

2010

# Keybank National Association v. Systems West Computer Resources, Inc., and Nancy H. Halverson : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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KEYBANK NATIONAL  
ASSOCIATION,

Plaintiff/Appellee,

vs.

SYSTEMS WEST COMPUTER  
RESOURCES, INC., and NANCY H.  
HALVERSON,

Defendants/Appellants.

---

No. 20100101-CA

BRIEF OF APPELLEE

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On Appeal from the Third Judicial District Court, Salt Lake County  
Case No. 080921404, Honorable Paul G. Maughan

---

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ORAL ARGUMENT NOT NECESSARY

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UTAH APPELLATE COURTS

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## **PARTIES IN THE COURT BELOW**

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## **JURISDICTION**

This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(j), as this case was transferred from the Supreme Court.

## **ISSUES PRESENTED**

1. The District Court correctly granted summary judgment to KeyBank when there was no dispute that the borrower and guarantor defaulted on the subject loan.
2. The District Court correctly entered judgment against the borrower and guarantor when the subject loan documents were fully integrated and unambiguous.

## **STANDARD OF REVIEW**

This Court reviews for correctness a ruling on summary judgment, which is appropriately granted when no material facts are in dispute and the governing law is properly applied. Holmes Dev. LLC v. Cook, 2002 UT 38, ¶ 21, 48 P.3d 895.

## **STATEMENT OF THE CASE**

### **A. Nature of the Case, Course of Proceedings, Disposition Below**

This was an action on a note and personal guaranty filed after the borrower and guarantor defaulted. KeyBank brought suit against borrower Systems West Computer Resources, Inc. (“Systems West”) and personal guarantor Nancy H. Halverson (“Halverson”) (collectively “Borrowers”). The Borrowers asserted counterclaims.

The District Court granted summary judgment to KeyBank and entered judgment against the Borrowers on their counterclaims. After the Borrowers appealed, this Court denied KeyBank’s motion for summary disposition, deferring the issues raised therein until the matter was fully briefed.

## **B. Facts Relevant to the Issues Presented on Appeal**

### **Execution and Extension of The Loan Documents**

On January 10, 2001, Systems West borrowed \$1,000,000 from KeyBank, executing a Promissory Note ("Note") agreeing to repay the loan. (R. 934–35.) Systems West simultaneously executed a Business Loan Agreement and a Commercial Security Agreement (R. 937–44, 946–51.) The Note was secured and properly perfected by all accounts, general intangibles, instruments, rents, monies, and payments of Systems West, as reflected in the UCC-1 Financing Statement executed by Systems West. (R. 982–83.)

Halverson is Systems West's current principal. (R. 1081–82, 1270–71.) She and her ex-husband (Don Halverson) applied for and obtained the subject line of credit and executed the loan documents on behalf of Systems West. (R. 1071–75, 1095–96, 1142–46.) Halverson understood that Systems West would have to repay the loan. (R. 1073.)

Halverson executed a Commercial Guaranty, personally guaranteeing repayment on the Note. (R. 988–91, 1104.) She understood that she would be personally responsible for the loan. (R. 1080–81, 1093–94.) Don Halverson confirmed these facts as well. (R. 1150–51.)

Don Halverson also executed a Commercial Guaranty. (R. 1150–53.) However, he was subsequently released as guarantor in his divorce from Halverson. (R. 1080–81, 1149–50.) Halverson assumed control of Systems West, as well as all of its assets and liabilities, pursuant to the divorce decree and orders. (R. 1080–81, 1149–50.)

The initial term of the Note was for a period of six months, with payment due in full on July 31, 2001. (R. 934, 1095–96.) The maturity date of the Note was



successively modified by written agreement of the parties. (R. 953–80.) Halverson and Systems West (as well as Don Halverson to the extent of his involvement) agreed to extend the subject Note pursuant to these modifications and change in terms agreements, and executed or authorized others to execute these modifications and change in terms agreements on behalf of Systems West. (R. 34–51, 1076–91, 1096–97, 1104, 1146–50.)

Pursuant to the final Change in Terms Agreement dated June 27, 2008, the maturity date of the Note was extended to July 15, 2008. (R. 980.) There were no further extensions and the entire Note came due and owing on July 15, 2008. Systems West defaulted on its payment obligations and, despite demand, failed to cure the default. (R. 1076, 1109, 1123–24, 1127.) Likewise, Halverson defaulted on her obligations under the Commercial Guaranty and, despite demand, failed to cure. (R. 1076, 1094, 1104, 1109, 1123–24, 1127.)

### **Relevant Governing Provisions of the Loan Documents**

The Notice of Final Agreement included an integration clause providing as follows:

BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT: (A) THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, (B) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES, AND (C) THE WRITTEN LOAN AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.

(R. 985.)

The Business Loan Agreement, Commercial Security Agreement, Modification and/or Extension Agreements, Change in Terms Agreements, and Commercial Guaranty each contained the same or substantively similar integration language, including the following integration language as set forth in the Business Loan Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

\* \* \*

**Final Agreement.** Borrower understands that this Agreement and the related loan documents are the final expression of the agreement between Lender and Borrower and may not be contradicted by evidence of any alleged oral agreement.

(R. 942, 944, 949, 956, 959, 961, 963–71, 975, 977–80, 990.)

Halverson, Systems West, and Don Halverson each signed documents containing these provisions. (R. 1093, 1134–35, 1153.)

The Commercial Security Agreement provided the following default provisions:

**DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Payment Default.** Grantor fails to make any payment when due under the Indebtedness.

**Other Defaults.** Grantor fails to comply with or perform any other term, obligation, covenant or condition named in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition

contained in any other agreement between Lender and Grantor.

\* \* \*

**Insolvency.** The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

\* \* \*

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

(R. 948.)

The Business Loan Agreement (Asset Based) provided for payment and an adequate borrowing base:

**TERM.** This Agreement shall be effective as of January 10, 2001, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges or until such time as the parties may agree in writing to terminate this Agreement.

\* \* \*

**Mandatory Loan Payments.** If at any time the aggregate principal amount of the outstanding Advances shall exceed the applicable Borrowing Base, Borrower, immediately upon written or oral notice from Lender, shall pay to Lender an amount equal to the difference between the outstanding principal balance of the Advances and the Borrowing Base.

(R. 937.)

The Business Loan Agreement defines the term "Borrowing Base" as follows:

**Borrowing Base.** The words "Borrowing Base" mean, as determined by Lender from time to time, the lesser of (1) \$1,000,000.00 or (2) 80.000% of the aggregate amount of Eligible Accounts.

(R. 943.)

The Business Loan Agreement also required that the Borrowers maintain a minimum assets-to-liabilities ratio:

**ADDITIONAL COVENANTS AND DEFINITIONS.**

Borrower covenants and agrees with Lender that, while this Agreement is in effect, Borrower will:

\* \* \*

**Current Ratio.** Borrower shall maintain a ratio of Current Assets to Current Liabilities in excess of 1.30 to 1.0; calculated at the end of each quarter.

(R. 126.)

The Borrowers made the following representations and warranties under the terms of the Business Loan Agreement:

**REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and all times any Indebtedness exists:

\* \* \*

**Financial Information.** Each of Borrower's financial statements supplied to Lender truly and completely disclosed

Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender.

\* \* \*

**Litigation and Claims.** No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

**Taxes.** To the best of Borrower's knowledge, all of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

(R. 938-39.)

The Business Loan Agreement provided the following default provisions:

**DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Payment Default.** Borrower fails to make any payment when due under the Loan.

\* \* \*

**Insolvency.** The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Change in Ownership.** Any change in ownership of twenty-five (25%) or more of the common stock of Borrower.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Loan is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

(R. 941.)

The Business Loan Agreement required that the Borrowers provide financial statements and tax returns:

**AFFIRMATIVE COVENANTS.** Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

\* \* \*

**Financial Statements.** Furnish Lender with the following:

**Annual Statements.** As soon as available, but in no event later than one-hundred-twenty (120) days after the end of each fiscal year, Borrower's balance sheet and income statement for the year ended, compiled by a certified public accountant satisfactory to Lender.

**Interim Statements.** As soon as available, but in no event later than 45 days after the end of each fiscal quarter, Borrower's balance sheet and profit and loss statement for the period ended, prepared by Borrower in form satisfactory to Lender.

**Tax Returns.** As soon as available, but in no event later than one-hundred-twenty (120) days after the applicable filing date for the tax reporting period ended, Federal and other governmental tax returns, prepared by a certified public accountant satisfactory to Lender.

(R. 939.)

The Modification of Business Loan Agreement, dated November 30, 2001,  
provided for the timely provision of the following additional financial information by the  
Borrowers:

3. **Borrowing Plan.** The parties agree to modify the  
"Collateral Schedule Timetables" set forth in the Borrowing  
Plan by deleting the same in its entirety and substituting the  
following:

**COLLATERAL SCHEDULE TIMETABLES.** Borrower  
shall execute and deliver to Lender the following schedules:

Accounts receivable aging reports quarterly within 45 days  
after the end of each calendar quarter.

Borrowing certificate reports quarterly within 45 days after  
the end of each calendar quarter.

(R. 955-56.)

The Commercial Guaranty made Halverson's guaranty unlimited:

**AMOUNT OF GUARANTY.** The amount of this Guaranty  
is Unlimited.

\* \* \*

**DURATION OF GUARANTY.** This Guaranty will take  
effect when received by Lender without the necessity of any  
acceptance by Lender, or any notice to Guarantor or to  
Borrower, and will continue in full force and until all  
Indebtedness incurred or contracted before receipt by Lender  
of any notice of revocation shall have been fully and finally  
paid and satisfied and all of Guarantor's other obligation's  
under this Guaranty shall have been performed in full.

(R. 988.)

The Commercial Guaranty also required that Halverson provide annual personal  
financial statements and tax returns:

## **GUARANTOR'S FINANCIAL STATEMENTS.**

Guarantor agrees to furnish Lender with the following:

**Annual Statements.** As soon as available, but in no event later than one-hundred-twenty (120) days after the end of each fiscal year, Guarantor's balance sheet and income statement for the year ended, prepared by Guarantor

**Tax Returns.** As soon as available, but in no event later than one-hundred-twenty (120) days after the applicable filing date for the tax reporting period ended, Federal and other governmental tax returns, prepared by Guarantor.

(R. 989.)

### **The Borrowers' Defaults**

Before KeyBank filed suit to enforce the loan and guaranty, the Borrowers defaulted on their contractual obligations in numerous ways:

#### ***Failure to Pay the Amount of the Note When Due***

Systems West failed to pay the amount of the Note when it came due in July 2008.

(R. 1076, 1109, 1123–24, 1127.) As of September 29, 2009, Systems West owed \$978,371.98, with accrued interest of \$77,855.30, and continuing interest, late fees, costs, and attorney fees incurred in pursuing action and collecting the amounts due. (R. 1042, 1452, 1485, 1931, 1936.)

#### ***Failure to Provide Accounts Receivable Information and to Maintain***

#### ***Borrowing Base***

Accounts receivable aging reports and certificates by Systems West were due to KeyBank on May 15, 2008; August 15, 2008; and November 15, 2008. (R. 955–56, 1043.) Systems West did not timely provide any such reports: the first accounts



receivable aging report for Systems West's 2008 operations was not provided until December 5, 2008. (R. 1043, 1048–53.) The Borrowers provided no further account receivable aging reports and certificates until after the entry of judgment. (R. 1043, 1070.) Systems West did not produce any financial statements for its operations in 2008 or 2009. (R. 1043, 1070.) By December 2, 2008, Systems West's accounts receivable had dropped below the borrowing base covenant in the subject loan documents. (R. 1042–43, 1048–53, 1070, 1122, 1136.)

#### ***Failure to Provide Financial Statements***

Systems West's Financial Statement dated as of December 31, 2007, was due to KeyBank no later than April 30, 2008. (R. 939.) Systems West did not timely provide it. (R. 1043, 1055–63.) Interim statements for 2008 and 2009 that were due 45 days after the end of each quarter were never provided to KeyBank. (R. 939, 1043, 1070.) Systems West never produced any financial statements for its operations in 2008 or 2009. (R. 1043, 1070.)

#### ***Failure to Maintain Assets-to-Liabilities Ratio***

The Business Loan Agreement required that the Borrowers maintain a ratio of current assets to current liabilities in excess of 1.30 to 1.0, calculated at the end of each quarter. (R. 126.) Systems West's Financial Statement dated as of December 31, 2007, reflected a loss of \$1,659,061 during the year 2007, and showed liabilities exceeding assets by approximately \$362,701.00. (R. 1055–63.) As of December 31, 2007, Systems West owed over \$978,000 to KeyBank. (R. 1058, 1062.) As of December 31, 2008, Systems West had only \$239,491.53 in accounts receivable, despite owing KeyBank well

in excess of \$900,000. (R. 1042, 1053.) Systems West is now insolvent. (R. 1043–44, 1119–21, 1125, 1126–29.)

***Failure to Provide Tax Returns***

Systems West never furnished to KeyBank tax returns for 2007 or 2008. (R. 1043, 1070, 1108.)

***Insolvency***

Systems West became insolvent, representing a material change in its financial condition, and giving KeyBank fundamentally legitimate grounds to believe the prospect of payment of the loan was greatly impaired. (R. 43, 1043–44, 1048–53, 1055–63, 1100–01, 1119–20, 1121–22, 1125, 1126–29.)

***Failure to Provide Halverson's Personal Financial Information***

Halverson never furnished to KeyBank her personal annual financial statements or tax returns for the calendar year 2007 or 2008, as required by the Commercial Guaranty. (R. 1044, 1108.)

***Change in Ownership, Material Adverse Change in Financial Condition, and Failure to Disclose***

On May 15, 2008, the United States District Court for the District of Utah entered a judgment in favor of Brian Gary Patterson declaring that Patterson was a general partner of Halverson and Systems West, with Patterson owning a 49% profits interest, Systems West owning a 25.5% profits interest, and Halverson owning a 25.5% profits interest. (R. 68–69.) Despite their obligation to disclose any judgment and any material change in ownership to KeyBank, the Borrowers failed to disclose the existence or

substance of this judgment. (R. 938–39, 1042.) In fact, Halverson “didn’t ever inform KeyBank about any litigation or pending litigation.” (R. 1110.)

### **The Borrowers’ Counterclaims**

The Borrowers asserted various counterclaims against KeyBank, each of which was grounded in the claim that Halverson believed the loan “would go on forever” “as long as [Systems West] paid the [minimum interest-only monthly] payments.” (R. 42–48, 1098–1103, 1107, 1126, 1132–33.) Halverson admitted there was no written document she could point to as support for this claim, but asserted that Systems West had an oral agreement to this effect with unnamed “KeyBank officials.” (R. 76, 1133.) Halverson thought “[i]t was the way [Systems West and KeyBank] ran the entire loan” and that a renewal of the Note with an extension of the maturity date would be a “mere technicality.” (R. 41, 1126, 1133.) However, no KeyBank employee ever informed Halverson that KeyBank would continue to renew the loan, even if Systems West defaulted under its loan covenants, so long as Systems West made its monthly payments. (R. 1098–1103.) Furthermore, Halverson testified she never read the loan documents she signed nor did she ever ask anyone to explain them to her. (R. 1071, 1110–12, 1134–35.)

### **SUMMARY OF ARGUMENTS**

This case presents the most basic action at law: a default on a guaranteed note. There is nothing novel about the facts, and the legal issues are settled issues of law. The Borrowers have sought to confuse the issues—as borrowers in this position sometimes do—but they have failed to muster any sufficient legal basis to overcome the District Court’s properly reasoned ruling.

The Borrowers' opening brief blatantly omits discussion of any of their defaults under the loan documents: their failure to pay, their failure to timely supply financial statements, the precipitous drop in their accounts receivable, the impermissible reduction in their borrowing base, their substantial financial losses incurred in 2007, and their failure to disclose a judgment awarding a 49% ownership interest in Systems West to a third party. These relevant, omitted facts confirm the propriety of the District Court's grant of summary judgment on the loan default.

The Borrowers instead attempt to premise their case, both defensively and offensively, on inadmissible testimony from Halverson. Ignoring the written covenants in the unambiguous written loan documents, which she never read, Halverson continues to claim that the loan should never have come due so long as Systems West made its minimum interest-only monthly payments, regardless of any other loan covenant violations, and regardless of the due date of the Note agreed to by the parties. This tepid attempt failed in the District Court and it fails when repeated here.

The District Court properly concluded that the application of the parol evidence rule, based upon fully integrated loan documents, precluded Halverson's irrelevant beliefs from creating an issue of fact and accordingly entered judgment. The District Court's decision was a correct application of law to undisputed material facts and should be affirmed in its entirety.

Given the straightforward nature of these issues, KeyBank asserts that oral argument would not materially assist the Court in correctly deciding this appeal. The Borrowers themselves have not requested oral argument.

## ARGUMENT

### **I. THIS COURT SHOULD AFFIRM THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT ON THE FULLY INTEGRATED, UNAMBIGUOUS WRITTEN LOAN DOCUMENTS.**

The District Court's legal conclusions were plainly grounded in well-established Utah law. The Borrowers did not offer any admissible evidence below either to controvert KeyBank's statement of undisputed material facts or to support their affirmative defenses and counterclaims. The Borrowers' "unsupported legal allegations" were not enough "to create a material issue of fact precluding summary judgment." Alta v. Ben Hame Corp., 836 P.2d 797, n.7 (Utah App. 1992). The loan documents were fully integrated and unambiguous, calling for construction as a matter of law without resort to extrinsic evidence. See Tangren Family Trust v. Tangren, 2008 UT 20, ¶ 16, 182 P.3d 326, 331; Smith v. Osguthorpe, 2002 UT App 361, ¶ 18, 58 P.3d 854; Webb v. R.O.A. Gen., Inc., 804 P.2d 547, 551 (Utah App. 1991). The District Court therefore properly concluded that there was no genuine issue of material fact and that KeyBank was entitled to judgment as a matter of law.

#### **A. The District Court properly concluded that Systems West defaulted under the Note.**

There was no genuine dispute that Systems West materially breached its contractual obligations to KeyBank by defaulting. The only defense raised by Systems West was that KeyBank failed to renew and extend the term of the Note indefinitely, pursuant to unspecified alleged oral agreements and representations between Systems

West and unidentified KeyBank employees, evidence of which was barred by the express terms of the loan and the parol evidence rule.

The Borrowers argue that the District Court improperly applied the parol evidence rule because the Business Loan Agreement prohibited termination of the entire loan (not just this agreement) without mutual, written consent, and that the loan documents were otherwise ambiguous. In support of these arguments, the Borrowers cite a single provision of the Business Loan Agreement regarding the termination of this agreement. (Appellants' Br., p. 12.) However, the Borrowers' arguments are not supported, legally or factually, by the record.

The Borrowers misread and misinterpret the terms of the Business Loan Agreement, especially when read in light of the binding and fully-integrated loan documents setting forth the maturity date of the loan, from the original maturity date of July 31, 2001, through and including the final maturity date of July 15, 2008, after which no further loan modifications and/or extensions were granted. (R. 937, 953–80.) The provision cited by the Borrowers states that “[t]his Agreement shall be effective as of January 10, 2001, and shall continue in full force and effect until such time as all of Borrower’s Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys’ fees, and other fees and charges, or until such time as the parties may agree in writing to terminate *this Agreement*.” (R. 937 (emphasis added).)

The Business Loan Agreement does not in any way state that the term of the loan shall continue into perpetuity, that no default shall be deemed to occur, that the maturity date of the loan shall be renewed continually and forever, or that the loan may not be

called due, unless and until the parties agree otherwise, in writing. Such a result would not only be absurd but inconsistent with the numerous clear and unambiguous contractual provisions to the contrary. The Business Loan Agreement simply ensures the validity and enforceability, i.e., the “force and effect” of the *agreement*, subject only to modifications and/or amendments entered into by and between the contracting parties, in writing. A plain reading of the Business Loan Agreement in its entirety, together with all other pertinent loan documents, makes this clear. Contrary to the Borrowers’ assertions, the District Court correctly determined that the loan documents were “valid, integrated, and unambiguous,” and ruled accordingly. (R. 1445–46.)

“[I]f a contract is integrated, parol evidence is admissible only to clarify ambiguous terms; it is ‘not admissible to vary or contradict the clear and unambiguous terms of the contract.’” Tangren Family Trust, 2008 UT 20, ¶ 11, 182 P.3d 326, 330.

“[A]n integrated agreement is ‘a writing or writings constituting a final expression of one or more terms of an agreement.’” Daines v. Vincent, 2008 UT 51, ¶ 22, 190 P.3d 1269, 1275.

Each and every loan agreement signed by the Borrowers in favor of KeyBank included a clear and unambiguous integration clause, providing the following or substantively similar integration language, that “BY SIGNING THIS DOCUMENT, EACH PARTY REPRESENTS AND AGREES THAT (A) THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, (B) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES, AND (C) THE WRITTEN LOAN AGREEMENT MAY NOT BE

CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR  
SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE  
PARTIES.” (R. 942, 944, 949, 956, 959, 961, 963–71, 975, 977–80, 985, 990.) To argue  
as the Borrowers do that the loan documents did not constitute “the complete agreement  
of the parties” is “to argue in direct contradiction to the clear integration claus[es].”  
Tangren Family Trust, 2008 UT 20, ¶ 16, 182 P.3d 326. The District Court was therefore  
correct not to “allow extrinsic evidence of a separate agreement to be considered on the  
question of integration in the face of a clear integration clause.” Id.

The effect of integration is to exclude evidence outside the written contract in  
construing the contracting parties’ agreement:

[The Parol Evidence Rule] operates . . . to exclude evidence  
of contemporaneous conversations, representations, or  
statements offered for the purpose of varying or adding to the  
terms of an *integrated* contract. Thus, if a contract is  
integrated, parol evidence is admissible only to clarify  
ambiguous terms; it is “not admissible to vary or contradict  
the clear and unambiguous terms of the contract.”

\* \* \*

To determine whether a writing is an integration, a court must  
determine whether the parties adopted the writing “as the  
*final and complete* expression of their bargain.” Importantly,  
we have explained “that when parties have reduced to writing  
what appears to be a complete and certain agreement, it will  
be conclusively presumed, in the absence of fraud, that the  
writing contains the whole of the agreement between the  
parties.”

Tangren Family Trust, 2008 UT 20, ¶¶ 11-12, 182 P.3d at 330-31.



The District Court correctly ruled as a matter of law that the Borrowers could not resort to parol evidence or other inadmissible assertions to vary or add to the terms of the subject loan, because the subject loan documents were “valid, integrated, and unambiguous.” (R. 1445–46.) See Tangren, 2008 UT 20, at ¶ 18. The very purpose of the parol evidence rule is “to limit the ability of the finder of fact . . . to believe testimony contradicting integrated writings.” Corbin on Contracts § 572C (Supp. 1994).

The District Court correctly concluded that “the subject loan documents [were] valid, enforceable and represent[ed] the parties’ final written agreement(s) governing their rights and obligations”; that the Borrowers “materially breached the loan documents”; and that “the alleged oral agreements and representations” asserted by the Borrowers did “not relieve them of liability.” (R. 1445.)

Without parol evidence, the Borrowers had nothing on which to proceed. Their defaults are established as a matter of law. The District Court got it exactly right.

**B. The District Court properly concluded that Halverson breached her Commercial Guaranty.**

For the same reasons, the District Court correctly concluded that Halverson materially breached her contractual obligations to KeyBank under the Commercial Guaranty. Halverson’s Commercial Guaranty was “unlimited.” (R. 988.) Its duration was to remain in place until the full obligation owing by Systems West was paid in full. (R. 988.) Thus, at the time Systems West’s obligations to KeyBank went into default, Halverson’s obligations under her Guaranty likewise went into default. Additionally, Halverson failed to supply her Annual Financial Statements and Tax Returns, thereby

defaulting under her independent covenants as well. (R. 989, 1044, 1108.) Like Systems West, Halverson's only alleged defense was that KeyBank unjustifiably refused to extend and renew the maturity date of the Note. Again, the District Court's decision was a proper application of the parol evidence rule.

## **II. THE DISTRICT COURT CORRECTLY ENTERED JUDGMENT AGAINST THE BORROWERS ON THE ENTIRETY OF THE CASE.**

The District Court properly disposed of the entirety of the case on this record. Contrary to the Borrowers' assertions, KeyBank specifically argued that the District Court should dismiss the Borrowers' counterclaims when it moved for summary judgment. (R. 926–29, 1384–90.) Dismissal of the Borrowers' counterclaims was, therefore, clearly within the “scope” of KeyBank's motion. See Timm v. Dewsnup, 851 P.2d 1178, 1181 (Utah 1993). Judge Faust agreed that the Borrowers' counterclaims should be dismissed, noting that “all of the defenses and counterclaims [were] premised on the argument that the Court should overlook the plain language of multiple, fully-integrated loan agreements in favor of contradictory oral agreements and representations.” (R. 1445.) This conclusion was correct as a matter of law.

The District Court correctly recognized that the Borrowers' counterclaims for breach of the implied covenant of good faith and fair dealing, negligent misrepresentation, breach of fiduciary duty, and promissory or equitable estoppel, were each premised entirely on the alleged oral agreements and representations asserted by Halverson, and constituted nothing more than an attempt to persuade the Court “to re-

write the numerous documents before the Court to essentially extend the life of the loan in perpetuity based upon the testimony of Halverson.” (R. 1444–46.)

Even if the Court’s assessment was not correct, the Borrowers’ arguments fail on independent grounds calling for affirmance on this record. The Court can affirm on any ground supported by the record. “[I]t is well settled that an appellate court may affirm the judgment appealed from if it is sustainable on any legal ground or theory apparent on the record, even though such ground or theory differs from that stated by the trial court to be the basis of its ruling or action, and this is true even though such ground or theory is not urged or argued on appeal by appellee, was not raised in the lower court, and was not considered or passed on by the lower court.” Dipoma v. McPhie, 2001 UT 61, ¶ 18, 29 P.3d 1225, 1230. The District Court properly granted summary judgment on this record. The Borrowers’ appellate briefing presents no record-based reason to disturb that correct conclusion. Even if not barred by the parol evidence rule, the Borrowers’ claims fail on their merits.

**A. The District Court correctly dismissed the Borrowers’ claim for breach of the implied covenant of good faith and fair dealing.**

The Borrowers argue that their claims and defenses based on the implied covenant of good faith and fair dealing should not have been dismissed. They argue that “KeyBank breached the covenant of good faith and fair dealing, and denied the defendants of the ‘fruits of the contract’ by failing to renew the Note and unilaterally deciding to call the loan due.” (Appellants’ Br., p. 16.) This argument ignores the

Borrowers' numerous defaults that occurred before the maturity date, focusing instead entirely on the due date of the Note.

The District Court properly recognized, however, that while a covenant of good faith and fair dealing inheres in almost every contract, some general principles limit the scope of the covenant. (R. 1933.) See Oakwood Vill., LLC v. Alberstons, Inc., 2004 UT 101, ¶ 45, 104 P.3d 1226, 1240. "First, this covenant cannot be read to establish new, independent rights or duties to which the parties did not agree ex ante." Id. (citing Brehany v. Nordstrom, Inc., 812 P.2d 49, 55 (Utah 1991). "Second, this covenant cannot create rights and duties inconsistent with express contractual terms." Id. (citing Brehany, 812 P.2d at 55, and Rio Algom Corp. v. Jimco, Ltd., 618 P.2d 497, 505 (Utah 1980)). "Third, this covenant cannot compel a contractual party to exercise a contractual right to its own detriment for the purpose of benefitting another party to the contract." Id. (citing Olympus Hills Shopping Ctr. v. Smith's Food & Drug Ctrs., 889 P.2d 445, 457 n.13 (Utah 1994)). Finally, the Court must "not use this covenant to achieve an outcome in harmony with the court's sense of justice but inconsistent with the express terms of the applicable contract." Id. (citing Dalton v. Jerico Constr. Co., 642 P.2d 748, 750 (Utah 1982)).

The Borrowers' proffered construction of the obligation to act in good faith would violate each of these broader principles of contract interpretation. See Oakwood, 2004 UT 101, ¶ 45, 104 P.3d at 1240. By asserting that KeyBank agreed to continually renew the Note and extend the maturity date of the Note into perpetuity, the Borrowers attempt to establish new, independent rights or duties; create rights and duties inconsistent with

the express contractual terms; compel KeyBank to exercise a contractual right to its own detriment for the purpose of benefitting Systems West; and achieve an outcome inconsistent with the express terms of the loan documents. This is insupportable under Utah law. The implied covenant cannot supplant the binding terms of the agreements. The Borrowers' unfounded assertions that KeyBank violated the implied covenant by refusing to extend the terms of the subject Note indefinitely was not well founded and was properly rejected by the District Court.

**B. The District Court correctly dismissed the Borrowers' claims for negligent misrepresentation and breach of fiduciary duty.**

The Borrowers also argue that the parol evidence rule cannot preempt their claims for negligent misrepresentation or breach of fiduciary duty. Had these claims been based on something other than the same vague allegations about "KeyBank officials," the approach might be different. In this case, however, the evidence was insufficient to raise a genuine fact issue. Not only did the Borrowers fail to identify any actual "KeyBank official" who allegedly made any such statements, but they proffered no evidence from which a fact finder could properly return a decision in their favor. See Prince, Yeates & Geldzahler v. Young, 2004 UT 26, ¶¶ 13 -14, 94 P.3d 179 (vague and indefinite statements offered to support allegations of an oral contract are properly ignored in ruling on summary judgment).

Nor could claims of negligent misrepresentation or breach of fiduciary duty properly survive summary judgment on this record. As a matter of law, negligent misrepresentation cannot relate to the representor's state of mind but must relate to the

communication of verifiable, objective facts. See, e.g., Cerritos Trucking Co. v. Utah Venture No. 1, 645 P.2d 608, 612 (Utah 1982). The Borrowers failed below to point to any such evidence that would allow a different outcome on summary judgment, and they fail again now. Furthermore, the Borrowers do not have record facts that would allow them to establish a fiduciary duty on KeyBank's part that would give rise to a cognizable claim for breach of any such duty. See First Sec. Bank, N.A. v. Banberry Dev. Corp., 786 P.2d 1326, 1332–33 (Utah) (stating that loan transactions between a bank or lender and its customer or borrower do not themselves give rise to a fiduciary duty).

**C. The District Court correctly dismissed the Borrowers' claims and defenses of promissory and equitable estoppel.**

Finally, the Borrowers argue that the District Court improperly dismissed their claims and defenses for promissory and equitable estoppel. The District Court was plainly correct, however, in determining that such claims or defenses were inapplicable and, therefore, insufficient to overcome summary judgment in favor of KeyBank on the entirety of the case. "[P]romissory estoppel is 'an affirmative cause of action or defense, which arises in instances where no formal contract exists and the party seeking promissory estoppel is attempting to prove the existence of an enforceable promise or agreement.'" See Youngblood v. Auto-Owners Ins. Co., 2007 UT 28, ¶ 18, 158 P.3d 1088, 1092–93 (Utah 2007).<sup>1</sup>

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<sup>1</sup> Notably, in Utah, the "defense" of promissory estoppel is distinguished from the "affirmative cause of action" of promissory estoppel and referred to as "equitable estoppel." See generally Youngblood v. Auto-Owners Ins. Co., 158 P.3d 1088 (Utah 2007).

“Promissory estoppel is an equitable doctrine.” UTCO Assocs., Ltd. v. Zimmerman, 2001 UT App 117, ¶ 19, 27 P.3d 177. “In general, the law will not imply an equitable remedy when there is an adequate remedy at law.” Id. Thus, “[r]ecovery in quasi contract is not available where there is an express contract covering the subject matter of the litigation.” See, e.g., Mann v. American W. Life Ins. Co., 586 P.2d 461, 465 (Utah 1978). “Once it is established, either by an admission of a party or by a judicial finding, that there is in fact an enforceable contract between the parties, and therefore consideration exists, then a party may no longer recover under the theory of promissory estoppel.” 28 AM. JUR. 2d Estoppel and Waiver § 57 (2000).

### CONCLUSION

For the foregoing reasons, independently and collectively, this Court should affirm the District Court’s judgment.

DATED this 24th day of August, 2010.

VAN COTT, BAGLEY, CORNWALL &  
McCARTHY

By: 

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Gerald H. Sunville

Seth M. Mott

*Attorneys for Appellee*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused two (2) true and correct copies of the within and foregoing **BRIEF OF APPELLEE** to be mailed, postage prepaid, this 24th day of August, 2010, to the following counsel of record:

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A handwritten signature in black ink, appearing to read "Matthew M. Boley", is written over a horizontal line.



**ADDENDUM INDEX (Addendum Bound Separately)**

***Loan Documents***

|           |  |
|-----------|--|
| R. 122-29 | Business Loan Agreement (Asset Based)                                    |
| R. 934-35 | Promissory Note  |
| R. 937-44 | Business Loan Agreement (Asset Based)                                    |
| R. 946-51 | Commercial Security Agreement  |
| R. 953-80 | Modification and/or Extension Agreements; and Change in Terms Agreements |
| R. 985-86 | Notice of Final Agreement  |
| R. 988-91 | Commercial Guaranty  |

***Related U.C.C. Filing***

|           |                           |
|-----------|---------------------------|
| R. 982-83 | UCC-1 Financing Statement |
|-----------|---------------------------|

***Financial Statements***

|            |   |
|------------|---|
| R. 1048-53 | Systems West Computer Resources, Inc. Aged Receivables<br>As of Dec. 2, 2008    |
| R. 1055-63 | Systems West Computer Resources, Inc. Financial Statements<br>December 31, 2007 |

***District Court Rulings***

|            |  |
|------------|--|
| R. 1442-47 | Memorandum Decision, dated November 19, 2009                     |
| R. 1929-34 | Amended Brief Statement of Grounds for Granting Summary Judgment |
| R. 1935-38 | Amended Order and Judgment                                       |

## BUSINESS LOAN AGREEMENT (ASSET BASED)

| Principal   | Loan Date  | Maturity   | Loan No    | Call / Coll | Account     | Officer | Initials |
|-------------|------------|------------|------------|-------------|-------------|---------|----------|
| ,000,000.00 | 01-10-2001 | 07-31-2001 | 1000009901 | 402 / 321   | N5180042142 | KXW03   |          |

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*\*" has been omitted due to text length limitations.

**Borrower:** SYSTEMS WEST COMPUTER RESOURCES, INC.  
315 EAST LION LANE, STE 310  
SALT LAKE CITY, UT 84121

**Lender:** KeyBank National Association  
UT-MM-Central Commercial Banking Center  
50 S. Main Street  
Suite 2007  
Salt Lake City, UT 84130

THIS BUSINESS LOAN AGREEMENT (ASSET BASED) dated January 10, 2001, is made and executed between SYSTEMS WEST COMPUTER SOURCES, INC. ("Borrower") and KeyBank National Association ("Lender") on the following terms and conditions. Borrower has received or commercial loans from Lender or has applied to Lender for a commercial loan or loans or other financial accommodations, including any which may be described on any exhibit or schedule attached to this Agreement ("Loan"). Borrower understands and agrees that: (A) in renewing, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement, and (B) all such Loans shall be and remain subject to the terms and conditions of this Agreement.

**TERM.** This Agreement shall be effective as of January 10, 2001, and shall continue in full force and effect until such time as all of Borrower's Loans in whole or in part have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until such time as the parties may agree in writing to terminate this Agreement.

**EXTENT OF CREDIT.** Lender agrees to make Advances to Borrower from time to time from the date of this Agreement to the Expiration Date, provided the aggregate amount of such Advances outstanding at any time does not exceed the Borrowing Base. Within the foregoing limits, Borrower may borrow, re-borrow, or wholly prepay, and re-borrow under this Agreement as follows:

**Conditions Precedent to Each Advance.** Lender's obligation to make any Advance to or for the account of Borrower under this Agreement is subject to the following conditions precedent, with all documents, instruments, opinions, reports, and other items required under this Agreement to be in form and substance satisfactory to Lender:

- (1) Lender shall have received evidence that this Agreement and all Related Documents have been duly authorized, executed, and delivered by Borrower to Lender.
- (2) Lender shall have received such opinions of counsel, supplemental opinions, and documents as Lender may request.
- (3) The security interests in the Collateral shall have been duly authorized, created, and perfected with first lien priority and shall be in full force and effect.
- (4) All guaranties required by Lender for the credit facility(ies) shall have been executed by each Guarantor, delivered to Lender, and be in full force and effect.
- (5) Lender, at its option and for its sole benefit, shall have conducted an audit of Borrower's Accounts, books, records, and operations, and Lender shall be satisfied as to their condition.
- (6) Borrower shall have paid to Lender all fees, costs, and expenses specified in this Agreement and the Related Documents as are then due and payable.
- (7) There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement, and Borrower shall have delivered to Lender the compliance certificate called for in the paragraph below titled "Compliance Certificate."

**Making Loan Advances.** Advances under this credit facility, as well as directions for payment from Borrower's accounts, may be requested orally or in writing by authorized persons. Lender may, but need not, require that all oral requests be confirmed in writing. Each Advance shall be conclusively deemed to have been made at the request of and for the benefit of Borrower (1) when credited to any deposit account of Borrower maintained with Lender or (2) when advanced in accordance with the instructions of an authorized person. Lender, at its option, may set a cutoff time, after which all requests for Advances will be treated as having been requested on the next succeeding Business Day.

**Mandatory Loan Repayments.** If at any time the aggregate principal amount of the outstanding Advances shall exceed the applicable Borrowing Base, Borrower, immediately upon written or oral notice from Lender, shall pay to Lender an amount equal to the difference between the outstanding principal balance of the Advances and the Borrowing Base. On the Expiration Date, Borrower shall pay to Lender in full the aggregate unpaid principal amount of all Advances then outstanding and all accrued unpaid interest, together with all other applicable fees, costs and charges, if any, not yet paid.

**Loan Account.** Lender shall maintain on its books a record of account in which Lender shall make entries for each Advance and such other debits and credits as shall be appropriate in connection with the credit facility. Lender shall provide Borrower with periodic statements of Borrower's account, which statements shall be considered to be correct and conclusively binding on Borrower unless Borrower notifies Lender to the contrary within thirty (30) days after Borrower's receipt of any such statement which Borrower deems to be incorrect.

**Collateral.** To secure payment of the Primary Credit Facility and performance of all other Loan obligations and duties owed by Borrower to Lender, Borrower (and others, if required) shall grant to Lender Security Interests in such property and assets as Lender may require. Lender's Security Interests in the Collateral shall be continuing liens and shall include the proceeds and products of the Collateral, including without limitation the proceeds of any insurance. With respect to the Collateral, Borrower agrees and represents and warrants to Lender:

**Perfection of Security Interests.** Borrower agrees to execute such financing statements and to take whatever other actions are requested by Lender to perfect and continue Lender's Security Interests in the Collateral. Borrower will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Borrower will deliver to Lender any and all chattel paper if not delivered to Lender for possession by Lender. Contemporaneous with the delivery of the Collateral, Borrower shall execute and deliver to Lender a UCC-9 financing statement covering the Collateral.

Borrower, file a carbon, photograph, facsimile, or other reproduction of any financing statement for use as a financing statement. Borrower will reimburse Lender for all expenses for the perfection, termination, and the continuation of the perfection of Lender's security interest in the Collateral. Borrower promptly will notify Lender of any change in Borrower's name including any change to the assumed business names of Borrower. Borrower also promptly will notify Lender of any change in Borrower's Social Security Number or Employer Identification Number. Borrower further agrees to notify Lender in writing prior to any change in address or location of Borrower's principal governance office or should Borrower merge or consolidate with any other entity.

**Collateral Records.** Borrower does now, and at all times hereafter shall, keep correct and accurate records of the Collateral, all of which records shall be available to Lender or Lender's representative upon demand for inspection and copying at any reasonable time. With respect to the Accounts, Borrower agrees to keep and maintain such records as Lender may require, including without limitation information concerning Eligible Accounts and Account balances and agings. Records related to Accounts (Receivables) are or will be located at . The above is an accurate and complete list of all locations at which Borrower keeps or maintains business records concerning Borrower's collateral.

**Collateral Schedules.** Concurrently with the execution and delivery of this Agreement, Borrower shall execute and deliver to Lender schedules of Accounts and schedules of Eligible Accounts in form and substance satisfactory to the Lender. Thereafter supplemental schedules shall be delivered according to the following schedule:

**Representations and Warranties Concerning Accounts.** With respect to the Accounts, Borrower represents and warrants to Lender: (1) Each Account represented by Borrower to be an Eligible Account for purposes of this Agreement conforms to the requirements of the definition of an Eligible Account; (2) All Account information listed on schedules delivered to Lender will be true and correct, subject to immaterial variance; and (3) Lender, its assigns, or agents shall have the right at any time and at Borrower's expense to inspect, examine, and audit Borrower's records and to confirm with Account Debtors the accuracy of such Accounts.

**Notification Basis.** Borrower agrees and understands that this Loan shall be on a notification basis pursuant to which Lender shall directly collect and receive all proceeds and payments from the Accounts in which Lender has a security interest. In order to facilitate the foregoing, Borrower agrees to deliver to Lender, upon demand, any and all of Borrower's records, ledger sheets, payment cards, and other documentation, in the form requested by Lender, with regard to the Accounts. Borrower further agrees that Lender shall have the right to notify each Account Debtor, pay such proceeds and payments directly to Lender, and to do any and all other things as Lender may deem to be necessary and appropriate, within its sole discretion, to carry out the terms and intent of this Agreement. Lender shall have the further right, where appropriate and within Lender's sole discretion, to file suit, either in its own name or in the name of Borrower, to collect any and all such Accounts. Borrower further agrees that Lender may take such other actions, either in Borrower's name or Lender's name, as Lender may deem appropriate within its sole judgment, with regard to collection and payment of the Accounts, without affecting the liability of Borrower under this Agreement or on the Indebtedness.

**CONDITIONS PRECEDENT TO EACH ADVANCE.** Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

**Loan Documents.** Borrower shall provide to Lender the following documents for the Loan: (1) the Note; (2) Security Agreements granting to Lender security interests in the Collateral; (3) financing statements perfecting Lender's Security Interests; (4) evidence of insurance as required below; (5) guaranties; (6) together with all such Related Documents as Lender may require for the Loan; all in form and substance satisfactory to Lender and Lender's counsel.

**Borrower's Authorization.** Borrower shall have provided in form and substance satisfactory to Lender properly certified resolutions, duly authorizing the execution and delivery of this Agreement, the Note and the Related Documents. In addition, Borrower shall have provided such other resolutions, authorizations, documents and instruments as Lender or its counsel, may require.

**Fees and Expenses Under This Agreement.** Borrower shall have paid to Lender all fees, costs, and expenses specified in this Agreement and the Related Documents as are then due and payable.

**Representations and Warranties.** The representations and warranties set forth in this Agreement, in the Related Documents, and in any document or certificate delivered to Lender under this Agreement are true and correct.

**No Event of Default.** There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

**REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each payment of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any Indebtedness exists:

**Organization.** Borrower is a corporation for profit which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Utah. Borrower is duly authorized to transact business in all other states in which Borrower is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Borrower is doing business. Specifically, Borrower is, and at all times shall be, duly qualified as a foreign corporation in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains an office at 315 EAST LION LANE, STE 310, SALT LAKE CITY, UT 84121. Unless Borrower has designated otherwise in writing, the principle office is the office at which Borrower keeps its books and records including its records concerning the Collateral. Borrower will notify Lender of any change in the location of Borrower's principle office. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

**Assumed Business Names.** Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: **None.**

**Authorization.** Borrower's execution, delivery, and performance of this Agreement and all the Related Documents have been duly authorized by all necessary action by Borrower and do not conflict with, result in a violation of, or constitute a default under (1) any provision of Borrower's articles of incorporation or organization, or bylaws, or any agreement or other instrument binding upon Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties.

**Financial Information.** Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

**Legal Effect.** This Agreement constitutes, and any instrument or agreement Borrower is required to give under this Agreement when delivered will

accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used, or filed a financing statement under, any other name for at least the last five (5) years.

**Hazardous Substances.** Except as disclosed to and acknowledged by Lender in writing, Borrower represents and warrants that: (1) During the period of Borrower's ownership of Borrower's Collateral, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from any of the Collateral; (2) Borrower has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws; (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Collateral by any prior owners or occupants of any of the Collateral; or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; (3) Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from any of the Collateral; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all Environmental Laws. Borrower authorizes Lender and its agents to enter upon the Collateral to make such inspections and tests as Lender may deem appropriate to determine compliance of the Collateral with this section of the Agreement. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Collateral for hazardous waste and Hazardous Substances. Borrower hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this section of the Agreement, including the obligation to indemnify, shall survive the payment of the indebtedness and the termination, expiration or satisfaction of this Agreement and shall not be affected by Lender's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

**Litigation and Claims.** No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

**Taxes.** To the best of Borrower's knowledge, all of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

**Lien Priority.** Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

**Binding Effect.** This Agreement, the Note, all Security Agreements (if any), and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

**IRMATIVE COVENANTS.** Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

**Notices of Claims and Litigation.** Promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

**Financial Records.** Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

**Financial Statements.** Furnish Lender with the following:

**Annual Statements.** As soon as available, but in no event later than one-hundred-twenty (120) days after the end of each fiscal year, Borrower's balance sheet and income statement for the year ended, compiled by a certified public accountant satisfactory to Lender.

**Interim Statements.** As soon as available, but in no event later than 45 days after the end of each fiscal quarter, Borrower's balance sheet and profit and loss statement for the period ended, prepared by Borrower in form satisfactory to Lender.

**Tax Returns.** As soon as available, but in no event later than one-hundred-twenty (120) days after the applicable filing date for the tax reporting period ended, Federal and other governmental tax returns, prepared by a certified public accountant satisfactory to Lender.

All financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Borrower as being true and correct.

**Additional Information.** Furnish such additional information and statements, as Lender may request from time to time.

**Insurance.** Maintain fire and other risk insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will provide Lender with such lender's loss payable or other endorsements as Lender may require.

**Insurance Reports.** Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any collateral. The cost of such appraisal shall be paid by Borrower.

**Warranties.** Prior to disbursement of any Loan proceeds, furnish executed guaranties of the Loans in favor of Lender, executed by the guarantors named below, on Lender's forms, and in the amounts and under the conditions set forth in the guaranties.



Names of Guarantors

DON M. HALVERSON  
NANCY H. HALVERSON

Amounts

Unlimited  
Unlimited

**Other Agreements.** Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

**Loan Proceeds.** Use all Loan proceeds solely for Borrower's business operations, unless specifically consented to the contrary by Lender in writing.

**Taxes, Charges and Liens.** Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits.

**Performance.** Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

**Operations.** Maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel; provide written notice to Lender of any change in executive and management personnel; conduct its business affairs in a reasonable and prudent manner.

**Environmental Studies.** Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testings as may be requested by Lender or any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or a hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

**Compliance with Governmental Requirements.** Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the conduct of Borrower's properties, businesses and operations, and to the use or occupancy of the Collateral, including without limitation, the Americans With Disabilities Act. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Collateral are not jeopardized. Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Inspection.** Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

**Compliance Certificates.** Unless waived in writing by Lender, provide Lender at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

**Environmental Compliance and Reports.** Borrower shall comply in all respects with any and all Environmental Laws; not cause or permit to exist, as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or occupied by Borrower, any environmental activity where damage may result to the environment, unless such environmental activity is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities; shall furnish to Lender promptly and in any event within thirty (30) days after receipt thereof a copy of any notice, summons, lien, citation, directive, letter or other communication from any governmental agency or instrumentality concerning any intentional or unintentional action or omission on Borrower's part in connection with any environmental activity whether or not there is damage to the environment and/or other natural resources.

**Additional Assurances.** Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security Interests.

**JER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower or comply with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when any amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower's behalf may (but not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security sts, encumbrances and other claims, at any time levied or placed on any Collateral and paying all costs for insuring, maintaining and preserving collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the occurred or paid by Lender to the date of repayment by Borrower. All such expenses will become a part of the Indebtedness and, at Lender's i, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment ents to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a in payment which will be due and payable at the Note's maturity.

**ATIVE COVENANTS.** Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior consent of Lender:

**ndebtedness and Liens.** (1) Except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Agreement, create, incur or assume indebtedness for borrowed money, including capital leases, (2) sell, transfer, mortgage, assign, pledge, ease, grant a security interest in, or encumber any of Borrower's assets (except as allowed as Permitted Liens), or (3) sell with recourse any of Borrower's accounts, except to Lender.

**Continuity of Operations.** (1) Engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change its name, dissolve or transfer or sell Collateral out of the ordinary course of business, or (3) pay any dividends on Borrower's stock (other than dividends payable in its stock), provided, however that notwithstanding the foregoing, but only so long as no Event of Default has occurred and is continuing or would result from the payment of dividends. If Borrower is a "Subchapter S Corporation" (as defined in the Internal Revenue Code of 1986, as amended) Borrower may pay cash

Subchapter S Corporation because of their ownership of shares of Borrower's stock, or purchase or retire any of Borrower's outstanding shares or alter or amend Borrower's capital structure.

**Loans, Acquisitions and Guaranties.** (1) Loan, invest in or advance money or assets, (2) purchase, create or acquire any interest in any other enterprise or entity, or (3) incur any obligation as surety or guarantor other than in the ordinary course of business.

**ASSATION OF ADVANCES.** If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (A) Borrower or any Guarantor is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower or any Guarantor has with Lender; (B) Borrower or any Guarantor dies, becomes incompetent or becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; (C) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any Guarantor, or in the value of Collateral securing any Loan; or (D) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of the Loan or any other loan with Lender; or (E) Lender in good faith deems itself insecure, even though no Event of Default shall have occurred.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts.

**DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Payment Default.** Borrower fails to make any payment when due under the Loan.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Default in Favor of Third Parties.** Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or any Grantor's property or Borrower's or any Grantor's ability to repay the Loans or perform their respective obligations under this Agreement or any of the Related Documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement, the Note, or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Insolvency.** The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Defective Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Change in Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Loan is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Right to Cure.** If any default, other than a default on Indebtedness, is curable and if Borrower or Grantor, as the case may be, has not been given a notice of a similar default within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Borrower or Grantor, as the case may be, after receiving written notice from Lender demanding cure of such default: (1) cure the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiate steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continue and complete all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**EFFECT OF AN EVENT OF DEFAULT.** If any Event of Default shall occur, except where otherwise provided in this Agreement or the Related Documents, all commitments and obligations of Lender under this Agreement or the Related Documents or any other agreement immediately will mature (including any obligation to make further Loan Advances or disbursements), and, at Lender's option, all Indebtedness immediately will become due and payable, all without notice of any kind to Borrower, except that in the case of an Event of Default of the type described in the "Insecurity" subsection above, such acceleration shall be automatic and not optional. In addition, Lender shall have all the rights and remedies provided in the Related Documents or available at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of Lender's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Borrower or of any Grantor shall not affect Lender's right to declare a default and to exercise its rights and remedies.

**ADDITIONAL COVENANTS AND DEFINITIONS.** Borrower covenants and agrees with Lender that, while this Agreement is in effect, Borrower will:

**Debt to Tangible Net Worth Ratio.** Borrower shall maintain a ratio of Total Debt to Tangible Net Worth of less than 2.75 to 1.0; calculated at the end of each quarter. The words "Total Debt" mean all of Borrower's liabilities including Subordinated Debt. The words "Subordinated Debt" mean Indebtedness and liabilities of Borrower which have been subordinated by written agreement to indebtedness owed by Borrower to Lender in form and

the words Current Assets shall be as defined by GAAP, minus prepaid expenses. The word Current Liabilities shall be as defined by GAAP.

**BORROWING PLAN.** An exhibit, titled "Borrowing Plan," is attached to this Agreement and by this reference is made a part of this Agreement just as if the provisions, terms and conditions of the Exhibit had been fully set forth in this Agreement.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, 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 unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not Lender's salaried employee and whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Consent to Loan Participation.** Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to the Loan, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loan and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loan irrespective of the failure or insolvency of any holder of any interest in the Loan. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

**Governing Law.** This Agreement will be governed by, construed and enforced in accordance with federal law and the laws of the State of Utah. This Agreement has been accepted by Lender in the State of Utah.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any of Borrower's or any Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender 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 Lender.

**Notices.** Unless otherwise provided by applicable law, any notice required to be given under this Agreement or required by law shall be given in writing, and shall be effective when actually delivered in accordance with the law or with this Agreement, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address. Unless otherwise provided by applicable law, if there is more than one Borrower, any notice given by Lender to any Borrower is deemed to be notice given to all Borrowers.

**Severability.** If a court of competent jurisdiction finds any provision 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.

**Subsidiaries and Affiliates of Borrower.** To the extent the context of any provisions of this Agreement makes it appropriate, including without limitation any representation, warranty or covenant, the word "Borrower" as used in this Agreement shall include all of Borrower's subsidiaries and affiliates. Notwithstanding the foregoing however, under no circumstances shall this Agreement be construed to require Lender to make any Loan or other financial accommodation to any of Borrower's subsidiaries or affiliates.

**Successors and Assigns.** All covenants and agreements contained by or on behalf of Borrower shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns. Borrower shall not, however, have the right to assign Borrower's rights under this Agreement or any interest therein, without the prior written consent of Lender.

**Survival of Representations and Warranties.** Borrower understands and agrees that in extending Loan Advances, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the extension of Loan Advances and delivery to Lender of the Related Documents, shall be continuing in nature, shall be deemed made and redated by Borrower at the time each Loan Advance is made, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

**Time is of the Essence.** Time is of the essence in the performance of this Agreement.

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**Waive Jury.** All parties to this Agreement hereby waive the right to a jury trial in any action, proceeding, or counterclaim brought by any party against any other party.



he contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement.

**Account.** The word "Account" means a trade account, account receivable, other receivable, or other right to payment for goods sold or services rendered owing to Borrower (or to a third party grantor acceptable to Lender).

**Account Debtor.** The words "Account Debtor" mean the person or entity obligated upon an Account.

**Advance.** The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf under the terms and conditions of this Agreement.

**Agreement.** The word "Agreement" means this Business Loan Agreement (Asset Based), as this Business Loan Agreement (Asset Based) may be amended or modified from time to time, together with all exhibits and schedules attached to this Business Loan Agreement (Asset Based) from time to time.

**Borrower.** The word "Borrower" means SYSTEMS WEST COMPUTER RESOURCES, INC., and all other persons and entities signing the Note in whatever capacity.

**Borrowing Base.** The words "Borrowing Base" mean, as determined by Lender from time to time, the lesser of (1) \$1,000,000.00 or (2) 80.000% of the aggregate amount of Eligible Accounts.

**Business Day.** The words "Business Day" mean a day on which commercial banks are open in the State of Utah.

**Collateral.** The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise. The word Collateral also includes without limitation all collateral described in the Collateral section of this Agreement.

**Eligible Accounts.** The words "Eligible Accounts" mean at any time, all of Borrower's Accounts which contain selling terms and conditions acceptable to Lender. The net amount of any Eligible Account against which Borrower may borrow shall exclude all returns, discounts, credits, and offsets of any nature. Unless otherwise agreed to by Lender in writing, Eligible Accounts do not include:

- (1) Accounts with respect to which the Account Debtor is employee or agent of Borrower.
- (2) Accounts with respect to which the Account Debtor is a subsidiary of, or affiliated with Borrower or its shareholders, officers, or directors.
- (3) Accounts with respect to which goods are placed on consignment, guaranteed sale, or other terms by reason of which the payment by the Account Debtor may be conditional.
- (4) Accounts with respect to which the Account Debtor is not a resident of the United States, except to the extent such Accounts are supported by insurance, bonds or other assurances satisfactory to Lender.
- (5) Accounts with respect to which Borrower is or may become liable to the Account Debtor for goods sold or services rendered by the Account Debtor to Borrower.
- (6) Accounts which are subject to dispute, counterclaim, or setoff.
- (7) Accounts with respect to which the goods have not been shipped or delivered, or the services have not been rendered, to the Account Debtor.
- (8) Accounts with respect to which Lender, in its sole discretion, deems the creditworthiness or financial condition of the Account Debtor to be unsatisfactory.
- (9) Accounts of any Account Debtor who has filed or has had filed against it a petition in bankruptcy or an application for relief under any provision of any state or federal bankruptcy, insolvency, or debtor-in-relief acts; or who has had appointed a trustee, custodian, or receiver for the assets of such Account Debtor; or who has made an assignment for the benefit of creditors or has become insolvent or fails generally to pay its debts (including its payrolls) as such debts become due.
- (10) Accounts with respect to which the Account Debtor is the United States government or any department or agency of the United States.
- (11) Accounts which have not been paid in full within 90 DAYS from the invoice date.
- (12) That portion of the Accounts of any single Account Debtor which exceeds 30.000% of all of Borrower's Accounts.
- (13) Accounts which are subject to retainage.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

**Expiration Date.** The words "Expiration Date" mean the date of termination of Lender's commitment to lend under this Agreement.

**GAAP.** The word "GAAP" means generally accepted accounting principles.

**Grantor.** The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Loan.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.



stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Indebtedness.** The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

**Lender.** The word "Lender" means KeyBank National Association, its successors and assigns.

**Loan.** The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

**Note.** The word "Note" means the Note executed by Borrower in the principal amount of \$1,000,000.00 dated January 10, 2001, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

**Permitted Liens.** The words "Permitted Liens" mean (1) liens and security interests securing Indebtedness owed by Borrower to Lender; (2) liens for taxes, assessments, or similar charges either not yet due or being contested in good faith; (3) liens of materialmen, mechanics, warehousemen, or carriers, or other like liens arising in the ordinary course of business and securing obligations which are not yet delinquent; (4) purchase money liens or purchase money security interests upon or in any property acquired or held by Borrower in the ordinary course of business to secure indebtedness outstanding on the date of this Agreement or permitted to be incurred under the paragraph of this Agreement titled "Indebtedness and Liens"; (5) liens and security interests which, as of the date of this Agreement, have been disclosed to and approved by the Lender in writing; and (6) those liens and security interests which in the aggregate constitute an immaterial and insignificant monetary amount with respect to the net value of Borrower's assets.

**Primary Credit Facility.** The words "Primary Credit Facility" mean the credit facility described in the Line of Credit section of this Agreement.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

**Security Agreement.** The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

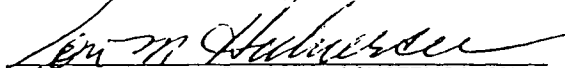
**Security Interest.** The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

**L AGREEMENT.** Borrower understands that this Agreement and the related loan documents are the final expression of the agreement between Lender and Borrower and may not be contradicted by evidence of any alleged oral agreement.

**BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AGREEMENT (ASSET BASED) AND BORROWER AGREES TO ITS TERMS. THIS BUSINESS LOAN AGREEMENT (ASSET BASED) IS DATED JANUARY 10, 2001.**

**BORROWER:**

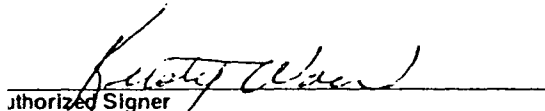
**SYSTEMS WEST COMPUTER RESOURCES, INC.**



**RON M. HALVERSON, President of SYSTEMS WEST  
COMPUTER RESOURCES, INC.**

**LENDER:**

**KEYBANK NATIONAL ASSOCIATION**

  
Authorized Signer

## PROMISSORY NOTE

| Principal  | Loan Date  | Maturity   | Loan No    | Call / Coll | Account     | Officer | Initials |
|------------|------------|------------|------------|-------------|-------------|---------|----------|
| \$1,000.00 | 01-10-2001 | 07-31-2001 | 1000009901 | 402 / 321   | N5180042142 | KXW03   |          |

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

Borrower: SYSTEMS WEST COMPUTER RESOURCES, INC.  
315 EAST LION LANE, STE 310  
SALT LAKE CITY, UT 84121

Lender: KeyBank National Association  
UT-MM-Central Commercial Banking Center  
50 S. Main Street  
Suite 2007  
Salt Lake City, UT 84130

Principal Amount: \$1,000,000.00 Initial Rate: 9.500% Date of Note: January 10, 2001

TO PAY. SYSTEMS WEST COMPUTER RESOURCES, INC. ("Borrower") promises to pay to KeyBank National Association ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Million & 00/100 Dollars (\$1,000,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance. Interest shall be calculated from the date of each advance until repayment of each advance.

REPAYMENT. Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on July 31, 2001. In the event of a default, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning February 10, 2001, with subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to accrued unpaid interest, then to principal, and any remaining amount to any unpaid collection costs and charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate to a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

ADJUSTED INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an index which is the Prime Rate as announced by Lender (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will continue to use the current Index rate upon Borrower's request. The interest rate change will not occur more often than each day that the Index changes. The interest rate will change automatically and correspondingly on the date of each announced change of the Index by Lender. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 9.000% per annum. The interest rate to be applied to the unpaid principal balance of this Note will be at a rate of 0.500 percentage points over the Index, resulting in an initial rate of 9.500% per annum. Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law.

WAIVER OF DEFENSE. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower waives without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of its obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance of the loan. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment is "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be sent or delivered to: KeyBank National Association, UT-MM-Central Commercial Banking Center, 50 S. Main Street, Suite 2007, Salt Lake City, UT 84130.

PREPAYMENT PENALTY. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment which is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the variable interest rate on this Note to 3.500 percentage points over the Index. The interest rate will not exceed the maximum rate permitted by applicable law.

EVENTS OF DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

(a) Default. Borrower fails to make any payment when due under this Note.

(b) Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Borrower and Lender.

(c) In Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

(d) Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or in any of the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

(e) Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver or liquidator of all or any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

(f) Enforcement Proceedings. Commencement of any legal proceedings, whether by judicial proceeding, self-help repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing this Note.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor or any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Change In Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Cure Provisions.** If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender's amount. This includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including without limitation all reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all sums provided by law.

**WARRANTY.** Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

**GOVERNING LAW.** This Note will be governed by, construed and enforced in accordance with federal law and the laws of the State of Utah. This Note has been accepted by Lender in the State of Utah.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower agrees Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

**LINE OF CREDIT.** This Note evidences a revolving line of credit. Advances under this Note may be requested either orally or in writing by Borrower or any authorized person as provided in this paragraph. Lender may, but need not, require that all oral requests be confirmed in writing. All communications, instructions, or requests by telephone or otherwise to Lender are to be directed to Lender's office shown above. The following person currently is authorized to request advances and authorize payments under the line of credit until Lender receives from Borrower, at Lender's address shown above, written revocation of his or her authority: **DON M. HALVERSON.** Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs. Lender will have no obligation to advance funds under this Note if: (A) Borrower or any guarantor is in default under the terms of this Note or any agreement that Borrower or any guarantor has with Lender, including any agreement made in connection with the signing of this Note; (B) Borrower or any guarantor ceases business or is insolvent; (C) any guarantor seeks, claims or otherwise attempts to limit, modify or revoke such guarantor's guarantee of this Note other than with Lender; (D) Borrower has applied funds provided pursuant to this Note for purposes other than those authorized by Lender; or (E) Lender in good faith believes itself insecure.

**ASSIGNMENT OF INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

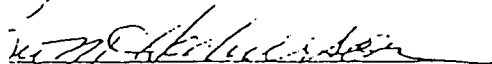
**MODIFICATION PROVISIONS.** Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and from time to time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the loan and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

**BY SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.**

**BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.**

ER:

WEST COMPUTER RESOURCES, INC.

  
DON M. HALVERSON, President of SYSTEMS WEST  
WEST COMPUTER RESOURCES, INC.

## BUSINESS LOAN AGREEMENT (ASSET BASED)

| Principal | Loan Date  | Maturity   | Loan No    | Call / Coll | Account     | Officer | Initials |
|-----------|------------|------------|------------|-------------|-------------|---------|----------|
| 10,000.00 | 01-10-2001 | 07-31-2001 | 1000009901 | 402 / 321   | N5180042142 | KXW03   |          |

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

Borrower: SYSTEMS WEST COMPUTER RESOURCES, INC.  
315 EAST LION LANE, STE 310  
SALT LAKE CITY, UT 84121

Lender: KeyBank National Association  
UT-MM-Central Commercial Banking Center  
50 S. Main Street  
Suite 2007  
Salt Lake City, UT 84130

BUSINESS LOAN AGREEMENT (ASSET BASED) dated January 10, 2001, is made and executed between SYSTEMS WEST COMPUTER RESOURCES, INC. ("Borrower") and KeyBank National Association ("Lender") on the following terms and conditions. Borrower has received commercial loans from Lender or has applied to Lender for a commercial loan or loans or other financial accommodations, including which may be described on any exhibit or schedule attached to this Agreement ("Loan"). Borrower understands and agrees that: (A) in renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement, and (B) all such Loans shall be and remain subject to the terms and conditions of this Agreement.

This Agreement shall be effective as of January 10, 2001, and shall continue in full force and effect until such time as all of Borrower's Loans in Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until such time as Borrower agrees in writing to terminate this Agreement.

**CREDIT.** Lender agrees to make Advances to Borrower from time to time from the date of this Agreement to the Expiration Date, provided the amount of such Advances outstanding at any time does not exceed the Borrowing Base. Within the foregoing limits, Borrower may borrow, or wholly prepay, and reborrow under this Agreement as follows:

**Conditions Precedent to Each Advance.** Lender's obligation to make any Advance to or for the account of Borrower under this Agreement is subject to the following conditions precedent, with all documents, instruments, opinions, reports, and other items required under this Agreement to be in form and substance satisfactory to Lender:

- (1) Lender shall have received evidence that this Agreement and all Related Documents have been duly authorized, executed, and delivered by Borrower to Lender.
- (2) Lender shall have received such opinions of counsel, supplemental opinions, and documents as Lender may request.
- (3) The security interests in the Collateral shall have been duly authorized, created, and perfected with first lien priority and shall be in full force and effect.
- (4) All guaranties required by Lender for the credit facility(ies) shall have been executed by each Guarantor, delivered to Lender, and be in full force and effect.
- (5) Lender, at its option and for its sole benefit, shall have conducted an audit of Borrower's Accounts, books, records, and operations, and Lender shall be satisfied as to their condition.
- (6) Borrower shall have paid to Lender all fees, costs, and expenses specified in this Agreement and the Related Documents as are then due and payable.
- (7) There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement, and Borrower shall have delivered to Lender the compliance certificate called for in the paragraph below titled "Compliance Certificate."

**Oral Loan Advances.** Advances under this credit facility, as well as directions for payment from Borrower's accounts, may be requested orally in writing by authorized persons. Lender may, but need not, require that all oral requests be confirmed in writing. Each Advance shall be conclusively deemed to have been made at the request of and for the benefit of Borrower (1) when credited to any deposit account of Borrower opened with Lender or (2) when advanced in accordance with the instructions of an authorized person. Lender, at its option, may set a cutoff date after which all requests for Advances will be treated as having been requested on the next succeeding Business Day.

**Monthly Loan Repayments.** If at any time the aggregate principal amount of the outstanding Advances shall exceed the applicable Borrowing Base, Borrower, immediately upon written or oral notice from Lender, shall pay to Lender an amount equal to the difference between the outstanding principal balance of the Advances and the Borrowing Base. On the Expiration Date, Borrower shall pay to Lender in full the aggregate principal amount of all Advances then outstanding and all accrued unpaid interest, together with all other applicable fees, costs and expenses, if any, not yet paid.

**Account.** Lender shall maintain on its books a record of account in which Lender shall make entries for each Advance and such other debits and credits as shall be appropriate in connection with the credit facility. Lender shall provide Borrower with periodic statements of account, which statements shall be considered to be correct and conclusively binding on Borrower unless Borrower notifies Lender in writing within thirty (30) days after Borrower's receipt of any such statement which Borrower deems to be incorrect.

**Collateral.** To secure payment of the Primary Credit Facility and performance of all other Loan, obligations and duties owed by Borrower to Lender (and others, if required) shall grant to Lender Security Interests in such property and assets as Lender may require. Lender's Security Interests in the Collateral shall be continuing liens and shall include the proceeds and products of the Collateral, including without limitation the proceeds of any insurance. With respect to the Collateral, Borrower agrees and represents and warrants to Lender:

**Delivery of Security Interests.** Borrower agrees to execute such financing statements and to take whatever other actions are requested by Lender to perfect and continue Lender's Security Interests in the Collateral. Upon request of Lender, Borrower will deliver to Lender any and all documents evidencing or constituting the Collateral, and Borrower will note Lender's interest upon any and all chattel paper if not delivered to Lender for possession by Lender. Contemporaneous with the execution of this Agreement, Borrower shall deliver to Lender any and all chattel paper if not delivered to Lender for possession by Lender. Machine-generated OCR may contain errors.



Borrower, like a carbon, photograph, facsimile, or other reproduction of any financing statement for use as a financing statement. Borrower will reimburse Lender for all expenses for the perfection, termination, and the continuation of the perfection of Lender's security interest in the collateral. Borrower promptly will notify Lender of any change in Borrower's name including any change to the assumed business names of Borrower. Borrower also promptly will notify Lender of any change in Borrower's Social Security Number or Employer Identification Number. Borrower further agrees to notify Lender in writing prior to any change in address or location of Borrower's principal governance office or should Borrower merge or consolidate with any other entity.

**Collateral Records.** Borrower does now, and at all times hereafter shall, keep correct and accurate records of the Collateral, all of which records shall be available to Lender or Lender's representative upon demand for inspection and copying at any reasonable time. With respect to the Accounts, Borrower agrees to keep and maintain such records as Lender may require, including without limitation information concerning Eligible Accounts and Account balances and agings. Records related to Accounts (Receivables) are or will be located at . The above is an accurate and complete list of all locations at which Borrower keeps or maintains business records concerning Borrower's collateral.

**Collateral Schedules.** Concurrently with the execution and delivery of this Agreement, Borrower shall execute and deliver to Lender schedules of accounts and schedules of Eligible Accounts in form and substance satisfactory to the Lender. Thereafter supplemental schedules shall be delivered according to the following schedule:

**Representations and Warranties Concerning Accounts.** With respect to the Accounts, Borrower represents and warrants to Lender: (1) Each account represented by Borrower to be an Eligible Account for purposes of this Agreement conforms to the requirements of the definition of an Eligible Account; (2) All Account information listed on schedules delivered to Lender will be true and correct, subject to immaterial variance; and (3) Lender, its assigns, or agents shall have the right at any time and at Borrower's expense to inspect, examine, and audit Borrower's records to confirm with Account Debtors the accuracy of such Accounts.

**Notification Basis.** Borrower agrees and understands that this Loan shall be on a notification basis pursuant to which Lender shall directly collect and receive all proceeds and payments from the Accounts in which Lender has a security interest. In order to facilitate the foregoing, Borrower agrees to deliver to Lender, upon demand, any and all of Borrower's records, ledger sheets, payment cards, and other documentation, in the form requested by Lender, with regard to the Accounts. Borrower further agrees that Lender shall have the right to notify each Account Debtor, pay such proceeds and payments directly to Lender, and to do any and all other things as Lender may deem to be necessary and appropriate, within its sole discretion, to carry out the terms and intent of this Agreement. Lender shall have the further right, where appropriate and within Lender's sole discretion, to file suit, either in its own name or in the name of Borrower, to collect any and all such Accounts. Borrower further agrees that Lender may take such other actions, either in Borrower's name or Lender's name, as Lender may deem appropriate within its sole judgment, with regard to collection and payment of the Accounts, without affecting the liability of Borrower under this Agreement or on the Indebtedness.

**CONDITIONS PRECEDENT TO EACH ADVANCE.** Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

**Related Documents.** Borrower shall provide to Lender the following documents for the Loan: (1) the Note; (2) Security Agreements granting to Lender security interests in the Collateral; (3) financing statements perfecting Lender's Security Interests; (4) evidence of insurance as required by law; (5) guaranties; (6) together with all such Related Documents as Lender may require for the Loan; all in form and substance satisfactory to Lender and Lender's counsel.

**Borrower's Authorization.** Borrower shall have provided in form and substance satisfactory to Lender properly certified resolutions, duly authorizing the execution and delivery of this Agreement, the Note and the Related Documents. In addition, Borrower shall have provided such resolutions, authorizations, documents and instruments as Lender or its counsel, may require.

**Fees and Expenses Under This Agreement.** Borrower shall have paid to Lender all fees, costs, and expenses specified in this Agreement and Related Documents as are then due and payable.

**Representations and Warranties.** The representations and warranties set forth in this Agreement, in the Related Documents, and in any certificate delivered to Lender under this Agreement are true and correct.

**Event of Default.** There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

**NOTATIONS AND WARRANTIES.** Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each payment of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any Indebtedness exists:

**Organization.** Borrower is a corporation for profit which is, and at all times shall be, duly organized, validly existing, and in good standing under the laws of the State of Utah. Borrower is duly authorized to transact business in all other states in which Borrower is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Borrower is doing business. Borrower is, and at all times shall be, duly qualified as a foreign corporation in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains an office at 315 EAST LION LANE, STE 310, SALT LAKE CITY, UT 84121. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning the Collateral. Borrower will notify Lender of any change in the location of Borrower's principal office. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all laws, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower in connection with its business activities.

**Assumed Business Names.** Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: None.

**Authorization.** Borrower's execution, delivery, and performance of this Agreement and all the Related Documents have been duly authorized by necessary action by Borrower and do not conflict with, result in a violation of, or constitute a default under (1) any provision of Borrower's charter of incorporation or organization, or bylaws, or any agreement or other instrument binding upon Borrower or (2) any law, governmental order, court decree, or order applicable to Borrower or to Borrower's properties.

**Financial Information.** Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

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Effect. This Agreement constitutes, and any instrument in connection therewith, may contain errors.

accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used, or filed a financing statement under, any other name for at least the last five (5) years.

**Hazardous Substances.** Except as disclosed to and acknowledged by Lender in writing, Borrower represents and warrants that: (1) During the period of Borrower's ownership of Borrower's Collateral, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from any of the Collateral; (2) Borrower has no knowledge or reason to believe that there has been (a) any breach or violation of any Environmental Laws; (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Collateral by any prior owners or occupants of any of the Collateral; or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; (3) neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from any of the Collateral, and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all Environmental Laws. Borrower authorizes Lender and its agents to enter upon the Collateral to make such inspections and tests as Lender may deem appropriate to determine compliance of the Collateral with this section of the Agreement. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Collateral for hazardous waste and Hazardous Substances. Borrower hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or incur resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this section of the Agreement, including the obligation to indemnify, shall survive the payment of the Indebtedness and the termination, expiration or satisfaction of this Agreement and shall not be affected by Lender's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

**Litigation and Claims.** No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or operations, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

**Taxes.** To the best of Borrower's knowledge, all of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

**Priority.** Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or created the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

**Binding Effect.** This Agreement, the Note, all Security Agreements (if any), and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

**COVENANTS.** Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

**Events of Claims and Litigation.** Promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor, which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

**Financial Records.** Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

**Financial Statements.** Furnish Lender with the following:

**Annual Statements.** As soon as available, but in no event later than one-hundred-twenty (120) days after the end of each fiscal year, furnish Borrower's balance sheet and income statement for the year ended, compiled by a certified public accountant satisfactory to Lender.

**Interim Statements.** As soon as available, but in no event later than 45 days after the end of each fiscal quarter, furnish Borrower's balance sheet and profit and loss statement for the period ended, prepared by Borrower in form satisfactory to Lender.

**Tax Returns.** As soon as available, but in no event later than one-hundred-twenty (120) days after the applicable filing date for the tax reporting period ended, furnish Federal and other governmental tax returns, prepared by a certified public accountant satisfactory to Lender.

Financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applied on a consistent basis, and shall be signed by Borrower as being true and correct.

**Additional Information.** Furnish such additional information and statements, as Lender may request from time to time.

**Insurance.** Maintain fire and other risk insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that they will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will deliver to Lender with such lender's loss payable or other endorsements as Lender may require.

**Insurance Reports.** Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender reasonably requests, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of the property insured. The cost of such appraisal shall be borne by Borrower.

**Indemnification.** Prior to disbursement of any Loan proceeds, Borrower shall obtain and maintain adequate insurance.

Names of Guarantors

Amounts

DON M. HALVERSON

Unlimited

NANCY H. HALVERSON

Unlimited

**Other Agreements.** Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

**Loan Proceeds.** Use all loan proceeds solely for Borrower's business operations, unless specifically consented to the contrary by Lender in writing.

**Taxes, Charges and Liens.** Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits.

**Performance.** Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

**Operations.** Maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel; provide written notice to Lender of any change in executive and management personnel; conduct its business affairs in a reasonable and prudent manner.

**Environmental Studies.** Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testings as may be requested by Lender or any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

**Compliance with Governmental Requirements.** Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the conduct of Borrower's properties, businesses and operations, and to the use or occupancy of the collateral, including without limitation, the Americans With Disabilities Act. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Collateral are not jeopardized. Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Inspection.** Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and Borrower's properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records, computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall cause such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

**Compliance Certificates.** Unless waived in writing by Lender, provide Lender at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

**Environmental Compliance and Reports.** Borrower shall comply in all respects with any and all Environmental Laws; not cause or permit to be caused as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or controlled by Borrower, any environmental activity where damage may result to the environment, unless such environmental activity is pursuant to compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities; shall furnish to Lender promptly and in any event within thirty (30) days after receipt thereof a copy of any notice, summons, lien, citation, directive, letter or other communication from any governmental agency or instrumentality concerning any intentional or unintentional action or omission on Borrower's part in connection with any environmental activity whether or not there is damage to the environment and/or other natural resources.

**Collateral Assurances.** Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security Interests.

**EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower complies with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower's behalf may (but is not obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security encumbrances and other claims, at any time levied or placed on any Collateral and paying all costs for insuring, maintaining and preserving the same. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date or paid by Lender to the date of repayment by Borrower. All such expenses will become a part of the Indebtedness and, at Lender's option, (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment of the Note which becomes due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a debt which will be due and payable at the Note's maturity.

**COVENANTS.** Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

**Indebtedness and Liens.** (1) Except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Agreement, create, incur or assume indebtedness for borrowed money, including capital leases, (2) sell, transfer, mortgage, assign, pledge, grant a security interest in, or encumber any of Borrower's assets (except as allowed as Permitted Liens), or (3) sell with recourse any of its accounts, except to Lender.

**Continuity of Operations.** (1) Engage in any business activities substantially different than those in which Borrower is presently engaged, (2) liquidate, reorganize, merge, transfer, acquire or consolidate with any other entity, change its name, dissolve or transfer or sell Collateral in the ordinary course of business, or (3) pay any dividends on Borrower's stock (other than dividends payable in its stock), provided, however, that the foregoing shall not apply to any such action if it is necessary to carry out the business of Borrower, or if it is necessary to carry out the business of Borrower, but only so long as no Event of Default occurs, and no claim for damages or compensation is asserted against any officer or director of Borrower.



Chapter S Corporation because of their ownership of shares of Borrower's stock, or purchase or retire any of Borrower's outstanding shares or to amend Borrower's capital structure.

ins, Acquisitions and Guaranties. (1) Loan, invest in or advance money or assets, (2) purchase, create or acquire any interest in any other enterprise or entity, or (3) incur any obligation as surety or guarantor other than in the ordinary course of business.

**EVENT OF ADVANCES.** If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (A) Borrower or any Guarantor is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower or any Guarantor has with Lender; (B) Borrower or any Guarantor dies, becomes incompetent or becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (C) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any Guarantor, or in the value of collateral securing any Loan; or (D) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of the performance of any other loan with Lender; or (E) Lender in good faith deems itself insecure, even though no Event of Default shall have occurred.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower agrees to assign to Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts.

Each of the following shall constitute an Event of Default under this Agreement:

**Event of Default.** Borrower fails to make any payment when due under the Loan.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Default in Favor of Third Parties.** Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or any Grantor's property or Borrower's or any Grantor's ability to repay the Loans or perform their respective obligations under this Agreement or any of the Related Documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement, the Note, or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Insolvency.** The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver or liquidator over all or part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Invalid Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any related document to create a valid and perfected security interest or lien) at any time and for any reason.

**Seizure or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding. Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the amount of the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor or any of the Indebtedness or any Guarantor dies, becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Borrower, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the Indebtedness in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Change in Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

**Material Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Loan is impaired.

**Insolvency.** Lender in good faith believes itself insecure.

**Right to Cure.** If any default, other than a default on Indebtedness, is curable and if Borrower or Grantor, as the case may be, has not been given notice of a similar default within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Borrower or Grantor, as the case may be, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiate steps which Lender deems in Lender's sole discretion to be necessary to cure the default and thereafter continue and complete all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practicable.

**CONSEQUENCES OF AN EVENT OF DEFAULT.** If any Event of Default shall occur, except where otherwise provided in this Agreement or the Related Documents, all commitments and obligations of Lender under this Agreement or the Related Documents or any other agreement immediately will become due and payable, including any obligation to make further Loan Advances or disbursements, and, at Lender's option, all Indebtedness immediately will become due and payable, all without notice of any kind to Borrower, except that in the case of an Event of Default of the type described in the subsection above, such acceleration shall be automatic and not optional. In addition, Lender shall have all the rights and remedies available to it under the Related Documents or available at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of Lender's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Borrower or of any Grantor shall not affect Lender's right to declare a default and to exercise its rights and remedies.

**COVENANTS AND DEFINITIONS.** Borrower covenants and agrees with Lender that, while this Agreement is in effect, Borrower will:

**Tangible Net Worth Ratio.** Borrower shall maintain a Tangible Net Worth Ratio of not less than 2.75 to 1.0; calculated at the end of each quarter. The words "Total Debt" mean all of Borrower's liabilities, including Subordinated Debt. The words "Subordinated Debt" mean all of the liabilities of Borrower which have been subordinated by written agreement to indebtedness to Lender.



words Current Assets shall be as defined by GAAP, minus prepaid expenses. The word Current Liabilities shall be as defined by GAAP.

**BORROWING PLAN.** An exhibit, titled "Borrowing Plan," is attached to this Agreement and by this reference is made a part of this Agreement just as if the provisions, terms and conditions of the Exhibit had been fully set forth in this Agreement.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, 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 unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not Lender's salaried employee and whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Consent to Loan Participation.** Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to the Loan, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally gives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loan and will have the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and conditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loan irrespective of the failure or solvency of any holder of any interest in the Loan. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

**Governing Law.** This Agreement will be governed by, construed and enforced in accordance with federal law and the laws of the State of Utah. This Agreement has been accepted by Lender in the State of Utah.

**Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender, Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any of Borrower's or any Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender 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 Lender.

**Notices.** Unless otherwise provided by applicable law, any notice required to be given under this Agreement or required by law shall be given in writing, and shall be effective when actually delivered in accordance with the law or with this Agreement, when actually received by telefacsimile (if so otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address. Unless otherwise provided by applicable law, if there is more than one Borrower, any notice given by Lender to any Borrower is deemed notice given to all Borrowers.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any instance, 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.

**Successors and Affiliates of Borrower.** To the extent the context of any provisions of this Agreement makes it appropriate, including without limitation on any representation, warranty or covenant, the word "Borrower" as used in this Agreement shall include all of Borrower's subsidiaries and affiliates. Notwithstanding the foregoing however, under no circumstances shall this Agreement be construed to require Lender to make any Loan or financial accommodation to any of Borrower's subsidiaries or affiliates.

**Successors and Assigns.** All covenants and agreements contained by or on behalf of Borrower shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns. Borrower shall not, however, have the right to assign Borrower's rights under this Agreement or any interest therein, without the prior written consent of Lender.

**Survival of Representations and Warranties.** Borrower understands and agrees that in extending Loan Advances, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the extension of Loan Advances and delivery to Lender of the Related Documents, shall be binding in nature, shall be deemed made and redated by Borrower at the time each Loan Advance is made, and shall remain in full force and effect until such time as Borrower's indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

**Time of the Essence.** Time is of the essence in the performance of this Agreement.

**Entire Agreement.** All parties to this Agreement hereby waive the right to bring any arbitration, proceeding, or court action, in any jurisdiction, to enforce or interpret this Agreement.

Generally, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the Agreement shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement.

**Account.** The word "Account" means a trade account, account receivable, other receivable, or other right to payment for goods sold or services rendered owing to Borrower (or to a third party grantor acceptable to Lender).

**Account Debtor.** The words "Account Debtor" mean the person or entity obligated upon an Account.

**Advance.** The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf under the terms and conditions of this Agreement.

**Agreement.** The word "Agreement" means this Business Loan Agreement (Asset Based), as this Business Loan Agreement (Asset Based) may be amended or modified from time to time, together with all exhibits and schedules attached to this Business Loan Agreement (Asset Based) from time to time.

**Borrower.** The word "Borrower" means SYSTEMS WEST COMPUTER RESOURCES, INC., and all other persons and entities signing the Note in any capacity.

**Borrowing Base.** The words "Borrowing Base" mean, as determined by Lender from time to time, the lesser of (1) \$1,000,000.00 or (2) 10% of the aggregate amount of Eligible Accounts.

**Business Day.** The words "Business Day" mean a day on which commercial banks are open in the State of Utah.

**Collateral.** The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or other security or lien interest whatsoever, whether created by law, contract, or otherwise. The word Collateral also includes without limitation collateral described in the Collateral section of this Agreement.

**Eligible Accounts.** The words "Eligible Accounts" mean at any time, all of Borrower's Accounts which contain selling terms and conditions acceptable to Lender. The net amount of any Eligible Account against which Borrower may borrow shall exclude all returns, discounts, credits, and assets of any nature. Unless otherwise agreed to by Lender in writing, Eligible Accounts do not include:

- 1) Accounts with respect to which the Account Debtor is employee or agent of Borrower.
- 2) Accounts with respect to which the Account Debtor is a subsidiary of, or affiliated with, Borrower or its shareholders, officers, or directors.
- 3) Accounts with respect to which goods are placed on consignment, guaranteed sale, or other terms by reason of which the payment by the Account Debtor may be conditional.
- 4) Accounts with respect to which the Account Debtor is not a resident of the United States, except to the extent such Accounts are supported by insurance, bonds or other assurances satisfactory to Lender.
- 5) Accounts with respect to which Borrower is or may become liable to the Account Debtor for goods sold or services rendered by the Account Debtor to Borrower.
- 6) Accounts which are subject to dispute, counterclaim, or setoff.
- 7) Accounts with respect to which the goods have not been shipped or delivered, or the services have not been rendered, to the Account Debtor.
- 8) Accounts with respect to which Lender, in its sole discretion, deems the creditworthiness or financial condition of the Account Debtor to be unsatisfactory.
- 9) Accounts of any Account Debtor who has filed or has had filed against it a petition in bankruptcy or an application for relief under any provision of any state or federal bankruptcy, insolvency, or debtor-in-relief acts; or who has had appointed a trustee, custodian, or receiver of the assets of such Account Debtor; or who has made an assignment for the benefit of creditors or has become insolvent or fails generally to pay its debts (including its payrolls) as such debts become due.
- 10) Accounts with respect to which the Account Debtor is the United States government or any department or agency of the United States.
- 11) Accounts which have not been paid in full within 90 DAYS from the invoice date.
- 12) That portion of the Accounts of any single Account Debtor which exceeds 30.000% of all of Borrower's Accounts.
- 13) Accounts which are subject to retainage.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. Law 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

**Expiration Date.** The words "Expiration Date" mean the date of termination of Lender's commitment to lend under this Agreement.

The word "GAAP" means generally accepted accounting principles.

The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such Security Interest.

The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Loan.



## COMMERCIAL SECURITY AGREEMENT

| Principal | Loan Date  | Maturity   | Loan No    | Call / Coll | Account     | Officer | Initials |
|-----------|------------|------------|------------|-------------|-------------|---------|----------|
| 10,000.00 | 01-10-2001 | 07-31-2001 | 1000009901 | 402 / 321   | N5180042142 | KXW03   |          |

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**Borrower:** SYSTEMS WEST COMPUTER RESOURCES, INC.  
315 EAST LION LANE, STE 310  
SALT LAKE CITY, UT 84121

**Lender:** KeyBank National Association  
UT-MM-Central Commercial Banking Center  
50 S. Main Street  
Suite 2007  
Salt Lake City, UT 84130

COMMERCIAL SECURITY AGREEMENT dated January 10, 2001, is made and executed between SYSTEMS WEST COMPUTER RESOURCES, INC. ("Grantor") and KeyBank National Association ("Lender").

**OF SECURITY INTEREST.** For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the debt and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights Lender may have by law.

**GENERAL DESCRIPTION.** The word "Collateral" as used in this Agreement means the following described property, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located, in which Grantor is giving to Lender a security interest for the debt and the performance of all other obligations under the Note and this Agreement:

### Chattel Paper, Accounts and General Intangibles

In, the word "Collateral" also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

All accessions, attachments, accessories, replacements and additions to any of the collateral described herein, whether added now or later.

All products and produce of any of the property described in this Collateral section.

All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, or other disposition of the property described in this Collateral section.

All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party's insurer, whether due to tort, settlement or other process.

All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, negative, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

By other provision of this Agreement, Lender is not granted, and will not have, a nonpurchase money security interest in household goods, to which such a security interest would be prohibited by applicable law. In addition, if because of the type of any Property, Lender is required to give notice of the right to cancel under Truth in Lending for the Indebtedness, then Lender will not have a security interest in such Collateral unless and until a notice is given.

**COLLATERALIZATION.** In addition to the Note, this Agreement secures all obligations, debts and liabilities, plus interest thereon, of Grantor or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, absolute or contingent, liquidated or unliquidated and whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, indemnity party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, or the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

**SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether savings, or some other account). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor agrees to Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL.** With respect to the Collateral, Grantor represents and warrants to Lender that:

**Continuation of Security Interest.** Grantor agrees to execute financing statements and to take whatever other actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Grantor will note Lender's interest upon any and all chattel paper if not delivered to Lender for possession by Lender. This is a continuing Security Agreement and will continue in effect even though all or any part of the Indebtedness is paid in full and even though for a period of time Grantor may not be indebted to Lender.

**Notification to Lender.** Grantor will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (1) change in Grantor's name; (2) change in Grantor's assumed business name(s); (3) change in the ownership of the corporation Grantor; (4) change in the authorized signer(s); (5) change in Grantor's principal office address; (6) conversion of Grantor to a new or different type of business entity; or (7) change in any other aspect of Grantor that directly or indirectly relates to any of the obligations between Grantor and Lender. No change in Grantor's name will take effect until after Lender has been notified.

**Assignment.** The execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party.



and capacity to contract and are in fact obligated as they appear to be on the Collateral. At the time any Account becomes subject to a security interest in favor of Lender, the Account shall be a good and valid account representing an undisputed, bona fide indebtedness incurred by the account debtor for merchandise held subject to delivery instructions or previously shipped or delivered pursuant to a contract of sale, or for services previously performed by Grantor with or for the account debtor. So long as this Agreement remains in effect, Grantor shall not, without Lender's prior written consent, compromise, settle, adjust, or extend payment under or with regard to any such Accounts. There shall be no setoffs or counterclaims against any of the Collateral, and no agreement shall have been made under which any deductions or discounts may be claimed concerning the Collateral except those disclosed to Lender in writing.

**Location of the Collateral.** Except in the ordinary course of Grantor's business, Grantor agrees to keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts or general intangibles, the records concerning the Collateral) at Grantor's address shown above or at such other locations as are acceptable to Lender. Upon Lender's request, Grantor will deliver to Lender in form satisfactory to Lender a schedule of real properties and Collateral locations relating to Grantor's operations, including without limitation the following: (1) all real property Grantor owns or is purchasing; (2) all real property Grantor is renting or leasing; (3) all storage facilities Grantor owns, rents, leases, or uses; and (4) all other properties where Collateral is or may be located.

**Removal of the Collateral.** Except in the ordinary course of Grantor's business, Grantor shall not remove the Collateral from its existing location without Lender's prior written consent. Grantor shall, whenever requested, advise Lender of the exact location of the Collateral.

**Transactions Involving Collateral.** Except for inventory sold or accounts collected in the ordinary course of Grantor's business, or as otherwise provided for in this Agreement, Grantor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. Grantor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right to the security interests granted under this Agreement. Unless waived by Lender, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Lender and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Lender to any sale or other disposition. Upon receipt, Grantor shall immediately deliver any such proceeds to Lender.

**Title.** Grantor represents and warrants to Lender that Grantor holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement covering any of the Collateral is on file in any public office other than one which reflect the security interest created by this Agreement or to which Lender has specifically consented. Grantor shall defend Lender's rights in the Collateral against the claims and demands of all other persons.

**Repairs and Maintenance.** Grantor agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order, repair and condition at all times while this Agreement remains in effect. Grantor further agrees to pay when due all claims for work done on, or services rendered or material furnished in connection with the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.

**Inspection of Collateral.** Lender and Lender's designated representatives and agents shall have the right at all reasonable times to examine and inspect the Collateral wherever located.

**Taxes, Assessments and Liens.** Grantor will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, upon this Agreement, upon any promissory note or notes evidencing the Indebtedness, or upon any of the other Related Documents. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay, so long as Lender's interest in the Collateral is not jeopardized in Lender's sole opinion. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, Grantor shall deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, reasonable attorneys' fees or other charges that may accrue as a result of foreclosure or sale of the Collateral. In any contest Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings. Grantor further agrees to furnish Lender with evidence that such taxes, assessments, and governmental and other charges have been paid in full and in a timely manner. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized.

**Compliance with Governmental Requirements.** Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral. Grantor may resist in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion, is not jeopardized.

**Hazardous Substances.** Grantor represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains in effect, used in violation of any Environmental Laws or for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any Hazardous Substance. The representations and warranties contained herein are based on Grantor's diligence in investigating the Collateral for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any Environmental Laws, and (2) agrees to indemnify and hold harmless Lender against any and all claims and losses resulting from a breach of this provision of this Agreement. This obligation to indemnify shall survive the payment of the Indebtedness and the satisfaction of this Agreement.

**Maintenance of Casualty Insurance.** Grantor shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis of payment acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days' prior written notice to Lender and not including any disclaimer of the insurer's liability to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be reduced in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender has or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

**Disposition of Insurance Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Collateral. Lender may make proof of loss. If Grantor fails to do so within fifteen (15) days after the date of loss or damage, Lender may make proof of loss. In the event of a loss or damage to the Collateral, including accrued proceeds, the proceeds shall be held by Lender as part of the Collateral. Lender shall have the right to take possession of the damaged or destroyed Collateral and shall, upon satisfactory proof of loss, pay to Lender the proceeds of the insurance policy or policies covering the Collateral.

**Insurance Reserves.** Lender may require Grantor to maintain with Lender reserves for payment of insurance premiums, which reserves shall be paid by monthly payments from Grantor of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are sufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit and shall constitute a non-interest-bearing account which Lender may satisfy by payment of the insurance premiums required to be paid by Grantor as they come due. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the insurance premiums required to be paid by Grantor. The responsibility for the payment of premiums shall remain Grantor's sole responsibility.

**Insurance Reports.** Grantor, upon request of Lender, shall furnish to Lender reports on each existing policy of insurance showing such information as Lender may reasonably request including the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; (5) the then current value on the basis of which insurance has been obtained and the manner of determining value; and (6) the expiration date of the policy. In addition, Grantor shall upon request by Lender (however not more often than annually) or an independent appraiser satisfactory to Lender determine, as applicable, the cash value or replacement cost of the Collateral.

**GRANTOR'S RIGHT TO POSSESSION AND TO COLLECT ACCOUNTS.** Until default and except as otherwise provided below with respect to the Collateral, Grantor may have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful manner consistent with this Agreement or the Related Documents, provided that Grantor's right to possession and beneficial use shall not apply to any property where possession of the Collateral by Lender is required by law to perfect Lender's security interest in such Collateral. Until otherwise notified in writing, Grantor may collect any of the Collateral consisting of accounts. At any time and even though no Event of Default exists, Lender may exercise its rights to collect the accounts and to notify account debtors to make payments directly to Lender for application to the Indebtedness. If at any time Grantor has possession of any Collateral, whether before or after an Event of Default, Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Lender takes such action for that purpose as Grantor shall request or as Lender, in Lender's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by Grantor shall not of itself be deemed to be a failure to exercise reasonable care. Lender shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor shall Lender be required to preserve or maintain any security interest given to secure the Indebtedness.

**EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any debt, Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be limited to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, judgments and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred to the date paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to be made during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

Each of the following shall constitute an Event of Default under this Agreement:

**Payment Default.** Grantor fails to make any payment when due under the Indebtedness.

**Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Grantor and Lender.

**In Favor of Third Parties.** Should Grantor or any Grantor default under any loan, extension of credit, security agreement, purchase or sale agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the Indebtedness or perform their respective obligations under this Agreement or any of the Related Documents.

**Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Agreement, the Note, or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Failure to Perfect Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any Related Document to create a valid and perfected security interest or lien) at any time and for any reason.

**Grantor's Insolvency.** The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for all or part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Grantor's or Third Party's Foreclosure or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, or any other method, by any creditor of Grantor or by any governmental agency against any collateral securing the Indebtedness, including a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Affecting Guarantor.** Any of the preceding events occurs with respect to Guarantor or any of the Indebtedness or Guarantor dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

**Material Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Grantor's Insolvency.** Lender in good faith believes itself insecure.

**Cure of Default.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same under this Agreement within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Grantor, after giving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and which Lender continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**REMEDIES ON DEFAULT.**

pay, immediately due and payable, without notice of any kind to Grantor.

**Assemble Collateral.** Lender may require Grantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require Grantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender also shall have full power to enter upon the property of Grantor to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Grantor agrees Lender may take such other goods, provided that Lender makes reasonable efforts to return them to Grantor after repossession.

**Sell the Collateral.** Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in Lender's own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will give Grantor reasonable notice of the time after which any private sale or any other intended disposition of the Collateral is to be made. The requirements of reasonable notice shall be met if such notice is given at least fifteen (15) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Collateral, with the power to protect and preserve the Collateral, to operate the Collateral preceding foreclosure or sale, and to collect the Rents from the Collateral and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. Grantor hereby waives any requirement that the receiver be impartial and disinterested as to all of the parties and agrees that employment by Lender shall not disqualify a person from serving as a receiver.

**Collect Revenues, Apply Accounts.** Lender, either itself or through a receiver, may collect the payments, rents, income, and revenues from the collateral. Lender may at any time in Lender's discretion transfer any Collateral into Lender's own name or that of Lender's nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the Indebtedness or apply it to payment of the indebtedness in such order of preference as Lender may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Lender may demand, collect, receipt for, settle, compromise, adjust, sue, foreclose, or realize on the Collateral as Lender may determine, whether or not Indebtedness or Collateral is then due. For these purposes, Lender may, on behalf of and in the name of Grantor, receive, open and dispose of mail addressed to Grantor; change any address to which mail or payments are to be sent, and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Lender may notify account debtors and obligors on any Collateral to make payments directly to Lender.

**Obtain Deficiency.** If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

**Other Rights and Remedies.** Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

**Election of Remedies.** Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement, the Related Documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**ENTIRE AGREEMENT.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the terms set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not Lender's salaried employee and whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

**Interpretation of Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Governing Law.** This Agreement will be governed by, construed and enforced in accordance with federal law and the laws of the State of Utah. This Agreement has been accepted by Lender in the State of Utah.

**Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A failure by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender 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 Lender.

**Notice.** Unless otherwise provided by applicable law, any notice required to be given under this Agreement or required by law shall be given in writing and shall be effective when actually delivered in accordance with the law or with this Agreement, when actually received by telefacsimile (if otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. If there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice to all Grantors.



Grantor, file a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a financing statement. Grantor will reimburse Lender for all expenses for the perfection and the continuation of the perfection of Lender's security interest in the Collateral. If a court of competent jurisdiction finds any provision 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.

**Successors and Assigns.** Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of acceptance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Agreement shall survive execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

**Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**Waiver of Jury.** All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the Agreement shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code.

**Account.** The word "Account" means a trade account, account receivable, other receivable, or other right to payment for goods sold or services rendered owing to Grantor (or to a third party grantor acceptable to Lender).

**Agreement.** The word "Agreement" means this Commercial Security Agreement, as this Commercial Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

**Borrower.** The word "Borrower" means SYSTEMS WEST COMPUTER RESOURCES, INC., and all other persons and entities signing the Note in their individual capacity.

**Collateral.** The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

**Default.** The word "Default" means the Default set forth in this Agreement in the section titled "Default".

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

**Grantor.** The word "Grantor" means SYSTEMS WEST COMPUTER RESOURCES, INC..

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or biological characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Indebtedness.** The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents.

**Lender.** The word "Lender" means KeyBank National Association, its successors and assigns.

**Note.** The word "Note" means the Note executed by Grantor in the principal amount of \$1,000,000.00 dated January 10, 2001, together with all amendments, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

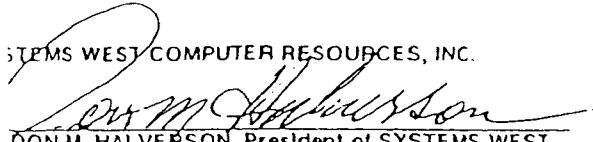
**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental statements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, contracts and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED JANUARY 10, 2001.**



VTOR:

SYSTEMS WEST COMPUTER RESOURCES, INC.



DON M. HALVERSON, President of SYSTEMS WEST  
COMPUTER RESOURCES, INC.

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## MODIFICATION AND/OR EXTENSION AGREEMENT

Date: July 31, 2001

MM-RN

Borrower(s): SYSTEMS WEST COMPUTER RESOURCES, INC.

Lender: KEYBANK NATIONAL ASSOCIATION

Note: Dated January 10, 2001, in the principal amount of \$1,000,000.00.

Loan #: 51-5180042142-1000009901

FOR VALUE RECEIVED, Borrower and Lender hereby agree to modify the above-referenced Loan and Promissory Note and/or Loan Agreement as follows:

1. MODIFICATION AND/OR EXTENSION PROVISIONS.

- The maturity date of the Loan is hereby extended to July 31, 2002.

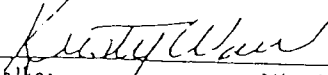
2. CONDITIONS. The modifications and/or extension described above are subject to and conditioned upon Borrower's full satisfaction of all of the following conditions on or before the date first stated above, time being of the essence.

- A. There shall be no uncured event of default under the Loan, nor any event or condition which with notice or the passage of time would be an event of default thereunder.
- B. Borrower shall deliver to Lender a fully executed original of this Modification and/or Extension Agreement.
- C. All expenses incurred by Lender in connection with this Agreement (including without limitation, attorney fees, recording charges, charges for title policy update(s), escrow charges, costs of obtaining updated or additional appraisal(s) or collateral valuations, if required by Lender) shall be paid by Borrower.
- D. Borrower shall comply with the following additional conditions:
  - Borrower shall pay Lender in cash an extension fee of \$5,000.00.

3. GENERAL PROVISIONS. Except as modified above, all other provisions of the Promissory Note and any other documents securing or relating to the Loan (the "Loan Documents") remain in full force and effect. All security given for the Loan and all guarantees of the Loan (as applicable) shall continue in full force. Borrower warrants and represents to Lender that it has full right, power and authority to enter into this agreement and to perform all its obligations hereunder, and that all information and materials submitted to Lender in connection with this modification are accurate and complete. Borrower warrants that no default exists under the Loan Documents. Borrower reaffirms its obligation to pay the Loan in full and reaffirms the validity and enforceability of the Loan Documents, without set-off, counterclaim or defense.

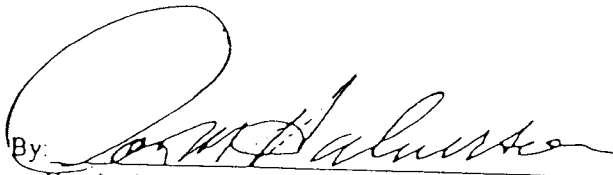
LENDER:

KEYBANK NATIONAL ASSOCIATION

By:   
Kristy Walker Vice President

BORROWER:

SYSTEMS WEST COMPUTER RESOURCES,  
INC.

By:   
Don M. Halverson President

## MODIFICATION OF BUSINESS LOAN AGREEMENT

This Modification of Business Loan Agreement (the "Modification") is made and entered into this 22 day of November, 2001, by and between SYSTEMS WEST COMPUTER RESOURCES, INC., a Utah corporation ("Borrower"), and KEYBANK NATIONAL ASSOCIATION, a national banking association ("Lender").

### RECITALS

A. Borrower and Lender entered into that certain "Business Loan Agreement (Asset Based)" dated January 10, 2001 (the "Agreement") pursuant to which Lender established for the benefit of Borrower a revolving line of credit in the original principal amount of \$1,000,000.00 (the "Loan"). Capitalized terms used in this Modification which are not defined herein shall have the meanings given to them in the Agreement.

B. As part of the Agreement, Borrower and Lender executed a "Borrowing Plan" dated January 10, 2001. Among other things, the Borrowing Plan established schedules for the delivery of certain documents, reports, and certificates by Borrower to Lender in accordance with the terms of the Agreement.

C. Borrower has requested certain modifications to the Agreement and the Borrowing Plan, and Lender is willing to make the same upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The parties acknowledge the truth and accuracy of the above Recitals and incorporate the same herein by this reference.

2. **Eligible Accounts.** The parties agree to modify the restrictions on concentration of accounts contained in the Agreement. Accordingly, the paragraph entitled "Eligible Accounts" on page 7 of the Agreement is hereby modified by deleting the current subparagraph "12" and substituting the following therefor:

(12) That portion of the Accounts of any single Account Debtor which exceeds 10.000% of the sum of all of Borrower's Accounts; provided, however, as to the Account of Commonwealth Edison of Chicago only, that amount which exceeds 30.000% of the sum of all of Borrower's Accounts will be excluded from "Eligible Accounts."

3. **Borrowing Plan.** The parties agree to modify the "Collateral Schedule Timetables" set forth in the Borrowing Plan by deleting the same in its entirety and substituting the following:

COLLATERAL SCHEDULE TIMETABLES. Borrower shall execute and deliver to Lender the following schedules:

Accounts Receivable Aging reports quarterly within 45 days after the end of each calendar quarter.

Borrowing Certificate reports quarterly within 45 days after the end of each calendar quarter.

4. Representations and Warranties. Borrower hereby adopts and restates all of the representations and warranties contained in the Agreement to the same extent, and for all intents and purposes, as though made and given at this time, except where such representations and warranties specifically pertain only to matters or conditions as of an earlier date. Without limiting the foregoing, Borrower hereby represents and warrants to Lender that no Event of Default has occurred and is continuing, and that no condition exists or event has occurred which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

5. Costs and Expenses. Borrower agrees to pay or reimburse Lender for all costs and expenses incurred by Lender in connection with the preparation of this Modification, including reasonably attorneys fees and costs. Borrower shall pay all such costs and expenses upon execution of this Modification, or if incurred thereafter, upon demand by Lender.

6. Entire Agreement. This Modification constitutes the entire understanding and agreement of the parties with respect to the general subject matter hereof; supersedes all prior negotiations, discussions, and agreements with respect thereto; may not be contradicted by evidence of any alleged oral agreement; and may not be amended, modified, or rescinded in any manner except by written agreement signed by the parties hereto.

Executed on the day and year first written above.

SYSTEMS WEST COMPUTER RESOURCES,  
INC., a Utah corporation

By: 

Don M. Halverson  
Its President

KEYBANK NATIONAL ASSOCIATION, a  
national banking association

By: 

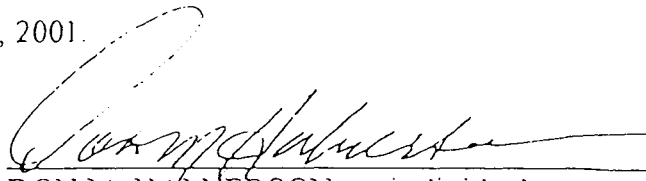
Name: MARK E. HANSEN

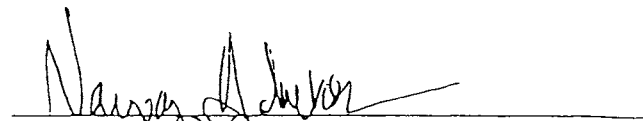
Title: Vice President

## CONSENT OF GUARANTORS

The undersigned, having absolutely and unconditionally guaranteed the obligations, liabilities, and indebtedness of Borrower to Lender in connection with the above-referenced Agreement and Loan, hereby acknowledge receipt of the foregoing Modification and consent to the terms and conditions thereof. Without limiting the foregoing, the undersigned hereby ratify any instrument of guaranty given to Lender with respect to the obligations of Borrower, and agree that their obligations and liabilities under such guaranties shall include the Agreement and the Loan as modified by the foregoing Modification. The undersigned acknowledge that Lender is relying on their execution and delivery of this Consent of Guarantors as a condition to executing the Modification, and do hereby waive notice of acceptance by Lender.

Executed the 30 day of November, 2001.

  
DON M. HALVERSON, an individual

  
NANCY HALVERSON, an individual

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## MODIFICATION AND/OR EXTENSION AGREEMENT

*Date* July 22, 2002 LOMM-PB&I/TWA  
*Borrower(s)* SYSTEMS WEST COMPUTER RESOURCES, INC.  
*Lender* KEYBANK NATIONAL ASSOCIATION  
*Note* Dated January 10, 2001, in the principal amount of \$1,000,000.00, including any and all amendments thereto.  
*Loan #* 51-5180042142-1000009901

FOR VALUE RECEIVED, Borrower and Lender hereby agree to modify the above-referenced Loan and Promissory Note and/or Loan Agreement as follows:

1 MODIFICATION AND/OR EXTENSION PROVISIONS

- The maturity date of the Loan is hereby extended to August 31, 2002.

2 CONDITIONS The modifications and/or extension described above are subject to and conditioned upon Borrower's full satisfaction of all of the following conditions on or before the date first stated above, time being of the essence

- A. There shall be no uncured event of default under the Loan, nor any event or condition which with notice or the passage of time would be an event of default thereunder.
- B. Borrower shall deliver to Lender a fully executed original of this Modification and/or Extension Agreement.
- C. All expenses incurred by Lender in connection with this Agreement (including without limitation, attorney fees, recording charges, charges for title policy update(s), escrow charges, costs of obtaining updated or additional appraisal(s) or collateral valuations, if required by Lender) shall be paid by Borrower.
- D. Borrower shall comply with the following additional conditions:
  - No additional conditions apply.

3. GENERAL PROVISIONS Except as modified above, all other provisions of the Promissory Note and any other documents securing or relating to the Loan (the "Loan Documents") remain in full force and effect. All security given for the Loan and all guarantees of the Loan (as applicable) shall continue in full force. Borrower warrants and represents to Lender that it has full right, power and authority to enter into this agreement and to perform all its obligations hereunder, and that all information and materials submitted to Lender in connection with this modification are accurate and complete. Borrower warrants that no default exists under the Loan Documents. Borrower reaffirms its obligation to pay the Loan in full and reaffirms the validity and enforceability of the Loan Documents, without set-off, counterclaim or defense.

BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT:  
(A) THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT  
BETWEEN THE PARTIES, (B) THERE ARE NO UNWRITTEN ORAL AGREEMENTS  
BETWEEN THE PARTIES, AND (C) THE WRITTEN LOAN AGREEMENT MAY NOT  
BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR  
SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.

LENDER:

BORROWER:

KEYBANK NATIONAL ASSOCIATION

By Karl Stevenson  
Karl Stevenson Vice President

SYSTEMS WEST COMPUTER RESOURCES,  
INC.

By Don M. Halverson  
Don M. Halverson, President

By Nancy H. Halverson  
Nancy H. Halverson, CEO





## MODIFICATION AND/OR EXTENSION AGREEMENT

*Date* September 30, 2002 CMM-DMG

*Borrower(s)* SYSTEMS WEST COMPUTER RESOURCES, INC.

*Lender* KEYBANK NATIONAL ASSOCIATION

*Note* Dated January 10, 2001, in the principal amount of \$1,000,000.00, including any and all amendments thereto

*Loan #* 51-5180042142-1000009901

FOR VALUE RECEIVED, Borrower and Lender hereby agree to modify the above-referenced Loan and Promissory Note and/or Loan Agreement as follows:

### 1 MODIFICATION AND/OR EXTENSION PROVISIONS

- The maturity date of the Loan is hereby extended to November 1, 2002.

2 CONDITIONS The modifications and/or extension described above are subject to and conditioned upon Borrower's full satisfaction of all of the following conditions on or before the date first stated above, time being of the essence

- A. There shall be no uncured event of default under the Loan, nor any event or condition which with notice or the passage of time would be an event of default thereunder.
- B. Borrower shall deliver to Lender a fully executed original of this Modification and/or Extension Agreement.
- C. All expenses incurred by Lender in connection with this Agreement (including without limitation, attorney fees, recording charges, charges for title policy update(s), escrow charges, costs of obtaining updated or additional appraisal(s) or collateral valuations, if required by Lender) shall be paid by Borrower.
- D. Borrower shall comply with the following additional conditions:
  - No additional conditions apply.


GENERAL PROVISIONS. Except as modified above, all other provisions of the Promissory Note and any other documents securing or relating to the Loan (the "Loan Documents") remain in full force and effect. All security given for the Loan and all guarantees of the Loan (as applicable) shall continue in full force. Borrower warrants and represents to Lender that it has full right, power and authority to enter into this agreement and to perform all its obligations hereunder, and that all information and materials submitted to Lender in connection with this modification are accurate and complete. Borrower warrants that no default exists under the Loan documents. Borrower reaffirms its obligation to pay the Loan in full and reaffirms the validity and enforceability of the Loan Documents, without set-off, counterclaim or defense.

BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT:  
(A) THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT  
BETWEEN THE PARTIES, (B) THERE ARE NO UNWRITTEN ORAL AGREEMENTS  
BETWEEN THE PARTIES, AND (C) THE WRITTEN LOAN AGREEMENT MAY NOT  
BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR  
SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.

LENDER:

BORROWER:

KEYBANK NATIONAL ASSOCIATION

By   
Kari Stevenson Vice President

SYSTEMS WEST COMPUTER RESOURCES,  
INC

By   
NANCY H. HALVERSON CEO



## MODIFICATION AND/OR EXTENSION AGREEMENT

*Date* October 7, 2002 MM-DMG

*Borrower(s)* SYSTEMS WEST COMPUTER RESOURCES, INC

*Lender:* KEYBANK NATIONAL ASSOCIATION

*Note:* Dated January 10, 2001, in the principal amount of \$1,000,000.00, including any and all amendments thereto

*Loan #* 51-5180042142-1000009901

FOR VALUE RECEIVED, Borrower and Lender hereby agree to modify the above-referenced Loan and Promissory Note and/or Loan Agreement as follows

### 1 MODIFICATION AND/OR EXTENSION PROVISIONS.

- The maturity date of the Loan is hereby extended to July 31, 2004.
- Effective October 7, 2002, the interest rate on this Note shall change to a variable rate equal to the Prime rate announced by the Lender (the "Index"), plus One Quarter percent (0.25%) per annum. The interest rate will change automatically and correspondingly on the date of each announced change of the Index by the Lender. The Index is not necessarily the lowest rate charged by the Lender on its loans and is set by Lender in its sole discretion.

2 CONDITIONS. The modifications and/or extension described above are subject to and conditioned upon Borrower's full satisfaction of all of the following conditions on or before the date first stated above, time being of the essence.

- A. There shall be no uncured event of default under the Loan, nor any event or condition which with notice or the passage of time would be an event of default thereunder.
- B. Borrower shall deliver to Lender a fully executed original of this Modification and/or Extension Agreement.
- C. All expenses incurred by Lender in connection with this Agreement (including without limitation, attorney fees, recording charges, charges for title policy update(s), escrow charges, costs of obtaining updated or additional appraisal(s) or collateral valuations, if required by Lender) shall be paid by Borrower.
- D. Borrower shall comply with the following additional conditions:
  - Borrower shall pay Lender in cash an extension fee of \$2,500.00.

3. GENERAL PROVISIONS. Except as modified above, all other provisions of the Promissory Note and any other documents securing or relating to the Loan (the "Loan Documents") remain in full force and effect. All security given for the Loan and all guarantees of the Loan (as applicable) shall continue in full force. Borrower

warrants and represents to Lender that it has full right, power and authority to enter into this agreement and to perform all its obligations hereunder, and that all information and materials submitted to Lender in connection with this modification are accurate and complete. Borrower warrants that no default exists under the Loan Documents. Borrower reaffirms its obligation to pay the Loan in full and reaffirms the validity and enforceability of the Loan Documents, without set-off, counterclaim or defense.

BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT:  
(A) THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, (B) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES, AND (C) THE WRITTEN LOAN AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.

LENDER:

KEYBANK NATIONAL ASSOCIATION

By: Kari Stevenson  
Kari Stevenson Vice President

BORROWER:

SYSTEMS WEST COMPUTER RESOURCES,  
INC.

CONSENTED TO BY:

Nancy H. Halverson  
NANCY H. HALVERSON Guarantor

Don M. Halverson  
DON M. HALVERSON Guarantor

By: Nancy H. Halverson  
NANCY H. HALVERSON CEO



# CHANGE IN TERMS AGREEMENT

|           |            |            |            |             |             |         |          |
|-----------|------------|------------|------------|-------------|-------------|---------|----------|
| Principal | Loan Date  | Maturity   | Loan No    | Call / Coll | Account     | Officer | Initials |
| 0,000.00  | 08-06-2004 | 09-14-2004 | 1000009901 | 402 / 321   | E5180042142 | KXSOC   |          |

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

ref: SYSTEMS WEST COMPUTER RESOURCES, INC.  
3115 E. Don Lane, Ste. 310  
Salt Lake City, UT 84121

Lender: KeyBank National Association  
UT-MM-Central Commercial Banking Center  
50 S. Main Street  
Suite 2007  
Salt Lake City, UT 84130

Principal Amount: \$1,000,000.00

Initial Rate: 4.500%

Date of Agreement: August 6, 2004

ALUABLE CONSIDERATION, Lender and Borrower agree to the following change in Borrower's obligation:

DESCRIPTION OF EXISTING INDEBTEDNESS. Obligor No.: 5180042142.  
 Obligor No.: 1000009901.

1 Promissory Note dated January 10, 2001, in the principal amount of \$1,000,000.00, including any and all amendments thereto.

Interest Rate as stated in the Promissory Note dated January 10, 2001 remains unchanged.

DESCRIPTION OF CHANGE IN TERMS. The maturity date of the Loan is hereby extended to September 14, 2004

NING VALIDITY. Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all agreements made or securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does not waive Lender's strict performance of the obligation(s) as changed, nor obligate Lender to make any future change in terms. Nothing in this Agreement will constitute a satisfaction of the obligation(s). It is the intention of Lender to retain as liable parties all makers and endorser of the original obligation(s), including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, who signs below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing party consents to the terms and provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension, modification or termination, but also to all such subsequent actions.

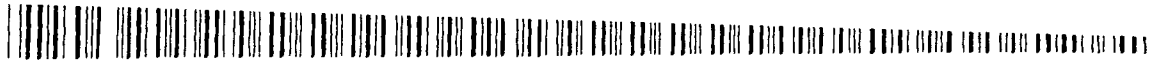
**AGREEMENT.** Borrower understands that this Agreement and the related loan documents are the final expression of the agreement between and Borrower and may not be contradicted by evidence of any alleged oral agreement.

TO SIGNING THIS AGREEMENT, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT. BORROWER IS TO THE TERMS OF THE AGREEMENT.

OWER:

MS WEST COMPUTER RESOURCES, INC.

Ray H. Halverson, CEO of SYSTEMS WEST  
COMPUTER RESOURCES, INC.



51518004214210000099010700

## CHANGE IN TERMS AGREEMENT

| Principal   | Loan Date  | Maturity   | Loan No    | Call / Coll | Account     | Officer | Initials |
|-------------|------------|------------|------------|-------------|-------------|---------|----------|
| \$00,000.00 | 09-17-2004 | 10-14-2004 | 1000009901 | 402 / 321   | E5180042142 | KXSOC   |          |

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing \*\*\*\*\* has been omitted due to text length limitations.

Borrower: SYSTEMS WEST COMPUTER RESOURCES, INC.  
3115 E. 1st Lane, Ste 310  
Salt Lake City, UT 84121

Lender: KeyBank National Association  
UT-MM-Central Commercial Banking Center  
50 S. Main Street  
Suite 2007  
Salt Lake City, UT 84130

Principal Amount: \$1,000,000.00 Initial Rate: 4.750% Date of Agreement: September 17, 2004

VALUABLE CONSIDERATION, Lender and Borrower agree to the following change in Borrower's obligation:

### DESCRIPTION OF EXISTING INDEBTEDNESS.

Account No.: 5180042142  
Loan No.: 10000 9901

Original Promissory Note dated January 10, 2001, in the principal amount of \$1,000,000.00, including any and all amendments thereto.  
Original Interest Rate as stated in the Promissory Note dated January 10, 2001 remains unchanged.

### DESCRIPTION OF CHANGE IN TERMS.

Maturity date of this Loan is hereby extended to October 14, 2004.


**MAINTAINING VALIDITY.** Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all agreements made or securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does not waive Lender's right to strict performance of the obligation(s) as changed, nor obligate Lender to make any future change in terms. Nothing in this Agreement will constitute a satisfaction of the obligation(s). It is the intention of Lender to retain as liable parties all makers and endorsers of the original obligation(s), including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall be released by virtue of this Agreement. If any person who signed the original obligation does not sign this Agreement below, then all persons signing below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing party consents to the terms and provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension, modification or release, but also to all such subsequent actions.

**AGREEMENT** Borrower understands that this Agreement and the related loan documents are the final expression of the agreement between Lender and Borrower and may not be contradicted by evidence of any alleged oral agreement.

IN WITNESS WHEREOF, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT. BORROWER AGREES TO THE TERMS OF THE AGREEMENT.

BORROWER:

SYSTEMS WEST COMPUTER RESOURCES, INC.

  
Nancy H. Halverson, CEO of SYSTEMS WEST  
COMPUTER RESOURCES, INC.

UNIFORM PROMISSORY NOTE, Form 10-10-00, Copyright National Automated Clearing House Association, Inc. 1997, 2000. All Rights Reserved. UT-UTM-MM-COMMERCIAL BANKING CENTER, P.O. BOX 1000, SALT LAKE CITY, UT 84101-1000.



## CHANGE IN TERMS AGREEMENT

| Principal  | Loan Date  | Maturity   | Loan No    | Call / Coll | Account     | Officer | Initials |
|--|------------|------------|------------|-------------|-------------|---------|----------|
| 50,000.00  | 10-13-2004 | 07-13-2005 | 1000009901 | 402 / 321   | E5180042142 | KXS0C   |          |
| References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "*****" has been omitted due to text length limitations. |            |            |            |             |             |         |          |

Borrower: SYSTEMS WEST COMPUTER RESOURCES, INC.  
3115 E. Lion Lane, Ste. 310  
Salt Lake City, UT 84121

Lender: KeyBank National Association  
UT-MM-Central Commercial Banking Center  
50 S. Main Street  
Suite 2007  
Salt Lake City, UT 84130

Principal Amount: \$1,000,000.00 Initial Rate: 5.000% Date of Agreement: October 13, 2004

VALUABLE CONSIDERATION, Lender and Borrower agree to the following change in Borrower's obligation:

#### EXTENSION OF EXISTING INDEBTEDNESS.

Account No.: 5180042142  
Loan No.: 1000009901

Promissory Note dated January 10, 2001, in the principal amount of \$1,000,000.00, including any and all amendments thereto.

Interest Rate as stated in the Promissory Note dated January 10, 2001 remains unchanged.

Loan Agreement dated January 10, 2001, including any and all amendments thereto.

#### EXTENSION OF CHANGE IN TERMS.

Term date of the Loan is hereby extended to July 31, 2005.

On October 13, 2004, the ratio in the covenant entitled Total Debt/Tangible Net Worth Ratio, is hereby changed to 2.00.

ENTIRETY AND VALIDITY. Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all agreements made or securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does not waive Lender's strict performance of the obligation(s) as changed, nor obligate Lender to make any future change in terms. Nothing in this Agreement will constitute a satisfaction of the obligation(s). It is the intention of Lender to retain as liable parties all makers and endorers of the original obligation(s), including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, released by virtue of this Agreement. If any person who signed the original obligation does not sign this Agreement below, then all persons below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing party consents to the terms and provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension, modification or amendment but also to all such subsequent actions.


ENTIRE AGREEMENT. Borrower understands that this Agreement and the related loan documents are the final expression of the agreement between Lender and Borrower and may not be contradicted by evidence of any alleged oral agreement.

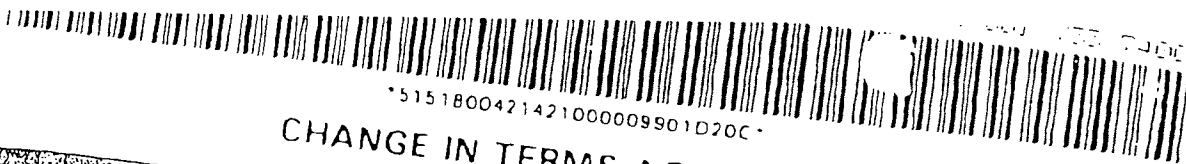
ON SIGNING THIS AGREEMENT, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT. BORROWER ACCEPTS THE TERMS OF THE AGREEMENT.

WITNESSES:

BY SYSTEMS WEST COMPUTER RESOURCES, INC.

  
H. Halverson, CEO of SYSTEMS WEST  
COMPUTER RESOURCES, INC.

  
H. Halverson, Individual Guarantor



\*5151800421421000009901D20C\*

# CHANGE IN TERMS AGREEMENT

|                |            |            |            |            |        |          |
|----------------|------------|------------|------------|------------|--------|----------|
| Principal      | Loan Date  | Maturity   | Loan No.   | Account    | Office | Initials |
| \$1,000,000.00 | 08-01-2005 | 08-30-2005 | 1000009901 | 5180042142 | KX80C  |          |

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**ORIGINATOR:** SYSTEMS WEST COMPUTER RESOURCES, INC.  
3115 East Lion Lane, Suite 310  
Salt Lake City, UT 84121

**Lender:** KeyBank National Association  
UT-MM-Commercial Banking Center  
50 S. Main Street  
Suite 2007  
Salt Lake City, UT 84130

Principal Amount: \$1,000,000.00

Initial Rate: 6.500%

Date of Agreement: August 1, 2005

IR VALUABLE CONSIDERATION. Lender and Borrower agree to the following change in Borrower's obligation:

DESCRIPTION OF EXISTING INDEBTEDNESS.  
Original No.: 5180042142.  
Modification No.: 1000009901.

Original Promissory Note dated January 10, 2001, in the principal amount of \$1,000,000.00, including any and all amendments thereto.  
Original Interest Rate as stated in the Promissory Note dated January 10, 2001 and amended by Modification Extension agreement dated January 7, 2002 remains unchanged.  
DESCRIPTION OF CHANGE IN TERMS.  
Maturity date of the loan is hereby extended to August 30, 2005.

REGARDING VALIDITY. Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all obligations evidenced or securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does not constitute a satisfaction of the obligation(s) as changed, nor obligate Lender to retain as liable parties all makers and signers of the original obligation(s), including accommodation makers, unless a party is expressly released by Lender in writing. Any maker or signer of the original obligation(s), including accommodation makers, will not be released by virtue of this Agreement. If any person who signed the original obligation(s) signs this Agreement below, then all persons signing below acknowledge that this Agreement is given conditionally, based on the release to Lender that the non-signing party consents to the changes and provisions of this Agreement or otherwise will not be released. This waiver applies not only to any initial extension, modification or release, but also to all such subsequent actions.

AGREEMENT. Borrower understands that this Agreement and the related loan documents are the final expression of the agreement between Lender and Borrower and may not be contradicted by evidence of any alleged oral agreement.

SIGNING THIS AGREEMENT, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT. BORROWER ACCEPTS THE TERMS OF THE AGREEMENT.

SYSTEMS WEST COMPUTER RESOURCES, INC.  
Halverson, CEO of SYSTEMS WEST  
COMPUTER RESOURCES, INC.

## CHANGE IN TERMS AGREEMENT

| Principal   | Loan Date  | Maturity   | Loan No    | Call / Coll | Account     | Officer | Initials |
|---|------------|------------|------------|-------------|-------------|---------|----------|
| 100,000.00  | 08-29-2005 | 09-30-2005 | 1000009901 | 402 / 321   | E5180042142 | KXS0C   |          |
| References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations. |            |            |            |             |             |         |          |

**Borrower:** SYSTEMS WEST COMPUTER RESOURCES, INC.  
3115 East Lion Lane, Suite 310  
Salt Lake City, UT 84121

**Lender:** KeyBank National Association  
UT-MM-Central Commercial Banking Center  
50 S. Main Street  
Suite 2007  
Salt Lake City, UT 84130

**Principal Amount:** \$1,000,000.00      **Initial Rate:** 6.750%      **Date of Agreement:** August 29, 2005

**VALUABLE CONSIDERATION.** Lender and Borrower agree to the following change in Borrower's obligation:

**DESCRIPTION OF EXISTING INDEBTEDNESS.**

Loan No.: 5180042142.  
Loan No.: 1000009901.

I Promissory Note dated January 10, 2001, in the principal amount of \$1,000,000.00, including any and all amendments thereto.

I Interest Rate as stated in the Promissory Note dated January 10, 2001 and amended by Modification Extension agreement dated October 7, 2004, remains unchanged.

**DESCRIPTION OF CHANGE IN TERMS.**

The maturity date of the Loan is hereby extended to September 30, 2005.


**NO WAIVER OF VALIDITY.** Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all agreements made or securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does not waive Lender's strict performance of the obligation(s) as changed, nor obligate Lender to make any future change in terms. Nothing in this Agreement will constitute a satisfaction of the obligation(s). It is the intention of Lender to retain as liable parties all makers and endorsers of the original obligation(s), including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall not be released by virtue of this Agreement. If any person who signed the original obligation does not sign this Agreement below, then all persons signing below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing party consents to the terms and provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension, modification or amendment but also to all such subsequent actions.

**ENTIRE AGREEMENT.** Borrower understands that this Agreement and the related loan documents are the final expression of the agreement between Lender and Borrower and may not be contradicted by evidence of any alleged oral agreement.

**BY SIGNING THIS AGREEMENT, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT. BORROWER ACCEPTS TO THE TERMS OF THE AGREEMENT.**

**FOR:**

SYSTEMS WEST COMPUTER RESOURCES, INC.

  
H. Halverson, CEO of SYSTEMS WEST  
COMPUTER RESOURCES, INC.

515180042142100009901D20C

## CHANGE IN TERMS AGREEMENT

| Loan Date  | Maturity   | Loan No.   | Collateral | Account     | Officer | Initials |
|------------|------------|------------|------------|-------------|---------|----------|
| 10-17-2005 | 07-31-2006 | 1000008901 | 402/321    | E5180042142 | RXSOC   |          |

Contents of the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

SYSTEMS WEST COMPUTER RESOURCES, INC.  
3115 East Lion Lane, Suite 310  
Salt Lake City, UT 84121

Lender: KeyBank National Association  
UT-MM-Central Commercial Banking Center  
50 S. Main Street  
Suite 2007  
Salt Lake City, UT 84130

Loan Amount: \$1,000,000.00 Initial Rate: 7.000% Date of Agreement: October 17, 2005

FOR VALUABLE CONSIDERATION, Lender and Borrower agree to the following change in Borrower's obligation:

MODIFICATION OF EXISTING INDEBTEDNESS.

Account: E5180042142  
Loan: 1000008901

Promissory Note dated January 10, 2001, in the principal amount of \$1,000,000.00, including any and all amendments thereto.

Interest Rate as stated in the Promissory Note dated January 10, 2001 and amended by Modification Extension agreement dated October 17, 2005, unchanged.

Original Agreement dated January 10, 2001, including any and all amendments thereto.

MODIFICATION OF CHANGE IN TERMS.

The date of the Loan is hereby extended to July 31, 2006.

On October 17, 2005, the AFFIRMATIVE COVENANT entitled Financial Statements is hereby changed to require Borrower's balance sheet and income statement for the year ended, to be provided to the Lender as soon as available, but in no event later than 120 days after the end of each fiscal year, to be audited by a certified public accountant satisfactory to Lender.

WARRANTY. Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all agreements securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does not waive Lender's performance of the obligation(s) as changed, nor obligate Lender to make any future change in terms. Nothing in this Agreement constitutes satisfaction of the obligation(s). It is the intention of Lender to retain as liable parties all makers and endorser of the original obligation(s), unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, released by virtue of this Agreement. If any person who signed the original obligation does not sign this Agreement below, then all persons acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing party consents to the provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension, modification or amendment, but also to all such subsequent actions.

ENTIRE AGREEMENT. Borrower understands that this Agreement and the related loan documents are the final expression of the agreement between Borrower and Lender and may not be contradicted by evidence of any alleged oral agreement.

IN WITNESS WHEREOF, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT. BORROWER'S SIGNATURE AND THE TERMS OF THE AGREEMENT.

SYSTEMS WEST COMPUTER RESOURCES, INC.

\_\_\_\_\_  
Williamson, CEO of SYSTEMS WEST  
COMPUTER RESOURCES, INC.

LOAN #1000008901, DATE 10/17/2005, COLLATERAL 402/321, ACCOUNT E5180042142, OFFICER RXSOC, INITIALS

\*5151800421421000009901020C\*

## CHANGE IN TERMS AGREEMENT

| Principal    | Loan Date  | Maturity   | Loan No    | Call / Coll | Account     | Officer | Initials |
|--------------|------------|------------|------------|-------------|-------------|---------|----------|
| 1,000,000.00 | 08-01-2006 | 09-29-2006 | 1000009901 | 402 / 321   | E5180042142 | DCB04   |          |

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

31: SYSTEMS WEST COMPUTER RESOURCES, INC.  
3115 East Lion Lane, Suite 310  
Salt Lake City, UT 84121

Lender: KeyBank National Association  
UT-MM-Central Commercial Banking Center  
50 S. Main Street  
Suite 2007  
Salt Lake City, UT 84130

Principal Amount: \$1,000,000.00 Initial Rate: 8.500% Date of Agreement: August 1, 2006

VALUABLE CONSIDERATION, Lender and Borrower agree to the following change in Borrower's obligation:

EXTENSION OF EXISTING INDEBTEDNESS.

Account No.: 5180042142.  
Loan No.: 1000009901.

Promissory Note dated January 10, 2001, in the principal amount of \$1,000,000.00, including any and all amendments thereto.  
Interest Rate as stated in the Modification Extension Agreement dated October 7, 2002 remains unchanged.

TERMINATION OF CHANGE IN TERMS.

Maturity date of the Loan is hereby extended to September 29, 2006.

NO EFFECT ON VALIDITY. Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all rights evidenced or securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does not constitute a waiver of Lender's right to strict performance of the obligation(s) as changed, nor obligate Lender to make any future change in terms. Nothing in this Agreement will constitute a satisfaction of the obligation(s). It is the intention of Lender to retain as liable parties all makers and guarantors of the original obligation(s), including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or guarantor, including accommodation makers, will not be released by virtue of this Agreement. If any person who signed the original obligation signs this Agreement below, then all persons signing below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing party consents to the changes and provisions of this Agreement or otherwise will not be released. This waiver applies not only to any initial extension, modification or release, but also to all such subsequent actions.

ENTIRE AGREEMENT. Borrower understands that this Agreement and the related loan documents are the final expression of the agreement between Lender and Borrower and may not be contradicted by evidence of any alleged oral agreement.

IN WITNESS WHEREOF, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT. BORROWER'S SIGNATURE TO THE TERMS OF THE AGREEMENT.

BY:

WEST COMPUTER RESOURCES, INC.

H. Halverson, CEO of SYSTEMS WEST  
COMPUTER RESOURCES, INC.

LASER PRO Lending, Ver. 3.30.10 001 Copy: Halverson Financial Solutions, Inc. 1997, 2006. All Rights Reserved. - UT H Agreement PNL1020C.PC TR-112051 PR-3

MODIFICATION OF BUSINESS  
LOAN AGREEMENT AND PROMISSORY NOTE

This Modification of Business Loan Agreement and Promissory Note (this "Modification") is made and entered into effective as of October 2, 2006, by and between SYSTEMS WEST COMPUTER RESOURCES, INC., a Utah corporation ("Borrower"), and KEYBANK NATIONAL ASSOCIATION, a national banking association ("Lender").

R E C I T A L S

A. Borrower and Lender entered into that certain "Business Loan Agreement (Asset Based)" dated January 10, 2001 (as amended, the "Agreement") pursuant to which Lender established for the benefit of Borrower a revolving line of credit in the original principal amount of \$1,000,000.00 (the "Loan"). Capitalized terms used in this Modification which are not defined herein shall have the meanings given to them in the Agreement.

B. The Loan was further evidenced by a Promissory Note dated January 10, 2001 (the "Note") in the principal amount of \$1,000,000.00.

C. The obligations and liabilities of Borrower under the Agreement, the Note, and the other Related Documents were originally guaranteed by Don M. Halverson and Nancy Halverson. Don M. Halverson was subsequently released from his liability as a guarantor, and Nancy Halverson is now the sole guarantor of Borrower's obligations to Lender (the "Guarantor").

D. As part of the Agreement, Borrower and Lender executed a "Borrowing Plan" dated January 10, 2001. Among other things, the Borrowing Plan established schedules for the delivery of certain documents, reports, and certificates by Borrower to Lender in accordance with the terms of the Agreement.

E. The Agreement and Note were amended by various amendments and modification agreements (collectively, the "Prior Modifications"). Among other things, the Prior Modifications extended the term of the Loan, modified the Borrowing Plan, and modified the definition of "Eligible Accounts."

F. The Loan has matured and Borrower has requested an extension of the term thereof. Lender is willing to grant such extension upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Borrower and Lender (each a "Party" and, collectively, the "Parties") agree as follows:

1. Incorporation of Recitals. The Parties acknowledge the truth and accuracy of the above Recitals and incorporate the same herein by this reference.



2. Extension of Loan Term The Parties agree that the term of the Loan, and the maturity date of the Note, is hereby extended to July 31, 2007. During such extended term, Borrower will continue to make payments as provided in the Agreement and Note, as modified by the Prior Modifications. Any reference in the Agreement, the Note, or the other Related Documents to the "Expiration Date," the "Maturity Date," or to any other term with reference to the date the Loan matures, the date Lender's obligations to make additional advances under the Agreement terminates, or the date the Note becomes due and payable shall henceforth mean July 31, 2007.

3. Seasonal Reduction of Loan Balance The Parties agree that for a period of thirty (30) consecutive days during any 12-month period, Borrower shall be required to reduce the outstanding principal balance of the Loan and the Note to not more than \$500,000.00 and shall refrain from obtaining any Advances during such 30-day period that would result in the outstanding principal balance of the Loan and the Note exceeding \$500,000.00.

4. Extension Fee; Reimbursement of Costs and Expenses Borrower agrees to pay Lender an extension fee in the amount of \$2,500.00, payable upon execution of this Modification. The extension fee is deemed to be fully earned and nonrefundable. In addition, Borrower agrees to pay or reimburse Lender for all costs and expenses incurred by it in connection with this Modification, including without limitation reasonable attorneys' fees and expenses. Such costs and expenses shall be paid upon execution of this Modification, or if incurred or paid thereafter, upon demand by Lender.

5. Conditions Precedent This Modification, and the extension granted herein, shall not take effect unless and until the following conditions have been, and continue to be, met to the satisfaction of Lender:

(a) This Modification shall have been executed by each of the Parties and shall have been delivered to Lender.

(b) The Guarantor shall have executed the "Acknowledgment and Consent" appearing at the end of this Modification and shall have delivered the same to Lender.

(c) Borrower shall have paid to Lender the extension fee and other costs and expenses described in Paragraph 4 above.

(d) No Event of Default shall have occurred and be continuing under the Agreement, and no event shall have occurred and no condition shall exist which, with the giving of notice or the lapse of time or both, would constitute an Event of Default under the Agreement.

(e) All of the representations and warranties in this Modification shall be true and correct in all material respects as of the date hereof.

(f) Borrower shall have executed and delivered to Lender such other documents and instruments as Lender may reasonably request to evidence the foregoing modification or the authority of any person to sign any document required by Lender.

6. Representations and Warranties. Borrower hereby adopts and restates all of the representations and warranties contained in the Agreement to the same extent, and for all intents and purposes, as though made and given at this time, except where such representations and warranties specifically pertain only to matters or conditions as of an earlier date. Without limiting the foregoing, Borrower hereby represents and warrants to Lender that no Event of Default has occurred and is continuing, and that no condition exists or event has occurred which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

7. Modification of Related Documents. The Agreement, the Note, and the other Related Documents are hereby amended and modified to the extent necessary to conform with the terms of this Modification. Except as expressly modified hereby, all of the remaining terms and conditions contained in the Agreement, the Note, the other Related Documents, and the Prior Modifications shall remain unchanged and in full force and effect, and any collateral given to secure the Loan and Borrower's obligations and liabilities to Lender under the Related Documents shall continue to secure the same, as modified by this Modification.

8. OFAC Covenant. Borrower covenants with Lender that neither Borrower nor any Guarantor is (or will be) a person with whom Lender is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury of the United States of America (including without limitation those persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such persons. In addition, Borrower hereby agrees to provide to Lender with any additional information that Lender deems necessary from time to time in order to ensure compliance with all applicable laws, rules, and regulations concerning money laundering and similar activities.

9. Counterparts; Electronic Signatures. This Modification may be executed in multiple counterparts, each of which shall be deemed an original instrument, and all of which shall constitute a single agreement. The signature of a Party and/or Guarantor to any counterpart shall be sufficient to legally bind such Party and/or Guarantor. Lender may remove the signature pages from one or more counterparts and attach them to any other counterpart for the purpose of having a single document containing the signatures of all Parties and Guarantor. Any Party or Guarantor may effect the execution and delivery of this Modification, including the Acknowledgment and Consent appearing at the end hereof, by signing the same and sending a signed copy thereof to Lender or its attorney by facsimile, e-mail, or other form of electronic transmission (each an "Electronic Transmission"). Any document sent by Electronic Transmission, including the signature thereon, shall be treated in all respects as an original instrument bearing an original signature. Any Party or Guarantor sending a signed copy hereof by Electronic Transmission shall also send the original thereof to Lender within five (5) days

thereafter, but failure to do so shall not invalidate or otherwise affect the legality or enforceability of the document sent by Electronic Transmission.

10. Release and Waiver of Claims. Borrower hereby fully, finally, and forever releases, waives, and discharges Lender and its successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits of whatever kind or nature that Borrower has or in the future may have, whether at law or in equity, whether known or unknown, whether liquidated or contingent, (a) in respect of the Loan, the Related Documents, or the actions or omissions of Lender with respect to the Loan, the Related Documents, and/or the Guarantor, and (b) arising from events occurring prior to the date hereof. Borrower acknowledges that the foregoing release and waiver of claims constitute a material consideration for Lender executing this Modification.

11. Entire Agreement. This Modification, together with the Agreement, the Note, and the other Related Documents, as modified by the Prior Modifications, constitute the entire understanding and agreement of the Parties and Guarantor with respect to the general subject matter hereof; supersede all prior negotiations, discussions, and agreements with respect thereto; and may not be contradicted by evidence of any alleged oral agreement. This Modification may not be amended, modified, or rescinded in any manner except by written agreement signed by the Parties.

Executed on the day and year first written above.

SYSTEMS WEST COMPUTER RESOURCES,  
INC., a Utah corporation

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

Nancy Halverson  
Its President

KEYBANK NATIONAL ASSOCIATION,  
a national banking association

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

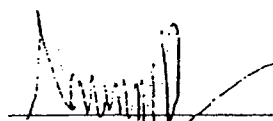
John P. Williamson  
Its Vice President

### CONSENT OF GUARANTOR

The undersigned, being the Guarantor named above, hereby acknowledges receipt of the foregoing Modification and consents to the terms and conditions thereof. Capitalized terms used

in this Acknowledgment and Consent which are not defined herein shall have the meanings given to them in the Modification and the Agreement. The undersigned hereby ratifies and reaffirms in all respects the instrument of guaranty (the "Guaranty") given to Lender with respect to the Loan. The undersigned acknowledges that the obligation and liabilities of Borrower under the Agreement and the Note, as amended by the foregoing Modification and the Prior Modifications, are covered under the terms and of the Guaranty and are included within the meaning of the indebtedness guaranteed by the Guaranty. The undersigned acknowledges that the Guaranty has not been amended, modified, or rescinded in any manner and that it is in full force and effect. The undersigned further acknowledges and agrees that she does, and she shall continue to, absolutely and unconditionally guaranty the obligations, liabilities, indebtedness, and undertakings of Borrower to Lender with respect to, or in any manner arising from, the Loan, the Agreement, the Note, and the other Related Documents, as amended and modified by the foregoing Modification. The undersigned acknowledges that Lender is relying on her execution of this Acknowledgment and Consent as a condition to signing the Modification, and does hereby waive notice of acceptance of this Acknowledgment and Consent by Lender. The undersigned incorporates herein by reference the terms of Paragraph 9 concerning counterparts and facsimile signatures and makes such terms equally applicable to the signature of the undersigned to this Acknowledgment and Consent. The undersigned hereby fully, finally, and forever releases and discharges Lender and its successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits of whatever kind or nature that the undersigned have or in the future may have, whether at law or in equity, whether known or unknown, whether liquidated or contingent, (a) in respect of the Loan, the Related Documents, or the actions or omissions of Lender with respect to the Loan, the Related Documents, and/or Borrower, and (b) arising from event occurring prior to the date hereof. The undersigned acknowledges that the foregoing release and waiver of claims constitute a material consideration for Lender executing the Modification.

Executed effective as of October 2, 2006.



NANCY HALVERSON, an individual



\*5151800421421000009901020C\*

## CHANGE IN TERMS AGREEMENT

| Principal | Loan Date  | Maturity   | Loan No    | Call / Coll | Account     | Officer | Initials |
|-----------|------------|------------|------------|-------------|-------------|---------|----------|
| 1000.00   | 09-27-2007 | 10-31-2007 | 1000009901 | 402 / 321   | E5180042142 | GRG04   |          |

ences in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

SYSTEMS WEST COMPUTER RESOURCES, INC.  
3175 East Lion Lane, Suite 310  
Salt Lake City, UT 84121

Lender: KeyBank National Association  
UT-MM Central Commercial Banking Center  
36 S. State Street  
Salt Lake City, UT 84136

Amount: \$1,000,000.00 Initial Rate: 8.000% Date of Agreement: September 27, 2007

TABLE CONSIDERATION, Lender and Borrower agree to the following change in Borrower's obligation:

ION OF EXISTING INDEBTEDNESS.

Account: 5180042142.

No.: 1000009901.

omissory Note dated January 10, 2001, in the principal amount of \$1,000,000.00, including any and all amendments thereto.

st Rate as stated in the Modification and/or Extension Agreement dated October 7, 2002 remains unchanged.

ION OF CHANGE IN TERMS.

ity date of the Loan is hereby extended to October 31, 2007.

NG VALIDITY. Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all s evidenced or securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does Lender's right to strict performance of the obligation(s) as changed, nor obligate Lender to make any future change in terms. Nothing reement will constitute a satisfaction of the obligation(s). It is the intention of Lender to retain as liable parties all makers and of the Original obligation(s), including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or ncluding accommodation makers, will not be released by virtue of this Agreement. If any person who signed the original obligation ign this Agreement below, then all persons signing below acknowledge that this Agreement is given conditionally, based on the ion to Lender that the non-signing party consents to the changes and provisions of this Agreement or otherwise will not be released waiver applies not only to any initial extension, modification or release, but also to all such subsequent actions.

REEMENT. Borrower understands that this Agreement and the related loan documents are the final expression of the agreement nder and Borrower and may not be contradicted by evidence of any alleged oral agreement.

SIGNING THIS AGREEMENT, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT. BORROWER D THE TERMS OF THE AGREEMENT.

3:

WEST COMPUTER RESOURCES, INC.

M. Halverson, CEO of SYSTEMS WEST  
TER RESOURCES, INC.

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Original sent to client - 10/2/2007

## CHANGE IN TERMS AGREEMENT

| Principal  | Loan Date  | Maturity   | Loan No    | Call / Coll | Account     | Officer | Initials |
|------------|------------|------------|------------|-------------|-------------|---------|----------|
| 100,000.00 | 11-23-2007 | 01-31-2008 | 1000009901 | 402 / 321   | E5180042142 | GRG04   |          |

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*\*" has been omitted due to text length limitations.

Borrower: SYSTEMS WEST COMPUTER RESOURCES, INC.  
3115 East Lion Lane, Suite 310  
Salt Lake City, UT 84121

Lender: KeyBank National Association  
UT-MM-Central Commercial Banking Center  
36 S. State Street  
Salt Lake City, UT 84136

Principal Amount: \$1,000,000.00 Initial Rate: 7.750% Date of Agreement: November 23, 2007

VALUABLE CONSIDERATION, Lender and Borrower agree to the following change in Borrower's obligation:

### EXTENSION OF EXISTING INDEBTEDNESS.

Loan No.: 5180042142  
Loan No.: 1000009901.

A Promissory Note dated January 10, 2001, in the principal amount of \$1,000,000.00, including any and all amendments thereto.

Interest Rate as stated in the Modification and/or Extension Agreement dated October 7, 2002 remains unchanged.

### EXTENSION OF CHANGE IN TERMS.

Maturity date of the Loan is hereby extended to January 31, 2008.

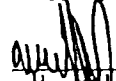
FOR VALIDITY. Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all payments evidenced or securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does not waive Lender's right to strict performance of the obligation(s) as changed, nor obligate Lender to make any future change in terms. Nothing in this Agreement will constitute a satisfaction of the obligation(s). It is the intention of Lender to retain as liable parties all makers and guarantors of the original obligation(s), including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or guarantor, including accommodation makers, will not be released by virtue of this Agreement. If any person who signed the original obligation signs this Agreement below, then all persons signing below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing party consents to the changes and provisions of this Agreement or otherwise will not be released. This waiver applies not only to any initial extension, modification or release, but also to all such subsequent actions.

ENTIRE AGREEMENT. Borrower understands that this Agreement and the related loan documents are the final expression of the agreement between Lender and Borrower and may not be contradicted by evidence of any alleged oral agreement.

ON SIGNING THIS AGREEMENT, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT. BORROWER ACCEPTS THE TERMS OF THE AGREEMENT.

BY:

SYSTEMS WEST COMPUTER RESOURCES, INC.



H. Hallerson, CEO of SYSTEMS WEST  
COMPUTER RESOURCES, INC.





## CHANGE IN TERMS AGREEMENT

|          |            |            |            |           |             |         |          |
|----------|------------|------------|------------|-----------|-------------|---------|----------|
| ndpal    | Loan Date  | Maturity   | Loan No.   | Coll. Cod | Account--   | Officer | Initials |
| 0,000.00 | 05-27-2008 | 05-31-2008 | 1000008901 | 402 1321  | E5180042142 | GRG04   |          |

ences in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*\*" has been omitted due to text length limitations.

101; SYSTEMS WEST COMPUTER RESOURCES, INC.  
3115 East Lion Lane, Suite 310  
Salt Lake City, UT 84121

Lender: KeyBank National Association  
UT-MM-Central Commercial Banking Center  
36 S. State Street  
Salt Lake City, UT 84138

Principal Amount: \$1,000,000.00      Initial Rate: 5.500%      Date of Agreement: March 27, 2008

VALUABLE CONSIDERATION. Lender and Borrower agree to the following change in Borrower's obligation:

## DESCRIPTION OF EXISTING INDEBTEDNESS.

No.: 5180042142.  
 Lon No.: 1000009901.

1 Promissory Note dated January 10, 2001, in the principal amount of \$1,000,000.00, including any and all amendments thereto.  
 2 interest rate as stated in the Modification and/or Extension Agreement dated October 7, 2002 remains unchanged.

### DESCRIPTION OF CHANGE IN TERMS.

maturity date of the Loan is hereby extended to May 31, 2008.

**JOINT VALIDITY.** Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all items evidenced or securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does not release Lender's right to strict performance of the obligation(s) as changed, nor obligate Lender to make any future change in terms. Nothing in this Agreement will constitute a satisfaction of the obligation(s). It is the intention of Lender to retain as liable parties all makers and guarantors of the original obligation(s), including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or guarantor, including accommodation makers, will not be released by virtue of this Agreement. If any person who signed the original obligation or obligations signs this Agreement below, then all persons signing below acknowledge that this Agreement is given conditionally, based on the obligation to Lender that the non-signing party consents to the changes and provisions of this Agreement or otherwise will not be released by Lender. This Agreement applies not only to any initial extension, modification or release, but also to all such subsequent actions.

**AGREEMENT.** Borrower understands that this Agreement and the related loan documents are the final expression of the agreement between Lender and Borrower and may not be contradicted by evidence of any alleged oral agreement.

BY SIGNING THIS AGREEMENT, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT. BORROWER  
TO THE TERMS OF THE AGREEMENT.

VER:

WEST COMPUTER RESOURCES, INC.

y H. Harrison, CEO of SYSTEMS WEST  
PUTER RESOURCES, INC.



\*5151800421421000009901020C\*

## CHANGE IN TERMS AGREEMENT

| Principal    | Loan Date  | Maturity   | Loan No    | Call / Coll. | Account     | Officer | Initials |
|--------------|------------|------------|------------|--------------|-------------|---------|----------|
| 1,000,000.00 | 06-27-2008 | 07-15-2008 | 1000009901 | 402 / 321    | E5180042142 | GRG04   |          |

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**Borrower:** SYSTEMS WEST COMPUTER RESOURCES, INC.  
3115 East Lion Lane, Suite 310  
Salt Lake City, UT 84121

**Lender:** KeyBank National Association  
UT-MM-Central Commercial Banking Center  
36 S. State Street  
Salt Lake City, UT 84136

**Principal Amount:** \$1,000,000.00      **Initial Rate:** 8.250%      **Date of Agreement:** June 27, 2008

FOR VALUABLE CONSIDERATION, Lender and Borrower agree to the following change in Borrower's obligation:

### DESCRIPTION OF EXISTING INDEBTEDNESS:

Obligor No.: 5180042142.  
Obligation No.: 1000009901.

Original Promissory Note dated January 10, 2001, in the principal amount of \$1,000,000.00, including any and all amendments thereto.

### DESCRIPTION OF CHANGE IN TERMS:

The maturity date of the loan is hereby extended to July 15, 2008.

The Index currently is 5.0% per annum. The interest rate to be applied to the unpaid principal balance of this Note will be at a rate of three and one quarter percentage points over the Index, resulting in an initial rate of 8.25% per annum. NOTICE: Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law.

**CONTINUING VALIDITY.** Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all agreements evidenced or securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does not waive Lender's right to strict performance of the obligation(s) as changed, nor obligate Lender to make any future change in terms. Nothing in this Agreement will constitute a satisfaction of the obligation(s). It is the intention of Lender to retain as liable parties all makers and endorsers of the original obligation(s), including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, will not be released by virtue of this Agreement. If any person who signed the original obligation does not sign this Agreement below, then all persons signing below acknowledge that this Agreement is given conditionally, based on the presentation to Lender that the non-signing party consents to the changes and provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension, modification or release, but also to all such subsequent actions.

**FINAL AGREEMENT.** Borrower understands that this Agreement and the related loan documents are the final expression of the agreement between Lender and Borrower and may not be contradicted by evidence of any alleged oral agreement.

**BEFORE SIGNING THIS AGREEMENT, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT. BORROWER AGREES TO THE TERMS OF THE AGREEMENT.**

**Borrower:**

SYSTEMS WEST COMPUTER RESOURCES, INC.

Nancy H. Peterson, CEO of SYSTEMS WEST  
COMPUTER RESOURCES, INC.

LESTER F.M. LUND, No. 8, 25, 30, 35, 40, 45, 50, 55, 60, 65, 70, 75, 80, 85, 90, 95, 100, 105, 110, 115, 120, 125, 130, 135, 140, 145, 150, 155, 160, 165, 170, 175, 180, 185, 190, 195, 200, 205, 210, 215, 220, 225, 230, 235, 240, 245, 250, 255, 260, 265, 270, 275, 280, 285, 290, 295, 300, 305, 310, 315, 320, 325, 330, 335, 340, 345, 350, 355, 360, 365, 370, 375, 380, 385, 390, 395, 400, 405, 410, 415, 420, 425, 430, 435, 440, 445, 450, 455, 460, 465, 470, 475, 480, 485, 490, 495, 500, 505, 510, 515, 520, 525, 530, 535, 540, 545, 550, 555, 560, 565, 570, 575, 580, 585, 590, 595, 600, 605, 610, 615, 620, 625, 630, 635, 640, 645, 650, 655, 660, 665, 670, 675, 680, 685, 690, 695, 700, 705, 710, 715, 720, 725, 730, 735, 740, 745, 750, 755, 760, 765, 770, 775, 780, 785, 790, 795, 800, 805, 810, 815, 820, 825, 830, 835, 840, 845, 850, 855, 860, 865, 870, 875, 880, 885, 890, 895, 900, 905, 910, 915, 920, 925, 930, 935, 940, 945, 950, 955, 960, 965, 970, 975, 980, 985, 990, 995, 1000, 1005, 1010, 1015, 1020, 1025, 1030, 1035, 1040, 1045, 1050, 1055, 1060, 1065, 1070, 1075, 1080, 1085, 1090, 1095, 1100, 1105, 1110, 1115, 1120, 1125, 1130, 1135, 1140, 1145, 1150, 1155, 1160, 1165, 1170, 1175, 1180, 1185, 1190, 1195, 1200, 1205, 1210, 1215, 1220, 1225, 1230, 1235, 1240, 1245, 1250, 1255, 1260, 1265, 1270, 1275, 1280, 1285, 1290, 1295, 1300, 1305, 1310, 1315, 1320, 1325, 1330, 1335, 1340, 1345, 1350, 1355, 1360, 1365, 1370, 1375, 1380, 1385, 1390, 1395, 1400, 1405, 1410, 1415, 1420, 1425, 1430, 1435, 1440, 1445, 1450, 1455, 1460, 1465, 1470, 1475, 1480, 1485, 1490, 1495, 1500, 1505, 1510, 1515, 1520, 1525, 1530, 1535, 1540, 1545, 1550, 1555, 1560, 1565, 1570, 1575, 1580, 1585, 1590, 1595, 1600, 1605, 1610, 1615, 1620, 1625, 1630, 1635, 1640, 1645, 1650, 1655, 1660, 1665, 1670, 1675, 1680, 1685, 1690, 1695, 1700, 1705, 1710, 1715, 1720, 1725, 1730, 1735, 1740, 1745, 1750, 1755, 1760, 1765, 1770, 1775, 1780, 1785, 1790, 1795, 1800, 1805, 1810, 1815, 1820, 1825, 1830, 1835, 1840, 1845, 1850, 1855, 1860, 1865, 1870, 1875, 1880, 1885, 1890, 1895, 1900, 1905, 1910, 1915, 1920, 1925, 1930, 1935, 1940, 1945, 1950, 1955, 1960, 1965, 1970, 1975, 1980, 1985, 1990, 1995, 2000, 2005, 2010, 2015, 2020, 2025, 2030, 2035, 2040, 2045, 2050, 2055, 2060, 2065, 2070, 2075, 2080, 2085, 2090, 2095, 2100, 2105, 2110, 2115, 2120, 2125, 2130, 2135, 2140, 2145, 2150, 2155, 2160, 2165, 2170, 2175, 2180, 2185, 2190, 2195, 2200, 2205, 2210, 2215, 2220, 2225, 2230, 2235, 2240, 2245, 2250, 2255, 2260, 2265, 2270, 2275, 2280, 2285, 2290, 2295, 2300, 2305, 2310, 2315, 2320, 2325, 2330, 2335, 2340, 2345, 2350, 2355, 2360, 2365, 2370, 2375, 2380, 2385, 2390, 2395, 2400, 2405, 2410, 2415, 2420, 2425, 2430, 2435, 2440, 2445, 2450, 2455, 2460, 2465, 2470, 2475, 2480, 2485, 2490, 2495, 2500, 2505, 2510, 2515, 2520, 2525, 2530, 2535, 2540, 2545, 2550, 2555, 2560, 2565, 2570, 2575, 2580, 2585, 2590, 2595, 2600, 2605, 2610, 2615, 2620, 2625, 2630, 2635, 2640, 2645, 2650, 2655, 2660, 2665, 2670, 2675, 2680, 2685, 2690, 2695, 2700, 2705, 2710, 2715, 2720, 2725, 2730, 2735, 2740, 2745, 2750, 2755, 2760, 2765, 2770, 2775, 2780, 2785, 2790, 2795, 2800, 2805, 2810, 2815, 2820, 2825, 2830, 2835, 2840, 2845, 2850, 2855, 2860, 2865, 2870, 2875, 2880, 2885, 2890, 2895, 2900, 2905, 2910, 2915, 2920, 2925, 2930, 2935, 2940, 2945, 2950, 2955, 2960, 2965, 2970, 2975, 2980, 2985, 2990, 2995, 3000, 3005, 3010, 3015, 3020, 3025, 3030, 3035, 3040, 3045, 3050, 3055, 3060, 3065, 3070, 3075, 3080, 3085, 3090, 3095, 3100, 3105, 3110, 3115, 3120, 3125, 3130, 3135, 3140, 3145, 3150, 3155, 3160, 3165, 3170, 3175, 3180, 3185, 3190, 3195, 3200, 3205, 3210, 3215, 3220, 3225, 3230, 3235, 3240, 3245, 3250, 3255, 3260, 3265, 3270, 3275, 3280, 3285, 3290, 3295, 3300, 3305, 3310, 3315, 3320, 3325, 3330, 3335, 3340, 3345, 3350, 3355, 3360, 3365, 3370, 3375, 3380, 3385, 3390, 3395, 3400, 3405, 3410, 3415, 3420, 3425, 3430, 3435, 3440, 3445, 3450, 3455, 3460, 3465, 3470, 3475, 3480, 3485, 3490, 3495, 3500, 3505, 3510, 3515, 3520, 3525, 3530, 3535, 3540, 3545, 3550, 3555, 3560, 3565, 3570, 3575, 3580, 3585, 3590, 3595, 3600, 3605, 3610, 3615, 3620, 3625, 3630, 3635, 3640, 3645, 3650, 3655, 3660, 3665, 3670, 3675, 3680, 3685, 3690, 3695, 3700, 3705, 3710, 3715, 3720, 3725, 3730, 3735, 3740, 3745, 3750, 3755, 3760, 3765, 3770, 3775, 3780, 3785, 3790, 3795, 3800, 3805, 3810, 3815, 3820, 3825, 3830, 3835, 3840, 3845, 3850, 3855, 3860, 3865, 3870, 3875, 3880, 3885, 3890, 3895, 3900, 3905, 3910, 3915, 3920, 3925, 3930, 3935, 3940, 3945, 3950, 3955, 3960, 3965, 3970, 3975, 3980, 3985, 3990, 3995, 4000, 4005, 4010, 4015, 4020, 4025, 4030, 4035, 4040, 4045, 4050, 4055, 4060, 4065, 4070, 4075, 4080, 4085, 4090, 4095, 4100, 4105, 4110, 4115, 4120, 4125, 4130, 4135, 4140, 4145, 4150, 4155, 4160, 4165, 4170, 4175, 4180, 4185, 4190, 4195, 4200, 4205, 4210, 4215, 4220, 4225, 4230, 4235, 4240, 4245, 4250, 4255, 4260, 4265, 4270, 4275, 4280, 4285, 4290, 4295, 4300, 4305, 4310, 4315, 4320, 4325, 4330, 4335, 4340, 4345, 4350, 4355, 4360, 4365, 4370, 4375, 4380, 4385, 4390, 4395, 4400, 4405, 4410, 4415, 4420, 4425, 4430, 4435, 4440, 4445, 4450, 4455, 4460, 4465, 4470, 4475, 4480, 4485, 4490, 4495, 4500, 4505, 4510, 4515, 4520, 4525, 4530, 4535, 4540, 4545, 4550, 4555, 4560, 4565, 4570, 4575, 4580, 4585, 4590, 4595, 4600, 4605, 4610, 4615, 4620, 4625, 4630, 4635, 4640, 4645, 4650, 4655, 4660, 4665, 4670, 4675, 4680, 4685, 4690, 4695, 4700, 4705, 4710, 4715, 4720, 4725, 4730, 4735, 4740, 4745, 4750, 4755, 4760, 4765, 4770, 4775, 4780, 4785, 4790, 4795, 4800, 4805, 4810, 4815, 4820, 4825, 4830, 4835, 4840, 4845, 4850, 4855, 4860, 4865, 4870, 4875, 4880, 4885, 4890, 4895, 4900, 4905, 4910, 4915, 4920, 4925, 4930, 4935, 4940, 4945, 4950, 4955, 4960, 4965, 4970, 4975, 4980, 4985, 4990, 4995, 5000, 5005, 5010, 5015, 5020, 5025, 5030, 5035, 5040, 5045, 5050, 5055, 5060, 5065, 5070, 5075, 5080, 5085, 5090, 5095, 5100, 5105, 5110, 5115, 5120, 5125, 5130, 5135, 5140, 5145, 5150, 5155, 5160, 5165, 5170, 5175, 5180, 5185, 5190, 5195, 5200, 5205, 5210, 5215, 5220, 5225, 5230, 5235, 5240, 5245, 5250, 5255, 5260, 5265, 5270, 5275, 5280, 5285, 5290, 5295, 5300, 5305, 5310, 5315, 5320, 5325, 5330, 5335, 5340, 5345, 5350, 5355, 5360, 5365, 5370, 5375, 5380, 5385, 5390, 5395, 5400, 5405, 5410, 5415, 5420, 5425, 5430, 5435, 5440, 5445, 5450, 5455, 5460, 5465, 5470, 5475, 5480, 5485, 5490, 5495, 5500, 5505, 5510, 5515, 5520, 5525, 5530, 5535, 5540, 5545, 5550, 5555, 5560, 5565, 5570, 5575, 5580, 5585, 5590, 5595, 5600, 5605, 5610, 5615, 5620, 5625, 5630, 5635, 5640, 5645, 5650, 5655, 5660, 5665, 5670, 5675, 5680, 5685, 5690, 5695, 5700, 5705, 5710, 5715, 5720, 5725, 5730, 5735, 5740, 5745, 5750, 5755, 5760, 5765, 5770, 5775, 5780, 5785, 5790, 5795, 5800, 5805, 5810, 5815, 5820, 5825, 5830, 5835, 5840, 5845, 5850, 5855, 5860, 5865, 5870, 5875, 5880, 5885, 5890, 5895, 5900, 5905, 5910, 5915, 5920, 5925, 5930, 5935, 5940, 5945, 5950, 5955, 5960, 5965, 5970, 5975, 5980, 5985, 5990, 5995, 6000, 6005, 6010, 6015, 6020, 6025, 6030, 6035, 6040, 6045, 6050, 6055, 6060, 6065, 6070, 6075, 6080, 6085, 6090, 6095, 6100, 6105, 6110, 6115, 6120, 6125, 6130, 6135, 6140, 6145, 6150, 6155, 6160, 6165, 6170, 6175, 6180, 6185, 6190, 6195, 6200, 6205, 6210, 6215, 6220, 6225, 6230, 6235, 6240, 6245, 6250, 6255, 6260, 6265, 6270, 6275, 6280, 6285, 6290, 6295, 6300, 6305, 6310, 6315, 6320, 6325, 6330, 6335, 6340, 6345, 6350, 6355, 6360, 6365, 6370, 6375, 6380, 6385, 6390, 6395, 6400, 6405, 6410, 6415, 6420, 6425, 6430, 6435, 6440, 6445, 6450, 6455, 6460, 6465, 6470, 6475, 6480, 6485, 6490, 6495, 6500, 6505, 6510, 6515, 6520, 6525, 6530, 6535, 6540, 6545, 6550, 6555, 6560, 6565, 6570, 6575, 6580, 6585, 6590, 6595, 6600, 6605, 6610, 6615, 6620, 6625, 6630, 6635, 6640, 6645, 6650, 6655, 6660, 6665, 6670, 6675, 6680, 6685, 6690, 6695, 6700, 6705, 6710, 6715, 6720, 6725, 6730, 6735, 6740, 6745, 6750, 6755, 6760, 6765, 6770, 6775, 6780, 6785, 6790, 6795, 6800, 6805, 6810, 6815, 6820, 6825, 6830, 6835, 6840, 6845, 6850, 6855, 6860, 6865, 6870, 6875, 6880, 6885, 6890, 6895, 6900, 6905, 6910, 6915, 6920, 6925, 6930, 6935, 6940, 6945, 6950, 6955, 6960, 6965, 6970, 6975, 6980, 6985, 6990, 6995, 7000, 7005, 7010, 7015, 7020, 7025, 7030, 7035, 7040, 7045, 7050, 7055, 7060, 7065, 7070, 7075, 7080, 7085, 7090, 7095, 7100, 7105, 7110, 7115, 7120, 7125, 7130, 7135, 7140, 7145, 7150, 7155, 7160, 7165, 7170, 7175, 7180, 7185, 7190, 7195, 7200, 7205, 7210, 7215, 7220, 7225, 7230, 7235, 7240, 7245, 7250, 7255, 7260, 7265, 7270, 7275, 7280, 7285, 7290, 7295, 7300, 7305, 7310, 7315, 7320, 7325, 7330, 7335, 7340, 7345, 7350, 7355, 7360, 7365, 7370, 7375, 7380, 7385, 7390, 7395, 7400, 7405, 7410, 7415, 7420, 7425, 7430, 7435, 7440, 7445, 7450, 7455, 7460, 7465, 7470, 7475, 7480, 7485, 7490, 7495, 7500, 7505, 7510, 7515, 7520, 7525, 7530, 7535, 7540, 7545, 7550, 7555, 7560, 7565, 7570, 7575, 7580, 7585, 7590, 7595, 7600, 7605, 7610, 7615, 7620, 7625, 7630, 7635, 7640, 7645, 7650, 7655, 7660, 7665, 7670, 7675, 7680, 7685, 7690, 7695, 7700, 7705, 7710, 7715, 7720, 7725, 7730, 7735, 7740, 7745, 7750, 7755, 7760, 7765, 7770, 7775, 7780, 7785, 7790, 7795, 7800, 7805, 7810, 7815, 7820, 7825, 7830, 7835, 7840, 7845, 7850, 7855, 7860, 7865, 7870, 7875, 7880, 7885, 7890, 7895, 7900, 7905, 7910, 7915, 7920, 7925, 7930, 7935, 7940, 7945, 7950, 7955, 7960, 7965, 7970, 7975, 7980, 7985, 7990, 7995, 8000, 8005, 8010, 8015, 8020, 8025, 8030, 8035, 8040, 8045, 8050, 8055, 8060, 8065, 8070, 8075, 8080, 8085, 8090, 8095, 8100, 8105, 8110, 8115, 8120, 8125, 8130, 8135, 8140, 8145, 8150, 8155, 8160, 8165, 8170, 8175, 8180, 8185, 8190, 8195, 8200, 8205, 8210, 8215, 8220, 8225, 8230, 8235, 8240, 8245, 8250, 8255, 8260, 8265, 8270, 8275, 8280, 8285, 8290, 8295, 8300, 8305, 8310, 8315, 8320, 8325, 8330, 8335, 8340, 8345, 8350, 8355, 8360, 8365, 8370, 8375, 8380, 8385, 8390, 8395, 8400, 8405, 8410, 8415, 8420, 8425, 8430, 8435, 8440, 8445, 8450, 8455, 8460, 8465, 8470, 8475, 8480, 8485, 8490, 8495, 8500, 8505, 8510, 8515, 8520, 8525, 8530, 8535, 8540, 8545, 8550, 8555, 8560, 8565, 8570, 8575, 8580, 8585, 8590, 8595, 8600, 8605, 8610, 8615, 8620, 8625, 8630, 8635, 8640, 8645, 8650, 8655, 8660, 8665, 8670, 8675, 8680, 8685, 8690, 8695, 8700, 8705, 8710, 8715, 8720, 8725, 8730, 8735, 8740, 8745, 8750, 8755, 8760, 8765, 8770, 8775, 8780, 8785, 8790, 8795, 8800, 8805, 8810, 8815, 8820, 8825, 8830, 8835, 8840, 8845, 8850, 8855, 8860, 8865, 8870, 8875, 8880, 8885, 8890, 8895, 8900, 8905, 8910, 8915, 8920, 8925, 8930, 8935, 8940, 8945, 8950, 8955, 8960, 8965, 8970, 8975, 8980, 8985, 8990, 8995, 9000, 9005, 9010, 9015, 9020, 9025, 9030, 9035, 9040, 9045, 9050, 9055, 9060, 9065



51518004214210000099010121

"F"

## NOTICE OF FINAL AGREEMENT

| Principal  | Loan Date  | Maturity   | Loan No    | Call / Coll | Account     | Officer | Initials |
|------------|------------|------------|------------|-------------|-------------|---------|----------|
| \$1,000.00 | 01-10-2001 | 07-31-2001 | 1000009901 | 402 / 321   | N5180042142 | KXW03   |          |

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*\*" has been omitted due to text length limitations.

Borrower: SYSTEMS WEST COMPUTER RESOURCES, INC.  
315 EAST LION LANE, STE 310  
SALT LAKE CITY, UT 84121

Lender: KeyBank National Association  
UT-MM-Central Commercial Banking Center  
50 S. Main Street  
Suite 2007  
Salt Lake City, UT 84130

SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT: (A) THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, (B) THERE ARE NO WRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES, AND (C) THE WRITTEN LOAN AGREEMENT SHALL NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT WRITTEN ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.

As used in this Notice, the following terms have the following meanings:

**Loan.** The term "Loan" means the following described loan: a Variable Rate Nondisclosable Revolving Line of Credit Loan to a Corporation for \$1,000,000.00 due on July 31, 2001.

**Loan Agreement.** The term "Loan Agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, relating to the Loan.

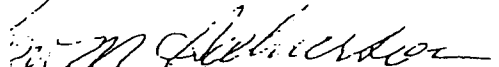
**Parties.** The term "Parties" means KeyBank National Association and any and all entities or individuals who are obligated to repay the Loan or have pledged property as security for the Loan, including without limitation the following:

Borrower: SYSTEMS WEST COMPUTER RESOURCES, INC.  
Grantor(s): SYSTEMS WEST COMPUTER RESOURCES, INC.  
Guarantor 1: DON M. HALVERSON  
Guarantor 2: NANCY H. HALVERSON

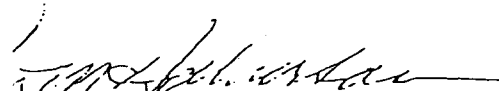
Any party who signs below, other than KeyBank National Association, acknowledges, represents, and warrants to KeyBank National Association that it has received, read and understood this Notice of Final Agreement. This Notice is dated January 10, 2001.

R:


SYSTEMS WEST COMPUTER RESOURCES, INC.

  
HALVERSON, President of SYSTEMS WEST  
COMPUTER RESOURCES, INC.

R:

  
HALVERSON, Individually

R:

  
HALVERSON, Individually

DER:

BANK NATIONAL ASSOCIATION

Authorized Signer

LASER PRO Imaging, Inc. U.S. Pat. 5,714,007 Ver. 3.10.01 (B-1) Copyright 1997, 2001 All Rights Reserved. U1: H:\Laserpro\CF\HCP1021.PC TR 2000 PP 31



51518004214210000099010E 20

tabb

"G"

## COMMERCIAL GUARANTY

| Principal | Loan Date | Maturity | Loan No | Call / Coll | Account     | Officer | Initials |
|-----------|-----------|----------|---------|-------------|-------------|---------|----------|
|           |           |          |         | 402 / 321   | N5180042159 | KXW03   |          |

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

OR: SYSTEMS WEST COMPUTER RESOURCES, INC.  
315 EAST LION LANE, STE 310  
SALT LAKE CITY, UT 84121

Lender: KeyBank National Association  
UT-MM-Central Commercial Banking Center  
50 S. Main Street  
Suite 2007  
Salt Lake City, UT 84130

OR: NANCY H. HALVERSON  
2561 EAST 6200 SOUTH  
SALT LAKE CITY, UT 84103

**TERMS OF GUARANTY.** The amount of this Guaranty is Unlimited.

**GRANTING UNLIMITED GUARANTY.** For good and valuable consideration, NANCY H. HALVERSON ("Guarantor") absolutely and irrevocably guarantees and promises to pay to KeyBank National Association ("Lender") or its order, in legal tender of the United States of America, the Indebtedness (as that term is defined below) of SYSTEMS WEST COMPUTER RESOURCES, INC. ("Borrower") to Lender on the terms and conditions set forth in this Guaranty. Under this Guaranty, the liability of Guarantor is unlimited and the obligations of Guarantor are continuing.

**DEFINITION OF INDEBTEDNESS GUARANTEED.** The Indebtedness guaranteed by this Guaranty includes any and all of Borrower's indebtedness to Lender and in the most comprehensive sense and means and includes any and all of Borrower's liabilities, obligations and debts to Lender, now existing or hereafter incurred or created, including, without limitation, all loans, advances, interest, costs, debts, overdraft indebtedness, credit card indebtedness, lease obligations, other obligations, and liabilities of Borrower, or any of them, and any present or future judgments against Borrower, or any of them, and whether any such Indebtedness is voluntarily or involuntarily incurred, due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined; whether Borrower may be liable individually or jointly with others, or primarily or secondarily, or as guarantor or co-guarantor; whether recovery on the Indebtedness may be or may become barred or unenforceable against Borrower for any reason whatsoever; and whether the Indebtedness arises from transactions which may be voidable on account of infancy, insanity, ultra vires, or otherwise.

**SCOPE OF GUARANTY.** This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice of acceptance by Borrower, and will continue in full force until all Indebtedness incurred or contracted before receipt by Lender of any notice of termination shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. Guarantor elects to revoke this Guaranty. Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Lender by certified mail, at Lender's address listed above or such other place as Lender may designate in writing. Written revocation of this Guaranty shall apply only to advances or new Indebtedness created after actual receipt by Lender of Guarantor's written revocation. For this purpose and without limitation, the term "new Indebtedness" does not include Indebtedness which at the time of notice of revocation is contingent, unliquidated, or not due and which later becomes absolute, liquidated, determined or due. This Guaranty will continue to bind Guarantor for all Indebtedness incurred by Borrower or committed by Lender prior to receipt of Guarantor's written notice of revocation, including any extensions, substitutions or modifications of the Indebtedness. All renewals, extensions, substitutions, and modifications of the Indebtedness granted by Guarantor's revocation, are contemplated under this Guaranty and, specifically will not be considered to be new Indebtedness. This Guaranty shall remain in full force and effect as to Indebtedness created both before and after Guarantor's death or incapacity, regardless of Lender's actual notice of death. Subject to the foregoing, Guarantor's executor or administrator or other legal representative may terminate this Guaranty in the event in which Guarantor might have terminated it and with the same effect. Release of any other guarantor or termination of any other guaranty shall not affect the liability of Guarantor under this Guaranty. A revocation Lender receives from any one or more guarantors shall not affect the liability of any remaining Guarantors under this Guaranty. It is anticipated that fluctuations may occur in the amount of Indebtedness covered by this Guaranty, and Guarantor specifically acknowledges and agrees that reductions in the amount of Indebtedness, even to zero dollars (\$0.00), prior to Guarantor's written revocation of this Guaranty shall not constitute a termination of this Guaranty. This Guaranty is binding upon Guarantor and Guarantor's heirs, successors and assigns so long as any of the guaranteed Indebtedness remains unpaid and even though the Indebtedness guaranteed may from time to time be zero dollars (\$0.00).

**POWER OF ATTORNEY AUTHORIZATION TO LENDER.** Guarantor authorizes Lender, either before or after any revocation hereof, without notice or without lessening Guarantor's liability under this Guaranty, from time to time: (A) prior to revocation as set forth above, to make additional secured or unsecured loans to Borrower, to lease equipment or other goods to Borrower, or otherwise to extend additional credit to Borrower; (B) to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of the loan or any part of the Indebtedness, including increases and decreases of the rate of interest on the Indebtedness; extensions may be made for longer than the original loan term; (C) to take and hold security for the payment of this Guaranty or the Indebtedness, and to enforce, waive, subordinate, fail or decide not to perfect, and release any such security, with or without the substitution of new collateral; (D) to substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner they may choose; (E) to determine how, when and what application of payments and credits shall be made on the Indebtedness; (F) to execute and direct the order or manner of sale thereof, including without limitation, any nonjudicial sale permitted by the terms of the security agreement or deed of trust, as Lender in its discretion may determine; (G) to sell, transfer, assign or grant participations in all or any part of the Indebtedness; and (H) to assign or transfer this Guaranty in whole or in part.

**NO REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants to Lender that (A) no representations or agreements have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (B) this Guaranty is executed at the request of Guarantor and not at the request of Lender; (C) Guarantor has full power, right and authority to enter into this Guaranty; (D) the provisions of this Guaranty do not conflict with or result in the violation of any applicable law, regulation, court decree or order applicable to Guarantor; and (E) Guarantor understands and agrees that this Guaranty is binding upon Guarantor and do not result in a discharge of Guarantor's obligations under the underlying loan agreement. This Guaranty shall be governed by the laws of the State of Utah and will be construed and enforced according to the laws of the State of Utah.

in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which materially adversely affects Guarantor's financial condition. (H) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened. (I) Lender has made no representation to Guarantor as to the solvency of Borrower, and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

**GUARANTOR'S FINANCIAL STATEMENTS.** Guarantor agrees to furnish Lender with the following:

**Annual Statements.** As soon as available, but in no event later than one-hundred-twenty (120) days after the end of each fiscal year, Guarantor's balance sheet and income statement for the year ended, prepared by Guarantor.

**Tax Returns.** As soon as available, but in no event later than one-hundred-twenty (120) days after the applicable filing date for the tax reporting period ended, Federal and other governmental tax returns, prepared by Guarantor.

Financial reports required to be provided under this Guaranty shall be prepared in accordance with GAAP, applied on a consistent basis, and shall be true and correct.

**GUARANTOR'S WAIVERS.** Except as prohibited by applicable law, Guarantor waives any right to require Lender (A) to continue lending money or to extend credit to Borrower, (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the indebtedness or of any nonpayment related to any collateral, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or guarantor in connection with the indebtedness or in connection with the creation of new or additional loans or obligations, (C) to resort to collateral or to proceed directly or at once against any person, including Borrower or any other guarantor, (D) to proceed directly against or exhaust collateral held by Lender from Borrower, any other guarantor, or any other person, (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code, (F) to pursue any other remedy within Lender's power, or (G) to commit any act or omission of any kind, or at any time, with respect to any indebtedness whatsoever.

In addition to the waivers set forth above, if now or hereafter Borrower is or shall become insolvent and the indebtedness shall not at all times until paid be secured by collateral pledged by Borrower, Guarantor hereby forever waives and gives up in favor of Lender and Borrower, and Lender's and Borrower's respective successors, any claim or right to payment Guarantor may now have or hereafter have or acquire against Borrower, by contract or otherwise, so that at no time shall Guarantor be or become a "creditor" of Borrower within the meaning of 11 U.S.C. section 547(b), or any successor provision of the Federal bankruptcy laws.

Guarantor also waives any and all rights or defenses arising by reason of (1) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the indebtedness; (2) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than its insolvency in full in legal tender, of the indebtedness; (3) any right to claim discharge of the indebtedness on the basis of unjustified impairment of any asset for the indebtedness; or (4) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced, notwithstanding the indebtedness of Borrower to Lender which is not barred by any applicable statute of limitations. Guarantor acknowledges and that Guarantor's obligations under this Guaranty shall apply to and continue with respect to any amount paid to Lender which is subsequently repaid from Lender for any reason whatsoever (including without limitation as a result of bankruptcy, insolvency or fraudulent conveyance law), notwithstanding the fact that all or a part of the indebtedness may have been previously paid, or this Guaranty may have been terminated.

Guarantor also waives and agrees not to assert or take advantage of (1) any right (including the right, if any, under Utah's one-action rule as set forth in Utah Code Annotated, 1953, Section 78-37-1) to require Lender to proceed against or exhaust any security held by Lender at any time or to pursue any remedy in Lender's power before proceeding against Guarantor; (2) the release or surrender of any security held for the payments of the indebtedness; or (3) any defense based upon an election of remedies (including, if available, an election of remedies to proceed by non-judicial foreclosure) by Lender which destroys or otherwise impairs the subrogation rights of Guarantor or the right of Guarantor to proceed against Borrower for reimbursement, or both.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Lender, or both.

**Guarantor's Understanding With Respect To Waivers.** Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

**Right of Setoff.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Guarantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Guarantor holds jointly with someone else and all accounts Guarantor may have in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Guarantor authorizes Lender, to the extent permitted by applicable law, to hold these funds if there is a default, and Lender may apply the funds in these accounts to pay what Guarantor owes under the terms of this Guaranty.

**Subordination of Borrower's Debts to Guarantor.** Guarantor agrees that the indebtedness of Borrower to Lender, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower available for the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the indebtedness of Borrower to Lender. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debt or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to execute and file financing statements and continuation statements and to execute such other documents and to take such other actions as Lender deems necessary or appropriate to



**Amendments.** This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not Lender's salaried employee and whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

**Governing Law.** This Guaranty will be governed by, construed and enforced in accordance with federal law and the laws of the State of Utah. This Guaranty has been accepted by Lender in the State of Utah.

**Integration.** Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and parol evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

**Interpretation.** In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require, and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If any one or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any Loan indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

**Notices.** Unless otherwise provided by applicable law, any notice required to be given under this Guaranty or required by law shall be given in writing, and, except for revocation notices by Guarantor, shall be effective when actually delivered in accordance with the law or with this Guaranty, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. All revocation notices by Guarantor shall be in writing and shall be effective upon delivery to Lender as provided in the section of this Guaranty entitled "DURATION OF GUARANTY." Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address. Unless otherwise provided by applicable law, if there is more than one Guarantor, any notice given by Lender to any Guarantor is deemed to be notice given to all Guarantors.

**Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever consent of Lender is required under this Guaranty, the granting of such consent by Lender 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 Lender.

**Successors and Assigns.** Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding on and inure to the benefit of the parties, their successors and assigns.

**Waive Jury.** Lender and Guarantor hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

**Definitions.** The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in this Guaranty shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Borrower.** The word "Borrower" means SYSTEMS WEST COMPUTER RESOURCES, INC., and all other persons and entities signing the Guaranty in whatever capacity.

**GAAP.** The word "GAAP" means generally accepted accounting principles.

**Guarantor.** The word "Guarantor" means each and every person or entity signing this Guaranty, including without limitation NANCY H. JOHNSON.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the indebtedness.

**Indebtedness.** The word "Indebtedness" means Borrower's indebtedness to Lender as more particularly described in this Guaranty.

**Lender.** The word "Lender" means KeyBank National Association, its successors and assigns.

**Related Documents.** The words "Related Documents" means all promissory notes, credit agreements, loan agreements, equipment

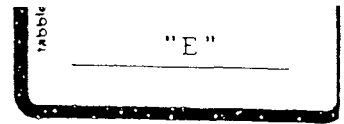
RANTOR:

NCY H. HALVERSON, individually

Commercial Code

Debtor(s) (Last Name First) and address(es)  
TEMS WEST COMPUTER RESOURCES,  
N/TIN: 87-0425813  
T LION LANE, STE 310  
KE CITY, UT 84121

2 Secured Party(ies) and address(es)  
KeyBank National Association  
UT-MM-Central Commercial Banking Center  
50 S. Main Street  
Suite 2007  
Salt Lake City, UT 84130



Financing Statement covers the following types (or items) of property:  
had Exhibit to UCC Financing Statement dated January 10.

6. Gross sales price  
of collateral

\$ \_\_\_\_\_

\$ \_\_\_\_\_ Sales

or use tax paid to  
State of

For Filing Officer (Date, Time, Number,  
and Filing Office)

Secured party is \_\_\_\_\_ is not \_\_\_\_\_ a seller or  
money lender of the collateral.

5. Assignee(s) of Secured Party and  
Address(es)

Statement is filed without the debtor's signature to perfect a security interest in collateral. (Check ☒ if so)  
already subject to a security interest in another jurisdiction when it was brought into this state.  
which is proceeds of the original collateral described above in which a security interest was perfected.

Microfilm No.

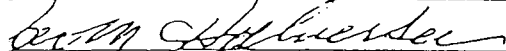
It covered: ☒ Proceeds of Collateral are also covered. ☒ Products of collateral are also covered. No. of additional Sheets presented:  
2


date (if any):

Approved by Department of Commerce Division of Corporations  
and Commercial Code.

TEMS WEST COMPUTER RESOURCES, INC.

KeyBank National Association

  
Signature(s) of Debtor(s)

By:   
Signature(s) of Secured Party(ies)

STANDARD FORM - FORM UCC-1.

(2) FILING OFFICER COPY - NUMERICAL

January 10, 2001

DEBTORS:

SYSTEMS WEST COMPUTER RESOURCES, INC. (TIN: 87-0425813)

MAILING ADDRESS:

315 EAST LION LANE, STE 310, SALT LAKE CITY, UT 84121

COLLATERAL DESCRIPTION:

Channel Paper, Accounts and General Intangibles; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to the foregoing (including insurance, general intangibles and other accounts proceeds).

This document is executed on the same date as the UCC-1 Financing Statement by KeyBank National Association and the undersigned.

SYSTEMS WEST COMPUTER RESOURCES, INC.

KeyBank National Association

Signature(s) of Debtor(s)

By:

Signature(s) of Secured Party (ies)

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WEST COMPUTER RESOURCES INC

Aged Receivables

As of Dec 2 2008

Includes: Report order is by ID Report is printed in Detail format

|                | Date     | Invoice/CM | 0 - 30 | 31 - 60 | 61 - 90  | OVER 90 DA | Amount Due |
|----------------|----------|------------|--------|---------|----------|------------|------------|
|                | 5/25/02  | 2059824    |        |         | 1,140.00 |            | 1,140.00   |
|                | 6/8/02   | 2069854    |        |         | 540.00   |            | 540.00     |
|                | 6/22/02  | 2069942    |        |         | 180.00   |            | 180.00     |
|                | 7/20/02  | 2080173    |        |         | 2,040.00 |            | 2,040.00   |
|                |          |            |        |         | 3,900.00 |            | 3,900.00   |
| MPANIES, INC / | 1/29/05  | 5012395    |        |         | .792.00  |            | .792.00    |
|                | 2/12/05  | 5022466    |        |         | 15.84    |            | 15.84      |
|                | 6/4/05   | 5063021    |        |         | 2,240.00 |            | 2,240.00   |
|                | 10/27/05 | 5103629    |        |         | 877.20   |            | 877.20     |
| MPANIES, INC / |          |            |        |         | 2,309.36 |            | 2,309.36   |
| & GAME         | 8/18/05  | 900-0373   |        |         | 150.00   |            | 150.00     |
| & GAME         |          |            |        |         | 150.00   |            | 150.00     |
| ROUP           | 10/24/03 | 3101649    |        |         | 1,281.00 |            | 1,281.00   |
| ROUP           |          |            |        |         | 1,281.00 |            | 1,281.00   |
| EGIES, INC.    | 6/15/02  | 2069916    |        |         | 36.25    |            | 36.25      |
|                | 7/15/02  | 2070096    |        |         | 25.00    |            | 25.00      |
|                | 11/15/02 | 2110916    |        |         | 75.00    |            | 75.00      |
|                | 12/15/02 | 2121013    |        |         | 25.00    |            | 25.00      |
|                | 1/15/03  | 3010086    |        |         | 25.00    |            | 25.00      |
|                | 2/20/03  | 3020338    |        |         | 25.00    |            | 25.00      |
|                | 3/21/03  | 3030536    |        |         | 25.00    |            | 25.00      |
|                | 3/31/03  | 90000003   |        |         | 25.00    |            | 25.00      |
| GIES, INC.     |          |            |        |         | 261.25   |            | 261.25     |
| GIES, INC.     | 11/30/03 | 900-0218   |        |         | 120.00   |            | 120.00     |
| GIES, INC.     |          |            |        |         | 120.00   |            | 120.00     |
|                | 4/30/03  | 900-0051   |        |         | 47.70    |            | 47.70      |
|                | 5/25/03  | 900-0076   |        |         | 42.50    |            | 42.50      |
|                | 7/1/03   | 900-0104   |        |         | 1,395.00 |            | 1,395.00   |
|                | 8/31/03  | 900-0156   |        |         | 55.00    |            | 55.00      |
|                | 9/30/03  | 900-0179   |        |         | 25.00    |            | 25.00      |
|                | 10/31/03 | 900-0199   |        |         | 25.00    |            | 25.00      |
|                | 11/30/03 | 900-0219   |        |         | 25.00    |            | 25.00      |
|                | 12/31/03 | 900-0239   |        |         | 25.00    |            | 25.00      |

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Aged Receivables

As of Dec 2, 2008

Includes: Report ordered by ID. Report is printed in Default format.

| Date      | Invoice/CM | 0-30    | 31-60 | 61-90 | OVER 90 DA | Amount Due |
|-----------|------------|---------|-------|-------|------------|------------|
| 1/13/07   | 7010030    |         |       |       | 193.00     | 193.00     |
| 1/13/07   | 7010037    |         |       |       | 163.00     | 163.00     |
| 1/7/07    | 7010082    |         |       |       | 190.00     | 190.00     |
| 1/7/07    | 7010089    |         |       |       | 200.00     | 200.00     |
| 2/10/07   | 7020135    |         |       |       | 180.00     | 180.00     |
| 2/10/07   | 7020142    |         |       |       | 150.00     | 150.00     |
| 2/24/07   | 7020190    |         |       |       | 125.00     | 125.00     |
| 2/24/07   | 7020197    |         |       |       | 108.00     | 108.00     |
| 2/24/07   | 7020199    |         |       |       | 125.00     | 125.00     |
| 2/24/07   | 7020206    |         |       |       | 84.00      | 84.00      |
| 3/10/07   | 7030255    |         |       |       | 220.00     | 220.00     |
| 3/10/07   | 7030262    |         |       |       | 120.00     | 120.00     |
| 3/10/07   | 7030264    |         |       |       | 220.00     | 220.00     |
| 3/10/07   | 7030271    |         |       |       | 108.00     | 108.00     |
| 3/24/07   | 7030305    |         |       |       | 170.00     | 170.00     |
| 3/24/07   | 7030311    |         |       |       | 120.00     | 120.00     |
| 3/24/07   | 7030313    |         |       |       | 185.00     | 185.00     |
| 3/24/07   | 7030314    |         |       |       | 1,100.00   | 1,100.00   |
| 3/24/07   | 7030319    |         |       |       | 72.00      | 72.00      |
| 4/7/07    | 7040357    |         |       |       | 193.00     | 193.00     |
| 4/7/07    | 7040363    |         |       |       | 120.00     | 120.00     |
|           |            |         |       |       | 8,424.50   | 8,424.50   |
| 8/23/08   | 8080508    |         |       |       | 375.00     | 375.00     |
| 11/15/08  | 8110589    | 390.00  |       |       |            | 390.00     |
|           |            | 390.00  |       |       | 375.00     | 765.00     |
| 3/31/04   | 900-0277   |         |       |       | 2,180.00   | 2,180.00   |
|           |            |         |       |       | 2,180.00   | 2,180.00   |
| UTY OF UT | 7/31/03    | 3071229 |       |       | 412.50     | 412.50     |
| UTY OF UT |            |         |       |       | 412.50     | 412.50     |
| 6/30/07   | 7060699    |         |       |       | 1,248.36   | 1,248.36   |
| 7/28/07   | 7070818    |         |       |       | 888.04     | 888.04     |
| 9/7/07    | 7060564A   |         |       |       | 899.90     | 899.90     |
| 9/7/07    | 7060632A   |         |       |       | 860.60     | 860.60     |
| 9/22/07   | 7091074    |         |       |       | -110.00    | -110.00    |
| 12/3/07   | 7060634B   |         |       |       | -1,909.25  | -1,909.25  |
| 12/29/07  | 7121538    |         |       |       | -57.00     | -57.00     |
| 1/26/08   | 8010054A   |         |       |       | 2,323.16   | 2,323.16   |
|           |            |         |       |       | 4,143.81   | 4,143.81   |

## Aged Receivables

As of Dec 2 2008

includes: Report ordered by ID Report is printed in Detail Format

|              | Date     | Invoice/CM | 0 - 30    | 31 - 60   | 61 - 90   | OVER 90 DA | Amount Due |
|--------------|----------|------------|-----------|-----------|-----------|------------|------------|
|              |          |            |           |           |           | 198.75     | 198.75     |
|              | 3/30/02  | 2039436    |           |           | 5,250.00  |            | 5,250.00   |
| AP           |          |            |           |           | 5,250.00  |            | 5,250.00   |
| IG SOLUTIONS | 4/24/04  | 4040897    |           |           | 1,817.50  |            | 1,817.50   |
|              | 5/8/04   | 4050918    |           |           | 2,172.50  |            | 2,172.50   |
|              | 5/22/04  | 4051008    |           |           | 2,007.50  |            | 2,007.50   |
|              | 5/22/04  | 4051068    |           |           | 2,640.00  |            | 2,640.00   |
|              | 6/5/04   | 4061092    |           |           | 440.00    |            | 440.00     |
|              | 6/19/04  | 4061173    |           |           | 330.00    |            | 330.00     |
|              | 6/17/05  | FC6H20000  |           |           | 1,800.08  |            | 1,800.08   |
| S SOLUTIONS  |          |            |           |           | 11,207.58 |            | 11,207.58  |
| OF JESUS CHR | 10/18/08 | 8100578    |           | 2,925.00  |           |            | 2,925.00   |
|              | 11/1/08  | 8110584    | 1,800.00  |           |           |            | 1,800.00   |
|              | 11/15/08 | 8110591    | 1,200.00  |           |           |            | 1,200.00   |
| IF JESUS CHR |          |            | 3,000.00  | 2,925.00  |           |            | 5,925.00   |
|              | 10/14/00 | 0107013    |           |           | 1,316.00  |            | 1,316.00   |
|              |          |            |           |           | 1,316.00  |            | 1,316.00   |
| RATED        | 10/4/08  | 8100560    |           | 5,793.60  |           |            | 5,793.60   |
|              | 10/18/08 | 8100575    |           | 5,440.00  |           |            | 5,440.00   |
|              | 11/1/08  | 8110581    | 5,372.00  |           |           |            | 5,372.00   |
|              | 11/15/08 | 8110588    | 5,283.60  |           |           |            | 5,283.60   |
| ATED         |          |            | 10,655.60 | 11,233.60 |           |            | 21,889.20  |
| XCHANGE      | 6/19/04  | 4061229    |           |           | 3,827.25  |            | 3,827.25   |
|              | 7/31/04  | 4071430    |           |           | 409.50    |            | 409.50     |
|              | 11/20/04 | 4112035    |           |           | 425.00    |            | 425.00     |
|              | 6/17/05  | FC6H20000  |           |           | 770.77    |            | 770.77     |
| XCHANGE      |          |            |           |           | 5,432.52  |            | 5,432.52   |

SYSTEMS COMPUTER RESOURCES, INC.

Aged Receivables

As of Dec 2 2008

Notes: Report ordered by ID. Report is printed in Detail Format.

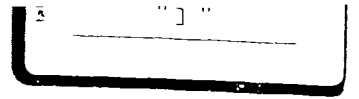
|         | Date     | Invoice/CM | 0 - 30   | 31 - 60 | 61 - 90   | OVER 90 DA | Amount Due |
|---------|----------|------------|----------|---------|-----------|------------|------------|
|         |          |            |          |         | 347.79    |            | 347.79     |
| NE      | 3/31/06  | 900-0281   |          |         | 50.00     |            | 50.00      |
| NE      |          |            |          |         | 50.00     |            | 50.00      |
| RE INC  | 6/17/05  | IC 6H20000 |          |         | 1,092.01  |            | 1,092.01   |
| RE INC  |          |            |          |         | 1,092.01  |            | 1,092.01   |
|         | 5/7/05   | 900-0333   |          |         | -150.00   |            | -150.00    |
|         |          |            |          |         | -150.00   |            | -150.00    |
|         | 10/22/05 | 5103634    |          |         | 600.00    |            | 600.00     |
|         |          |            |          |         | 600.00    |            | 600.00     |
| S       | 12/1/01  | 1128721    |          |         | 550.00    |            | 550.00     |
| S       |          |            |          |         | 550.00    |            | 550.00     |
| WORK F  | 10/4/08  | 8100559    | 1,540.00 |         |           |            | 1,540.00   |
| FT      |          |            |          |         |           |            |            |
| WORK F  |          |            | 1,540.00 |         |           |            | 1,540.00   |
| 6/5/04  | 4061155  |            |          |         | 7,000.00  |            | 7,000.00   |
| 6/5/04  | 4061156  |            |          |         | 6,150.00  |            | 6,150.00   |
| 6/19/04 | 4061240  |            |          |         | 4,800.00  |            | 4,800.00   |
| 7/31/04 | 4071471  |            |          |         | 6,150.00  |            | 6,150.00   |
| 7/31/04 | 4071479  |            |          |         | 7,058.54  |            | 7,058.54   |
| 7/31/04 | 4071480  |            |          |         | 9,275.27  |            | 9,275.27   |
| 7/31/04 | 4071481  |            |          |         | 10,500.30 |            | 10,500.30  |
| 8/14/04 | 4081551  |            |          |         | 8,205.79  |            | 8,205.79   |
| 8/28/04 | 4081617  |            |          |         |           |            |            |

# Aged Receivables

As of Dec 7 2008

includes: Report printed by JD Report is printed in Default Format

|      | Date     | Invoice/CM | 0 30      | 31 60     | 61 90     | OVER 90 DA | Amount Due |
|------|----------|------------|-----------|-----------|-----------|------------|------------|
| 0    |          |            |           |           |           |            |            |
| 1    |          |            |           |           |           |            |            |
| 11Y  |          |            |           |           |           | 74,611.39  | 74,611.39  |
| 11Y  |          |            |           |           |           |            |            |
| OWTR | 1/31/04  | 4010261    |           |           |           | -441.00    | -441.00    |
|      | 8/28/04  | 4081399    |           |           |           | -488.80    | -488.80    |
|      | 10/9/04  | 4101827    |           |           |           | 1,965.88   | 1,965.88   |
|      | 12/14/04 | 4122130    |           |           |           | 1,748.40   | 1,748.40   |
|      | 2/11/06  | 6024053    |           |           |           | 1,965.88   | 1,965.88   |
|      | 4/8/06   | 6034236    |           |           |           | 74.08      | 74.08      |
|      | 4/8/06   | 6034261    |           |           |           | 70.77      | 70.77      |
|      | 6/30/06  | 6064552    |           |           |           | 678.00     | 678.00     |
|      | 7/15/06  | 6074604    |           |           |           | 678.00     | 678.00     |
|      | 7/15/06  | 6074607    |           |           |           | 690.80     | 690.80     |
|      | 7/29/06  | 6074638    |           |           |           | 678.00     | 678.00     |
|      | 7/29/06  | 6074641    |           |           |           | 678.00     | 678.00     |
|      | 8/12/06  | 6084697    |           |           |           | 678.00     | 678.00     |
|      | 8/12/06  | 6084693    |           |           |           | 678.00     | 678.00     |
|      | 8/26/06  | 6084759    |           |           |           | 678.00     | 678.00     |
|      | 8/26/06  | 6084760    |           |           |           | 678.00     | 678.00     |
| WTR  |          |            |           |           |           | 2,646.44   | 2,646.44   |
|      |          |            |           |           |           |            |            |
|      | 1/12/08  | 8010034    |           |           |           | 18.49      | 18.49      |
|      |          |            |           |           |           |            |            |
|      |          |            |           |           |           | 18.49      | 18.49      |
|      |          |            |           |           |           |            |            |
|      |          |            | 35,495.10 | 41,389.99 | 15,066.90 | 147,539.54 | 239,491.53 |



SYSTEMS WEST  
COMPUTER RESOURCES, INC.  
FINANCIAL STATEMENTS

December 31, 2007

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# White & Rasmuson, LLC

Certified Public Accountants

To The Shareholder  
Systems West Computer Resources, Inc.  
Salt Lake City, Utah

We have reviewed the accompanying balance sheet of Systems West Computer Resources, Inc. (an S Corporation) as of December 31, 2007, and the related statements of income and retained earnings, and cash flows for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. All information included in these financial statements is the representation of the management of Systems West Computer Resources, Inc.

A review consists principally of inquiries of Company personnel and analytical procedures applied to financial data. It is substantially less in scope than an audit in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principles.

Salt Lake City, Utah  
September 2, 2008

SYSTEMS WEST COMPUTER RESOURCES, INC.

BALANCE SHEET

December 31, 2007

ASSETS

CURRENT ASSETS

|                        |               |
|------------------------|---------------|
| Accounts receivable    | 1,506,914     |
| Employee Advances      | 100           |
| Prepaid expenses       | 12,404        |
| Prepaid Canadian taxes | <u>91,902</u> |

TOTAL CURRENT ASSETS 1,611,320

|  |              |
|--|--------------|
| Property and equipment,<br>less accumulated depreciation | <u>3,344</u> |
|--|--------------|

TOTAL ASSETS \$ 1,614,664

LIABILITIES AND STOCKHOLDERS' EQUITY

CURRENT LIABILITIES

|                    |                |
|--------------------|----------------|
| Bank overdraft     | \$ 170,250     |
| Accounts Payable   | 48,801         |
| Prepaid expenses   | 276,751        |
| Accrued payroll    | 502,191        |
| Accounts of credit | <u>978,372</u> |

TOTAL LIABILITIES 1,976,365

STOCKHOLDERS' EQUITY

|   |                  |
|---|------------------|
| Common stock, no par value; 500,000 shares authorized;<br>100,000 shares issued and outstanding | 1,000            |
| Retained earnings   | <u>(362,701)</u> |

TOTAL STOCKHOLDER'S EQUITY (361,701)

TOTAL LIABILITIES AND STOCKHOLDER'S EQUITY \$ 1,614,664

See accountants' report

1000

# SYSTEMS WEST COMPUTER RESOURCES, INC

## STATEMENT OF INCOME AND RETAINED EARNINGS

*For the Year Ended December 31, 2007*

|   |                     |
|---|---------------------|
| Revenue   | \$ 8,864,142        |
| Direct costs                                    | <u>7,249,892</u>    |
| Gross Profit                                    | 1,614,250           |
| General and administrative expenses             | <u>3,141,374</u>    |
| Income from Operations                          | (1,527,124)         |
| Other income / (expense)                        |                     |
| Interest income                                 | 7,243               |
| Gain (Loss) on Sale of Asset                    | 29,857              |
| Other expense                                   | (10,080)            |
| Interest expense                                | <u>(84,252)</u>     |
| Total Other Income / (Expense)                  | <u>(57,232)</u>     |
| Net Income before taxes                         | (1,584,356)         |
| Canadian Tax Expense                            | <u>(74,705)</u>     |
| Net Income                                      | (1,659,061)         |
| Retained earnings at December 31, 2006          | 1,773,261           |
| Prior Period Adjustment                         | <u>(303,442)</u>    |
| Retained earnings at December 31, 2006 Restated | 1,469,819           |
| Shareholder Distributions                       | <u>(173,459)</u>    |
| Retained earnings at December 31, 2007          | <u>\$ (362,701)</u> |

See accountants' report

# SYSTEMS WEST COMPUTER RESOURCES, INC

## STATEMENTS OF CASH FLOWS

For the Year Ended December 31, 2007

|   |                  |                  |
|---|------------------|------------------|
| Cash Flows from Operating Activities  |                  |                  |
| Net earnings  |                  | \$ (1,659,061)   |
| Adjustments to reconcile net earnings to net cash provided by operating activities: |                  |                  |
| Depreciation  | 11,686           |                  |
| Bad Debts   | 1,731,325        |                  |
| Changes in operating assets and liabilities:  |                  |                  |
| (Increase) / Decrease in:   |                  |                  |
| Receivables   | \$ 207,293       |                  |
| Prepaid Expenses  | 60,880           |                  |
| Prepaid Taxes   | 42,600           |                  |
| Increase / (Decrease) in:   |                  |                  |
| Accounts payable  | 48,801           |                  |
| Accrued expenses  | (23,835)         |                  |
| Customer prepayments & deposits   | -                |                  |
| Total Adjustments to Net Earnings   |                  | <u>2,078,750</u> |
| Net Cash Provided / (Used) by Operating Activities                                  |                  | 419,689          |
| Cash flows from investing activities:   |                  |                  |
| Sale of Fixed Assets  | 1,231            |                  |
| Shareholder Distributions   | <u>(173,459)</u> |                  |
| Net Cash Provided / (Used) by Investing Activities                                  |                  | (172,228)        |
| Cash flows from financing activities:   |                  |                  |
| Net change in bank overdraft  | (195,977)        |                  |
| Net change in line of credit  | (21,628)         |                  |
| Long-term borrowings  | <u>(29,856)</u>  |                  |
| Net Cash Provided / (Used) by Financing Activities                                  |                  | <u>(247,461)</u> |
| Net increase / (decrease) in cash   |                  | 0                |
| December 31, 2006   |                  | <u>0</u>         |
| December 31, 2007   |                  | <u>\$ 0</u>      |

See accountant's report

SYSTEMS WEST COMPUTER RESOURCES, INC.

NOTES TO FINANCIAL STATEMENTS

December 31, 2007

NOTE A - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A summary of significant accounting policies consistently applied in the preparation of the accompanying financial statements follows:

1. Business Activity

The Company is engaged primarily in outsourcing computer programmers and technicians to major corporations, municipalities and public utilities. Sales are concentrated throughout the United States and Toronto, Canada.

2. Method of Accounting

The accompanying financial statements have been prepared using generally accepted accounting principals. Revenues from services provided are recognized upon billings as provided in service agreements with customers.

Management uses estimates and assumptions in preparing these financial statements in accordance with generally accepted accounting principles. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Actual results may vary from the estimates used.

3. Income Taxes

The Company has elected to be taxed under the provisions of Subchapter S of the Internal Revenue Code for income earned in the United States. Under those provisions the Corporation does not pay income tax. The shareholders are liable for taxes based on their respective share of the Company's net income.

The Company's Canadian operations are taxed directly to the Corporation. The Company has accrued the amount due for 2007.

4. Cash and cash equivalents

For purposes of the Statement of Cash Flows, the Company considers all highly liquid investments with maturity of three months or less to be "cash equivalents". Cash balances at one banking institution may exceed the federally insured limit at any one time.

SYSTEMS WEST COMPUTER RESOURCES, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

December 31, 2006

5. Operating Cycle

Assets and liabilities related to long-term contracts are included in current assets and current liabilities in the accompanying balance sheet, as they will be liquidated in the normal course of contract completion, although this may be more than one year.

6. Depreciation

Depreciation is provided principally using straight line and accelerated methods over the estimated useful lives of the assets, which is generally three to seven years

NOTE B - ACCOUNTS RECEIVABLE

The Company uses the direct write-off method for recording bad debts. Total bad debt expense for the year ending December 31, 2007 was \$1,731,325.

NOTE C - EQUIPMENT AND FIXTURES

Equipment and fixtures as of December 31, 2007 consisted of the following:

|                        | <u>Cost</u>      | <u>Accumulated<br/>Depreciation</u> | <u>Net Book<br/>Value</u> |
|------------------------|------------------|-------------------------------------|---------------------------|
| Furniture & fixtures   | \$101,855        | \$100,888                           | \$ 967                    |
| Leasehold improvements | <u>16,987</u>    | <u>14,610</u>                       | <u>2,377</u>              |
| Total                  | <u>\$118,842</u> | <u>\$115,498</u>                    | <u>\$ 3,344</u>           |

Depreciation expense for the year ended December 31, 2007 was \$11,686, classified as a general and administrative cost.

NOTE D - REVOLVING LINE OF CREDIT

The Company held a \$1,000,000 line of credit agreement with Key Bank, which is scheduled for renewal in 2007. Interest on the outstanding balance is charged at 1/4% above the bank's prime lending rate. The balance available for borrowing at December 31, 2007 was \$21,628. The assets of the company secure the line of credit.



SYSTEMS WEST COMPUTER RESOURCES, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

December 31, 2007

NOTE E - STATEMENT OF CASH FLOWS

The Company paid interest of \$84,252 and Canadian taxes of \$74,705 during the year ended December 31, 2007. All interest has been expensed in the current period.

NOTE F - CONCENTRATIONS OF CREDIT RISK

The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of receivables. The Company routinely assesses the financial strength of its customers and, as a consequence, believes its exposure on receivables is limited.

The Company's cash balances held at banking institutions may, at times, exceed the federally insured limit.

Service contracts with one major customer accounted for over 23% of total revenues for the year ended December 31, 2007.

NOTE G - LEASES

The Company leases office space, storage space, office equipment and vehicles. The leases are classified as operating leases. Lease expense for the year totaled \$108,105.

NOTE H - RELATED PARTY TRANSACTIONS

The Company leases office space from a related person on a month-to-month basis. Current monthly payments are \$7,435 (See Note G).

NOTE I - ADVERTISING EXPENSE

Costs for advertising are expensed as incurred. For the year ended December 31, 2007, advertising expense totaled \$10,679.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----

KEYBANK NATIONAL ASSOCIATION,

:

MEMORANDUM DECISION

Plaintiff,

:

CASE NO. 080921404

vs.

:

SYSTEMS WEST COMPUTER RESOURCES,  
INC., and NANCY H. HALVERSON,

:

:

Defendants.

:

SYSTEMS WEST COMPUTER RESOURCES,  
INC., and NANCY H. HALVERSON,

:

Counterclaim Plaintiffs,

:

vs.

:

KEYBANK NATIONAL ASSOCIATION,

:

Counterclaim Defendant.

:

SYSTEMS WEST COMPUTER RESOURCES,  
INC., and NANCY H. HALVERSON,

:

:

Third Party Plaintiffs,

:

vs.

:

BRIAN GARY PATTERSON,

:

Third Party Defendant.

-----

This matter came before the Court for a hearing on November 18, 2009, in connection with the Plaintiff's Renewed Motion for Summary Judgment. At the conclusion of the hearing, the Court took the matter

under advisement to further consider the parties' written submissions, the relevant legal authority and counsel's oral argument. Being now fully informed, the Court rules as stated herein.

#### LEGAL ANALYSIS

The Plaintiff has moved for Summary Judgment on the entirety of its action against the Defendants, primarily asserting breach of a Promissory Note executed by Defendant Systems West Computer Resources, Inc. ("Systems West") in favor of the Plaintiff, a Personal Guaranty executed by Defendant Nancy H. Halverson ("Halverson") in favor of the Plaintiff and various accompanying loan documents. The Defendants have, in turn, brought a Counterclaim alleging seven causes of action, including breach of the covenant of good faith and fair dealing, negligent misrepresentation and breach of fiduciary duty.

As a procedural note, the Plaintiff previously moved for Summary Judgment, but the Court granted the Defendants' Rule 56(f) Motion seeking a continuance. The parties have apparently now engaged in discovery and Plaintiff's Renewed Motion for Summary Judgment is now ripe for decision.

The following facts are largely undisputed: Systems West executed a Promissory Note in favor of the Defendant on January 10, 2001. Systems West also executed a Business Loan Agreement and a Commercial Loan Agreement. At the same time as Systems West executed the Note, Halverson executed a Commercial Guaranty in favor of the Plaintiff with respect to the Note and the obligations of Systems West. The Note was due on July

31, 2001. The parties subsequently entered into a series of Modification and/or Change in Terms Agreements which extended the maturity date of the Note. The last Change in Terms Agreement between Key Bank and Systems West is dated June 27, 2008, extending the maturity date of the Note to July 15, 2008.

The Plaintiff asserts that Systems West has defaulted in its payment obligations under the Note, as modified, and that Halverson has defaulted in her obligations as guarantor. According to the documents before the Court, the Plaintiff is owed the principal sum of \$978,371.98, together with accrued interest in the sum of \$77,855.30. There is continuing interest on the principal sum and the Plaintiff is also seeking attorney's fees and costs.

In their Opposition, the Defendants acknowledge that the last extension extended the Note until July 15, 2008, but argue that the Plaintiff did not have the right to terminate the loan on that date. The Defendants' position is that the Plaintiff breached the covenant of good faith and fair dealing and committed other breaches "by refusing to continue to extend the term of the Note" as its representatives had promised. The Defendants seek to introduce evidence of statements by the Plaintiff's representatives that the bank would "continually renew the Note . . ." As the Court understands the Defendants' argument, it is that because the Plaintiff breached the covenant of good faith and fair dealing by refusing to renew and extend the Note and instead calling the

loan due they, in turn, are not liable for breaching the Note or the Guaranty. In this regard, the Defendants suggest that it was the Plaintiff's duty to extend the term of the loan so long as Systems West was making periodic payments.

After considering the parties' respective legal positions, the Court determines that the Plaintiff's Motion is well-taken and therefore granted. Specifically, the Court agrees with the Plaintiff's assessment that the Defendants are essentially asking this Court to re-write the numerous documents before the Court to essentially extend the life of the loan in perpetuity based upon the testimony of Halverson. Indeed, all of the defenses and counterclaims are premised on the argument that the Court should overlook the plain language of multiple, fully-integrated loan agreements in favor of contradictory oral agreements and representations.


The Court determines that the subject loan documents are valid, enforceable and represent the parties' final written agreement(s) governing their rights and obligations. The Plaintiff cannot seek to alter these written documents with parol evidence and she cannot invoke the covenant of good faith and fair dealing to create rights and duties inconsistent with the express written terms of the documents.

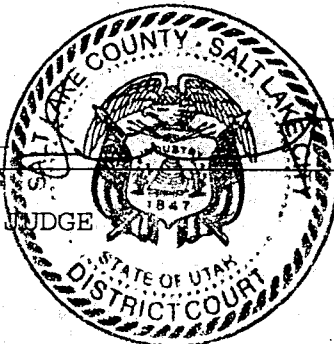
Overall, the Court is satisfied that the Defendants have materially breached the loan documents and the alleged oral agreements and representations do not relieve them of liability. Moreover, these oral

representations are not admissible under the parol evidence rule because they seek to vary or contradict the clear and unambiguous terms of the loan documents. See Tangren Family Trust v. Tangren, 182 P.3d 326, 330 (Utah 2008). As a corollary, the Defendants' counterclaims are barred under the parol evidence rule in that they seek to impose duties and obligations that are inconsistent with the express terms of the loan documents.

Based on the foregoing and on the detailed argument set forth in the Plaintiff's moving documents, the Court grants the Plaintiff's Motion in its entirety. Counsel for the Plaintiff is to prepare an Order consistent with but not limited to this Memorandum Decision. Counsel should provide legal authority where necessary to support this Court's conclusions and should outline only those facts that are material to the Court's ruling and which are not in dispute.

Dated this 19th day of November, 2009.

  
ROBERT P. FAUST  
DISTRICT COURT JUDGE





MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 19 day of November, 2009:

Gerald H. Suniville  
Seth M. Mott  
Attorneys for Plaintiff  
36 S. State Street, Suite 1900  
Salt Lake City, Utah 84111-1478

Matthew M. Boley  
C. Ryan Christensen  
Attorneys for Defendants  
111 E. Broadway, Eleventh Floor  
Salt Lake City, Utah 84111

ST

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**FILED DISTRICT COURT**  
Third Judicial District

**MAR 30 2010**

SALT LAKE COUNTY  
BY [Signature] Deputy Clerk  
DEPUTY CLERK

Prepared and Submitted by:

VANCOTT, BAGLEY, CORNWALL & MCCARTHY

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*Attorneys for KeyBank National Association, Plaintiff*

**IN THE THIRD JUDICIAL DISTRICT COURT**

**SALT LAKE COUNTY, STATE OF UTAH**

KEYBANK NATIONAL ASSOCIATION,

Plaintiff,

vs.

SYSTEMS WEST COMPUTER  
RESOURCES, INC. and NANCY H.  
HALVERSON,

Defendants.

SYSTEMS WEST COMPUTER  
RESOURCES, INC. and NANCY H.  
HALVERSON,

Counterclaim Plaintiffs,

vs.

KEYBANK NATIONAL ASSOCIATION,

Counterclaim Defendant.

**AMENDED BRIEF STATEMENT OF  
GROUNDS  
FOR GRANTING  
SUMMARY JUDGMENT**

Case No. 080921404

Judge Paul G. Maughan

Pursuant to the Court's Memorandum Decision dated November 19, 2009, and as more fully set forth in Plaintiff KeyBank's Memoranda in Support of its Renewed Motion for Summary Judgment, the Court makes the following brief statement of the grounds for its decision to grant summary judgment in favor of KeyBank:

**BRIEF STATEMENT OF UNDISPUTED MATERIAL FACTS**

1. On January 10, 2001, Defendant Systems West Computer Resources, Inc. ("Systems West") obtained a revolving line of credit loan from KeyBank, for which it executed a Promissory Note (the "Note"), together with a Business Loan Agreement, a Commercial Security Agreement, and a Notice of Final Agreement (collectively the "Loan Documents"), in favor of KeyBank, in the principal sum of \$1,000,000.00. All of the Loan Documents are fully integrated agreements.

2. Also on January 10, 2001, Defendant Nancy H. Halverson ("Halverson") executed a Commercial Guaranty in favor of KeyBank with respect to the Note and the obligations of Systems West under the Loan Documents.

3. After an initial term of six months, the term of the Note was successively modified and extended until the Note came due in full on July 15, 2008.

4. Systems West defaulted in its payment obligations under the Note, by failing to repay the loan as due and as demanded, and failed to cure the default.

5. Halverson likewise defaulted in her obligations under the Commercial Guaranty, and, despite demand, failed to cure the default.

6. The current amount owing to KeyBank under the Note and accompanying loan documents, as of September 29, 2009, is in the principal sum of \$978,371.98, plus accrued interest in the sum of \$77,855.30, together with continuing interest at a per diem rate of \$176.65, late charges, costs and reasonable attorneys' fees incurred in pursuing this action and collecting the amounts due.

7. The Court heretofore has entered Judgment on December 8, 2009, against Defendants Systems West and Halverson, jointly and severally, in the principal sum of \$978,371.98, plus interest in the sum of \$77,855.30, attorneys' fees in the amount of \$100,061.00, and costs in the amount of \$4,622.13, for a total judgment of \$1,160,910.41.

## **BRIEF STATEMENT OF LEGAL GROUNDS FOR GRANTING SUMMARY**

### **JUDGMENT**

#### **A. SYSTEMS WEST BREACHED THE PROMISSORY NOTE AND ACCOMPANYING LOAN DOCUMENTS.**

1. The elements that a plaintiff must show to recover in a case for breach of contract are: "(1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages." Bair v. Axiom Design, L.L.C., 10 P.3d 338, 340 (Utah 2000). In this case, the "contract terms are complete, clear, and unambiguous," and thus may be "interpreted by the judge on a motion for summary judgment." Colonial Leasing Co. of New England, Inc. v. Larsen Bros. Const. Co., 731 P.2d 483, 488 (Utah 1986).

2. Systems West breached its contractual obligations to KeyBank under the Note and accompanying Loan Documents, by, among other things, failing and refusing to pay the outstanding amounts due and owing at the maturity date of the Note.

**B. HALVERSON BREACHED HER COMMERCIAL GUARANTY.**

3. Halverson likewise breached her contractual obligations to KeyBank under the Commercial Guaranty, by, among other things, failing and refusing to pay the outstanding amounts due and owing at the maturity date of the Note.

**C. DEFENDANTS' COUNTERCLAIMS ARE BARRED UNDER THE PAROL EVIDENCE RULE.**

4. "[I]f a contract is integrated, parol evidence is admissible only to clarify ambiguous terms; it is 'not admissible to vary or contradict the clear and unambiguous terms of the contract.'" Tangren Family Trust v. Tangren, 182 P.3d 326, 330 (Utah 2008); see also Park v. Stanford, 642 Utah Adv. Rep. 22 (Utah Ct. App. 2009). "[A]n integrated agreement is 'a writing or writings constituting a final expression of one or more terms of an agreement.'" Daines v. Vincent, 190 P.3d 1269, 1275 (Utah 2008).

5. The Loan Documents entered into by and between KeyBank, as lender, Systems West, as borrower, and Halverson, as guarantor, are all clear, unambiguous, and fully integrated agreements, and therefore the introduction or consideration of parol evidence to "vary or add" to the terms of the Loan Documents is impermissible. See Tangren at 330–31.

6. It is similarly impermissible to use the covenant of good faith and fair dealing to vary or contradict the express terms of the Loan Documents. See, e.g., Oakwood Vill., LLC v. Alberstons, Inc., 104 P.3d 1226, 1240 (Utah 2004). "First, this covenant cannot be read to establish new, independent rights or duties to which the parties did not agree ex ante." Id. (citing Brehany v. Nordstrom, Inc., 812 P.2d 49, 55 (Utah 1991). "Second, this covenant cannot create rights and duties inconsistent with express contractual terms." Id. (citing Brehany, 812 P.2d at 55; Rio Algom Corp. v. Jimco, Ltd., 618 P.2d 497, 505 (Utah 1980)). "Third, this covenant cannot compel a contractual party to exercise a contractual right to its own detriment for the purpose of benefitting another party to the contract." Id. (citing Olympus Hills Shopping Ctr. v. Smith's Food & Drug Ctrs., 889 P.2d 445, 457 n.13 (Utah 1994)). Finally, the Court must "not use this covenant to achieve an outcome in harmony with the court's sense of justice but inconsistent with the express terms of the applicable contract." Id. (citing Dalton v. Jerico Constr. Co., 642 P.2d 748, 750 (Utah 1982)).

7. Defendants' counterclaims are barred because they seek to impose duties and obligations that are inconsistent with the express terms of the Loan Documents.

DATED this 29 day of March, 2010.

BY THE COURT

  
PAUL G. MAUGHAN  
THIRD DISTRICT JUDGE



**CERTIFICATE OF SERVICE**

I hereby certify that on the 16<sup>th</sup> day of February, 2010, I caused a true and correct copy of the foregoing **AMENDED BRIEF STATEMENT OF GROUNDS FOR GRANTING SUMMARY JUDGMENT** to be served on the following by depositing a copy thereof in the United States Mail, postage prepaid, and addressed as follows:

Matthew M. Boley  
C. Ryan Christensen  
PARSONS KINGHORN HARRIS  
111 East Broadway, 11<sup>th</sup> Floor  
Salt Lake City, UT 84111

David K. Isom  
Isom Law Firm PLLC  
299 South Main Street, Suite 1300  
Salt Lake City, Utah 84111


A handwritten signature in black ink, appearing to read "D. K. Isom", written over a horizontal line.

Prepared and Submitted by:  
VANCOTT, BAGLEY, CORNWALL & MCCARTHY  
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**FILED DISTRICT COURT**  
Third Judicial District

**MAR 30 2010**

SALT LAKE COUNTY

by  Deputy Clerk

**IMAGED**

*Attorneys for KeyBank National Association, Plaintiff*

**IN THE THIRD JUDICIAL DISTRICT COURT**

**SALT LAKE COUNTY, STATE OF UTAH**

KEYBANK NATIONAL ASSOCIATION,

Plaintiff,

vs.

SYSTEMS WEST COMPUTER  
RESOURCES, INC. and NANCY H.  
HALVERSON,

Defendants.

SYSTEMS WEST COMPUTER  
RESOURCES, INC. and NANCY H.  
HALVERSON,

Counterclaim Plaintiffs,

vs.

KEYBANK NATIONAL ASSOCIATION,

Counterclaim Defendant.

**AMENDED ORDER AND JUDGMENT**

Case No. 080921404

Judge Paul G. Maughan

Amended Order and Judgment @J



JD31298202

pages: 4

080921404 SYSTEMS WEST COMPUTER RI

This matter came before the Court for hearing on November 18, 2009, in connection with the Renewed Motion for Summary Judgment against Defendants Systems West Computer Resources, Inc. ("Systems West") and Nancy H. Halverson ("Halverson") submitted by Plaintiff KeyBank National Association ("KeyBank") on October 8, 2009. At the conclusion of the hearing, the Court took the matter under advisement to further consider the parties' written submissions, the relevant legal authority, and counsel's oral arguments. The Court, having reviewed and considered all the submissions of the parties, having entered its Memorandum Decision dated November 19, 2009 and its Brief Statement of Grounds for Granting Summary Judgment, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. KeyBank's Renewed Motion for Summary Judgment dated October 8, 2009, be, and it hereby is, GRANTED in its entirety.
2. Defendants' Counterclaims against KeyBank be, and they hereby are, DENIED and DISMISSED in their entirety.
3. JUDGMENT be, and it hereby is, GRANTED against Defendants Systems West Computer Resources, Inc. and Nancy H. Halverson, jointly and severally, in the principal sum of \$978,371.98, together with interest as of September 29, 2009, in the sum of \$77,855.30, together with continuing interest at a per diem rate of \$176.65, from and after September 29, 2009, costs in the amount of \$4,622.13, and reasonable attorney's fees, in the amount of \$100,061.00.

4. Defendant Systems West be, and it HEREBY is, ORDERED and DIRECTED to immediately assemble, turnover and deliver to KeyBank all of KeyBank's collateral and records relating to the same, for disposition of such collateral.

DATED this 29 <sup>March 2010</sup> day of ~~December~~, ~~2009~~.

BY THE COURT


  
PAUL G. MAUGHAN  
THIRD DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11<sup>th</sup> day of December, 2009, I caused a true and correct copy of the foregoing **AMENDED ORDER AND JUDGMENT** to be served on the following by depositing a copy thereof in the United States Mail, postage prepaid, and addressed as follows:

Matthew M. Boley  
C. Ryan Christensen  
PARSONS KINGHORN HARRIS  
111 East Broadway, 11<sup>th</sup> Floor  
Salt Lake City, UT 84111

David K. Issom  
Isom Law Firm PLLC  
299 South Main Street, Suite 1300  
Salt Lake City, Utah 84111

A handwritten signature in black ink, appearing to read 'David K. Issom', written over a horizontal line.