc., a Pennsylvania corporation ("CB")

### Background

Subject to the terms and provisions hereof, Bank has agreed to make available to Borrower: (i) a committed line of credit facility for working capital purposes in the maximum amount of One Million (\$1,000,000) Dollars (the "Committed Line"); (ii) a discretionary line of credit facility to finance purchases of certain equipment in the maximum amount of Five Hundred Thousand (\$500,000) Dollars (the "Equipment Line"); and (iii) a discretionary line of credit facility for working capital purposes in the maximum amount of One Million Five Hundred Thousand (\$1,500,000) Dollars (the "Discretionary Line", and together with the Committed Line and the Equipment Line, collectively, the "Credit Facilities"). The Credit Facilities are secured by a first lien on, and security interest in, All Assets of Borrower (as such term is defined herein).

Resulting from a series of corporate restructurings, hereinafter more particularly described, Borrower is currently indebted to the Bank in connection with: (i) that certain Loan and Security Agreement dated as of July 28, 1998 by, between and among the Bank, CB, and certain of its then existing affiliates, CB TECHNOLOGIES, INC., GROUP SYNETIC, INC., NET VENTURES, LLC, and CB TECHNOLOGIES - BOSTON, LLC, secured by the unlimited surety and guaranty of James L. Coyne and Karen M. Cantrell-Borda of even date therewith; and (ii) that certain Business Loan Agreement dated December 30, 1999 by and between the Bank and Plexsys, Inc., and evidenced by a that certain Promissory Note of even date therewith of Plexsys in favor of the Bank (the "Plexsys Documents", and together with those document identified in clause (i) hereof, collectively, the "Prior Credit Agreements").

Pursuant to an Agreement and Plan of Merger dated March 6, 2000 and a Certificate of Merger pursuant thereto filed with the Secretary of State of Delaware, Plexsys, Inc., was merged into, and is survived by, the Borrower. Although still in existence as of the date hereof, Borrower has advised Bank that neither Group Syndetic, Inc., Net Ventures, LLC, nor CB Technologies - Boston, LLC currently conducts any substantial business, nor has any material assets.

This Agreement and the other Loan Documents of even date herewith are intended to amend, restate, and replace the Prior Credit Agreements to the extent provided herein. The indebtedness under the Prior Credit Agreements is secured by a first lien on, and security interest in, All Assets of Borrower (as such term is defined therein). It is the express intention of the parties to continue Bank's first lien on, and security interest in, All Assets of Borrower, which lien continues to secure the Indebtedness outstanding under the Equipment Line and evidenced under the Equipment Lease Documents executed in connection with the Prior Credit Agreements (collectively, the "Prior

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Equipment Lease Documents”) with respect to the Prior Equipment Lease Documents, as well as to secure the Indebtedness to be incurred hereunder.

NOW, THEREFORE, in consideration of the mutual covenants and premises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. DEFINITIONS, CERTAIN RULES OF CONSTRUCTION.

1.1 Defined Terms. Each initially capitalized term used herein shall have the meaning set forth in this Section or as otherwise set forth herein for the purposes hereof and for each of the Loan Documents. All initially-capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Uniform Commercial Code as enacted in Pennsylvania.

“Accounts” means all rights of a Borrower to receive payment for the sale or provision of goods and services and all other rights to receive the payment of money, shown on the financial reports of a Borrower as gross accounts receivable, or otherwise, all as determined in accordance with a Borrower’s financial policies consistently applied and in conformity with GAAP.

“Additional Capital” shall have the same meaning as ascribed to such term in Subparagraph 2.3.3.2 hereof.

“Advance” means any extension of credit by Bank to Borrower under the Committed Line or the Discretionary Line, as the case may be.

“Affiliate” means and refers to, as applied to any Person, any other Person directly or indirectly controlling, or through one or more Persons controlled by, controlling or in common control with that Person. “Control” (including with correlative meanings, the terms “controlling,” “controlled by” and under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and/or policies of that Person, whether through the ownership of voting securities, by contract, or otherwise.

“Agreement” or “Loan Agreement” means this Loan and Security Agreement, and all amendments, modifications and restatements hereof.

“All Assets of Borrower” means all assets of Borrower including, but not limited to, Accounts, inventory, goods, furniture, fixtures, machinery, equipment, vehicles and rolling stock, chattel paper, letters of credit, instruments, documents, merchandise, supplies, tools, dies, customer lists, general intangibles, money, securities, contract rights, and books and records (including, without limitation, all manual records, computer records, runs, printouts, tapes, discs, software programs, source codes, and other computer prepared information and equipment of any kind) with respect thereto, whether now existing or hereafter acquired.

“Applicable Line Fees” means with respect to: (i) the Committed Line, the sum of Five Thousand (\$5,000) Dollars, half of which was previously paid to the Bank in connection with the Commitment Letters, and the balance of which is due and payable on the Closing Date; (ii) Equipment Line, the sum of Five Thousand (\$5,000) Dollars, half of which was previously paid to the

Bank in connection with the Commitment Letters, and the balance of which is due and payable on the Closing Date; and (iii) the Discretionary Line, Seven Thousand Five Hundred (\$7,500) Dollars, payable once Borrower meets the requirements set forth in Paragraph 2.3.2 hereof..

“Applicable Interest Rate” means with respect to: (i) the Committed Line, Wall Street Prime as announced from time to time plus fifty (50) basis points; (ii) Equipment Line, Wall Street Prime as announced from time to time plus seventy-five (75) basis points; and (iii) the Discretionary Line, Wall Street Prime as announced from time to time plus fifty (50) basis points; each calculated on the basis of a 360 day year and charged for the actual number of days elapsed.

“Applicable Maximum Available Credit” means with respect to: (i) the Committed Line, the lesser of (a) the sum of One Million (\$1,000,000) Dollars, or (b) Eighty (80%) of Borrower’s Eligible Accounts, less outstanding Advances made with respect thereto under the Discretionary Line; (ii) the Equipment Line, the sum of Five Hundred Thousand (\$500,000) Dollars; and (iii) the Discretionary Line, the lesser of (a) the sum of One Million Five Hundred Thousand (\$1,500,000) Dollars, or (b) Eighty (80%) of Borrower’s Eligible Accounts, less outstanding Advances made with respect thereto under the Committed Line.

“Bankruptcy Code” means Title 11 of the United States Code as now or hereafter in effect, or any successor statute.

“Bank’s Costs” means all reasonable costs and expenses of any kind paid or incurred by Bank in connection with the preparation, execution, delivery, amendment, modification, restatement, administration or termination of this Loan Agreement or any other Loan Document, any amendments thereto, any transaction contemplated herein or any existing or future related agreements and the preservation, enforcement, defense and protection of Bank’s rights, remedies, obligations and liabilities in any manner concerning this Loan Agreement or any other Loan Document, any transaction contemplated herein or any existing or future related agreements, including but not limited to: (i) expenditures of every nature and kind of Borrower paid or incurred by Bank pursuant to the provisions of this Loan Agreement; (ii) filing, recording, publication, appraisal, monitoring, search and title insurance costs related to the Collateral, including, but not limited to, costs paid to perfect, maintain perfected and preserve the existence and priority of Liens on the Collateral; (iii) upon the occurrence of an Event of Default, all Bank’s internal and external administrative costs and costs incurred in collecting and gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale and advertising to sell the Collateral; (iv) reasonable attorneys’ fees and other fees and expenses paid or incurred by Bank in enforcing, obtaining legal advice in preparing, reviewing, consummating, amending, restructuring, extending, terminating, defending, or preserving or protecting Bank’s rights, remedies, obligations or liabilities in any manner concerning, this Loan Agreement or any of the other Loan Documents, any transaction contemplated herein or any existing or future related agreements; (v) notwithstanding the absence or existence of any default hereunder, any reasonable attorneys’ fees and other fees and expenses incurred by Bank in connection with any bankruptcy or insolvency proceeding filed by or against Borrower whether such attorneys’ fees, other fees or expenses, incurred in the sole discretion of Bank, are related to the review, determination, protection, monitoring (including attendance at meetings or hearings) or enforcement by Bank of the Obligations, including, but not limited to, the preparation and filing of any proof of claim and without regard to whether Bank files, responds, or is a party to any application, motion, or other proceeding;

(vi) wire transfer charges in such amounts as Bank may from time to time establish for such service; and (vii) as set forth in Sections 4.1 and 4.2 hereof.

“Borrower” means CB TECHNOLOGIES, INC., a Delaware corporation.

“Business Day” means any day other than a Saturday, Sunday or day on which banking institutions in Pennsylvania are authorized by law or regulation to close.

“Capital Lease” means any lease of property (real, personal or mixed) which, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of a Person.

“Capital Lease Obligations” means the aggregate amount of a Borrower’s obligations under all of a Borrower’s Capital Leases, such amount to be determined in accordance with GAAP.

“Cash” means money, currency or a credit balance in a Deposit Account.

“CERCLA / RCRA” means the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and the Resource Conservation Recovery Act of 1976, as amended.

“Closing” and “Closing Date” mean the date hereof.

“Collateral” means the security for the Credit Facilities as set forth in Article 3 hereof.

“Commitment Letters” means, collectively, those certain letters dated June 6, 2001, each from Bank to CB Technologies, Inc., as that same have from time to time thereafter been amended, each as executed by Bank and Borrower.

“Committed Line” means the committed credit facility for working capital purposes in the maximum amount of One Million (\$1,000,000) Dollars extended pursuant to Article 2 hereof, and to be evidenced by the Committed Line Note.

“Committed Line Note” means that certain promissory note of even date herewith of Borrower in favor of Bank evidencing that portion of the Indebtedness associated with the Committed Line.

“Credit Facilities” shall have the same meaning as ascribed to such term in the Background Section hereof.

“Debt” means for any Person at any date, without duplication, (i) all obligations of such Person for borrowed money except for money borrowed pursuant to a loan from any other Borrower, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments with an original maturity in excess of one year (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable and accrued liabilities, in each case arising in the ordinary course of business, (iv) all Capital Lease Obligations of such Person, (v) all indebtedness of the type described in clauses (i) through (iv) above of others

secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person, and (vi) all indebtedness of the type described in clauses (i) through (iv) above of others guaranteed by such Person.

“Deposit Account” means a demand, time, savings, passbook or like account with a federally insured bank or savings and loan association, other than an account evidenced by a negotiable certificate of deposit.

“Designated Officer” means Roger L. Bomgardner, Regional Vice President, or any other person designated in writing by Bank as its representative for the purpose of receiving notice under this Loan Agreement.

“Discretionary Line” means the discretionary credit facility for working capital purposes in the maximum amount of One Million Five Hundred Thousand (\$1,500,000) Dollars extended pursuant to Article 2 hereof, and to be evidenced by the Discretionary Line Note.

“Discretionary Line Note” means that certain promissory note of even date herewith of Borrower in favor of Bank evidencing that portion of the Indebtedness associated with the Discretionary Line.

“Discretionary Line Covenants” shall have the same meaning as ascribed to such terms in Paragraph 2.3.2 hereof.

“Draws” means amounts advanced from time-to-time by Bank to Borrower under the Equipment Line, which shall be repaid to the Bank in accordance with the provisions of the respective Equipment Leases.

“Eligible Accounts” means any Account of Borrower arising in the ordinary course of business of Borrower, which has not remained unpaid for more than ninety (90) days from its invoice date. Eligible Accounts shall not include any account in connection with any: (i) pre-billing; (ii) Account in connection with which the account payor thereof disputes the amount owed to Borrower; (iii) Account arising from a consignment or other arrangement for which goods are returnable if not sold by such account payor; (iv) Account constituting partial billings and returns that provide that such account payor need make no payment prior to full shipment or full performance; (v) Account with respect to all or part of which a check, promissory note, draft, trade acceptance or other instrument has been received; (vi) Account of any account payor that is an Affiliate of a Borrower; (vii) Account where the account payor is insolvent, whether or not such account debtor has filed for protection under federal or state insolvency laws; (viii) Account where the account payor is a Person other than those identified in the immediately preceding sentence; or (ix) such other Accounts as Bank in its discretion deems appropriate.

“Eligible Equipment” means that certain equipment for which Borrower may request that Bank fund Draws under the Equipment Line, the eligibility of which equipment shall be at the sole, but reasonable discretion of Bank.



“Equipment Lease Documents” means collectively those certain agreements, documents and instruments which will evidence and secure extensions of credit by Bank to Borrower under the Equipment Line, as all more particularly described in Paragraph 2.2.2 hereof.

“Equipment Line” means the discretionary credit facility to finance certain equipment in the maximum amount of Five Hundred Thousand (\$500,000) Dollars extended pursuant to Article 2 hereof, and to be evidenced by the Equipment Lease Documents.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“Event of Default” means any event as set forth in Section 8.1 hereof.

“Financing Statements” means any and all financing statements, amendments or continuation statements required or appropriate to perfect and keep perfected any security interest created hereby or under any other Loan Document pursuant to the Uniform Commercial Code as adopted in any state having jurisdiction over the Collateral.

“Fiscal Year” means the fiscal year of Borrower, which ends on December 31 of each year.

“Funding Date” means the Business Day on which an Advance is funded under the Line, or a Draw is funded under the Equipment Line.

“Funding Request” means the completed and executed form to be delivered by Borrower: (i) with respect to an Advance under the Committed Line, (ii) with respect to an Advance under the Discretionary Line, if available; or (iii) with respect to a proposed Draw under the Equipment Line, in form and substance reasonably acceptable to Bank.

“GAAP” means generally accepted accounting principles as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board as each may from time to time be in effect, or as set forth in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination and which are applied on a consistent basis.

“Indebtedness” means all amounts due from Borrower to Bank pursuant to this Loan Agreement or otherwise arising out of or in connection with this Agreement, any other Loan Document, and all other indebtedness of Borrower to Bank whether now existing or hereafter incurred.

“Lien” means any charge against or interest in property securing payment of a debt or performance of an obligation owed to, or a claim, right or interest of, any Person, whether created by agreement, statute, common law or judicial or governmental authority, legal action or equitable process, or proceeding, including, but not limited to, any security interest, lien, encumbrance, mortgage, assignment, pledge, conditional sale, lease, consignment or bailment.

“Line Termination Date” means July 1, 2002, or such other date as Bank and Borrower shall, from time to time, mutually determine.

“Loans” means collectively the extension of credit under the Credit Facilities.

“Loan Documents” means this Agreement, the Notes, the Prior Equipment Lease Documents, the Equipment Lease Documents, together with any other instrument or document delivered in connection herewith or therewith, and all amendments, modifications and restatements hereto and thereto.

“Material Adverse Change or Effect” means, with respect to Borrower, a material adverse change or effect upon Borrower’s assets, liabilities, financial condition, results of operations or business prospects, or Borrower’s ability to perform Borrower’s obligations under the Loan Documents in accordance with their respective terms, as determined by Bank in its reasonable discretion.

“Minimum Cash Balance” means the sum of: (i) the cleared cash balances in Borrower’s accounts maintained at Commerce Bank/Pennsylvania; and (ii) amount by which the Applicable Maximum Available Credit with respect to the Discretionary Line exceeds the unpaid outstanding Advances extended to the Borrower thereunder, without regard to the limitations set forth in Paragraph 2.3.2.

“Net Income” shall have the same meaning as ascribed to such term under GAAP.

“Notes” means collectively, the Committed Line Note and the Discretionary Line Note, each to be executed by Borrower in favor of Bank evidencing a portion of the Indebtedness with respect to the Committed Line and the Discretionary Line respectively.

“Obligations” means the Indebtedness and all covenants and agreements of Borrower contained herein or in any of the other Loan Documents.

“Operating Lease” means any lease of any property (real, personal or mixed) which, in conformity with GAAP, is not a Capital Lease and which has a term of one year or more.

“Operating Lease Expense” means payments with respect to Operating Leases, determined in accordance with GAAP.

“Permitted Liens” means: (i) Liens for taxes, assessments or governmental charges or claims which are not overdue or which are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, if a reserve or other appropriate provision, if any, as shall be required by Bank, shall have been made therefor; (ii) Liens of carriers, warehousemen, mechanics, materialmen, repairmen, suppliers and other like Liens incurred in the ordinary course of business for sums not yet delinquent or being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, if a reserve or other appropriate provision, if any, as shall be required by Bank, shall have been made therefor; (iii) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business in connection with workers’ compensation or unemployment insurance and other types of social security; (iv) Liens incurred or

deposits made to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business (exclusive of obligations for the payment of borrowed money); (v) the rights of tenants under leases or subleases not interfering with the ordinary conduct of the business of Borrower; (vi) easements, rights-of-way, encroachments, zoning provisions, covenants, conditions, restrictions and other similar charges, encumbrances and governmental restrictions not interfering with the ordinary conduct of the business of Borrower; (vii) capital lease obligations and purchase money security interests in equipment, leased or purchased by, Borrower from third parties (other than the Bank) in the aggregate amount outstanding not to exceed One Hundred Thousand (\$100,000) Dollars.

“Person” means an individual, corporation, partnership, joint venture, trust or unincorporated organization, or a government or any agency or political subdivision thereof.

“Plexsys Documents” shall have the same meaning as ascribed to such term in the Background Section hereof.

“Prior Credit Agreements” shall have the same meaning as ascribed to such term in the Background Section hereof.

“Prior Equipment Lease Documents” shall have the same meaning as ascribed to such term in the Background Section hereof.

“Rule” means and includes any law, rule or regulation binding upon, or applicable to, Bank as well as any guideline or similar directive issued by a governmental agency having regulatory jurisdiction over Bank which Bank observes or with which it complies, whether or not such guideline or directive technically has the force of law.

“Tangible Net Worth” means the sum of: (i) Shareholder’s Equity (determined in accordance with GAAP); plus (ii) the amount of Series A Redeemable Preferred Stock as reflected on the books and records of the Borrower.

“Unmatured Event of Default” means and refers to any event, act or occurrence which with the passage of time or giving of notice or both would become an Event of Default.

“Wall Street Prime” means the “Prime Rate” published in the “Money Rates” section of The Wall Street Journal on the applicable date, or the highest “Prime Rate” if more than one is published, as such rate may change from time to time. If The Wall Street Journal ceases to be published, goes on strike, or is otherwise not published for any period of time, or if it ceases to publish a “Prime Rate”, then the Bank may use any similar published prime or base rate.

1.2 Accounting Reports and Principles. The character or amount of any asset, liability, account or reserve and of any item of income or expense to be determined, and any consolidation or other accounting computation to be made, and the construction of any definition containing a financial term, including but not limited to capitalized terms not otherwise defined herein, pursuant to this Agreement or any other Loan Document, shall be construed, determined or

made, as the case may be, in accordance with GAAP, consistently applied, unless such principles are inconsistent with any express provision of this Agreement.

1.3 Business Day. Whenever any payment or other obligation hereunder, under the Notes or any other Loan Document, is due on a day other than a Business Day, such shall be paid or performed on the Business Day next following the prescribed due date, except as otherwise specifically provided for herein to the contrary, and such extension of time shall be included in the computation of interest and charges. Any reference made herein or in any other Loan Document to an hour of day shall refer to the then prevailing time in Philadelphia, Pennsylvania, unless specifically provided herein to the contrary.

1.4 Borrower's Authorization to Charge Accounts. Whenever Borrower is obligated hereunder, or under the Note or any other Loan Document, to make payments of any nature to Bank, including payments of principal, interest and Bank's Costs, Bank shall be entitled, and Borrower hereby authorizes Bank, to debit from any Deposit Account of Borrower at Bank, the amount of such payment due. Upon such drawing or charging, Bank shall deliver to Borrower a notice setting forth, in reasonable detail, the amount of the fees, expenses and/or payments to be satisfied by such draw, and the names or numbers of the account or accounts from which the draw or charge was made.

1.5 Bank's Costs. Borrower shall, on demand, pay Bank and hold Bank harmless against liability with respect to all Bank's Costs. Until paid, all past due and owing interest payments, fees and Bank's Costs shall be deemed to be part of the principal balance of the Loan, bear interest at the rate applicable thereto, and be secured by the Collateral. The obligations of Borrower under this Section shall survive the termination of this Agreement and the payment of all of the Notes.

1.6 Amendment and Restatement of the Prior Credit Agreement. This Agreement and the Other Loan Documents of even date herewith shall amend, restate and replace the Prior Credit Agreements, and shall hereafter control for all purposes. Notwithstanding the foregoing, any provision of this Agreement or any of the other loan documents, the Prior Equipment Lease Documents shall be unaffected by the execution of this Agreement and any of the Other Loan Documents, and shall remain in full force and effect and any the balance of any unpaid Draws heretofore made under the Prior Equipment Lease Documents shall be deemed to constitute Draws under the Equipment Line.

## 2. LOAN.

### 2.1 Committed Line.

2.1.1 Committed Line Facility Established. Provided that no Event of Default or Unmatured Event of Default has occurred, and subject to the terms and conditions set forth herein, commencing on the Closing Date and expiring on the day next preceding the Line Termination Date, Bank shall, upon Borrower's requests from time to time, extend one or more Advances to Borrower, the aggregate of which outstanding at any one time shall not exceed the Applicable Maximum Available Credit, to be solely used by Borrower for working capital purposes. Each request for an Advance under the Committed Line shall be accompanied by a completed and executed Funding

Request and a completed and executed Borrowing Base Certificate in the form of Schedule 2.1.1. Requests for Advances under the Committed Line made consistent with the foregoing and not exceeding the Applicable Maximum Available Credit received by the Bank prior to 2:00 p.m. on a Business Day shall be funded on the same Business Day and those received after 2:00 p.m. shall be funded on the next Business Day. On or prior to the Line Termination Date, Borrower may borrow, repay and, subject to the provisions of this Agreement, re-borrow under the Committed Line determined with respect to the Borrowing Base Certificate most recently submitted to Bank. Borrower agrees to immediately repay, without notice or demand, any balance of the Committed Line in excess of the Applicable Maximum Available Credit. Indebtedness under the Committed Line shall be evidenced by the Committed Line Note.

2.1.2 Interest Rate. Advances under the Committed Line shall bear interest on the unpaid principal balance thereof from the Funding Date to the Line Termination Date at the Applicable Interest Rate.

2.1.3 Principal and Interest Payments. Until the Line Termination Date, interest alone shall be paid monthly at the Line Interest Rate. All unpaid principal of the Committed Line and all interest accrued thereon shall be paid in full by Borrower on the Line Termination Date.

## 2.2 Equipment Line.

2.2.1 Equipment Line Facility Established. Provided that no Event of Default or Unmatured Event of Default has occurred, and subject to the terms and conditions set forth herein, and expiring on the Equipment Line Termination Date, Bank shall, upon Borrower's requests from time to time, fund Draws for the benefit of Borrower, the aggregate of which shall not exceed the Applicable Maximum Available Credit.

2.2.2 Procedures For Draws on the Equipment Line. With respect to each Draw sought by Borrower under the Equipment Line, Borrower shall submit to Bank, no later than five (5) Business Days prior to the anticipated Funding Date of such Draw: (i) a completed and executed form of Funding Request; (ii) a completed purchase order describing the Eligible Equipment to be purchased and the total purchase price (including, freight, taxes and insurance) and the estimated date of delivery, and such other information as Bank may reasonably request; and (iii) a description of the purpose for which Borrower intends to use the Eligible Equipment and where the Eligible Equipment will be located. No later than two (2) Business Days prior to such anticipated Funding Date, Bank shall advise Borrower of whether or not Bank will fund such Draw, and if so, advise Borrower the terms of the proposed equipment lease by delivering to Borrower a completed form of Bank's standard equipment lease. No later than one (1) Business Day prior to such anticipated Funding Date, Borrower shall execute and deliver to Bank: (a) an Equipment Lease; (b) a Corporate Resolution to Lease; (c) an Authorization to Purchase Equipment on behalf of Borrower; and (d) a Purchase Order Assignment, each substantially in the form of the ones attached hereto as Schedule 2.3.2(a) hereof, together with such other documents, instruments and agreements as Bank may reasonably request to effectuate such equipment lease transaction (collectively the "Equipment Lease Documents"). BORROWER ACKNOWLEDGES AND AGREES THAT UPON THE EXECUTION AND DELIVERY OF THE EQUIPMENT LEASE DOCUMENTS, THE REPAYMENT OF THE DRAW WITH RESPECT TO EACH SUCH TRANSACTION SHALL BE

GOVERNED BY THE EQUIPMENT LEASE DOCUMENTS WITH RESPECT THERETO AND THAT, AMONG THE OTHER PROVISIONS THEREOF, BORROWER IS FULLY COGNIZANT OF, AND AGREES TO BE BOUND BY, THE PROVISIONS SET FORTH IN SECTION 7 OF SUCH EQUIPMENT LEASES.

2.2.3 Repayment of Draws. Draws shall be repaid by Borrower pursuant to the provisions of the respective Equipment Lease Documents which shall provide for an effective interest rate equal to the Applicable Interest Rate and an amortization of the principal and interest thereon in level payments over a term of no more than forty-eight (48) months.

2.3 Discretionary Line.

2.3.1 Discretionary Line Facility Established. Provided that no Event of Default or Unmatured Event of Default has occurred, and subject to the terms and conditions set forth herein, commencing on the Closing Date and expiring on the day next preceding the Line Termination Date, Bank shall, upon Borrower's requests from time to time, extend one or more Advances to Borrower, the aggregate of which outstanding at any one time shall not exceed the Applicable Maximum Available Credit, to be solely used by Borrower for working capital purposes. Each request for an Advance under the Discretionary Line shall be accompanied by a completed and executed Funding Request and a completed and executed Borrowing Base Certificate in the form of Schedule 2.3.1. Requests for Advances made consistent with the foregoing and not exceeding the Applicable Maximum Available Credit received by the Bank prior to 2:00 p.m. on a Business Day shall be funded on the same Business Day and those received after 2:00 p.m. shall be funded on the next Business Day. On or prior to the Line Termination Date, Borrower may borrow, repay and, subject to the provisions of this Agreement, re-borrow under the Discretionary Line determined with respect to the Borrowing Base Certificate most recently submitted to Bank. Borrower agrees to immediately repay, without notice or demand, any balance of the Discretionary Line of Credit in excess of the Applicable Maximum Available Credit. Indebtedness under the Discretionary Line shall be evidenced by the Discretionary Line Note.

2.3.2 Special Provisions Regarding the Discretionary Line. Notwithstanding any provision herein to the contrary, Advances under the Discretionary Line shall only be available to the Borrower from and after, and only so long as, Borrower is in compliance with the following collectively, the "Discretionary Line Covenants"):

2.3.2.1 Net Income. Borrower has generated positive Net Income with respect to the immediately preceding month and for all months thereafter, measured on a monthly basis;

2.3.2.2 Tangible Net Worth. Borrower shall maintain a Tangible Net Worth of no less than:

\$3,500,000	as of June 30, 2001
\$2,500,000	at all times from July 1 through September 30, 2001
\$2,000,000	at all times from October 1 through December 31, 2001
\$2,000,000	at all times from January 1 through March 31, 2002

\$2,000,000 at all times from April 1 through June 30, 2002

provided, however, that if the Borrower raises additional equity or unsecured Debt from time-to-time, which is fully subordinated to the Indebtedness, both on terms and conditions acceptable to the Bank in the exercise of its reasonable credit judgment (the "Additional Capital"), the Tangible Net Worth amounts set forth above shall be respectively increased, as and when raised, on a prospective basis as of the day such Additional Capital is received by Borrower by an amount equal to Fifty (50%) Percent of such Additional Capital; and

2.3.2.3 Minimum Cash Balance. Borrower shall maintain at all times a Minimum Cash Balance of no less than Two Million (\$2,000,000) Dollars.

2.3.3 Non-Compliance with Discretionary Covenants. In the event that Advances under the Discretionary Line have been made and any portion thereof has not been repaid in full and the Borrower fails to continue to comply with all of the Discretionary Line Covenants, then and in such events, all unpaid Advances outstanding under the Discretionary Line shall become immediately due and payable.

2.3.4 Interest Rate. Advances under the Discretionary Line shall bear interest on the unpaid principal balance thereof from the Funding Date to the Line Termination Date at the Applicable Interest Rate.

2.3.5 Principal and Interest Payments. Until the Line Termination Date, interest alone shall be paid monthly at the Line Interest Rate. All unpaid principal of the Discretionary Line and all interest accrued thereon shall be paid in full by Borrower on the Line Termination Date.

## 2.4 General Provisions Applicable to All Credit Facilities.

2.4.1 Payments. All payments hereunder shall be made by Borrower without defense, setoff or counterclaim in immediately available funds and delivered to Bank not later than 2:00 p.m. on the date due, at Bank's address set forth in Section 9.1 hereof, or such other place as shall be designated in writing by Bank. Funds received by Bank after that time shall be deemed to have been paid by Borrower on the next succeeding Business Day.

2.4.2 Late Charge; Default Rate of Interest. Borrower shall pay Bank a late charge of five (5%) percent of any payment of principal, interest, fees, charges or Bank's Costs which is more than fifteen (15) days past due. In addition, any principal payment not paid when due, and to the extent permitted by applicable law, any interest payment not paid when due, and any other amount due to Bank under this Agreement or any other Loan Document not paid when due (including Bank's Costs), in any case whether at stated maturity, demand, acceleration or otherwise, shall thereafter bear interest payable upon demand at a rate per annum which is three (3%) percent plus the Applicable Line Interest Rate.

2.4.3 Maximum Rate of Interest. Notwithstanding anything to the contrary herein or in any other Loan Document, no effective rate of interest hereunder shall exceed the

maximum effective rate of interest permitted by applicable law or regulation. Borrower hereby agrees to give Bank written notice in the event that Borrower has actual knowledge that any interest payment made to Bank hereunder or under any other Loan Document will cause the total interest payments collected in any one year to be usurious under applicable law, and Bank hereby agrees not to knowingly collect any interest from Borrower in the form of fees or otherwise which would render any of the Credit Facilities, either of the Notes, or any of the Equipment Lease Documents to be usurious. In the event that interest hereunder or under any of the other Loan Document would be usurious in the opinion of Bank, Bank reserves the right to reduce the interest payable by Borrower. This Section shall survive closing and the repayment of the Indebtedness.

2.4.4 Assessment. If Bank shall determine that: (i) any current Rule, the adoption or imposition of any Rule, any change in any Rule, or the adoption, imposition or change in the interpretation or administration thereof by a governmental authority, central bank or comparable agency charged with the interpretation and administration thereof, or (ii) compliance with any guideline or directive generally applicable to national banks whether or not having the force of law, including without limitation with respect to special deposit, capital adequacy, risk based capital, capital or reserve maintenance, capital ratio, or similar requirements, or any deposits or other liabilities taken or entered into by Bank (including the capital adequacy guidelines promulgated by the Board of Governors of the Federal Reserve System) may result in (a) increase to Bank of the cost of making or maintaining the Credit Facilities, or to impose upon Bank or increase any capital requirement applicable as a result of the making or maintenance of the Credit Facilities, or (b) reduction of the rate of return or amounts receivable hereunder as a consequence of its obligations pursuant to this Agreement to a level below that which Bank could have achieved but for such adoption, imposition, change or compliance, taking into consideration Bank's policies with respect to capital adequacy, (which adoption, imposition, change, or increase in capital requirements or reduction in amounts receivable may be determined by Bank's reasonable allocation of the aggregate of such cost increase, capital increase or imposition or reductions in amounts receivable resulting from such events), then, from time to time, Borrower shall pay to Bank, within ten (10) Business Days of demand by Bank, such additional amounts as will be necessary to restore the rate of return to Bank from the date of such change, together with interest on such amount from the tenth (10<sup>th</sup>) Business Day after demand until payment thereof in full at the rate provided in this Agreement. Bank shall be entitled to compensation pursuant to this Section by submitting a certificate claiming compensation and setting forth the increased cost, reduction in amounts receivable or additional amount or amounts necessary to compensate Bank hereunder for any reduction in return on capital, which certificate shall be conclusive absent manifest error. Failure on the part of Bank to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital with respect to any period shall not constitute a waiver of Bank's right to demand compensation with respect to such period or any other period. The protection of this Section shall be available to Bank regardless of any possible contention of the invalidity or inapplicability of the Rule or other change or condition which shall have occurred or been imposed.

2.4.5 Authorization to Charge Accounts. Borrower hereby authorizes Bank to automatically debit from Borrower's operating account an amount equal to all payments due hereunder, on the first day of the month following the month in which the first Advance under the either the Committed Line or the Discretionary Line, or a Draw is funded under the Equipment Lease Documents and thereafter respectively on the first day of each consecutive month; provided, however



that in the event that there are insufficient funds in such accounts to pay all currently due payments to Bank in respect to such portion of the Indebtedness, Borrower shall promptly pay to the Bank the difference of all payments currently due and owing.

### 3. SECURITY.

3.1 Security Interest in All Assets of Borrower. As security for the payment, performance and discharge of the Notes, the Equipment Lease Documents, the Indebtedness hereunder, as well as for the payment, performance and discharge of the Indebtedness (as such term is defined therein) under the Prior Credit Agreements in connection with the Prior Equipment Lease Documents, Borrower hereby ratifies, confirms and grants again to Bank a security interest in, and first lien on, all of its right, title and interest in, as, to and under All Assets of Borrower, whether now owned or hereafter created, acquired or reacquired, all cash deposited with and all other property of Borrower of any kind in the possession of Bank for any purpose, all other tangible and intangible personal property of Borrower, whether now owned or hereafter acquired, all replacements thereof and all accessions thereto, all policies of insurance covering any of the foregoing and all insurance proceeds in connection therewith, and all products, rents, profits, returns and income of and from any of the foregoing collateral, and all cash and noncash proceeds of the foregoing.

3.2 Financing Statements and Other Documents. Borrower agrees to execute and deliver to Bank, from time to time, any and all Financing Statements, certificates of title and other documents and instruments reasonably requested by Bank to perfect or keep perfected any security interest or lien created under this Agreement or under any Loan Document under the Uniform Commercial Code, or otherwise, as adopted in any state having jurisdiction over the Collateral, and any such additional security agreements or instruments with respect to the Collateral as Bank may reasonably require. Borrower hereby appoint Bank as Borrower's attorney-in-fact to execute and file in Borrower's name all documents and instruments which Bank may deem necessary or appropriate to perfect and continue perfected the security interests in the Collateral.

3.3 Maintenance of Collateral. Borrower shall maintain, preserve, protect and keep in good order and condition, ordinary wear and tear excepted, all Collateral, and from time to time, make all necessary or appropriate repairs, replacements and improvements thereto, except for such properties, taken as a whole, which are not material to the operation of Borrower's businesses. Borrower shall cause all Collateral which, under applicable law, is required to be registered or certified, to be registered or certified properly in the name of Borrower, and cause all motor vehicles or other equipment the ownership of which, under applicable law, is evidenced by a certificate of title to be properly titled in a Borrower's name, and to have Bank's lien on such motor vehicles and other equipment properly noted on the certificate of title with respect thereto and deliver such certificates of title to Bank. Bank may, but shall not be obligated to, on behalf of Borrower, pay and discharge taxes and/or Liens pertaining to the Collateral, except for Permitted Liens, and may pay for the repair of any Collateral, the maintenance and preservation thereof and for insurance thereon. Borrower agrees to reimburse Bank, within three (3) Business Days after notice thereof from Bank to Borrower, for any payment so made.

3.4 Inspection of Collateral. Bank shall have the right, as it deems necessary in its sole discretion, so long as any portion of the Indebtedness remains outstanding and unpaid, to audit

and inspect the Collateral. Such audits and inspections shall be performed by persons selected by Bank, at the cost of Borrower, at any reasonable time during regular business hours, at least 24 hours subsequent to the provision of notice of such inspection, by telephone or otherwise, to Borrower. Unless there exists an Event of Default or an Unmatured Event of Default, the Bank's rights under this Section 3.4 may be exercised no more than semi-annually.

3.5 Appraisals of Collateral. Bank shall have the right at such times as it determines, in its sole discretion, to obtain appraisals of the Collateral; provided, however that although Bank may conduct appraisals of the Borrower's software at any time and from time-to-time at Bank's expense, which costs shall not constitute Bank's Costs, following the occurrence and continuance of an Event of Default, the costs of such appraisals shall constitute Bank's Costs and shall be borne solely by Borrower. Such appraisals shall be performed by persons selected by Bank, and subject to the foregoing at the sole cost and expense of Borrower, which expenses shall constitute Bank's Costs.

3.6 Security Agreement. The parties hereto hereby acknowledge and agree that the provisions of this Agreement constitute a security agreement under the Uniform Commercial Code as enacted in each jurisdiction in which the Collateral is or may be located.

3.7 Security Agreement Transition Provisions Addressing Revised Article 9.

3.7.1 Concerning Revised Article 9 of the Uniform Commercial Code. The parties acknowledge and agree to the following provisions of this Agreement in anticipation of the possible application, in one or more jurisdictions to the transactions contemplated hereby, of the revised Article 9 of the Uniform Commercial Code in the form or substantially in the form approved by the American Law Institute and the National Conference of Commissioners on Uniform State Law and contained in the 1999 Official Text of the Uniform Commercial Code ("Revised Article 9").

3.7.2 Attachment. In applying the law of any jurisdiction in which Revised Article 9 is in effect, the Collateral is all assets of Borrower, whether or not within the scope of Revised Article 9. The Collateral shall include, without limitation, the following categories of assets as defined in Revised Article 9: goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, Accounts (including health-care-insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, general intangibles (including payment intangibles and software), supporting obligations and any and all proceeds of any thereof, wherever located, whether now owned or hereafter acquired. If Borrower shall at any time, whether or not Revised Article 9 is in effect in any particular jurisdiction, acquire a commercial tort claim, as defined in Revised Article 9, Borrower shall immediately notify the Bank in writing signed by Borrower of the brief details thereof and grant the Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Bank.

3.7.3 Additional Grant of Security Interest in Specified Property. Borrower acknowledges and agrees that, in anticipation of the possible application in one or more jurisdictions of the Revised Article 9, Borrower, in addition to the items previously described as constituting Collateral, hereby gives, grants, bargains, assigns and confirms that it has granted a security interest in

the following now owned or hereafter acquired and wherever located properties, assets and rights of Borrower:

3.7.3.1 All other goods, rights to payment of money, insurance refund claims and all other insurance claims and proceeds, tort claims, electronic chattel paper, securities and other investment property, rights to proceeds of letters of credit, letter of credit rights, supporting obligations of every nature, all tax refund claims, license fees, rights to sue and recover for past infringement of patents, trademarks and copyrights, computer programs, computer software, engineering drawings, customer lists, goodwill and all licenses, permits, agreements of any kind or nature pursuant to which (i) Borrower operates or has authority to operate, (ii) Borrower possesses, uses or has authority to possess or use property (whether tangible or intangible) of others, or (iii) others possess, use or have authority to possess or use property (whether tangible or intangible) of Borrower, and all recorded data of any kind or nature, regardless of the medium of recording, including without limitation, all software, writings, plans, specifications and schematics;

3.7.3.2 Borrower acknowledges and agrees that, with respect to any term used herein that is defined in either (a) Article 9 of the Uniform Commercial Code as in force in the jurisdiction in which a financing statement was signed by Borrower at the time that it was signed or (b) Article 9 as in force at any relevant time in the jurisdiction in which a financing statement is filed, the meaning to be ascribed thereto with respect to any particular item of property shall be that under the more encompassing of the two definitions; and

3.7.3.3 Borrower further acknowledges and agrees that the grant of Collateral in this Agreement covers, and is intended to cover, All Assets of Borrower.

3.7.4 Perfection by Filing. The Bank may at any time and from time to time, file financing statements, continuation statements and amendments thereto that describe the Collateral as all assets Borrower or words of similar effect and which contain any other information required by Part 5 of Revised Article 9 for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower. Borrower agrees to furnish any such information to the Bank promptly upon request. Any such financing statements, continuation statements or amendment may be signed by the Bank on behalf of Borrower, and may be filed at any time in any jurisdiction whether or not Revised Article 9 is then in effect in that jurisdiction.

3.7.5 Other Perfection, etc. Borrower shall at any time and from time to time, whether or not Revised Article 9 is in effect in any particular jurisdiction, take such steps as the Bank may reasonably request for the Bank (a) to obtain an acknowledgment, in form and substance satisfactory to the Bank, of any bailee having possession of any of the Collateral that the bailee holds such Collateral for the Bank, (b) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights or electronic chattel paper (as such terms are defined in Revised Article 9 with corresponding provisions in Rev. §9-104, 9-105, 9-106 and 9-107 relating to what constitutes "control" for such items of Collateral), with any agreements establishing control to be in form and substance satisfactory to the Bank, and (c) otherwise to insure the continued perfection and priority of the Bank's security interest in any of the Collateral and of the preservation of its rights therein,

whether in anticipation of or following the effectiveness of Revised Article 9 in any jurisdiction.

3.7.6 Other Provisions. In applying the law of any jurisdiction in which Revised Article 9 is in effect, the following references to sections of existing Article 9 shall be to the Revised Article 9 Section of that jurisdiction indicated below:

<u>Existing Article 9</u>	<u>Revised Article 9</u>
§9-103(3)	Rev. §9-102(a)(34)
§9-207	Rev. §9-207
§§8-106 and 9-115 (1994)	Rev. §§8-106 and 9-106
§9-504(1)(c)	Rev. §§9-608(a)(1)(C) and 9-615(a)(3)

3.7.7 Savings Clause. Nothing contained in this Section shall be construed to narrow the scope of the Bank's security interest in any of the Collateral or the perfection or priority thereof or to impair or otherwise limit any of the rights, powers, privileges or remedies of the Bank hereunder except (and then only to the extent) as mandated by Revised Article 9 to the extent then applicable.

3.7.8 Commercial Transaction. Borrower acknowledges that the transactions contemplated by this Agreement, the credit facilities established hereby and the use by Borrower of the proceeds of the Loan and other accommodations made on its behalf by Bank are purely commercial in nature. Revised Article 9 contains certain provisions applicable to consumers and consumer transactions. Borrower acknowledges that any consumer oriented provisions in Revised Article 9 are inapplicable to this Agreement and the enforcement by Bank of any of its rights and remedies herein.

#### 4. CONDITIONS PRECEDENT.

The performance by Bank of any of its obligations hereunder are subject to the following conditions precedent:

4.1 Closing Deliveries. At or prior to Closing, Borrower shall deliver or cause to be delivered to Bank, executed where applicable and in form and substance satisfactory to Bank and its counsel, in addition to this Agreement, the following documents and instruments and the following conditions shall have been satisfied:

4.1.1 Committed Line Note;

4.1.2 Discretionary Line Note;

4.1.3 Financing Statements and other evidence of Bank's security interest in the Collateral;

4.1.4 UCC-3 Termination Statements, if any, with respect Liens on the Collateral, other than Permitted Liens;

4.1.5 Landlord's Waivers with respect to all real property leased by Borrower upon which any of the Collateral is kept;

4.1.6 Certificate of the Secretary of Borrower, certifying to and attaching (i) resolutions authorizing the borrowing hereunder and the execution and delivery of the Loan Documents, (ii) articles of incorporation, (iii) bylaws, (iv) incumbency and signatures of the officers of Borrower authorized to execute and deliver the Loan Documents, and (v) Good Standing, Subsistence or Existence Certificate from the state of Borrower's incorporation and each state in which Borrower conducts business;

4.1.7 Opinion of Borrower's counsel;

4.1.8 Executed Borrowing Base Certificate under the Committed Line, effective as of the Closing Date;

4.1.9 Insurance certificates meeting the criteria set forth in Section 6.1.3 hereof;

4.1.10 State and county UCC-1, tax, judgment and other similar searches in all jurisdictions which Bank deems appropriate, to be performed by a company designated by Bank, the cost of which shall be borne by Borrower;

4.1.11 Corporate status searches, performed by a company designated by Bank, the cost of which shall be borne by Borrower;

4.1.12 Payment of the Applicable Line Fees due as of the Closing Date;

4.1.13 All costs, charges, expenses and fees incurred in connection with the transactions contemplated by this Agreement, including without limitation the fees and expenses of Bank's counsel and search costs, shall be paid by Borrower. Borrower authorizes Bank to deduct such costs, charges, expenses and fees from the Advance, if any made on the Closing Date and agrees to indemnify and hold Bank harmless from and against any and all claims for any such costs, charges, expenses and fees;

4.1.14 Satisfaction by Borrower of all conditions set forth in the Commitment Letters;

4.1.15 Such additional documents or instruments as Bank may require.

4.2 Advances After the Date Hereof. Bank shall not make any requested Advance under the Committed Line (or the Discretionary Line from and after the conditions set forth in

Paragraph 2.3.2 hereof have been fulfilled to the satisfaction of the Bank), or fund any Draw under the Equipment Line, unless on each Funding Date, Borrower shall deliver or cause to be delivered to Bank, executed where applicable and in form and substance satisfactory to Bank and its counsel, the following documents and instruments and the following conditions shall have been satisfied:

4.2.1 With respect to either the Committed Line or the Discretionary Line, the Line, Bank shall have timely received an executed Funding Request and all deliveries for Advances set forth in Article 2 hereof by the times set forth therein; and with respect to the Equipment Line, Bank shall have timely received an executed Funding Request, together with the timely delivery of each and all of the other Equipment Lease Documents identified in Paragraph 2.2.2 hereof;

4.2.2 The representations and warranties set forth in Article 5 of this Agreement shall be true and correct on and as of such date with the same effect as though made on and as of such date, except to the extent that such representations and warranties relate to an earlier date;

4.2.3 Borrower shall have complied with all of the covenants set forth in this Agreement;

4.2.4 No Event of Default or Unmatured Event of Default shall have occurred hereunder or under any other Loan Document;

4.2.5 No Material Adverse Change, individually or in the aggregate, shall have occurred; and

4.2.6 Such additional documents, agreements and instruments as Bank may require.

## 5. REPRESENTATIONS AND WARRANTIES

5.1 Borrower represents and warrants to Bank as follows:

5.1.1 Good Standing. Borrower is a corporation duly organized and in good standing under the laws of the State of Delaware, has the power and authority to own and operate its properties and to carry on its business where and as contemplated, and is duly qualified as a foreign corporation to do business in, and is, in good standing in, every jurisdiction where the nature of Borrower's business requires such qualification, except where the failure to do so would not have a Material Adverse Effect upon Borrower. Schedule 5.1.1 sets forth each jurisdiction where the nature of Borrower's business requires such qualification;

5.1.2 Corporate Restructuring of Borrower and Affiliates.

5.1.2.1 Pursuant to an Agreement and Plan of Merger dated March 6, 2000 and a Certificate of Merger pursuant thereto filed with the Secretary of State of Delaware, Plexsys was merged into, and is survived by, the Borrower, and by operation of law all assets of Plexsys, Inc., became the assets of Borrower and all liabilities of Plexsys, Inc., were conditionally assumed by Borrower, including, but not limited to those of Borrower to Bank under the Plexsys

Documents, and Borrower hereby acknowledges and agrees that it has unconditionally assumed such obligations. Copies of such Agreement and Plan of Merger and Certificate of Merger heretofore delivered to Bank are true, correct and complete copies of such documents,

5.1.2.2 Although still in existence as of the date hereof, neither Group Syndetic, Inc., Net Ventures, LLC, nor CB Technologies - Boston, LLC currently conducts any substantial business nor has and material assets;

5.1.3 Power and Authority. The making, execution, issuance and performance by Borrower of this Loan Agreement, the Notes, the Equipment Lease Documents and the Other Loan Documents to which it is a party, have been duly authorized by all necessary corporate action and will not violate any provision of law or regulation or the Articles of Incorporation or Bylaws of Borrower, have been duly authorized by all necessary action and will not violate any provision of law or regulation; and will not violate any agreement, trust or other indenture or instrument to which Borrower is a party or by which Borrower's property is bound; and is enforceable against Borrower;

5.1.4 Priority of Liens; Location and Condition of Collateral. With the exception of Permitted Liens, Borrower owns the Collateral free and clear of all liens, encumbrances, security interests or other rights of third parties, excepting only the rights and interests granted Bank herein and in the other Loan Documents, and upon perfection of Bank's security interest in the Collateral, Bank will have a first priority security interest in the Collateral. Borrower's principal executive office and all other locations of Borrower, and any names, other than its corporate name, under which it does business or has done business within the last five (5) years, are located at the addresses set forth on Schedule 5.1.4 hereto;

5.1.5 Intellectual Property. Borrower is the sole owner of the intellectual property identified on schedule 5.1.5 hereof, free and clear of all Liens. All of the information set forth on Schedule 5.1.5 hereof, including, but not limited to the descriptions thereof, the file numbers and the recording information;

5.1.6 No Violation. The execution, delivery and performance by Borrower of each of the Loan Documents do not, and will not by the passage of time, the giving of notice or otherwise, (i) violate any provision of any law or regulation, (ii) violate the Articles of Incorporation or Bylaws of Borrower, (iii) violate any judgment, order, decree, agreement, trust or other indenture or instrument to which Borrower is a party or by which any property of any of Borrower is bound, or (v) result in or require the creation or imposition of any Lien with respect to any property of any of them now owned or hereafter acquired, other than Liens arising under the Loan Documents;

5.1.7 Financial Condition. The financial statements of Borrower heretofore furnished to Bank are true, complete and correct in all material respects, have been prepared in accordance with GAAP, consistently applied, and present fairly the financial condition of Borrower, as of the dates therein, and the results of Borrower's operations for the periods therein ended. Since the dates of such financial statements, there has been no Material Adverse Change, individually or in the aggregate, in the financial condition of Borrower or otherwise, from that set forth in the balance sheets as of said dates;

5.1.8 No Litigation, Employee Relations. There are no suits or proceedings pending, or, to the knowledge of Borrower, threatened against or affecting any of the assets, and Borrower is not in default in the performance of any agreement to which Borrower is a party or by which Borrower is bound, or with respect to any order, writ, injunction, or any decree of any court, or any federal, state, municipal or other government agency or instrumentality, domestic or foreign, which could have a Material Adverse Effect on Borrower, individually or in the aggregate. Borrower's relations with their respective employees are satisfactory;

5.1.9 Compliance. Borrower has all authorizations, consents, approvals, licenses, and exceptions from, and have made all registrations and filings with, and all reports to, all Federal, state and local governmental bodies and agencies (collectively referred to as "Governmental Approvals") necessary for the conduct of the business of Borrower, and the conduct of Borrower's business is not and has not been in violation of any such Governmental Approvals or any applicable federal or state law, rule or regulation, including ERISA, the failure of which to obtain or to comply with would, in any such case, have a Material Adverse Effect on Borrower. Borrower does not require any Governmental Approvals to enter into, or perform under, this Agreement, the Notes or any other Loan Document to which Borrower is a party. There are no actions or investigations pending or threatened against or affecting Borrower before any governmental authority, or which could result in a Material Adverse Change in any of Borrower's respective business, prospects or the ability of Borrower to conduct its business in a manner consistent with past operations and financial results;

5.1.10 Compliance with Regulations T, U and X. Borrower is not engaged principally, or as Borrower's important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meanings of Regulations T, U and X of the Board of Governors of the Federal Reserve System);

5.1.11 Taxes. Borrower's Federal EIN is 23-2718871. Borrower has paid all taxes, governmental charges and assessments levied against Borrower, or any of its assets, except for taxes, charges or assessments which are not overdue or which are being contested in good faith and by appropriate proceedings with adequate reserves therefor being available or having been set aside;

5.1.12 Environmental. Borrower has in the conduct of its business, and the ownership and use of all real property, complied, in all material respects, with all federal, state and local, laws, rules, regulations, judicial decisions and decrees pertaining to the use, storage, transportation or disposal of hazardous waste or toxic materials;

5.1.13 Debt and Guaranties. Except as reflected in the Financial Statements furnished pursuant to Section 5.1.5 hereof or in the notes thereto, Borrower has no Debt, nor has Borrower guaranteed the payment or performance of any debts or obligations of any other Person except for the guaranty of checks or other negotiable instruments for collection, or as permitted pursuant to Section 7.1 hereof; and



5.1.14 Other Contractual Obligations. The execution, delivery and performance by Borrower of its obligations under the Loan Documents do not violate any other contractual obligations of Borrower.

5.2 Accuracy of Representations; No Default. The information set forth herein and on each of the Schedules hereto, in the Commitment Letter, and in each of the other Loan Documents, is complete and accurate in all material respects and contains full and true disclosure of all pertinent information in connection with Borrower. None of the foregoing contains any untrue statement of a material fact or omits to state a material fact necessary to make the information contained herein or therein not misleading or not incomplete. No Event of Default or Unmatured Event of Default hereunder, or under any other Loan Document has occurred.

## 6. AFFIRMATIVE COVENANTS.

6.1 Borrower's Covenants. As long as any portion of the Indebtedness remains outstanding and unpaid or Bank has any obligation to extend Advances or to provide Draws under the Equipment Line hereunder, Borrower covenants and agrees that Borrower will:

6.1.1 Financial Statements and Other Information. Furnish or cause to be furnished to Bank, in form and content satisfactory to Bank:

(i) not later than 120 days following the close of each Fiscal Year, statement of income and expense, statement of sources and uses of funds, and balance sheet and notes of Borrower as at the end of such Fiscal Year, reviewed by an independent certified public accountant, satisfactory to Bank,

(ii) not later than 45 days following the end of the first, second, and third calendar quarter of each Fiscal Year, statement of income and expense, statement of sources and uses of funds, and balance sheet of Borrower compiled by an independent certified public accountant,

(iii) not later than 30 days following the end of each calendar quarter and with each Funding Request, deliver to Bank an accounts receivable aging report reflecting the existence of all Accounts of Borrower and the respective aging thereof, together with such other pertinent information as Bank may request, all in form acceptable to Bank, and

(iv) not later than 15 days after the dates filed, federal income tax returns of Borrower prepared by an independent certified public accountant reasonably acceptable to Bank, as filed.

All financial information provided by Borrower pursuant to this Section 6.1 shall be accompanied by a written statement signed by the President of Borrower stating that all information is true, correct and complete and Borrower has not committed nor does there exist an Event of Default or Unmatured Event of Default under the Loan Agreement or any other Loan Document. All financial information shall be accompanied, where applicable, by calculations as to compliance with the covenants set forth in Section 6.1.15 which shall be certified by Borrower as true

and correct and where based on independent quarterly or annual financial statements, shall be verified by a letter to such effect from the independent certified public accountant;

6.1.2 Additional Financial Data. With reasonable promptness furnish to Bank such additional information and data concerning the business and financial condition of Borrower as may be reasonably requested by Bank; upon reasonable prior notice afford Bank or its agents reasonable access to the financial books and records, computer records and properties of Borrower at all reasonable times and permit Bank or its agents to make copies and abstracts of same and to remove such copies and abstracts from Borrower's or any of its premises and permit Bank or its agents the right to converse directly with the independent accounting firm then engaged by Borrower, to prepare their financial statements; provided, however, if there exists no Event of Default or Unmatured Event of Default hereunder, Bank may avail itself of its rights under those sections no more than semi-annually. Borrower shall maintain its financial books and other records in accordance with GAAP;

6.1.3 Insurance. Maintain at all times, in full force and effect, (i) worker's compensation insurance, in amounts required under applicable law, (ii) commercial general liability coverage with a minimum limit of Two Million Dollars (\$2,000,000) for injury or death, (iii) "Basic Form" fire, theft and extended coverage covering all of Borrower's real and personal property on a replacement value basis in minimum limits of One Hundred Twenty-five Thousand (\$125,000) Dollars, (v) business interruption insurance, with a deductible period of not more than thirty (30) days, and (vi) such other coverages satisfactory to Bank.

Each policy of insurance hereunder shall be issued by a company satisfactory to Bank, and Borrower shall furnish Bank with copies of each such policy. All such policies, including policies for any amounts carried in excess of the required minimums and policies not specifically required by Bank, shall be in form satisfactory to Bank, shall name Bank as lender's loss payee or additional insured, as applicable, shall be prepaid, on a quarterly basis, for a period of not less than three (3) months, and shall contain a provision that such policies shall not be canceled or materially amended without at least ten (10) days prior written notice to Bank for monetary cancellation, and thirty (30) days prior written notice to Bank for non-monetary cancellation or material amendment. If the insurance, or any part thereof, shall expire, or be withdrawn, or become void or unsafe by reason of Borrower's or any of their breach of any condition thereof, or become void or unsafe by reason of the value or impairment of the capital of any company in which the insurance may then be carried, or if for any reason whatever the insurance shall be unsatisfactory to Bank, Borrower shall at its own expense place new or additional insurance satisfactory to Bank;

6.1.4 Taxes. Cause the prompt payment and discharge of all taxes, governmental charges and assessments levied and assessed or imposed upon Borrower or any of its or their assets, except as may be contested in good faith with adequate reserves having been set aside therefor;

6.1.5 Litigation.

6.1.5.1 Promptly after knowledge thereof, defend all actions, proceedings or claims which could result in a Material Adverse Change on Borrower's businesses

individually or in the aggregate, and promptly notify Bank of the institution of, or any change in, any such action, proceeding or claim if the same is in excess of Twenty-five Thousand (\$25,000) Dollars for any single action, proceeding or claim and Fifty Thousand (\$50,000) Dollars in the aggregate (other than claims covered by insurance in the ordinary course of business), and

6.1.5.2 In the event any order, judgment or lien in an amount exceeding Twenty-five Thousand (\$25,000) Dollars is entered or filed, while any portion of the Indebtedness remains outstanding and unpaid, that has not been vacated or the execution of which has not been stayed within thirty (30) days (or immediately if a writ of execution is filed) following the entry thereof, or that is not covered by insurance satisfactory to Bank, Borrower shall furnish to Bank (i) a bond, satisfactory to Bank, from an independent, financially responsible corporate surety company, naming Borrower or the applicable Borrower and Bank as co-obligees, or (ii) establish an escrow account with Bank, in either event in an amount equal to or greater than the amount of such order, judgment or lien, plus costs;

6.1.6 Notice of Events. Promptly give written notice to Bank of the occurrence or imminent occurrence of any event which causes or would imminently cause: (i) any representation or warranty made in Article 5 hereof to be untrue, incomplete or misleading in any material respect, (ii) an Event of Default or Unmatured Event of Default hereunder or under any other Loan Document, (iii) any Material Adverse Change, (iv) any material casualty to any property of Borrower, (v) the institution of, or the issuance of any order, judgment, decree or other process in, any litigation, investigation, prosecution, proceeding or other action by any governmental authority or other Person against Borrower and that does, or could, cause a Material Adverse Change, and (vi) any change in the shareholders, directors or officers of Borrower;

6.1.7 Fiscal Year; Principal Executive Office; Existence. Promptly notify Bank in writing of a change in the Fiscal Year of Borrower; notify Bank at least 60 days prior to a change in the location of any Collateral or the principal executive office of Borrower; and maintain the corporate existence (or limited liability company status, as the case may be) of Borrower and all necessary foreign qualifications in good standing;

6.1.8 Compliance with Laws; Licenses; Agreements. Comply in all material respects with all applicable statutes, rules and regulations with respect to the conduct of Borrower's or any of their businesses, including but not limited to ERISA and CERCLA/RCRA, maintain in all material respects such necessary licenses and permits required for the conduct of Borrower's business; and comply in all material respects with all agreements (including without limitation, collective bargaining agreements with all labor unions) to which Borrower is or may become a party;

6.1.9 Business. Maintain (i) all licenses in full force and effect, and (ii) the general character of Borrower's business in which it is currently engaged, and not engage in any business unrelated to the business in which Borrower is currently engaged;

6.1.10 Maintain Accounts with Bank. Maintain Bank as its depository for Borrower's primary operating accounts;

6.1.11 Additional Security Documents. Provide Bank at any time and from time to time on request with such assignments, certificates of title, or Financing Statements, and such additional instruments or documents as Bank may, in Bank's sole discretion, deem necessary in order to perfect, protect and maintain the security interest in the Collateral granted to Bank pursuant to the terms hereof;

6.1.12 Operation of Business; Collection of Accounts. Diligently operate Borrower's business and collect all Accounts in connection therewith;

6.1.13 Performance of Obligations. Perform, as and when due, all obligations (both monetary and nonmonetary) within such applicable notice or cure period allowed, pay and discharge, at or before maturity, all obligations and liabilities, except where the same may be contested in good faith by appropriate proceedings, and maintained, in accordance with GAAP, appropriate reserves for the accrual of any of the same; and

6.1.14 Collateral Audits. Subject to the limitations set forth in Section 3.5 hereof, permit Bank from time-to-time to conduct audits, valuations, other tests and/or monitoring of the Collateral and to inspect the Collateral (collectively "Audit"), and pay all Bank's Costs in connection therewith; provided further, such costs shall not exceed Four Thousand (\$4,000) Dollars for the first audit, and Three Thousand (\$3,000) Dollars for each audit thereafter; provided, however, that so long as no Event of Default has occurred and is continuing, Bank shall not conduct such Audits at the expense of the Borrower more than twice in any twelve month period.

6.2 Indemnification. Borrower hereby indemnifies and agrees to protect, defend, and hold harmless Bank, its parent, subsidiaries and/or Affiliates and its or their directors, officers, employees, agents, attorneys and shareholders, from and against any and all losses, damages, expenses or liabilities of any kind or nature and from any suits, claims, or demands, including all reasonable counsel fees incurred in investigating, evaluating or defending such claim, suffered by any of them and caused by, relating to, arising out of, resulting from, or in any way connected with this Agreement, the Notes, the Equipment Lease Documents or any of the other Loan Documents, and any transaction contemplated herein or therein or arising out of each of Borrower's businesses, including, but not limited to, claims based upon any act or failure to act by Bank in connection with this Agreement, the Notes, the Equipment Lease Documents, or any of the other Loan Documents, and any transaction contemplated herein or therein. If Borrower shall have knowledge of any claim or liability hereby indemnified against, it shall promptly give written notice thereof to Bank. THIS COVENANT SHALL SURVIVE PAYMENT OF THE INDEBTEDNESS AND THE TERMINATION OR SATISFACTION OF THIS AGREEMENT AND THE PAYMENT OF THE RESPECTIVE EQUIPMENT LEASE DOCUMENTS.

6.2.1 Bank shall promptly give Borrower written notice of all suits or actions instituted against Bank with respect to which Borrower has indemnified Bank, and Borrower shall timely proceed to defend any such suit or action. Bank shall also have the right, at the expense of Borrower, to participate in or, at Bank's election, assume the defense or prosecution of such suit, action, or proceeding, and in the latter event Borrower may employ counsel and participate therein. Bank shall have the right to adjust, settle, or compromise any claim, suit, or judgment after notice to Borrower, unless Borrower desires to litigate such claim, defend such suit, or appeal such judgment

and simultaneously therewith deposit with Bank additional collateral security sufficient to pay any judgment rendered, with interest, costs, legal fees and expenses; and the right of Bank to indemnification under this Agreement shall extend to any money paid by Bank in settlement or compromise of any such claims, suits, and judgments in good faith, after notice to Borrower.

6.2.2 If any suit, action, or other proceeding is brought by Bank against Borrower for breach of Borrower's covenant of indemnity herein contained, separate suits may be brought as causes of action accrue, without prejudice or bar to the bringing of subsequent suits on any other cause or causes of action, whether theretofore or thereafter accruing.

6.3 Post Closing Compliance. Borrower agrees to execute, re-execute, and to cause any applicable third party to execute and re-execute, and to deliver to Bank any document or instrument signed in connection herewith or with any other Loan Document which was incorrectly drafted and/or signed, as well as any document or instrument which should have been signed at or prior to Closing but which was not so signed. Borrower agrees to comply with any written request of Bank not later than ten (10) days after Borrower's receipt thereof, and failure by Borrower to so comply shall, at the option of Bank, constitute an Event of Default hereunder.

7. NEGATIVE COVENANTS So long as any portion of the Indebtedness shall remain outstanding and unpaid or Bank has any obligation to make Advances to Borrower hereunder, Borrower covenants and agrees that, in the absence of prior written consent of Bank, no Borrower will:

7.1 Debt, Liens and Encumbrances.

7.1.1 Other than the Additional Capital contemplated by Subparagraph 2.3.3.2 hereof, and only upon consent of the Bank, which consent shall not be unreasonably withheld by the Bank in the exercise of its reasonable credit judgment, incur any Debt or Capital Lease Obligations, except as specifically provided or permitted hereunder, or

7.1.2 Create, incur, assume or permit to exist any mortgage, lien, pledge, charge, security interest or other encumbrance upon the Collateral, or any of its other properties or assets, whether now owned or hereafter acquired, except: (i) security interests with respect to money borrowed from Bank; (ii) liens for taxes or governmental claims not yet due or which are being duly contested and reserved in accordance with Section 6.1.3 hereof, or (iii) Permitted Liens.

7.2 Transfer of Collateral. Except for Permitted Liens, sales of assets in the ordinary course of business or for deterioration or obsolescence, and as provided in Section 7.1 hereof, sell, enter into an agreement of sale for, convey, lease, assign, transfer, pledge, grant a security interest, mortgage or lien in, or otherwise dispose of the Collateral or its other assets;

7.3 Combination, Merger. Enter into proceedings in total or partial liquidation; merge, combine or consolidate with or into any unaffiliated entity, or, acquire all or substantially all of the assets or securities of any other Person; or otherwise take any action or omit to take any action which would have a Material Adverse Effect on Borrower's businesses;

7.4 Voting Control. Except with the express written consent of Bank, change Borrower's corporate structure, or issue any additional shares of Borrower's capital stock, except in connection with: (i) a public offering of Borrower's capital stock; or (ii) Borrower's duly adopted stock option, bonus or other such similar plans; ~~provided, however~~, that under all circumstances the voting control of Borrower, whether exercised directly or indirectly through USS Constitution Partners, L.P., or any other Person, shall at all times remain with James L. Coyne and Karen M. Cantrell-Borda;

7.5 Margin Stock. Use any part of the proceeds of the Line to purchase or carry, or to reduce, retire or refinance any credit incurred to purchase or carry, any margin stock (within the meaning of Regulations T, U and X of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying any margin stock. If requested by Bank, Borrower will furnish Bank statements in conformity with the requirements of Federal Reserve Form U-1 referred to in said Regulation;

7.6 Transactions with Affiliates. Enter into any transaction or transactions with any Affiliate for less than full value or on terms or conditions less favorable than could be obtained in an arm's length transaction with a third party;

7.7 Environmental Matters. Use, generate, treat, transport, store, dispose of, or otherwise introduce fuel or any other hazardous substances, pollutants, contaminants, hazardous waste, residual waste or solid waste (as defined above) into or on any real property owned, leased or occupied by Borrower, or cause, suffer, allow, or permit anyone else to do so, in violation of any applicable statute, law, ordinance rule or regulation; or

7.8 Non-Assignability of Loan Agreement. Assign this Loan Agreement, the Notes, any of the Equipment Lease Documents, or any interest herein, therein or in any of the other Loan Documents.

## 8. DEFAULT.

8.1 Events of Default. The occurrence of any one or more of the following events, conditions or states of affairs, shall constitute an "Event of Default" hereunder, under the Notes, the Equipment Lease Documents and under each of the other Loan Documents; provided however, that nothing contained in this Article 8 shall be deemed to enlarge or extend any grace period provided for in the Notes, any other Loan Document, any Construction Loan Document:

8.1.1 Failure by Borrower to pay the Indebtedness or any portion thereof within five (5) days after the same becomes due;

8.1.2 Failure by Borrower to observe or perform any agreement, condition, undertaking or covenant in: (i) this Loan Agreement (other than the Discretionary Line Covenants), the Notes, the Equipment Lease Documents, the Prior Equipment Lease Documents, or any other Loan Document, or in any other agreement by, between, or among Borrower and Bank; or (ii) any other material agreement, lease, mortgage, note or other obligation to which Borrower is a party or by which Borrower is bound, the failure of which taken as a whole, in the case of any of the clauses

above, would have a Material Adverse Effect on Borrower, or cause an Event of Default or Unmatured Event of Default in connection with any Debt, the failure of any of which, except the failure to pay the Indebtedness or any portion thereof when due or to deliver any of the financial information set forth in Section 6.1.1 hereof (as to which there shall be no cure period), is not cured by Borrower within thirty (30) days or if not capable of being cured within thirty (30) days, Borrower commences to cure within such thirty (30) day period, diligently prosecute the same and such failure is fully cured within sixty (60) days following such failure;

8.1.3 Any representation or warranty of Borrower made, or deemed made, in this Loan Agreement, any of the Equipment Lease Documents, or any other Loan Document, or any statement or information in any report, certificate, financial statement or other instrument furnished by Borrower in connection with making this Loan Agreement, the establishment of the Credit Facilities hereunder or in compliance with the provisions hereof or any other Loan Document shall have been false or misleading in any material respect when so made, deemed made or furnished;

8.1.4 Borrower shall become insolvent or unable to pay its debts as they mature, or file a voluntary petition or proceeding seeking liquidation, reorganization or other relief with respect to itself under any provision of the Bankruptcy Code or any state bankruptcy or insolvency statute, or make an assignment or any other transfer of assets for the benefit of its creditors, or apply for or consent to the appointment of a receiver for its assets, or suffer the filing against its property of any attachment or garnishment or take any action to authorize any of the foregoing, or an involuntary case or other proceeding shall be commenced against Borrower seeking liquidation, reorganization or other relief with respect to its debts under the Bankruptcy Code or any other bankruptcy, insolvency or similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days (it being understood that no delay period applies with respect to any default arising under this Section by reason of the filing of a voluntary petition by Borrower under the Bankruptcy Code or any other bankruptcy or insolvency statute, whether state or federal, or the making of an assignment or other transfer of assets for the benefit of Borrower's creditors or by reason of Borrower applying for or consenting to the appointment of a receiver for Borrower's assets); or an order for relief shall be entered against Borrower under any provision of the Bankruptcy Code or any state bankruptcy or insolvency statute as now or hereafter in effect;

8.1.5 Borrower shall cease to conduct its business substantially as it is now or will be conducted; or Borrower shall change the nature of its business;

8.1.6 Entry of a final judgment or judgments against Borrower by a court of law in an amount exceeding Twenty-five Thousand (\$25,000) Dollars or an aggregate of Fifty Thousand (\$50,000) Dollars outstanding at any one time, enforcement of which judgment or judgments has not been stayed or satisfied within thirty (30) days after entry;

8.1.7 Except for Permitted Liens and as permitted pursuant to Section 7.1 hereof, imposition of any Lien or series of Liens against Borrower or any of the Collateral whether by operation of law or by consent which is not removed within thirty (30) days;

8.1.8 Loss or partial invalidity of Borrower's corporate existence; or

8.1.9 The suspension or revocation of any license of Borrower the result of which would cause Borrower to suffer a Material Adverse Effect.

## 8.2 Remedies on Default.

8.2.1 Upon the occurrence of an Event of Default:

8.2.1.1 Except as may be otherwise provided herein and subject to the cure period provided in Sections 8.1.1 and 8.1.2 hereof, at its election, Bank may forthwith declare all Indebtedness to be immediately due and payable, without protest, demand or other notice, except such notice as may be provided herein, and, in addition to the rights specifically granted hereunder or now or hereafter existing in equity, at law, by virtue of statute or otherwise (each of which rights may be exercised at any time and from time to time), Bank may exercise the rights and remedies available to Bank at law or in equity or under this Agreement, the Notes, the Equipment Lease Documents, any of the other Loan Documents, or any other agreement by and between Borrower and Bank in accordance with the respective provisions thereof,

8.2.1.2 Bank shall have all the rights of a secured creditor under the Uniform Commercial Code as enacted in the Commonwealth of Pennsylvania, in the state of Borrower's incorporation, or in any other jurisdiction in which any Collateral is located, and

8.2.1.3 Borrower will pay, as part of the Indebtedness and obligations hereby secured, Bank's administrative fees and all other amounts (including but not limited to Bank's reasonable attorneys' fees, where permitted by applicable law) paid by Bank: (i) for taxes, levies, and insurance on, or maintenance of, such Collateral; and (ii) in taking possession of, disposing of, or preserving such Collateral, with per annum interest on all of same at the Applicable Interest Rate, plus three (3%) percent from and after demand for the payment thereof until paid;

8.2.2 Borrower hereby designates and appoints Bank and its designees or agents irrevocably and with power of substitution as Borrower's attorney-in-fact upon the occurrence and continuation of an Event of Default with authority to: (i) receive, open and dispose of all mail addressed to Borrower, to notify the Post Office authorities to change the address for delivery of mail addressed to Borrower to such address as Bank may designate; (ii) sign Borrower's name on any financing statements relating to the Collateral; (iii) endorse the name of Borrower on any notes, acceptances, checks, drafts, money orders or other evidences of payment or proceeds of the Collateral that may come into Bank's possession; (iv) sign the name of Borrower on any invoices, documents, drafts against and notices to account debtors of Borrower, assignments and request for verification of accounts; (v) execute proofs of claim and loss; (vi) execute any endorsements, assignments or other instruments of conveyance or transfer; (vii) adjust and compromise any claims under insurance policies; (viii) execute releases; (ix) collect the Accounts; and (x) do all other acts and things necessary and advisable in the sole discretion of Bank to carry out and enforce this Agreement. All acts of said attorney or designee are hereby ratified and approved and said attorney or designee shall not be liable for any acts of commission or omission, nor for any error of judgment or mistake of fact or law. Each of these powers of attorney being coupled with an interest is irrevocable while any of



the Indebtedness shall remain unpaid or Bank has any obligations to make Advances or to provide Draws hereunder.

8.3 Assembly of Collateral. Upon the occurrence and continuation of any Event of Default, Bank may require Borrower at Borrower's expense, to assemble the Collateral and make it available to Bank at the place or places to be designated by Bank. Bank shall have the right to sell such Collateral at one or more public or private sales. The requirement of reasonable notice of the time and place of disposition of such Collateral by Bank shall be conclusively met if such notice is personally delivered, delivered by overnight courier, facsimiled or mailed to Borrower's address as specified in this Agreement at least ten days before the time of the sale or disposition. Bank may bid upon and purchase any or all of such Collateral at any public sale thereof. Bank may dispose of all or any part of such Collateral from time to time, and upon such terms and conditions, including a credit sale, as it determines in its sole discretion;

8.4 Application of Proceeds. Any cash proceeds of sale, lease or other disposition of the Collateral upon an Event of Default shall, unless otherwise determined by the Bank in its sole discretion, be applied in the following order:

8.4.1 To Bank's Costs;

8.4.2 To the payment of interest due pursuant to the Loan Documents;

8.4.3 To the payment of principal due pursuant to the Loan Documents; and

8.4.4 Any surplus then remaining to Borrower or whomever may be lawfully entitled thereto.

8.5 Set-Off Rights Upon Default. Borrower acknowledges and agrees that upon and during the continuance of any Event of Default, Bank, in addition to any remedies set forth above, shall have the right at any time and from time to time without notice to Borrower (to the extent permitted by law) (any such notice being expressly waived by Borrower) and to the fullest extent permitted by applicable Rules, to set off, to exercise any banker's lien or any right of attachment or garnishment and apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies at any time held by Bank and other indebtedness at any time owing by Bank to or for the account of Borrower against any and all Indebtedness or other obligations of Borrower now or hereafter existing under this Agreement, the Notes, the Equipment Lease Documents, or any other Loan Document, regardless of whether Bank shall have made any demand hereunder or thereunder.

8.6 Singular or Multiple Exercise; Non-Waiver. The remedies provided herein, in the Note and in the other Loan Documents or otherwise available to Bank at law or in equity and any warrants of attorney therein contained, shall be cumulative and concurrent, and may be pursued singly, successively or together at the sole discretion of Bank, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same.

9. MISCELLANEOUS.

9.1 Notices. Any notice or other communication by one party hereto to the other shall be in writing and shall be deemed to have been validly given upon receipt if by hand delivery, overnight delivery or facsimile, or two days after mailing if mailed first class, to the addresses as follows:

If to Borrower:

CB Technologies, Inc.  
Att: Warren Barratt, CFO  
350 Eagleview Blvd.  
Exton, PA 19341-1155

Facsimile: (610) 280-4546

With a copy to:

Stradley Ronon Stevens & Young, LLP  
Att: Todd C. Vanett, Esquire  
2600 One Commerce Square  
Philadelphia, PA 19103-7098

Facsimile: (215) 564-8120

If to Bank:

Commerce Bank, N.A.  
Att: Roger L. Bomgardner,  
Regional Vice President  
200 Lancaster Avenue  
Devon, PA 19333

Facsimile: (610) 254-0287

With a copy to:

Schnader Harrison Segal & Lewis LLP  
Att: Walter B. Ferst, Esquire  
1600 Market Street, 36<sup>th</sup> Floor  
Philadelphia, PA 19103

Facsimile: (215) 751-2205

9.2 Integration. This Agreement together with the Note, the Equipment Lease Documents, and the other Loan Documents shall be construed as one agreement; and in the event of any inconsistency, this Agreement shall control over any other Loan Document. This Agreement, the Notes and the Equipment Lease Documents, and the other Loan Documents contain all the agreements of the parties hereto with respect to the subject matter of each thereof and supersede all prior or contemporaneous discussions and agreements with respect to such subject matter.

9.3 Modification. Modifications or amendments of or to the provisions of this Agreement or any other Loan Document shall be effective only if set forth in a written instrument signed by Bank.

9.4 Survival. The terms of this Agreement and all agreements, representations, warranties and covenants made by Borrower in any other Loan Document shall survive the issuance and payment of the Notes and the Indebtedness under the respective Equipment Lease Documents, and shall continue so long as any portion of the Indebtedness shall remain outstanding and unpaid; provided, however, that the covenants set forth in Sections 6.2 (with respect to indemnification), 9.8 and 9.9 (with respect to jurisdiction, venue and jury trial) hereof shall survive the payment of the

Indebtedness and the termination or settlement of this Agreement. Borrower hereby acknowledges that Bank has relied upon the foregoing in making available the Credit Facilities.

9.5 Closing. Closing hereunder shall occur at 10:00 a.m. on July \_\_\_\_, 2001 at the offices of Schnader Harrison Segal & Lewis LLP, 1600 Market Street, 36<sup>th</sup> Floor, Philadelphia, PA 19103, or at such other time and place as the parties hereto may determine.

9.6 Successors and Assigns; Assignment. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto; provided, however that Borrower shall not assign this Agreement, or any rights or duties arising hereunder, under the Notes, the Equipment Loan Documents or any of the other Loan Documents without the express prior written consent of Bank, and Bank may assign all or any part of its rights or duties hereunder without the consent of Borrower.

9.7 Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the Commonwealth of Pennsylvania for contracts made and to be performed within the Commonwealth of Pennsylvania.

9.8 CONSENT TO JURISDICTION AND VENUE. IN ANY LEGAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE RELATIONSHIP EVIDENCED HEREBY, EACH UNDERSIGNED PARTY HEREBY IRREVOCABLY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF ANY STATE COURT LOCATED IN THE COMMONWEALTH OF PENNSYLVANIA, IN ANY COUNTY IN WHICH BANK HAS AN OFFICE OR BRANCH, AND THE FEDERAL COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, AND AGREES NOT TO RAISE ANY OBJECTION TO SUCH JURISDICTION OR TO THE LAYING OR MAINTAINING OF THE VENUE OF ANY SUCH PROCEEDING IN SUCH COURT. EACH UNDERSIGNED PARTY AGREES THAT SERVICE OF PROCESS IN ANY SUCH PROCEEDING MAY BE DULY EFFECTED UPON IT BY MAILING A COPY THEREOF, BY CERTIFIED MAIL, POSTAGE PREPAID, TO EACH UNDERSIGNED PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO ENTER INTO, EXTEND THE CREDIT FACILITES, AND TO ACCEPT OR RELY UPON THIS AGREEMENT.

9.9 WAIVER OF JURY TRIAL. EACH UNDERSIGNED PARTY HEREBY WAIVES TRIAL BY JURY IN ANY LEGAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE RELATIONSHIP EVIDENCED HEREBY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO ENTER INTO, ACCEPT OR RELY UPON THIS AGREEMENT.

9.10 Gender. All references to any gender, including the neuter gender, shall be deemed to incorporate all other genders.

9.11 Public Announcement. Bank may announce and publicize the existence of this Agreement and the extension of credit by Bank to Borrower, in such media as Bank may, in its sole discretion, from time to time determine.

9.12 Relationship of Parties. The relationship of bank and borrower will at all times be that of creditor and obligor. Nothing herein shall be deemed or construed to confer upon the parties any other relationship including, but not limited to, any relationship of a partnership or joint venture.

9.13 Participation and Information. Bank may in its sole discretion enter into participation arrangements with respect to this Agreement, and may provide all information in its possession relating to Borrower or this Agreement: (i) to any current or prospective participating lender; (ii) to its affiliates, employees, directors, agents, attorneys, accountants and other professional advisors; (iii) upon the request or demand of any governmental authority; (iv) in response to any order of court or as may be otherwise be required pursuant to any requirement of applicable law; (v) which has been publicly disclosed other than in breach of this Agreement; or (vi) in connection with the exercise of any remedy or other enforcement of the rights of Bank hereunder or under any of the other Loan Documents.

9.14 Commitment Letter. To the extent not inconsistent with the provisions of this Agreement and the Bank's Commitment Letters shall survive the execution of this Agreement and shall remain in full force and effect until all obligations of Borrower under or pursuant to this Agreement shall have been satisfied.

## **10. CONFESSION OF JUDGMENT.**

**10.1 THE FOLLOWING SETS FORTH A WARRANT OF ATTORNEY TO CONFESS JUDGMENT AGAINST BORROWER. IN GRANTING THIS WARRANT OF ATTORNEY TO CONFESS JUDGMENT AGAINST BORROWER. BORROWER, FOLLOWING CONSULTATION WITH (OR DECISION NOT TO CONSULT WITH) SEPARATE COUNSEL FOR BORROWER, AND WITH KNOWLEDGE OF THE LEGAL EFFECT HEREOF, HEREBY WAIVES ANY AND ALL RIGHTS BORROWER HAS, OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY TO BE HEARD UNDER THE CONSTITUTIONS AND LAWS OF THE UNITED STATES AND THE COMMONWEALTH OF PENNSYLVANIA. BORROWER SPECIFICALLY ACKNOWLEDGES THAT THE BANK HAS RELIED ON THIS WARRANT OF ATTORNEY IN GRANTING THE FINANCIAL ACCOMMODATIONS DESCRIBED HEREIN.**

**10.2 BORROWER IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR BORROWER IN ANY AND ALL ACTIONS, AND UPON THE OCCURRENCE OF AN EVENT OF DEFAULT TO: (i) ENTER JUDGMENT AGAINST BORROWER FOR THE PRINCIPAL SUM DUE HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT; OR (ii) SIGN FOR BORROWER AN AGREEMENT FOR ENTERING IN ANY COMPETENT COURT AN AMICABLE ACTION OR ACTIONS TO CONFESS JUDGMENT AGAINST BORROWER FOR ALL OR ANY PART OF THE INDEBTEDNESS; AND IN EITHER CASE FOR**

**INTEREST AND COSTS TOGETHER WITH A REASONABLE COLLECTION FEE. BORROWER FURTHER IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR AND ENTER JUDGMENT AGAINST BORROWER AND IN FAVOR OF BANK OR ANY HOLDER OF ANY OF THE NOTES WITH RESPECT TO AN AMICABLE ACTION OF REPLEVIN OR ANY OTHER ACTION WITH RESPECT TO THE COLLATERAL GRANTED TO BANK PURSUANT TO ARTICLE 3 HEREOF. BORROWER WAIVES ALL RELIEF FROM ANY AND ALL APPRAISEMENT OR EXEMPTION LAWS NOW IN FORCE OR HEREAFTER ENACTED. IF A COPY OF THIS LOAN AGREEMENT, VERIFIED BY AFFIDAVIT OF AN OFFICER OF THE BANK OR ANY OTHER HOLDER OF ANY OF THE NOTES, SHALL BE FILED IN ANY PROCEEDING OR ACTION WHEREIN JUDGMENT IS TO BE CONFESSED, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL HEREOF AND SUCH VERIFIED COPY SHALL BE SUFFICIENT WARRANT FOR ANY ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR AND CONFESS JUDGMENT AGAINST BORROWER AS PROVIDED HEREIN. JUDGMENT MAY BE CONFESSED FROM TIME TO TIME UNDER THE AFORESAID POWERS WHICH SHALL NOT BE EXHAUSTED BY ONE EXERCISE THEREOF.**

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IN WITNESS WHEREOF, intending to be legally bound hereby, Borrower and Bank have executed this Agreement as an instrument under seal as of the day and year first above written.

BORROWER:  
CB TECHNOLOGIES, INC.,  
a Delaware corporation

By: W.D. Barratt  
Warren D. Barratt, Senior  
Vice President and Chief Financial  
Officer

BANK:  
COMMERCE BANK, N.A.

By: R. Bomgardner  
Roger Bomgardner,  
Regional Vice President

SCHEDULE 2.1.1

Form of Borrowing Base Certificate  
(Committed Line)

**COMMERCE BANK, PA**  
**ACCOUNTS RECEIVABLE**  
**BORROWING BASE CERTIFICATE - COMMITTED LINE**

To induce COMMERCE BANK, PA (herein called "Bank") to make a loan of \$1,000,000 pursuant to a Loan and Security Agreement dated July 10, 2001 between the undersigned and Bank, and any amendments thereto (herein called the "Agreement"), the undersigned hereby specifically confirms Bank's security interest in the collateral, as set forth and defined in the Agreement, and the non-cash proceeds thereof, and hereby certifies, as of the date below that all account receivable information is true and accurate as follows:

- (1) The borrowing Base, as determined in accordance with the Agreement is as follows:

Aggregate amount owing on all its Accounts		\$ _____
Less:		
Amounts over 90 days from invoice date	\$	-
Contra accounts		-
Customer credit amounts		-
Intercompany/Affiliate accounts		-
Other ineligible		-
		<u>          -</u>
Net amount of Eligible Accounts		<u>          -</u>
80% of Eligible Accounts		<u>          -</u>
Less outstanding Advances on Discretionary Line		<u>          -</u>
Current loan balance		<u>          -</u>
Excess availability/(overadvance)		<u>          -</u>

- (2) The undersigned hereby certifies that there is no Default or Event of Default outstanding under the Agreement.

- (3) Capitalized terms used without further definition herein shall have the respective meaning set forth in the Agreement.

Dated \_\_\_\_\_

Advance Request \$ \_\_\_\_\_

Authenticated as of this day by:

Name of Borrower

CB Technologies, Inc.

Signature

\_\_\_\_\_





SCHEDULE 2.3.1

Form of Borrowing Base Certificate  
(Discretionary Line)

(37)

875520\_10.DOC

**COMMERCE BANK, PA  
ACCOUNTS RECEIVABLE  
BORROWING BASE CERTIFICATE - DISCRETIONARY LINE**

To induce COMMERCE BANK, PA (herein called "Bank") to make a loan of \$1,500,000 pursuant to a Loan and Security Agreement dated July 10, 2001 between the undersigned and Bank, and any amendments thereto (herein called the "Agreement"), the undersigned hereby specifically confirms Bank's security interest in the collateral, as set forth and defined in the Agreement, and the non-cash proceeds thereof, and hereby certifies, as of the date below that all account receivable information is true and accurate as follows:

(1) The borrowing Base, as determined in accordance with the Agreement is as follows:

Aggregate amount owing on all its Accounts		\$	-	_____
Less:				
Amounts over 90 days from invoice date	\$		-	
Contra accounts			-	
Customer credit amounts			-	
Intercompany/Affiliate accounts			-	
Other ineligible			-	
			-	_____
Net amount of Eligible Accounts			-	_____
80% of Eligible Accounts			-	_____
Less outstanding Advances on Committed Line			-	_____
Current loan balance			-	_____
Excess availability/(overadvance)		\$	-	_____

(2) The undersigned hereby certifies that thee is no Default or Event of Default outstanding under the Agreement.

(3) Capitalized terms used without further definition herein shall have the respective meaning set forth in the Agreement.

Dated \_\_\_\_\_

Advance Request \$ \_\_\_\_\_

Authenticated as of this day by:

Name of Borrower             CB Technologies, Inc.

Signature                             \_\_\_\_\_

Title                                     \_\_\_\_\_

SCHEDULE 2.3.2

Form of Equipment Lease Documents

**DELIVERY AND ACCEPTANCE CERTIFICATE**

On behalf of the undersigned lessee ("Lessee"), I hereby certify that all of the equipment ("Equipment") leased pursuant to that certain Master Lease Schedule No. \_\_\_\_ dated as of \_\_\_\_\_, 20\_\_ executed pursuant to that certain Master Lease Agreement ("Lease") dated as of \_\_\_\_\_, 20\_\_ by and between Lessee and Commerce Bank Leasing, LLC ("Lessor") has been delivered to and been received by Lessee, that all installation or other work necessary prior to the use thereof has been examined by Lessee and is in good operating order and condition and is in all respects satisfactory to Lessee, and that the Equipment is accepted by Lessee for all purposes under the Lease. Lessee represents and warrants that the date of delivery is \_\_\_\_\_, 20\_\_.

ACCORDINGLY, I AUTHORIZE LESSOR TO PURCHASE THE EQUIPMENT.

DO NOT SIGN THIS DELIVERY AND ACCEPTANCE CERTIFICATE UNTIL YOU HAVE RECEIVED THE EQUIPMENT.

LESSEE:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SURETY AGREEMENT

To: Commerce Bank Leasing, LLC  
1701 Route 70 East  
Cherry Hill, NJ 08034

\_\_\_\_\_, 20\_\_\_\_

To induce you to establish and/or continue financing and/or leasing arrangements with and consider making or continuing certain loans and extending or continuing to extend credit from time to time to \_\_\_\_\_ ("Lessee"), the Undersigned, jointly and severally, intending to be legally bound, hereby guarantees and becomes surety for the unconditional and prompt payment and performance to you of all of the now existing or hereafter arising debts, obligations, covenants, and duties of payment or performance of every kind, matured or unmatured, direct or contingent, owing, arising, due, or payable to you from Lessee ("Obligations"). The Undersigned shall also pay or reimburse you on demand for all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by you at any time to enforce, protect, preserve, or defend your rights hereunder and with respect to any property securing this Surety Agreement. All payments hereunder shall be made in lawful money of the United States, in immediately available funds. Unless otherwise defined herein, all capitalized terms shall have the respective meanings given to such terms in that certain Master Equipment Lease Agreement dated as of \_\_\_\_\_, 20\_\_\_\_ between Lessee and you and any and all Schedules executed in connection therewith from time to time (as the same may hereafter be amended, supplemented or replaced from time to time, collectively, the "Lease Agreement").

subordinate, or compromise any collateral of any party now or hereafter securing any of the Obligations, and (g) apply any and all payments received by you at any time against the Obligations in any order as you may determine; all of the foregoing in such manner and upon such terms as you may see fit, and without notice to or further consent from the Undersigned, who hereby agrees to be and shall remain bound upon this Surety Agreement notwithstanding any such action on your part.

The Undersigned further undertakes and agrees as follows:

1. The Undersigned represents and warrants that:
  - (a) The Undersigned's execution and performance of this Surety Agreement shall not (i) violate or result in a default or breach (immediately or with the passage of time) under any contract, agreement or instrument to which the Undersigned is a party, or by which the Undersigned is bound, (ii) violate or result in a default or breach under any order, decree, award, injunction, judgment, law, regulation or rule or (iii) cause or result in the imposition or creation of any lien upon any property of the Undersigned.
  - (b) The Undersigned has the full power and capacity to enter into and perform under this Surety Agreement.
  - (c) No consent, license or approval of, or filing or registration with, any governmental authority is necessary for the execution and performance hereof by the Undersigned.
  - (d) This Surety Agreement constitutes the valid and binding obligation of the Undersigned enforceable in accordance with its terms.
  - (e) This Surety Agreement promotes and furthers the business and interests of the Undersigned, and the incurrence of the Obligations by Lessee and creation of the obligations hereunder will result in direct financial benefit to the Undersigned.
2. The Undersigned hereby waives notice of (a) acceptance of this Surety Agreement, (b) the existence or incurring from time to time of any Obligations guaranteed hereunder, (c) the existence of any Event of Default, the making of demand, or the taking of any action by you, under the Lease Agreement, and (d) demand and default hereunder.
3. The Undersigned hereby consents and agrees that you may at any time or from time to time in your discretion (a) extend or change the time of payment, and/or the manner, place or terms of payment of any or all Obligations, (b) amend, supplement or replace the Lease Agreement or any related agreements, (c) renew, extend, modify, increase (without limit of any kind and whether related or unrelated) or decrease loans and extensions of credit to Lessee, (d) modify the terms and conditions under which loans and extensions of credit may be made to Lessee, (e) settle, compromise or grant releases for liabilities of Lessee, and/or any other person or persons liable with Undersigned for, any Obligations, (f) exchange, release, surrender, sell,

4. The liability of the Undersigned hereunder is absolute and unconditional and shall not be reduced, impaired or affected in any way by reason of (a) any failure to obtain, retain or preserve, or the lack of prior enforcement of, any rights against any person or persons (including Lessee and the Undersigned) or in any property, (b) the invalidity or unenforceability of any Obligations or rights in any Collateral, (c) any delay in making demand upon Lessee or any delay in enforcing, or any failure to enforce, any rights against Lessee or in any Collateral even if such rights are thereby lost, (d) any failure, neglect or omission on your part to obtain or perfect any lien upon, protect, exercise rights against, or realize on, any property of Lessee, the Undersigned or any other party securing the Obligations, (e) the existence or nonexistence of any defenses which may be available to Lessee with respect to the Obligations, (f) any failure to proceed against Lessee or any Collateral in a commercially reasonable manner, or (g) the commencement of any bankruptcy, reorganization, liquidation, dissolution or receivership proceeding or case filed by or against Lessee.
5. If any or all payments made from time to time to you with respect to any obligation hereby guaranteed are recovered from, or repaid by, you in whole or in part in any bankruptcy, reorganization, insolvency or similar proceeding instituted by or against Lessee, this Surety Agreement shall continue to be fully applicable to such obligation to the same extent as if the recovered or repaid payment(s) had never been originally made on such obligation.
6. All rights and remedies hereunder and under the Lease Agreement, and related agreements, are cumulative and not alternative, and you may proceed in any order from time to time against Lessee, the Undersigned and/or any other obligor of Lessee's Obligations and its respective assets. You shall not have any obligation to proceed against, or exhaust any or all of your rights against, Lessee prior to proceeding against the Undersigned hereunder.
7. Any and all rights of any nature of the Undersigned to subrogation, reimbursement or indemnity and any right of the Undersigned to recourse to any assets or property of Lessee for any reason shall be unconditionally subordinated to all of your rights under the Lease Agreement and the Undersigned shall not at any time exercise any of such rights unless and until all of the Obligations have been unconditionally paid in full.
8. Your books and records of any and all of Lessee's Obligations, absent manifest error, shall be prima facie evidence against the Undersigned of the indebtedness due you or to become due to you hereunder.
9. This Surety Agreement shall constitute a continuing surety obligation with respect to all Obligations from time to time incurred or arising and the liability of the Undersigned under this Surety Agreement may not be revoked or terminated.
10. The Undersigned agrees that you shall have a right of setoff against any and all property of the Undersigned now or at any time in your or any of your affiliate's possession, including, without limitation, deposit accounts, and the proceeds thereof, as security for the obligations of the Undersigned hereunder.
11. If an Event of Default occurs and is continuing under the Lease Agreement, then all of the Undersigned's obligations of every kind or nature to you hereunder shall, at your option, be deemed immediately due and payable and

you may at any time and from time to time take any and/or all actions and enforce all rights and remedies available hereunder or under applicable law to collect the Undersigned's liabilities hereunder.

12. Failure or delay in exercising any right or remedy against the Undersigned hereunder shall not be deemed a waiver thereof or preclude the exercise of any other right or remedy hereunder. No waiver of any breach of or provision of this Surety Agreement shall be construed as a waiver of any subsequent breach or of any other provision. The invalidity or unenforceability of any provision hereof shall not affect the remaining provisions which shall remain in full force and effect.

13. This Surety Agreement shall (a) be legally binding upon the Undersigned, and the Undersigned's heirs, executors, administrators, successors and assigns, provided that the Undersigned's obligations hereunder may not be delegated or assigned without your prior written consent and (b) benefit any and all of your successors and assigns.

14. This Surety Agreement embodies the whole agreement and understanding of the parties hereto relative to the subject matter hereof. No modification or waiver of any provision hereof shall be enforceable unless approved by you in writing.

15. This Surety Agreement shall in all respects be interpreted, construed

IN WITNESS WHEREOF, the Undersigned parties have executed this Surety Agreement the day and year first written above.

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

and governed by the substantive laws of the State of New Jersey. The Undersigned irrevocably (i) submits to the jurisdiction of the Courts of the State of New Jersey and the United States District Court for the District of New Jersey for the purposes of any litigation or proceeding hereunder or concerning the terms hereof and (ii) waives the right to a jury trial with respect to any litigation or proceeding hereunder or concerning the terms hereof.

16. (a) In any action or proceeding brought by you to enforce the terms hereof, the Undersigned waives personal service of the summons, complaint, and any motion or other process, and agrees that notice thereof may be served by registered or certified mail, return receipt requested or by nationally recognized overnight courier at the address of the Undersigned set forth on the signature page hereof. Such service shall be deemed made on the date of delivery at such address.

(b) Any and all notices which may be given to the Undersigned by you hereunder shall be sent to the Undersigned at the address of the Undersigned set forth on the signature page hereof and shall be deemed given to and received (on the date delivered) by the Undersigned if personally delivered or if sent by facsimile transmission or if sent in the manner provided for service of process in paragraph 16(a) above.

\_\_\_\_\_[SEAL]

Name: \_\_\_\_\_

\_\_\_\_\_[SEAL]

Name: \_\_\_\_\_

LANDLORD'S CONSENT

Lessor: Commerce Bank Leasing, LLC  
1701 Route 70 East  
Cherry Hill, New Jersey 08034

Landlord: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. General. This Landlord's Consent is entered into between the undersigned lessee ("Lessee") and Landlord. Lessee and Lessor have entered into, or are about to enter into, an agreement whereby Lessor has acquired or will acquire a security interest or other interest in certain of Lessee's personal property in which Lessor has leased to Lessee including without limitation the equipment listed on Exhibit A (collectively, the "Collateral"). Some or all of the Collateral may be affixed or otherwise become located on the premises set forth below ("Premises"). To induce Lessor to extend the Lease to Lessee against such security interest in the Collateral and for other valuable consideration, Landlord hereby agrees with Lessor and Lessee as follows.

2. Disclaimer Of Interest. Landlord hereby consents to Lessor's security interest (or other interest) in the Collateral and disclaims all interests, liens and claims which Landlord now has or may hereafter acquire in the Collateral. Landlord agrees that any lien or claim it may now have or may hereafter have in the Collateral will be subject at all times to Lessor's security interest (or other present or future interest) in the Collateral and will be subject to the rights granted by Landlord to Lessor in this Agreement.

3. Entry Onto Premises. Landlord and Lessee grant to Lessor the right to enter upon the Premises for the purpose of removing the Collateral from the Premises or conducting sales of the Collateral on the Premises. The rights granted to Lessor in this Agreement will continue until a reasonable time after Lessor receives notice in writing from Landlord that Lessee no longer is in lawful possession of the Premises. If Lessor enters onto the Premises and removes the Collateral, Lessor agrees with Landlord not to remove any Collateral in such a way that the Premises are damaged, without either repairing any such damage or reimbursing Landlord for the cost of repair.

4. Miscellaneous Provisions. The following miscellaneous provisions are a part of this Agreement: This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement. The covenants of Lessee and Landlord respecting subordination of the claim or claims of Landlord in favor of Lessor shall extend to, include, and be enforceable by any transferee or endorsee to whom Lessor may transfer any claim or claims to which this Agreement shall apply. Lessor need not accept this Agreement in writing or otherwise to make it effective. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. If

Landlord is other than an individual, any agent or other person executing this Agreement on behalf of Landlord represents and warrants to Lessor that he or she has full power and authority to execute this Agreement on Landlord's behalf. Lessor shall not be deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by Lessor. Without notice to Landlord and without affecting the validity of this Consent, Lessor may do or not do anything it deems appropriate or necessary with respect to the Lease, any obligors on the Lease, or any Collateral for the Lease; including without limitation extending, renewing, rearranging, or accelerating any of the Lease indebtedness.

5. Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective without the prior written consent of Lessor.

6. No Waiver By Lessor. Lessor shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lessor. No delay or omission on the part of Lessor in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lessor of a provision of this Agreement shall not prejudice or constitute a waiver of Lessor's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lessor, nor any course of dealing between Lessor and Landlord, shall constitute a waiver of any of Landlord's obligations as to any future transactions. Whenever the consent of Lessor is required under this Agreement, the granting of such consent by Lessor in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lessor.

7. Severability. If a court of competent jurisdiction finds any provisions of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

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

LESSEE:  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PREMISES:  
\_\_\_\_\_  
\_\_\_\_\_

LANDLORD:  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**MASTER LEASE AGREEMENT**

This Master Lease Agreement ("Agreement") is dated as of \_\_\_\_\_, 200\_\_ by and between COMMERCE BANK LEASING, LLC ("Lessor"), having an office at 1701 Route 70 East, Cherry Hill, New Jersey 08034, and \_\_\_\_\_ ("Lessee").

In consideration of the mutual agreements set forth below and the payment of rent as provided for herein, and intending to be legally bound, the parties agree as follows:

1. **LEASE**. This Agreement establishes the general terms and conditions under which Lessor may from time to time lease equipment and other property to Lessee. The terms of this Agreement shall be deemed to form a part of each Schedule executed by Lessee and Lessor which references this Agreement. "Equipment" shall mean all items of equipment and other property described on any "Schedule." Each Schedule shall constitute a separate lease agreement ("Lease") incorporating all of the terms and conditions of this Agreement. In the event of a conflict between the provisions of any Lease and the provisions of this Agreement, the provisions of the Lease shall prevail.

2. **TERMS AND LEASE PAYMENTS**. This Agreement shall become effective when it is signed and accepted by Lessor and shall remain in effect until the last Lease term under any Schedule has expired. Individual Leases go into effect and the term of a Lease begins when it is signed and accepted by Lessor ("Commencement Date"). Lessee hereby authorizes Lessor to insert the Commencement Date on each Lease. Lessee shall pay to Lessor rent ("Lease Payments") for each item of Equipment in the amount and at the times specified in the Schedule for such Equipment. The first Lease Payment is due on the date Lessor accepts the Lease or any later date designed by Lessor. Subsequent Lease Payments will be due as invoiced by Lessor for successive months until the balance of the Lease Payments and any additional Lease Payment or expenses chargeable to Lessee under a Lease are paid in full. **LESSEE'S OBLIGATION TO PAY THE LEASE PAYMENTS AND OTHER LEASE OBLIGATIONS IS ABSOLUTE AND UNCONDITIONAL AND IS NOT SUBJECT TO CANCELLATION, DEFENSE, DEDUCTION, RECOUPMENT, REDUCTION, SETOFF, CLAIM OR COUNTERCLAIM. THIS AGREEMENT AND ALL LEASES ARE NON-CANCELLABLE.** All Payments will be made to Lessor as set forth on the Lease or any other place Lessor indicates in writing.

The amounts of each Lease Payment is based on the supplier's best estimate of the Equipment cost including (if applicable), any installation, other related costs and estimated sales or use tax. The Lease Payments will be adjusted proportionately upward or downward if the actual total cost of the Equipment or taxes is more or less than the estimate. In that event, Lessee authorizes Lessor to adjust the Lease Payments by up to ten percent (10%). In the event Lessor's Lease rates increase after the date Lessee signs a Lease and the Lease is not accepted by Lessor within thirty (30) days of the effective date of the Lease rate increase, Lessee authorizes Lessor to increase the Lease Payments to reflect the Lease rate increase applicable to the Lease.

3. **DELIVERY AND ACCEPTANCE**. Lessee is responsible, at Lessee's own cost and expense, to arrange for the delivery and installation of the Equipment (unless such costs are included in the cost of the Equipment to Lessor). Lessee agrees to accept the Equipment when it is delivered and to sign the Equipment Acceptance supplied by Lessor.

4. **DISCLAIMER OF WARRANTIES**. Lessee acknowledges that Lessor is not the manufacturer of the Equipment, nor the manufacturer's or vendor's agent. Nor is the vendor an agent of Lessor. Lessee has selected the Equipment based upon Lessee's own judgment. Lessee disclaims any reliance upon any statements or

representations made by Lessor and acknowledges that representations made by Vendor, unless specifically contained in this Agreement, shall not be binding upon Lessor. **LESSOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER DIRECT OR INDIRECT, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUITABILITY, MATERIALS, DURABILITY, DESIGN, WORKMANSHIP, OPERATION OR CONDITION OF THE EQUIPMENT OR ANY PART THEREOF, ITS MERCHANTABILITY, FITNESS FOR USE FOR THE PARTICULAR PURPOSES AND USES OF LESSEE.** Lessor shall not be liable to Lessee for any loss, damage or expense of any kind or nature caused directly or indirectly by the Equipment or for any damages based on strict or absolute tort liability or Lessor's or vendor's negligence, or due to the repair, service or adjustment of the Equipment, or by any delay or failure to provide any maintenance, repair, service or adjustment, or by any interruption of service, or for any loss of business however caused. **NO DEFECT OR UNFITNESS OF THE EQUIPMENT OR THE FACT THAT THE EQUIPMENT SHALL NOT OPERATE OR THAT IT SHALL OPERATE IMPROPERLY SHALL RELIEVE LESSEE OF ANY OBLIGATION UNDER THE LEASE.**

5. **TITLE, PERSONAL PROPERTY, LOCATION AND INSPECTION**. Lessor owns the Equipment and Lessee has the right to use the Equipment for the full Lease term provided Lessee complies with the terms and conditions of this Agreement and the Lease. Lessee will keep and use the Equipment only at the Equipment Location shown on the applicable Schedule. Although the Equipment may become attached to real estate, it remains personal property and Lessee agrees not to permit a lien to be placed upon the Equipment or to remove the Equipment from the Equipment Location without Lessor's prior written consent. The Equipment is removable from and is not essential to the premises at which the Equipment is located. If Lessor feels it is necessary, Lessee agrees to provide Lessor with waivers of interest or liens, from anyone claiming any interest in the real estate on which any item of Equipment is located. Lessor also has the right, at reasonable times, to inspect the Equipment.

6. **MAINTENANCE**. Lessee is required, at Lessee's own cost and expense, to keep the Equipment in good repair, condition and working order, except for ordinary wear and tear, and Lessee will supply all parts and servicing required. All replacement parts used or installed and repairs made to the Equipment will become Lessor's property. Lessee may, with Lessor's prior written consent, make modifications to the Equipment; so long as such modifications do not reduce the value or usefulness of the Equipment or result in the loss of any warranty or any certification necessary for the maintenance of the Equipment and such modifications must be easily removable without causing damage to the Equipment. Before returning the Equipment, Lessee agrees to remove such modifications and restore the Equipment to its original condition unless otherwise directed by Lessor. If Lessee fails to remove such modifications, Lessor is deemed the owner of such modifications. **LESSEE ACKNOWLEDGES THAT LESSOR IS NOT RESPONSIBLE FOR PROVIDING ANY REQUIRED MAINTENANCE AND/OR SERVICE FOR THE EQUIPMENT. LESSEE WILL MAKE ALL CLAIMS FOR SERVICE AND/OR**

MAINTENANCE SOLELY TO THE SUPPLIER AND/OR MANUFACTURER AND SUCH CLAIMS WILL NOT AFFECT LESSEE'S OBLIGATION TO MAKE ALL REQUIRED LEASE PAYMENTS.

7. **ASSIGNMENT.** LESSEE AGREES NOT TO TRANSFER, SELL, SUBLEASE, ASSIGN, PLEDGE, TRANSFER OR ENCUMBER EITHER THE EQUIPMENT OR ANY OF LESSEE'S RIGHTS UNDER THIS AGREEMENT OR ANY LEASE OR OTHERWISE PERMIT THE EQUIPMENT TO BE OPERATED OR USED BY, OR COME INTO OR REMAIN IN THE POSSESSION OF ANYONE BUT LESSEE, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT. No sale, assignment, transfer or sublease, whether authorized herein or in violation of the terms hereof, shall relieve Lessee of its obligations, and Lessee shall remain primarily liable, hereunder and under each Lease. Lessee agrees that Lessor may sell, assign or transfer all or any part of any Lease and if Lessor does, the new owner will have the same rights and benefits that Lessor now has and will not have to perform any of Lessor's obligations and that the rights of the new owner will not be subject to any claims, defenses, or setoffs that Lessee may have against Lessor. Any such assignment, sale or transfer of a Lease or the Equipment will not relieve Lessor of Lessor's obligations to Lessee under the Lease. Subject to the foregoing, this Agreement inures to the benefit of and is binding upon the successors and assigns of the parties hereto and thereto, as the case may be (and, without limiting the foregoing, shall bind all persons who became a "new debtor" to this Agreement and any Lease, as defined in Section 9-203(e) of Revised Article 9 of the UCC).

8. **RETURN OF EQUIPMENT AND RENEWAL.** Upon at least one hundred twenty (120) days written notice to Lessor prior to the expiration of the initial term or any renewal of any Lease, Lessee shall advise Lessor of Lessee's intention to return the Equipment to Lessor at the end of the initial term or any renewal of such Lease. Provided Lessee has given such timely notice, Lessee shall return all, but not less than all, of the Equipment, freight and insurance prepaid, to Lessor in good repair, condition and working order, ordinary wear and tear excepted, in a manner and to a location designated by Lessor. If Lessee fails to so notify Lessor, or having notified Lessor, Lessee fails to return the equipment as provided herein, the Lease shall renew for an additional term of four (4) months, and Lessee agrees to continue to make lease payments at the same monthly lease payment as set forth in this Lease, subject to the right of either party to terminate any renewal upon one hundred twenty (120) days written notice, in which case Lessee will immediately deliver the equipment to Lessor as stated in this paragraph.

9. **LOSS OR DAMAGE.** Lessee assumes and shall bear the entire risk of loss or destruction of, or damage to the Equipment from any cause whatsoever, whether or not insured. No such loss or damage relieves Lessee from any obligation under a Lease. Lessee agrees to promptly notify Lessor in writing of any loss or destruction or damage to the Equipment and Lessee will, at Lessor's option, (a) repair the Equipment to good condition and working order, (b) replace the Equipment with like Equipment in good repair, condition and working order, acceptable to Lessor and transfer clear title to such replacement Equipment to Lessor, such Equipment shall be subject to the Lease and be deemed the Equipment, or (c) pay to Lessor the present value of the total of all unpaid Lease Payments for the full Lease term plus the estimated fair market value of the Equipment at the end of the originally scheduled Lease term, all discounted at a rate equal to, unless set forth in a separate schedule, four percent (4.0%) per annum whereupon the Lease shall terminate. All proceeds of insurance received by Lessor as a result of such loss or damage will be applied, where applicable, toward the replacement or repair of the Equipment or the payment of Lessee's obligations.

10. **INDEMNITY.** Lessee assumes liability for and agrees to indemnify, defend (if requested by Lessor) and hold harmless Lessor and its employees and agents from and against any and all liabilities,

losses, damages, penalties, claims, suits and repossession or return of the Equipment, actions, costs and expenses, including court costs and Lessor's attorneys fees, of whatever kind imposed or incurred by or asserted against Lessor (collectively, "Claims"), whether based on a theory of strict liability or otherwise, caused by or related to (a) the manufacture, selection, purchase, installation, ownership, use lease, possession, delivery, operation, storage, repair, disposition or return of the Equipment, and if due to the action inaction of Lessee or (b) any defects in the Equipment. Lessee agrees to reimburse Lessor for and to defend Lessor against any Claims. This indemnity will continue even after the termination or expiration of a Lease and repossession or return of the Equipment.

11. **TAXES.** Lessee agrees to pay all license and registration fees, sale and use taxes, personal property taxes and all other taxes and charges, relating to the ownership, leasing, rental, sale, purchase, possession or use of the Equipment as part of the Lease Payment or as billed by Lessor. Lessee agrees that if Lessor pays any taxes or charges on Lessee's behalf, Lessee will reimburse Lessor for all such payments and will pay Lessor interest and a late charge (as calculated in Section 14) on such payments with the next Lease Payment, plus reasonable costs incurred in collecting and administering any taxes, assessments or fees and remitting them to the appropriate authorities. Lessor shall not be obligated to contest any valuation of a tax imposed on the Equipment or on this Agreement or any Lease.

12. **INSURANCE.** During the term of a Lease, Lessee will keep the Equipment insured, at its sole cost and expense, against all risks of a loss or damage in an amount not less than the replacement cost of the Equipment, without deductible and without co-insurance. Lessee will also obtain and maintain for the term of a Lease, comprehensive public liability insurance and such policy shall provide Lessee with thirty (30) days prior written notice of cancellation of termination of such policy covering both personal injury and property damage in an amount acceptable to Lessor. Lessor will be the sole named loss payee on the property insurance under a separate lender's loss payable clause and named as an additional insured on the public liability insurance. Lessee will pay all premiums for such insurance and Lessee shall deliver proof of insurance coverage to Lessor satisfactory to Lessor. If Lessee does not provide such insurance, Lessee agrees that Lessor has the right, but not the obligation, to obtain such insurance and charge Lessee for all costs. Lessee irrevocably appoints Lessor as Lessee's attorney-in-fact to make claims for, receive payment of, and execute and endorse all documents, checks or drafts in payment for loss or damage under any said insurance policies.

13. **DEFAULT.** An "Event of Default" shall be deemed to exist if any of the following occurs: (a) Lessee fails to pay any Lease Payment or other sum due hereunder within ten (10) days of when due; (b) Lessee fails to observe or perform any other term, covenant or condition of this Agreement, any Lease or any other agreement with Lessor and such failure continues for ten (10) days from the occurrence of such failure; (c) Lessee or any guarantor or surety, if any, dies, or becomes insolvent or unable to pay its debts when due; stops doing business as a going concern; terminates its organizational existence, merges, consolidates, transfers all or substantially all of Lessee's or its assets; (d) a writ of attachment or execution is levied upon the Equipment unless released, satisfied or stayed within fifteen (15) days of such levy; (e) the filing by or against Lessee of a petition under the Bankruptcy Code or under any insolvency law provided for relief of debtors unless with respect to a petition filed against Lessee, it is dismissed within forty-five (45) days; (f) the voluntary or involuntary making of an assignment for the benefit of creditors, the appointment of a receiver or trustee for Lessee or for Lessee's assets, the commencement of any formal or informal proceeding for dissolution, liquidation, settlement of claims against or winding up of the affairs of Lessee; (g) there is a substantial change in the ownership or control of Lessee; (h) any representation, warranty or signature herein or made by Lessee or any surety or guarantor of Lessee's obligations, if any, in any document delivered to Lessor in connection with this Agreement or any

Lease shall be false or misleading in any material respect when made; (i) Lessee is in default under any other agreement with Lessor or any affiliate of Lessor (including without limitation Commerce Bank, N.A.) or any other person; (j) Lessee engages in any criminal conduct that subjects the Equipment to seizure and/or confiscation by governmental authorities; (k) Lessee uses or permits use of the Equipment in a fashion not covered by the required insurance policies; (l) without the prior written consent of Lessor, Lessee attempts to remove, sell, transfer, encumber, part with possession, or sublet any item of Equipment; (m) Lessee suffers a material adverse change in its financial condition, business, operations or assets and, as a result, Lessor deems itself or any of its Equipment to be insecure; (n) the termination of Lessee's credit facility, if any, with Commerce Bank, N.A., its successors or assigns; or (o) any default under any guaranty agreement executed in connection with this Agreement or any Lease, if any.

14. **REMEDIES.** Lessor has the following remedies if an Event of Default should occur: (a) Lessor may cancel or terminate the Leases; (b) upon written notice to Lessee, declare the entire balance of the unpaid Lease Payments for the full term of all Leases immediately due and payable, sue for and receive all Lease Payments and any other payments then accrued or accelerated under all Leases or any other agreement plus the estimated fair market value of the Equipment at the end of the originally scheduled term of all Leases, and all accelerated Lease Payments and the estimated fair market value of the Equipment will be discounted to the date of the default at six percent (6.0%) per year, but only to the extent permitted by law; (c) charge Lessee interest on all monies due Lessor at the rate of eighteen percent (18%) per annum from the date of default until paid, but in no event more than the maximum rate permitted by law; (d) charge Lessee a return-check or non-sufficient funds charge ("NSF Charge") to reimburse Lessor for the time and expense incurred with respect to a check that is returned for any reason including non-sufficient or uncollected funds, such NSF Charge is stipulated and liquidated at Twenty Five Dollars (\$25.00); (e) require that Lessee return the Equipment to Lessor and in the event Lessee fails to return the Equipment, peaceably enter upon the premises with or without legal process where the Equipment is located and repossess the Equipment; (f) apply any security deposit to any amounts owing from Lessee to Lessor; and/or (g) setoff against any account maintained with Lessor or any affiliate of Lessor (including without limitation Commerce Bank, N.A.) any and all amounts owing from Lessee to Lessor hereunder or under any Lease. Such return or repossession of the Equipment will not constitute a termination of the applicable Lease unless Lessor expressly notifies Lessee in writing. In the event the Equipment is returned or repossessed by Lessor and unless Lessor has terminated the applicable Lease, Lessor will sell or re-lease the Equipment to any persons with any terms Lessor determines, at one or more public or private sales, with or without notice to Lessee, and apply the net proceeds deducting the costs and expenses of such sales or re-lease, to Lessee's obligations with Lessee remaining liable for any deficiency on the Leases and with any excess being retained by Lessor. The credit for any sums to be received by Lessor from any such lease shall be discounted to the date of the agreement at a rate equal to the like time treasuries rate plus half of one percent (0.50%) per annum. Lessee agrees that if notice of sale is required by law to be given, seven (7) days notice shall constitute reasonable notice.

Lessee is also required to pay (i) all costs and expenses incurred by Lessor in connection with the enforcement of any remedies, including all expenses incurred in connection with the return or other recovery of any Equipment or other collateral, sale, re-lease or other disposition (including without limitation costs of transportation, possession, storage, refurbishing, advertising and broker's fees), and all other pre-judgment and post-judgment enforcement related to actions taken by Lessor, and/or any actions taken by Lessor in any bankruptcy case involving Lessee, this Equipment or other collateral, and (ii) reasonable attorneys' fees (including consultation, drafting documents, sending notices or instituting, prosecuting or defending litigation or arbitration).

Whenever any Lease Payment is not made within ten (10) days of when due, Lessee agrees to pay Lessor, within one month of the original due date, a late charge of five percent (5.0%) for each delayed payment, as compensation for Lessor's internal operating expenses arising as a result of each delayed payment, but only to the extent permitted by law. This amount is payable in addition to all amounts payable by Lessee as a result of the exercise of any other remedies.

Lessee agrees that any delay or failure to enforce Lessor's rights under this Agreement or any Lease does not prevent Lessor from enforcing any rights at a later time. No right or remedy referred to herein is intended to be exclusive, but each shall be cumulative and shall be in addition to any other remedy referred to above or otherwise available at law or in equity, and may be exercised concurrently or separately from time to time. With respect to any exercise by Lessor of its right to recover and/or dispose of any Equipment or other collateral securing Lessee's obligations under any Lease, Lessee acknowledges and agrees that: (i) Lessor shall have no obligation, subject to the requirements of commercial reasonableness, to clean up or otherwise prepare the Equipment or any other collateral for disposition; and (ii) Lessor may comply with any applicable state or federal law required in connection with the disposition of the Equipment or other collateral, and any actions taken in connection therewith shall not be deemed to have adversely effected the commercial reasonableness of any disposition of such Equipment and/or other collateral.

15. **SECURITY DEPOSIT.** Lessor will retain any required security deposit to insure Lessee's performance of Lessee's obligations. Any security deposit is non-interest bearing. Lessor may apply any security deposit to cure any default by Lessee, in which event Lessee will promptly restore any amount so applied. If Lessee is not in default, any security deposit will be returned to Lessee at the termination of a Lease.

16. **COSTS AND EXPENSES.** Lessee shall reimburse Lessor, upon demand, for all reasonable costs and expenses incurred in connection with this Agreement or any Lease, including without limitation attorneys' fees, processing fees, filing fees, overnight delivery costs, long distance telephone charges, copying costs and the cost of obtaining credit reports, certified articles of organization, good standing certificates, lien searches and UCC-1 title insurance.

17. **REPRESENTATIONS AND WARRANTIES.** Lessee warrants and represents to Lessor that (a) the Equipment will be used for business purposes, and not for personal, family or household purposes, (b) Lessee is an entity duly organized, validly existing and in good standing with the laws of the jurisdiction specified below Lessee's signature, and the organizational number assigned to Lessee in such jurisdiction, if any, is as specified below Lessee's signature, (c) Lessee's full and accurate legal name is as first provided above, (d) Lessee has the power and capacity to enter into this Agreement, all documents related to the purchase of the Equipment and any other documents required to be delivered in connection herewith (collectively, the "Documents"), and (e) the Documents have been duly authorized, executed and delivered by Lessee and constitute valid, legal and binding agreements, enforceable in accordance with their terms, except to the extent that the enforcement of remedies herein or therein provided may be limited under applicable bankruptcy and insolvency laws.

18. **FINANCIAL INFORMATION.** At Lessor's request, Lessee shall provide Lessor with (i) audited or reviewed (as required by Lessor) annual consolidated and consolidating financial statements, prepared in accordance with generally accepted accounting principles applied on a basis consistent with the most recent audited or reviewed, as applicable, financial statements provided to Lessor by Lessee, including balance sheets, income and cash flow statements, accompanied by the unqualified report thereon of an independent certified public accountant acceptable to Lessor, as soon as available, and in any event within 120 days after the end of each of Lessee's fiscal year; (ii) by April 15 of each calendar year, each guarantor's, if any,

annual financial statement for the immediately preceding calendar year and copies of such guarantor's state and federal tax returns for the immediately preceding calendar year; and (iii) such other reports and financial information as may be requested by Lessor.

19. UCC FILINGS. Lessee authorizes Lessor to file a financing statement with respect to the Equipment with or without Lessee's signature where permitted by the UCC and grant Lessor the right to sign such financing statement on Lessee's behalf. The filing of a financing statement is not to be construed as evidence that any security interest was intended to be created, but only to give public notice of Lessor's ownership of the Equipment. If a Lease is deemed at any time to be one intended as security then Lessee grants Lessor a first priority security interest in the Equipment together with all related software (embedded therein or otherwise) and general intangibles, and all additions, accessories, attachments and accessions thereto whether furnished by the supplier of the Equipment, all subleases, chattel paper, accounts and security deposits relating thereto, and any and all substitutions, replacements or exchanges for such item of Equipment, in each such case in which Lessee shall from time to time acquire an interest, and any and all proceeds (including insurance proceeds) of the Equipment and other collateral in and against which a security interest is granted hereunder. Lessee will promptly execute, or otherwise authenticate, and deliver to Lessor such further documents, instruments, assurances and other records, and take such further action as Lessor from time to time may reasonably request in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of Lessor under the Documents (including without limitation (i) lien searches and (ii) such UCC financing statements, fixture filings and waivers as reasonably may be required by Lessor in connection with any change in circumstances relating to Lessee, the Equipment or otherwise); provided, however, Lessee hereby authorizes Lessor to file any and all of the same without Lessee's authentication, to the extent permitted by applicable law. Lessee shall provide written notice to Lessor not less than thirty (30) days prior to any contemplated change in the name, the jurisdiction of organization, or address of the chief executive office, of Lessee.

20. NOTICE. Written notices will be deemed to have been given when delivered in person or if sent by certified mail, postage prepaid return receipt requested, or by reliable nationally recognized overnight courier, addressed to the recipient at its address above or at any other address subsequently provided in writing.

21. UCC - ARTICLE 2A PROVISIONS. Lessee agrees that these Leases are "finance leases" as that term is defined in Article 2A of the Uniform Commercial Code ("UCC"). Lessee acknowledges that Lessor has given Lessee the name of the Supplier of the Equipment for each Lease. Lessor hereby notifies Lessee that Lessee may have rights under the contract with the Supplier and Lessee may contact the Supplier for a description of any rights or warranties that Lessee may have under this supply contract. Lessee also waives any and all rights and remedies granted Lessee under Sections 2A-508 through 2A-522 of the UCC.

22. CHOICE OF LAW. This Agreement and all Leases were made in the State of New Jersey; and they are to be performed in the

State of New Jersey by reason of the Lease Payments Lessee is required to pay Lessor in State of New Jersey. This Agreement and all Leases shall in all respects be interpreted and all transactions subject to this Agreement and all rights and liabilities of the parties under this Agreement and all Leases shall be determined and governed as to their validity, interpretation, enforcement and effect by the laws of the State of New Jersey except for local filing requirements. Lessee consents to and agree that personal jurisdiction over Lessee and subject matter jurisdiction over the Equipment shall be with the courts of the State of New Jersey or the United States District Court for the District of New Jersey solely at Lessor's option with respect to any provision of this Agreement or any Lease. Lessee also waives Lessee's right to a trial by jury.

23. ENTIRE AGREEMENT; SEVERABILITY; WAIVERS. This Agreement and all Leases contain the entire agreement and understanding of the parties hereto. No agreements or understandings are binding on the parties unless set forth in writing and signed by the parties. Any provision of this Agreement or any Lease which for any reason may be held unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective without invalidating the remaining provisions of this Agreement and the Leases.

THIS AGREEMENT IS NOT BINDING UNTIL ACCEPTED BY LESSOR.

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

LESSOR:  
COMMERCE BANK LEASING, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LESSEE:  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Jurisdiction of Organization: \_\_\_\_\_

Organizational Number: \_\_\_\_\_

Chief Executive Office: \_\_\_\_\_  
\_\_\_\_\_

MORTGAGEE'S CONSENT

Lessor: Commerce Bank Leasing, LLC  
1701 Route 70 East  
Cherry Hill, New Jersey 08034

Mortgagee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. General. This Mortgagee's Consent is entered into between the undersigned lessee ("Lessee") and Mortgagee. Lessee and Lessor have entered into, or are about to enter into, an agreement whereby Lessor has acquired or will acquire a security interest or other interest in certain of Lessee's personal property in which Lessor has leased to Lessee including without limitation the equipment listed on Exhibit A (collectively, the "Collateral"). Some or all of the Collateral may be affixed or otherwise become located on the premises set forth below ("Premises"). To induce Lessor to extend the Lease to Lessee against such security interest in the Collateral and for other valuable consideration, Mortgagee hereby agrees with Lessor and Lessee as follows.

2. Disclaimer Of Interest. Mortgagee hereby consents to Lessor's security interest (or other interest) in the Collateral and disclaims all interests, liens and claims which Mortgagee now has or may hereafter acquire in the Collateral. Mortgagee agrees that any lien or claim it may now have or may hereafter have in the Collateral will be subject at all times to Lessor's security interest (or other present or future interest) in the Collateral and will be subject to the rights granted by Mortgagee to Lessor in this Agreement.

3. Entry Onto Premises. Mortgagee and Lessee grant to Lessor the right to enter upon the Premises for the purpose of removing the Collateral from the Premises or conducting sales of the Collateral on the Premises. The rights granted to Lessor in this Agreement will continue until a reasonable time after Lessor receives notice in writing from Mortgagee that Lessee no longer is in lawful possession of the Premises. If Lessor enters onto the Premises and removes the Collateral, Lessor agrees with Mortgagee not to remove any Collateral in such a way that the Premises are damaged, without either repairing any such damage or reimbursing Mortgagee for the cost of repair.

4. Miscellaneous Provisions. The following miscellaneous provisions are a part of this Agreement: This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement. The covenants of Lessee and Mortgagee respecting subordination of the claim or claims of Mortgagee in favor of Lessor shall extend to, include, and be enforceable by any transferee or endorsee to whom Lessor may transfer any claim or claims to which this Agreement shall apply. Lessor need not accept this Agreement in writing or otherwise to make it effective. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. If

Mortgagee is other than an individual, any agent or other person executing this Agreement on behalf of Mortgagee represents and warrants to Lessor that he or she has full power and authority to execute this Agreement on Mortgagee's behalf. Lessor shall not be deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by Lessor. Without notice to Mortgagee and without affecting the validity of this Consent, Lessor may do or not do anything it deems appropriate or necessary with respect to the Lease, any obligors on the Lease, or any Collateral for the Lease; including without limitation extending, renewing, rearranging, or accelerating any of the Lease indebtedness.

5. Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective without the prior written consent of Lessor.

6. No Waiver By Lessor. Lessor shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lessor. No delay or omission on the part of Lessor in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lessor of a provision of this Agreement shall not prejudice or constitute a waiver of Lessor's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lessor, nor any course of dealing between Lessor and Mortgagee, shall constitute a waiver of any of Mortgagee's obligations as to any future transactions. Whenever the consent of Lessor is required under this Agreement, the granting of such consent by Lessor in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lessor.

7. Severability. If a court of competent jurisdiction finds any provisions of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

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

LESSEE:  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PREMISES:  
\_\_\_\_\_  
\_\_\_\_\_

MORTGAGEE:  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

RIDER NO. 1 TO LEASE AGREEMENT

(Fair Market Value)

The terms and conditions of this Rider No. 1 to Lease Agreement are hereby incorporated into the Master Lease Agreement Schedule No. \_\_\_\_ ("Lease"), issued pursuant to the Master Lease Agreement dated \_\_\_\_\_, 20\_\_ by and between Commerce Bank Leasing, LLC ("Lessor") and the undersigned lessee ("Lessee").

1. Notwithstanding any provision contained in the Lease to the contrary, upon the expiration of the original Lease Term and payment by Lessee of all Lease Payments and other amounts due under the Lease, and provided that no Event of Default shall have occurred and be continuing, Lessee shall have the option, upon written notice to Lessor at least one hundred twenty (120) days prior to the expiration of the original Lease Term, to purchase all but not less than all of the Equipment for an amount equal to the then fair market value of such Equipment, plus applicable taxes. Lessee's payment to Lessor of the purchase price as determined above shall be due Lessor no later than the expiration date of the original Lease Term.

If Lessee for any reason does not purchase the Equipment in accordance with the terms set forth above, the Lease shall automatically and without further action on the part of Lessor and Lessee be extended for an additional term of four (4) months, plus applicable taxes, with such rental payments commencing as of the expiration date of the original Lease Term (the "Extension Term").

2. Upon the expiration of the initial Extension Term, the Lease shall continue to renew for additional four (4) months terms and can be terminated upon one hundred twenty (120) days prior written notice (each an "Extension Term"). If Lessee does not exercise such renewal option, Lessee shall have the option to purchase all but not less than all of the Equipment upon one hundred twenty (120) days prior written notice at its then fair market value. Should Lessee fail to exercise such renewal or purchase option, Lessee shall be obligated to continue to pay rent and/or return the Equipment to Lessor in accordance with the terms of the Lease.

3. Lessor shall determine the "fair market value" purchase option at the expiration of the original Lease Term and any Extension Term. If Lessee disagrees with Lessor's quote, Lessee and Lessor shall within thirty (30) days after receipt of Lessor's quote provide an appraisal from an independent third party appraiser selected by Lessor and Lessee. The appraiser shall have no conflicts of interest, shall not be affiliated with, or be an employee of, Lessee or Lessor and/or any of their subsidiaries or affiliates and shall have such working knowledge of the specific Equipment to be appraised and the market value thereof as would reasonably be expected of any individual or organization requested to provide a fair market appraisal in its ordinary course of business. The appraiser selected shall document its qualifications and its basis for the appraised valuation. The parties shall be bound by such appraisal. All costs and expenses of appraisal shall be paid by Lessee.

4. (a) It is acknowledged and agreed by the parties that they are entering into this Lease with the assumption that Lessor and the consolidated group of which Lessor is a member (all references to Lessor in this Section include such consolidated group) will be treated for federal income tax purposes (and to the extent allowable, for state and local tax purposes) as the owner of all Equipment leased hereunder and will have the maximum federal income tax rate applicable to corporations during the term hereof (which maximum federal income tax rate shall remain constant during the term hereof).

(b) Lessee acknowledges and agrees that this Lease has been executed by Lessor based upon the following representations and warranties of Lessee: (i) each item of Equipment has been placed in service on the Commencement Date; (ii) Lessor will not under the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code"), be required to include in its gross income, for federal income tax purposes, any amount with respect to any improvement, modification or addition made by Lessee to any item of Equipment; (iii) Lessor shall be entitled to accelerated cost recovery deductions ("Recovery Deductions") for the cost of each item of Equipment over the number of years indicated on the Schedule by using the 200% declining balance method permitted under Code Section 168 and the half year convention, unless otherwise required by operation of Code Section 168 (d) (3) (A); (iv) no item of Equipment is limited use property within the meaning of Rev. Proc. 76-30; and (v) for federal income tax purposes, all amounts included in the gross income of Lessor with respect to each item of Equipment will be treated as derived from or allocable to sources within the United States.

(c) If by reason of (1) the inaccuracy in law or in fact of any of the assumptions or representations or warranties set forth in Subsections (a) of (b) of this Section, (2) the inaccuracy of any statement or any letter or document furnished to Lessor by or on behalf of Lessee in connection with the transactions contemplated under the Lease, or (3) the act, failure to act or omission of or by Lessee or (4) any change in the Code occurring after the date hereof, Lessor will (i) lose, will not have the right to claim or if there will be disallowed with respect to Lessor all or any portion of the Recovery Deduction as to any item of the Equipment, (ii) be required to include in its gross income any amount in respect to any alteration, modification or addition, any item, other than an alteration, modification or addition which is permitted without adverse tax consequences to Lessor under Rev. Procs. 75-21, 76-30 or 79-48 (an

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"Improvement Loss"), or (iii) suffer a decrease in Lessor's net return over the then remaining portion of the Lease Term (any such occurrence referred to hereinafter as "Loss"), then at Lessor's option either (X) the rent will, on and after the next succeeding date for the payment thereof upon notice to Lessee by Lessor that a Loss has occurred, and describing the amount as to which Lessor intends to claim indemnification and the reason for such adjustment in reasonable detail, be increased by such amount, which will cause Lessor's net return over the then remaining portion of the Lease Term (taking into account the tax effect from deferred utilization of tax basis resulting from changes in the method of calculating Recovery Deductions) to equal the net return that would have been available if such loss had not occurred, or (Y) in lieu of a rent increase, Lessee shall pay to Lessor on such next succeeding date for the payment of rent such sum as will cause Lessor's net return over the term of the Lease in respect of the Equipment to equal to the net return that would have been available if such Loss had not occurred. If such Loss occurs after the expiration or termination of the Lease, Lessor will notify Lessee of such Loss and Lessee will, within sixty (60) days after such notice, pay to Lessor such sum as required by the preceding clause (Y). Lessee will forthwith pay on demand to Lessor an amount on an after-tax basis which will be equal to the amount of any interest and/or penalties which may be assessed by the United States or any state against Lessor as a result of the Loss.

(d) For purposes of this Section, a Loss will occur upon the earliest of (1) the happening of any event which may cause such Loss, (2) the payment by Lessor to the Internal Revenue Service of the tax increase resulting from such Loss, or (3) the adjustment of the tax return of Lessor to reflect such Loss. Lessor will be responsible for, and will not be entitled to a payment under this Section on account of any Loss due solely to one or more of the following events: (i) the failure of Lessor to have sufficient taxable income to benefit from the Recovery Deduction; (ii) any disposition of the Equipment by Lessor prior to an Event of Default which has occurred and is continuing under the Lease; or (iii) the failure of Lessor to properly claim the Recovery Deduction.

(e) The indemnities and assumptions of liability provided herein and all Lessor's rights and privileges herein will continue in full force and effect notwithstanding the expiration or termination of the Lease.

5. It is expressly agreed by the parties that this Rider is supplemental to the Lease which is by reference made a part hereof and all the terms and conditions and provisions thereof unless specifically modified herein, are to apply to this Rider and are made a part of this Rider as though they were expressly rewritten.

6. In the event of any conflict, inconsistency or incongruity between the provisions of this Rider and any of the provisions of the Lease, the provisions of this Rider shall in all respects govern and control.

IN WITNESS WHEREOF, the undersigned parties have executed this Rider as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

LESSOR:  
COMMERCE BANK LEASING, LLC

LESSEE:  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CERTIFICATE OF RESOLUTION  
(CORPORATION)

The undersigned, Secretary of \_\_\_\_\_, a \_\_\_\_\_ corporation ("Corporation"), hereby certifies to Commerce Bank Leasing, LLC ("Lessor") that the following is a true copy of resolutions duly adopted by the Board of Directors of the Corporation at a meeting duly held on \_\_\_\_\_, and that said resolutions are in conformity with the Articles of Incorporation and By-laws of the Corporation and are now in full force and effect:

RESOLVED, that each of the following named officers of the Corporation, acting singly or jointly

<u>Title</u>	<u>Name</u>	<u>Signature</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

be and hereby is authorized and directed, for and in the name of this Corporation, from time to time and on such terms and conditions as such officer(s) may agree upon with Lessor, to (a) lease equipment and related products from Lessor in such amounts as, in such officer's sole discretion, this Corporation may require; (b) assign, transfer, convey, deliver, pledge, mortgage and encumber to or for the benefit of Lessor to secure payment of the indebtedness and performance of the obligations of this Corporation to the Lessor, whether then existing or thereafter incurred, any or all of the property of this Corporation, real or personal; and (c) execute and deliver to evidence or in furtherance of or connection with any of the foregoing, such leases, notes, guaranties, undertakings to purchase, mortgages, Uniform Commercial Code financing statements, security agreements, and any other agreement or instrument that Lessor may require and such officer may approve by his or her execution and delivery thereof;

RESOLVED, that the Secretary of this Corporation is hereby authorized and directed to provide Lessor with a certified copy of these resolutions;

RESOLVED, that the authority given hereunder shall be deemed retroactive and any and all acts authorized hereunder and performed prior to the passage of these resolutions are hereby ratified and approved;

RESOLVED, that until Lessor receives notice in writing of any change or limitation of the authority of the officers of this Corporation designated in these resolutions, Lessor is authorized to rely upon the authority and power of such designated officers as set forth in these resolutions:

I further certify that the persons designated above are the duly elected and acting officers of this Corporation; that they are empowered to act for and on behalf of the Corporation within the authority prescribed in the foregoing resolutions; and that the signatures set opposite their names are genuine.

IN WITNESS WHEREOF, I have hereunto executed this Certificate of Resolution on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
SECRETARY



MASTER LEASE SCHEDULE NO. \_\_\_\_\_

This Master Lease Schedule No. \_\_\_\_ ("Lease"), dated as of \_\_\_\_\_, 20\_\_ between Commerce Bank Leasing, LLC ("Lessor") and the undersigned lessee ("Lessee") incorporates the terms and conditions of Master Lease Agreement dated as of \_\_\_\_\_, 20\_\_ between Lessor and Lessee ("Master Lease"). Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the following described items of Equipment for the Lease Term and on terms and conditions set forth herein.

- 1. EQUIPMENT. (See Exhibit A attached hereto)
- 2. TOTAL CAPITALIZED COST. \$ \_\_\_\_\_
- 2. EQUIPMENT LOCATION. \_\_\_\_\_  
\_\_\_\_\_
- 3. LESSEE'S BILLING ADDRESS. \_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

4. LEASE TERM. The Lease Term is for an initial term ("Initial Term") commencing on the date Lessor executes this Lease and continuing to, but not including, the \_\_\_\_\_, 20\_\_ ("Commencement Date") and for a Lease Term of \_\_\_\_\_ months, commencing on the Commencement Date ("Lease Term").

5. LEASE PAYMENTS.

(a) Interim rent is due and payable in full on the date specified in Lessor's invoice therefor and shall be computed by dividing one Lease Payment by thirty (30) and multiplying the result by the number of days from such date through the Commencement Date.

- (b) (i) Number of Payments: \_\_\_\_\_
- (ii) Amount of each Lease Payment plus taxes \$ \_\_\_\_\_
- (iii) Frequency of Primary Term Rent: \_\_\_\_\_ monthly \_\_\_\_\_ quarterly  
\_\_\_\_\_ semi-annual \_\_\_\_\_ other

(c) The first Lease Payment shall be due and payable along with any Special Payment required hereunder on the date Lessee executes this Lease.

- 6. SPECIAL PAYMENTS. (a) Security Deposit \$ \_\_\_\_\_
- (b) Other: \_\_\_\_\_ \$ \_\_\_\_\_

7. LEASE END OPTIONS. (See Rider No. 1)

8. ADDITIONAL PROVISIONS. (N/A)

9. MISCELLANEOUS. To the extent any of the terms and conditions set forth in this Lease conflict with or are inconsistent with the Agreement, this Lease shall govern and control. No amendment, modification or waiver of this Lease will be effective unless evidenced by a writing signed by the party to be charged. This Lease may be executed in counterparts, all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned parties have executed this Lease as of the date first set forth above.

LESSOR:  
COMMERCE BANK LEASING, LLC

LESSEE:  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date

Name

Address

City, State, Zip

Dear :

Attached is the invoice selling the equipment to Commerce Bank Leasing, LLC. I authorize payment to the vendor. We have fully accepted the equipment and it is in good working order.

Sincerely,

Name

SCHEDULE 5.1.1

Borrowers' Foreign Qualifications

Pennsylvania

SCHEDULE 5.1.4

Borrower's Locations

350 Eagleview Blvd.  
Exton, PA 19341-1155

One Springfield Ave.  
Suite 300-PMB 3009  
Summit, NJ 07901

Citicorp Center  
One Sansom Street #1900  
San Francisco, CA 94104

17011 Beach Blvd.  
Suite 900  
Huntington Beach, CA 92647

400 Calhoun #217  
Charleston, SC 29401

SCHEDULE 5.1.5

Intellectual Property

(41)

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**CB TECHNOLOGIES, INC.**  
**PENDING TRADEMARKS**

<b>Trademark</b>	<b>Serial No.</b>	<b>Filing Date</b>	<b>Status</b>
METATRIAL	75/943761	March 14, 2000	Pending; response to Office action filed February 28, 2001
ELECTRONIC CLINICAL INTELLIGENCE	76/114290	August 22, 2000	Pending; response to Office Action due August 15, 2001
UNPLUGGED	76/219183	March 2, 2001	Pending; filing receipt issued; awaiting examination
EDC UNPLUGGED	76/219315	March 2, 2001	Pending; filing receipt issued; awaiting examination
MATRIX MANAGER (Class 9)	76/227910	March 21, 2001	Pending; filing receipt issued; awaiting examination

**CB TECHNOLOGIES, INC.**  
**PENDING COMMUNITY TRADEMARK APPLICATIONS**

<b>Trademark</b>	<b>Ser. No.</b>	<b>Filing Date</b>	<b>Status</b>
EDC UNPLUGGED	2.139.301	March 19, 2001	Pending
UNPLUGGED	2.139.525	May 29, 2001	Pending
METATRIAL	2.139.202	March 19, 2001	Pending
CB TECHNOLOGIES	2.139.152	March 19, 2001	Pending

**CB TECHNOLOGIES, INC.**  
**PENDING UNITED STATES PATENT APPLICATIONS**

Title	Serial No.	Filing Date	Status
Method and System for Electronic Data Capture	09/677,472	October 2, 2000	Pending; awaiting examination



**CB TECHNOLOGIES, INC.**  
**FOREIGN (PCT) PATENT APPLICATION**

Title	Serial No.	Filing Date	Status
Method and System for Electronic Data Capture	PCT/US00/27020	October 2, 2000	Demand for Preliminary Examination filed April 19, 2001; International Preliminary Examination Report received; Entry into European Phase by May 1, 2002