

The Company closed on the first tranche of \$2.75 million and issued to the Purchasers, in the aggregate, Debentures in the face amount of \$2.75 million, 100,000 shares of Common Stock, Warrants to acquire 229,167 shares of Common Stock and CBS Warrants to acquire 70,000 CBS Shares. Consummation of the second and third tranches is conditioned upon, among other things, achievement by the Company and CBS of certain mutually agreeable milestones and under certain conditions, approval by the shareholders of Fidelity.

The Debentures are convertible into Common Stock of the Company at any time after the date of issue (subject to certain volume limitations). Upon conversion, holders will be entitled to receive a number of shares of Common Stock determined by dividing the outstanding principal amount of the Debentures by a conversion price equal to the lesser of 90% of the average closing bid prices for the Common Stock during a defined period prior to conversion, and \$4.20 (but in no event less than \$3.00, and subject to adjustment upon the occurrence of certain dilutive events).

The Warrants are exercisable for shares of Common Stock of the Company. Upon exercise, holders will be entitled to receive shares of Common Stock for an exercise price of \$4.20 per share. The Warrants will expire on January 25, 2004.

The CBS Warrants are exercisable for shares of Common Stock of CBS. Upon exercise, holders will be entitled to receive shares of Common Stock for an exercise price of \$0.001 per share. The CBS Warrants will expire on January 25, 2004.

In connection with this transaction, the Company also entered into a Registration Rights Agreement with the Purchasers under which the Company is required to file a registration statement on Form S-3 by March 11, 1999, subject to certain specified exceptions, covering resales of the Conversion Shares and the Warrant Shares (the "Resale Registration Statement"). Under the Registration Rights Agreement, the Company may be required to make certain payments to holders of the Debentures as partial damages if, among other things, the Resale Registration Statement has not been declared effective by the Securities and Exchange Commission on or before July 9, 1999, subject to certain specified exceptions.

The net proceeds to the Company after payment of closing fees and expenses is \$2,455,250. In connection with the placement of the Debentures, the Company also issued to Zanett Securities Corporation, the placement agent for the transaction (the "Placement Agent"), and its assignees, 50,000 shares of the Company's Common Stock, 30,000 shares of CBS Common Stock and warrants to purchase an aggregate of 114,583 shares of Common Stock at an exercise price equal to \$4.20 per share, which contain the same restrictions as the Warrants. All of the shares underlying the Placement Agent warrants must be included in the Resale Registration Statement.

#### Use of Proceeds

The Company intends to use the net proceeds from the Offering primarily for developmental activities in its telecommunications and plastics divisions, and also for working capital purposes of Fidelity and CBS, including the possible acquisition of additional car dealerships.

#### Item 7. Financial Statements, Pro Forma Financial Information and Exhibits

##### (C) Exhibits

The following exhibits, from which schedules and exhibits have been omitted and will be furnished to the Commission upon its request, are filed with this report on Form 8-K.

4.11 -- Form of Warrant

4.12 -- Form of CBS Warrant

4.13 -- Form of Debenture

10.60 -- Placement Agent Agreement, dated as of January 25, 1999, between Fidelity Holdings, Inc. and The Zanett Securities Corporation, Claudio Guazzoni, David McCarthy, and Tony Milbank

10.61 -- Securities Purchase Agreement dated as of January 25, 1999, By and among Fidelity Holdings, Inc., Computer Business Sciences, Inc., Zanett Lombardier, Ltd., Goldman Sachs Performance Partners, L.P., Goldman Sachs Performance Partners, (Offshore) L.P., David McCarthy

and Bruno Guazzoni

- 10.62 -- Registration Rights Agreement dated as of January 25, 1999, by and among Fidelity Holdings, Inc., Zanett Lombardier, Ltd., Goldman Sachs Performance Partners, L.P., Goldman Sachs Performance Partners, (Offshore) L.P., David McCarthy and Bruno Guazzoni.

### SIGNATURE

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

FIDELITY HOLDINGS, INC.  
(Registrant)

/s/ Doron Cohen

Doron Cohen, President

Dated: February 3, 1999

Exhibit 4.11

VOID AFTER 5:00 P.M., NEW YORK  
CITY TIME, ON JANUARY 25, 2004  
(UNLESS EXTENDED PURSUANT TO SECTION 2 HEREOF)

THIS WARRANT AND THE SHARES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. THE SECURITIES REPRESENTED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED UNLESS THE SECURITIES ARE REGISTERED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, OR ANY SUCH OFFER, SALE OR TRANSFER IS MADE PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS.

Date: January 25, 1999

Right to Purchase \_\_\_\_\_  
Shares of Common Stock

### FIDELITY HOLDINGS, INC. STOCK PURCHASE WARRANT

THIS CERTIFIES THAT, for value received, \_\_\_\_\_ or its or his registered assigns is entitled to purchase from Fidelity Holdings, Inc., a Nevada corporation (the "Company"), at any time or from time to time during the period specified in Section 2 hereof, \_\_\_\_\_ (\_\_\_\_\_) fully paid and nonassessable shares of the Company's Common Stock, par value \$0.01 per share ("Common Stock"), at an exercise price per share equal to \$4.20 ("Exercise Price"). The number of shares of Common Stock purchasable hereunder (the "Warrant Shares") and the Exercise Price are subject to adjustment as provided in Section 4 hereof. The term "Warrants" means this Warrant and the other Warrants of the Company issued pursuant to that certain Securities Purchase Agreement, dated as of January 25, 1999, and among the Company and the other signatories thereto (the "Securities Purchase Agreement") and/or that certain Placement Agency Agreement of even date herewith between the Company and The Zanett Securities Corporation (the "Placement Agency Agreement").

This Warrant is subject to the following terms, provisions and conditions:

1. **Manner of Exercise; Issuance of Certificates; Payment for Shares.** Subject to the provisions hereof, including, without limitation, the limitations contained in Section 7 hereof, this Warrant may be exercised by the holder hereof, in whole or in part, by the surrender of this Warrant, together with a completed exercise agreement in the form attached hereto (the

"Exercise Agreement"), to the Company by 11:59 p.m., New York time on any business day at the Company's principal executive offices (or such other office or agency of the Company as it may designate by notice to the holder hereof), and upon (i) payment to the Company in cash, by certified or official bank check or by wire transfer for the account of the Company, of the Exercise Price for the Warrant Shares specified in the Exercise Agreement or (ii) upon delivery to the Company of a written notice of a Cashless Exercise for the Warrant Shares specified in the Exercise Agreement. The Warrant Shares so purchased shall be deemed to be issued to the holder hereof or such holder's designee, as the record owner of such shares, as of the close of business on the date on which this Warrant shall have been surrendered, the completed Exercise Agreement shall have been delivered and payment shall have been made for such Warrant Shares as set forth above, or, if such date is not a business date, on the next succeeding business day. Certificates for the Warrant Shares so purchased, representing the aggregate number of shares specified in the Exercise Agreement, shall be delivered to the holder hereof within a reasonable time, not exceeding two (2) business days, after this Warrant shall have been so exercised (the "Delivery Period"). The certificates so delivered shall bear a standard restrictive legend and shall be in such denominations as may be requested by the holder hereof and shall be registered in the name of such holder or such other name as shall be designated by such holder. If this Warrant shall have been exercised only in part, then, unless this Warrant has expired, the Company shall, at its expense, at the time of delivery of such certificates, deliver to the holder a new Warrant representing the number of shares with respect to which this Warrant shall not then have been exercised.

If, at any time, a holder of this Warrant submits this Warrant, an Exercise Agreement and payment to the Company of the Exercise Price for each of the Warrant Shares specified in the Exercise Agreement, and the Company fails for any reason to deliver, on or prior to the fourth business day following the expiration of the Delivery Period for such exercise, the number of shares of Common Stock to which the holder is entitled upon such exercise (an "Exercise Default"), then the Company shall pay to the holder payments ("Exercise Default Payments") for an Exercise Default in the amount of (a)  $(N/365)$ , multiplied by (b) the difference between the Market Price (as defined in Section 4(l)(ii) hereof) on the date the Exercise Agreement giving rise to the Exercise Default is transmitted in accordance with this Section 1 (the "Exercise Default Date") less the Exercise Price, multiplied by (c) the number of shares of Common Stock the Company failed to so deliver in such Exercise Default multiplied by (d) .24, where  $N$  = the number of days from the Exercise Default Date to the date that the Company effects the full exercise of this Warrant which gave rise to the Exercise Default. The accrued Exercise Default Payment for each calendar month shall be paid in cash or shall be convertible into Common Stock at the Exercise Price, at the holder's option, as follows:

(a) In the event the holder elects to take such payment in cash, cash payment shall be made to holder by the fifth (5th) day of the month following the month in which it has accrued; and

(b) In the event the holder elects to take such payment in Common Stock, the holder may convert such payment amount into Common Stock at the Exercise Price (as in effect at the time of conversion) at any time after the fifth (5th) day of the month following the month in which it has accrued.

Nothing herein shall limit the holder's right to pursue actual damages for the Company's failure to maintain sufficient number of authorized shares of Common Stock as required pursuant to the terms of Section 3(b) hereof, or otherwise issue shares of Common Stock upon exercise of this Warrant in accordance with the terms hereof, and the holder shall have the right to pursue all remedies available at law or in equity (including a decree of specific performance and/or injunctive relief); provided that any such damages shall be reduced by the amount of the Exercise Default Payments.

2. **Period of Exercise.** This Warrant is exercisable at any time or from time to time on or after the date of the initial issuance of this Warrant (the "Issue Date") and before 5:00 p.m., New York City time, on the fifth (5th) year anniversary of the Issue Date (the "Exercise Period"). The Exercise Period shall automatically be extended by one (1) day for each day on which the Company does not have a number of shares of Common Stock reserved for issuance upon exercise hereof at least equal to the number of shares of Common Stock issuable upon exercise hereof.

3. **Certain Agreements of the Company.** The Company hereby covenants and agrees as follows:

(a) **Shares to be Fully Paid.** All Warrant Shares will, upon issuance in accordance with the terms of this Warrant, be validly issued, fully paid, and nonassessable and free from all taxes, liens, claims and encumbrances.

(b) Reservation of Shares. During the Exercise Period, the Company shall at all times have authorized, and reserved for the purpose of issuance upon exercise of this Warrant, a sufficient number of shares of Common Stock to provide for the exercise of this Warrant.

(c) Listing. The Company shall promptly secure the listing of the shares of Common Stock issuable upon exercise of this Warrant upon each national securities exchange or automated quotation system, if any, upon which shares of Common Stock are then listed or become listed (subject to official notice of issuance upon exercise of this Warrant) and shall maintain, so long as any other shares of Common Stock shall be so listed or through the Exercise Period, whichever is shorter, such listing of all shares of Common Stock from time to time issuable upon the exercise of this Warrant; and the Company shall so list on each national securities exchange or automated quotation system, as the case may be, and shall maintain such listing of, any other shares of capital stock of the Company issuable upon the exercise of this Warrant if and so long as any share of the same class shall be listed on such national securities exchange or automated quotation system; provided, however, that the holder of this Warrant acknowledges that the rules of such national securities exchange or automated quotation system may under certain circumstances require shareholder approval for the issuance of Shares of Common Stock upon exercise of this Warrant.

(d) Certain Actions Prohibited. The Company will not, by amendment of its charter or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by it hereunder, but will at all time in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may reasonably be requested by the holder of this Warrant in order to protect the exercise privilege of the holder of this Warrant against dilution or other impairment, consistent with the tenor and purpose of this Warrant. Without limiting the generality of the foregoing, the Company (i) will not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, and (ii) will take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant.

(e) Successors and Assigns. This Warrant will be binding upon any entity succeeding to the Company by merger, consolidation or acquisition of all or substantially all of the Company's assets.

(f) Blue Sky Laws. The Company shall, on or before the date of issuance of any Warrant Shares, take such action as the Company shall reasonably determine are necessary to qualify the Warrant Shares for, or obtain exemption for the Warrant Shares for, sale to the holder of this Warrant upon the exercise hereof under applicable securities or "blue sky" laws of the states of the United States, and shall provide evidence of any such action so taken to the holder of this Warrant prior to such date; provided, however, that the Company shall not be required to qualify as a foreign corporation or file a general consent to service of process in any such jurisdiction.

4. Antidilution Provisions. During the Exercise Period, the Exercise Price and the number of Warrant Shares shall be subject to adjustment from time to time as provided in this Section 4. In the event that any adjustment of the Exercise Price as required herein results in a fraction of a cent, such Exercise Price shall be rounded up or down to the nearest cent.

(a) Adjustment of Exercise Price and Number of Shares upon Issuance of Common Stock. Except as otherwise provided in Sections 4(b)(iv), 4(c) and 4(e) hereof, if and whenever during the Exercise Period, after the Issue Date, the Company issues or sells, or in accordance with Section 4(b) hereof is deemed to have issued or sold, any shares of Common Stock for no consideration or for a consideration per share less than the Market Price on the date of issuance (other than an issuance pursuant to the Securities Purchase Agreement) (a "Dilutive Issuance"), then effective immediately upon the Dilutive Issuance, the Exercise Price will be adjusted in accordance with the following formula:

$$E' = E \times \frac{O + P/M}{\text{CSDO}}$$

where:

E' = the adjusted Exercise Price;  
E = the then current Exercise Price;  
M = the then current Market Price (as defined in Section 4(l)(ii));  
O = the number of shares of Common Stock outstanding

P = immediately prior to the Dilutive Issuance;  
the aggregate consideration, calculated as set forth  
in Section 4(b) hereof, received by the Company upon  
such Dilutive Issuance; and  
CSDO = the total number of shares of Common Stock Deemed  
Outstanding (as defined in Section 4(l)(i))  
immediately after the Dilutive Issuance.

(b) Effect on Exercise Price of Certain Events. For purposes of determining the adjusted Exercise Price under Section 4(a) hereof, the following will be applicable:

(i) Issuance of Rights or Options. If the Company in any manner issues or grants any warrants, rights or options, whether or not immediately exercisable, to subscribe for or to purchase Common Stock or other securities exercisable, convertible into or exchangeable for Common Stock ("Convertible Securities") (such warrants, rights and options to purchase Common Stock or Convertible Securities are hereinafter referred to as "Options") and the price per share for which Common Stock is issuable upon the exercise of such Options is less than the Market Price in effect on the date of issuance of such Options ("Below Market Options"), then the maximum total number of shares of Common Stock issuable upon the exercise of all such Below Market Options (assuming full exercise, conversion or exchange of Convertible Securities, if applicable) will, as of the date of the issuance or grant of such Below Market Options, be deemed to be outstanding and to have been issued and sold by the Company for such price per share. For purposes of the preceding sentence, the "price per share for which Common Stock is issuable upon the exercise of such Below Market Options" is determined by dividing (i) the total amount, if any, received or receivable by the Company as consideration for the issuance or granting of all such Below Market Options, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the exercise of all such Below Market Options, plus, in the case of Convertible Securities issuable upon the exercise of such Below Market Options, the minimum aggregate amount of additional consideration payable upon the exercise, conversion or exchange thereof at the time such Convertible Securities first become exercisable, convertible or exchangeable, by (ii) the maximum total number of shares of Common Stock issuable upon the exercise of all such Below Market Options (assuming full conversion of Convertible Securities, if applicable). No further adjustment to the Exercise Price will be made upon the actual issuance of such Common Stock upon the exercise of such Below Market

Options or upon the exercise, conversion or exchange of Convertible Securities issuable upon exercise of such Below Market Options.

(ii) Issuance of Convertible Securities.

(A) If the Company in any manner issues or sells any Convertible Securities, whether or not immediately convertible (other than where the same are issuable upon the exercise of Options) and the price per share for which Common Stock is issuable upon such exercise, conversion or exchange (as determined pursuant to Section 4(b)(ii)(B) if applicable) is less than the Market Price in effect on the date of issuance of such Convertible Securities, then the maximum total number of shares of Common Stock issuable upon the exercise, conversion or exchange of all such Convertible Securities will, as of the date of the issuance of such Convertible Securities, be deemed to be outstanding and to have been issued and sold by the Company for such price per share. For the purposes of the preceding sentence, the "price per share for which Common Stock is issuable upon such exercise, conversion or exchange" is determined by dividing (i) the total amount, if any, received or receivable by the Company as consideration for the issuance or sale of all such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the exercise, conversion or exchange thereof at the time such Convertible Securities first become exercisable, convertible or exchangeable, by (ii) the maximum total number of shares of Common Stock issuable upon the exercise, conversion or exchange of all such Convertible Securities. No further adjustment to the Exercise Price will be made upon the actual issuance of such Common Stock upon exercise, conversion or exchange of such Convertible Securities.

(B) If the Company in any manner issues or sells any Convertible Securities with a fluctuating conversion or exercise price or exchange ratio (a "Variable Rate Convertible Security"), then the "price per share for which Common Stock is issuable upon such exercise, conversion or exchange" for purposes of the calculation contemplated by Section 4(b)(ii)(A) shall be deemed to be the lowest price per share which would be applicable (assuming all holding period and other conditions to any discounts contained in such Convertible Security have been satisfied) if the Market Price in effect on the date of issuance of such Convertible Security was 75% of the Market Price in effect on such date (the "Assumed Variable Market Price"). Further, if the Market Price in effect at any time or times thereafter is less than or equal to the Assumed Variable Market Price last used for making any adjustment under this Section 4 with respect to any Variable Rate Convertible Security, the Exercise Price in effect at such time shall be readjusted to equal the Exercise Price which would have resulted if the Assumed

Variable Market Price in effect at the time of issuance of the Variable Rate Convertible Security had been 75% of the Market Price in effect at the time of the adjustment required by this sentence.

(iii) Change in Option Price or Conversion Rate. If there is a change at any time in (i) the amount of additional consideration payable to the Company upon the exercise of any Options; (ii) the amount of additional consideration, if any, payable to the Company upon the exercise, conversion or exchange of any Convertible Securities; or (iii) the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock (in each such case, other than under or by reason of provisions designed to protect against dilution), the Exercise Price in effect at the time of such change will be readjusted to the Exercise Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold.

(iv) Treatment of Expired Options and Unexercised Convertible Securities. If, in any case, the total number of shares of Common Stock issuable upon exercise of any Option or upon exercise, conversion or exchange of any Convertible Securities is not, in fact, issued and the rights to exercise such Option or to exercise, convert or exchange such Convertible Securities shall have expired or terminated, the Exercise Price then in effect will be readjusted to the Exercise Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination (other than in respect of the actual number of shares of Common Stock issued upon exercise or conversion thereof), never been issued.

(v) Calculation of Consideration Received. If any Common Stock, Options or Convertible Securities are issued, granted or sold for cash, the consideration received therefor for purposes of this Warrant will be the amount received by the Company therefor, before deduction of reasonable commissions, underwriting discounts or allowances or other reasonable expenses paid or incurred by the Company in connection with such issuance, grant or sale. In case any Common Stock, Options or Convertible Securities are issued or sold for a consideration part or all of which shall be other than cash, the amount of the consideration other than cash received by the Company will be the fair market value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Company will be the Market Price thereof as of the date of receipt. In case any Common Stock, Options or Convertible Securities are issued in connection with any merger or consolidation in which the Company is the surviving corporation, the amount of consideration therefor will be deemed to be the fair market value of such portion of the net assets and business of the non-surviving corporation as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair market value of any consideration other than cash or securities will be determined in good faith by an investment banker or other appropriate expert of national reputation selected by the Company and reasonably acceptable to the holder hereof, with the costs of such appraisal to be borne by the Company.

(vi) Exceptions to Adjustment of Exercise Price. No adjustment to the Exercise Price will be made (i) upon the exercise or conversion of any warrants, options, subscriptions, convertible notes, convertible debentures, convertible preferred stock or other convertible securities issued and outstanding on the First Closing Date (as defined in the Securities Purchase Agreement) as set forth on Schedule 3(a)(iii) of the Securities Purchase Agreement in accordance with the terms of such securities as of such date; (ii) upon the grant or exercise of any stock or options which may hereafter be granted or exercised under any employee benefit plan of the Company now existing or to be implemented in the future, or upon grant or exercise of any stock or options to or by any officer, director, employee, agent, consultant or other entity providing services to the Company, whether or not under a plan, so long as the issuance of such stock or options is approved by a majority of the non-employee members of the Board of Directors of the Company or a majority of the members of a committee of non-employee directors established for such purpose; (iii) upon the issuance of any Debentures (as such term is defined in the Securities Purchase Agreement) or Warrants issued or issuable in accordance with the terms of the Securities Purchase Agreement; (iv) upon conversion of the Debentures or exercise of the Warrants; (v) upon the issuance of securities in connection with an underwritten public offering of the Company; (vi) upon the issuance of securities in connection with any merger, acquisition or consolidation, or purchase of assets or business from another person, so long as the Company is the surviving corporation; (vii) upon the issuance of securities issued as the result of anti-dilution rights granted to a third party; (viii) in connection with the issuance of securities upon the exercise of warrants or other rights granted as "equity kickers" to the holders of Senior Indebtedness (as defined in the Debentures); and (ix) upon exercise of the Placement Agent's Warrants.

(c) Subdivision or Combination of Common Stock. If the Company, at any time during the Exercise Period subdivides (by any stock split, stock dividend, recapitalization, reorganization, reclassification or otherwise) its shares of Common Stock into a greater number of shares, then, after the date of record for effecting such subdivision, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company, at any time during the Exercise Period, combines (by reverse stock split, recapitalization, reorganization, reclassification or otherwise) its shares of Common Stock into a smaller number of shares, then, after the date of record for effecting such combination, the Exercise Price in effect immediately prior to such combination will be proportionately increased.

(d) Adjustment in Number of Shares. Upon each adjustment of the Exercise Price pursuant to the provision Section 4, the number of shares of Common Stock issuable upon exercise of this Warrant and for which this Warrant is become exercisable shall be adjusted by multiplying a number equal to the Exercise Price in effect immediately prior adjustment by the number of shares of Common Stock issuable upon exercise of this Warrant and for which this Warrant may become exercisable immediately prior to such adjustment and dividing the product so obtained by the adjusted Exercise Price.

(e) Consolidation or Merger. In case of any consolidation of the Company with, or merger of the Company into, another corporation, or in case of any sale or conveyance of all or substantially all of the assets of the Company at any time during the Exercise Period, then as a condition of such consolidation, merger or sale or conveyance, adequate provision shall be made whereby the holder of this Warrant will have the right to acquire and receive upon exercise of this Warrant in lieu of the shares of Common Stock immediately theretofore acquirable upon the exercise of this Warrant, such shares of Common Stock, securities, cash or assets as may be issued or payable with respect to or in exchange for the number of shares of Common Stock immediately theretofore acquirable and receivable upon exercise of this Warrant had such consolidation, merger, sale or conveyance not taken place. In any such case, the Company will make appropriate provision to insure that the provisions of this Section 4 hereof will thereafter be applicable as nearly as may be in relation to any shares of stock or securities thereafter deliverable upon the exercise of this Warrant. The Company will not effect any consolidation, merger, sale or conveyance unless prior to the consummation thereof, the successor corporation (if other than the Company) assumes by written instrument the obligations under this Warrant and the obligations to deliver to the holder of this Warrant such shares of stock, securities or assets as, in accordance with the foregoing provisions, the holder may be entitled to acquire. Notwithstanding the foregoing, in the event of any consolidation of the Company with, or merger of the Company into, any other corporation, or the sale or conveyance of all or substantially all of the assets of the Company, at any time during the Exercise Period, the holder of the Warrant shall, at its option, have the right to receive, in connection with such transaction, cash consideration equal to the fair market value of this Warrant as determined in accordance with customary valuation methodology used in the investment banking industry.

(f) Distribution of Assets. In case the Company shall declare or make any distribution of its assets (or rights to acquire its assets) to holders of Common Stock as a dividend, by way of return of capital or otherwise (including any dividend or distribution to the Company's shareholders of cash or shares (or rights to acquire shares) of capital stock of a subsidiary (a "Distribution"), at any time during the Exercise Period, then the holder of this Warrant shall be entitled upon exercise of the Warrant for the purchase of any or all of the shares of Common Stock subject hereto, to receive the amount of such asset (or rights) which would have been payable to the holder had such holder been the holder of such shares of Common Stock on the record date for the determination of shareholders entitled to such Distribution.

(g) Notice of Adjustment. Upon the occurrence of any event which requires any adjustment of the Exercise Price, then, and in each such case, the Company shall give notice thereof to the holder of this Warrant, which notice shall state the Exercise Price resulting from such adjustment and the increase or decrease in the number of Warrant Shares purchasable at such price upon exercise, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Such calculation shall be certified by the chief financial officer of the Company.

(h) Minimum Adjustment of Exercise Price. No adjustment of the Exercise Price shall be made in an amount of less than 1% of the Exercise Price in effect at the time such adjustment is otherwise required to be made, but any such less adjustment shall be carried forward and shall be made at the time and together with the next subsequent adjustment which together with any adjustments so carried forward, shall amount to not less than 1% of such Exercise Price.

(i) No Fractional Shares. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but the Company shall pay a cash adjustment in respect of any fractional share which would otherwise be issuable in an amount equal to the same fraction of the Market Price of a share of Common Stock on the date of such exercise.

(j) Other Notices. In case at any time:

(i) the Company shall declare any dividend upon the Common Stock payable in shares of stock of any class or make any other distribution (other than dividends or distributions payable in cash out of retained earnings consistent with the Company's past practices with respect to declaring dividends and making distributions) to the holders of the Common Stock;

(ii) the Company shall offer for subscription pro rata to the holders of the Common Stock any additional shares of stock of any class or other rights;

(iii) there shall be any capital reorganization of the Company, or reclassification of the Common Stock, consolidation or merger of the Company with or into, or sale of all or substantially all of its assets to, another corporation or entity; or

(iv) there shall be a voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then, in each such case, the Company shall give to the holder of this Warrant (a) notice of the date on which the books of the Company shall close or a record shall be taken for determining the holders of Common Stock entitled to receive any such dividend, distribution, or subscription rights or for determining the holders of Common Stock entitled to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up and (b) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, notice of the date (or, if not then known, a reasonable estimate thereof by the Company) when the same shall take place. Such notice shall also specify the date on which the holders of Common Stock shall be entitled to receive such dividend, distribution, or subscription rights or to exchange their Common Stock for stock or other securities or property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation, or winding-up, as the case may be. Such notice shall be given at least twenty (20) days prior to the record date or the date on which the Company's books are closed in respect thereof. Failure to give any such notice or any defect therein shall not affect the validity of the proceedings referred to in clauses (i), (ii), (iii) and (iv) above. Notwithstanding the foregoing, the Company shall publicly disclose the substance of any notice delivered hereunder prior to delivery of such notice to the holder of this Warrant.

(k) **Certain Events.** If, at any time after the Issue Date, any event occurs of the type contemplated by the adjustment provisions of this Section 4 but not expressly provided for by such provisions, the Company will give notice of such event as provided in Section 4(g) hereof, and the Company Board of Directors will make an appropriate adjustment in the Exercise Price and the number of shares of Common Stock acquirable upon exercise of this Warrant so that the rights of the holder shall be neither enhanced nor diminished by such event.

(l) **Certain Definitions.**

(i) "Common Stock Deemed Outstanding" shall mean the number of shares of Common Stock actually outstanding (not including shares of Common Stock held in the treasury of the Company), plus (x) in the case of an adjustment required by Section 4(a) resulting from the issuance of any Options, the maximum total number of shares of Common Stock issuable upon the exercise of the Options for which the adjustment is required (including any Common Stock issuable upon the conversion of Convertible Securities issuable upon the exercise of such Options), and (y) in the case of an adjustment required by Section 4(a) resulting from the issuance of any Convertible Securities, the maximum total number of shares of Common Stock issuable upon the exercise, conversion or exchange of the Convertible Securities for which the adjustment is required, as of the date of issuance of such Convertible Securities, if any. Except as specifically provided by the foregoing, no other derivative securities (and underlying shares) shall be deemed outstanding for purposes of this definition.

(ii) "Market Price," as of any date, (i) means the average of the closing bid prices for the shares of Common Stock as reported on the Nasdaq SmallCap Market by Bloomberg Financial Markets ("Bloomberg") for the five (5) consecutive trading days immediately preceding such date, or (ii) if the Nasdaq SmallCap Market is not the principal trading market for the shares of Common Stock, the average of the closing bid prices reported by Bloomberg on the principal trading market for the Common Stock during the same period, or, if there is no bid price for such period, the last reported price reported by Bloomberg for such period, or (iii) if the foregoing do not apply, the last closing bid price of such security in the over-the-counter market on the pink sheets or bulletin board for such security as reported by Bloomberg, or if no closing bid price is so reported for such security, the last closing trade price of such security as reported by Bloomberg, or (iv) if market value cannot be calculated as of such date on any of the foregoing bases, the Market Price shall be the average fair market value as reasonably determined by an investment banking firm selected by the Company and reasonably acceptable to the holder, with the cost of the appraisal to be borne by the Company. The manner of determining the Market Price of the Common Stock set forth in the foregoing definition shall apply with respect to any other security in respect of which a determination as to market value must be made hereunder.

(iii) "Common Stock," for purposes of this Section 4, includes the Common Stock and any additional class of stock of the Company having no preference as to dividends or distributions on liquidation, provided that the shares purchased pursuant to this Warrant shall include only Common Stock in respect of which this Warrant is exercisable, or shares resulting from any subdivision or combination of such Common Stock, or in the case of any reorganization, reclassification, consolidation, merger, or sale of the character referred to in Section 4(e) hereof, the stock or other securities or property provided for in such Section.

5. Issue Tax. The issuance of certificates for Warrant Shares upon the exercise of this Warrant shall be made without charge to the holder of this Warrant or such shares for any issuance tax or other costs in respect thereof, provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than the holder of this Warrant.

6. No Rights or Liabilities as a Stockholder. This Warrant shall not entitle the holder hereof to any voting rights or other rights as a stockholder of the Company. No provision of this Warrant, in the absence of affirmative action by the holder hereof to purchase Warrant Shares, and no mere enumeration herein of the rights or privileges of the holder hereof, shall give rise to any liability of such holder for the Exercise Price or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

7. Transfer, Exchange, Redemption and Replacement of Warrant.

(a) Restriction on Transfer. This Warrant and the rights granted to the holder hereof are transferable, in whole or in part, upon surrender of this Warrant, together with a properly executed assignment in the form attached hereto, at the office or agency of the Company referred to in Section 7(e) below, provided, however, that any transfer or assignment shall be subject to the conditions set forth in Sections 7(f) and (g) hereof and to the provisions of Sections 2(f) and (g) of the Securities Purchase Agreement. Until due presentment for registration of transfer on the books of the Company, the Company may treat the registered holder hereof as the owner and holder hereof for all purposes, and the Company shall not be affected by any notice to the contrary. Notwithstanding anything to the contrary contained herein, the registration rights described in Section 8 hereof are assignable only in accordance with the provisions of the Registration Rights Agreement.

(b) Warrant Exchangeable for Different Denominations. This Warrant is exchangeable, upon the surrender hereof by the holder hereof at the office or agency of the Company referred to in Section 7(e) below, for new Warrants of like tenor of different denominations representing in the aggregate the right to purchase the number of shares of Common Stock which may be purchased hereunder, each of such new Warrants to represent the right to purchase such number of shares as shall be designated by the holder hereof at the time of such surrender.

(c) Replacement of Warrant. Upon receipt of evidence reasonably satisfactory to the Company of the loss, the destruction, or mutilation of this Warrant and, in the case of any such loss, theft, or destruction, upon delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company, or, in the case of any such mutilation, upon surrender and cancellation of this Warrant, the Company, at its expense, will execute and deliver, in lieu thereof, a new Warrant of like tenor.

(d) Cancellation; Payment of Expenses. Upon the surrender of this Warrant in connection with any transfer, exchange, or replacement as provided in this Section 7, this Warrant shall be promptly canceled by the Company. The Company shall pay all taxes (other than securities transfer taxes) and all other expenses (other than legal expenses, if any, incurred by the Holder or transferees) and charges payable in connection with the preparation, execution, and delivery of Warrants pursuant to this Section 7. The Company shall indemnify and reimburse the holder of this Warrant for all costs and expenses (including legal fees) incurred by such holder in connection with the enforcement of its rights hereunder.

(e) Warrant Register. The Company shall maintain, at its principal executive offices (or such other office or agency of the Company as it may designate by notice to the holder hereof), a register for this Warrant, in which the Company shall record the name and address of the person in whose name this Warrant has been issued, as well as the name and address of each transferee and each prior owner of this Warrant.

(f) Exercise or Transfer Without Registration. If, at the time of the surrender of this Warrant in connection with an exercise, transfer, or exchange of this Warrant, this Warrant (or, in the case of any exercise, the Warrant Shares issuable hereunder), shall not be registered under the Securities Act and under applicable state securities or blue sky laws, the Company may require, as a condition of allowing such exercise, transfer, or exchange, (i) that the holder or transferee of the Warrant, as the case may be, furnish to the Company a written opinion of counsel (which opinion shall be in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that such exercise, transfer, or exchange may be made without registration under the Securities Act and under applicable state securities or blue sky laws (the cost of which shall be borne by the Company if the Company's counsel renders such opinion and up to \$250 of such cost shall be borne by the Company if the holder's counsel is requested to render such opinion), (ii) that the holder or transferee execute and deliver to the Company an investment letter in form and substance acceptable to the Company and (iii) that the transfer be an "accredited investor" as defined in Rule 501(a) promulgated under the Securities Act; provided that no such opinion, letter or status as an "accredited investor" shall be required in connection with any transfer pursuant to Rule 144 under the Securities Act.

(g) Additional Restrictions on Exercise or Transfer. Notwithstanding anything contained herein to the contrary, unless the waiver contemplated by the last sentence of this Subsection (g) is delivered, this Warrant shall not be exercisable by a holder hereof to the extent (but only to the extent) that (a) the number of shares of Common Stock beneficially owned by such holder and its affiliates (other than shares of Common Stock which may be deemed beneficially owned through the ownership of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein) and (b) the number of shares of Common Stock issuable upon exercise of the Warrant (or portion thereof) with respect to which the determination described herein is being made, would result in beneficial ownership by such holder and its affiliates of more than 4.99% of the outstanding shares of Common Stock. To the extent the above limitation applies, the determination of whether and to what extent this Warrant shall be exercisable vis-a-vis other securities owned by such holder shall be in the sole discretion of the holder and submission of this Warrant for full or partial exercise shall be deemed to be the holder's determination of whether and the extent to which this Warrant is exercisable, in each case subject to such aggregate percentage limitation. No prior inability to exercise the Warrant pursuant to this Section shall have any effect on the applicability of the provisions of this Section with respect to any subsequent determination of exerciseability. For purposes of the immediately preceding sentence, beneficial ownership shall be determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended, and Regulation 13D-G thereunder, except as otherwise provided in clause (a) of such sentence. The restrictions contained in this Section 7(g) may not be amended without the consent of the holder of this Warrant and the holders of a majority of the Company's then outstanding Common Stock. Notwithstanding the foregoing, the holder hereof may waive the foregoing limitations and restrictions upon thirty (30) days prior written notice to the Company.

8. Registration Rights. The initial holder of this Warrant (and certain assignees thereof) is entitled to the benefit of such registration rights in respect of the Warrant Shares as are set forth in the Registration Rights Agreement, dated as of January 25, 1999, by and between the Company, the initial holder hereof and the other signatories thereto, including the right to assign such rights to certain assignees, as set forth therein.

9. Notices. Any notices required or permitted to be given under the terms of this Warrant shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier or by confirmed telecopy, and shall be effective five days after being placed in the mail, if mailed, or upon receipt or refusal of receipt, if delivered personally or by courier or confirmed telecopy, in each case addressed to a party. The addresses for such communications shall be:

If to the Company:

Fidelity Holdings, Inc.  
80-02 Kew Gardens Road  
Suite 5000  
Kew Gardens, NY 11415  
Telecopy: (718) 793-2455  
Attention: Chief Executive Officer

and if to the holder, at such address as such holder shall have provided in writing to the Company, or at such other address as each such party furnishes by notice given in accordance with this Section 9.

10. Governing Law; Jurisdiction. This Warrant shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of choice of law or conflict of laws that would defer to the substantive law of another jurisdiction performed in the State of New York. The Company irrevocably consents to the jurisdiction of the United States federal courts and state courts located in the City of New York in the State of New York in any suit or proceeding based on or arising under this Warrant and irrevocably agrees that all claims in respect of such suit or proceeding shall be determined exclusively in such courts. The Company irrevocably waives the defense of an inconvenient forum to the maintenance of such suit or proceeding. The Company agrees that service of process upon the Company mailed by first class mail shall be deemed in every respect effective service of process upon the Company in any such suit or proceeding. Nothing herein shall affect the holder's right to serve process in any other manner permitted by law. The Company agrees that a final non-appealable judgment in any such suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on such judgment or in any other lawful manner.

11. Miscellaneous.

(a) Amendments. This Warrant and any provision hereof may only be amended by an instrument in writing signed by the Company and the holder hereof.

(b) Descriptive Headings. The descriptive headings of the several Sections of this Warrant are inserted for purposes of reference only, and shall not affect the meaning or construction of any of the provisions hereof.

(c) Cashless Exercise. Notwithstanding anything to the contrary contained in this Warrant, this Warrant may be exercised at any time during the Exercise Period by presentation and surrender of this Warrant to the Company at its principal executive offices with a written notice of the holder's intention to effect a cashless exercise, including a calculation of the number of shares of Common Stock to be issued upon such exercise in accordance with the terms hereof (a "Cashless Exercise"). In the event of a Cashless Exercise, in lieu of paying the Exercise Price in cash, the holder shall surrender this Warrant for that number of shares of Common Stock determined by multiplying the number of Warrant Shares to which it would otherwise be entitled by a fraction, the numerator of which shall be the difference, but not less than zero between the then current Market Price per share of the Common Stock and the Exercise Price, and the denominator of which shall be the then current Market Price per share of Common Stock.

IN WITNESS WHEREOF, the Company has caused this Warrant to be signed by its duly authorized officer.

FIDELITY HOLDINGS, INC.

By:

Name:

Title:

By:

Name:

Title:

#### FORM OF EXERCISE AGREEMENT

(To be Executed by the Holder in order to Exercise the Warrant)

The undersigned hereby irrevocably exercises the right to purchase \_\_\_\_\_ of the shares of Common Stock of Fidelity Holdings, Inc., a \_\_\_\_\_ corporation (the "Company"), evidenced by the attached Warrant, and herewith makes payment of the Exercise Price with respect to such shares in full, all in accordance with the conditions and provisions of said Warrant.

(i) The undersigned agrees not to offer, sell, transfer or otherwise dispose of any Common Stock obtained on exercise of the Warrant, except under circumstances that will not result in a violation of the Securities Act of 1933, as amended, or any state securities laws, and agrees that the following legend may be affixed to the stock certificate for the Common Stock hereby subscribed for if resale of such Common Stock is not registered or if Rule 144 is unavailable for the immediate resale of such shares:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE SECURITIES REPRESENTED HEREBY MAY NOT BE OFFERED OR SOLD IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER APPLICABLE SECURITIES LAWS UNLESS OFFERED SOLD OR TRANSFERRED UNDER AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS.

(ii) The undersigned requests that stock certificates for such shares be issued, and a Warrant representing any unexercised portion hereof be issued, pursuant to the Warrant in the name of the Holder and delivered to the undersigned at the address set forth below:

Dated: \_\_\_\_\_

Signature of Holder

Name of Holder (Print)

Address:

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers all the rights of the undersigned under the within Warrant, with respect to the number of shares of Common Stock covered thereby set forth hereinbelow, to:

<u>Name of Assignee</u>	<u>Address</u>	<u>Number of Shares</u>
-------------------------	----------------	-------------------------

, and hereby irrevocably constitutes and appoints \_\_\_\_\_ as agent and attorney-in-fact to transfer said Warrant on the books of the within-named corporation, with full power of substitution in the premises.

Dated: \_\_\_\_\_,

In the presence of

\_\_\_\_\_

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

Signature: \_\_\_\_\_

Title of Signing Officer or Agent (if any): \_\_\_\_\_

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

Note: The above signature should correspond exactly with the name on the face of the within Warrant.

Exhibit 4.12

VOID AFTER 5:00 P.M., NEW YORK  
CITY TIME, ON JANUARY 25, 2004  
(UNLESS EXTENDED PURSUANT TO SECTION 2 HEREOF)

THIS WARRANT AND THE SHARES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. THE SECURITIES REPRESENTED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED UNLESS THE SECURITIES ARE REGISTERED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, OR ANY SUCH OFFER, SALE OR TRANSFER IS MADE PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS.

Date: January 25, 1999

Right to Purchase \_\_\_\_\_  
Shares of Common Stock

**COMPUTER BUSINESS SCIENCES, INC.  
STOCK PURCHASE WARRANT**

THIS CERTIFIES THAT, for value received, \_\_\_\_\_ or its or his registered assigns (the "Holder") is entitled to purchase from Computer Business Sciences, Inc., a Delaware corporation (the "Company"), at any time or from time to time during the period specified in Section 2 hereof, \_\_\_\_\_ (\_\_\_\_\_) fully paid and nonassessable shares (the "Warrant Shares") of the Company's Common Stock, par value \$0.01 per share ("Common Stock"), at an exercise price per share equal to \$0.001 (the "Exercise Price"). The number of Warrant Shares purchasable hereunder are subject to adjustment as provided in Section 4 hereof. The term "Warrants" means this Warrant and the other Warrants of the Company issued pursuant to that certain Securities Purchase Agreement, dated as of January 25, 1999, by and among the Company and the other signatories thereto (the "Securities Purchase Agreement") and/or that certain Placement Agency Agreement of even date herewith between the Company and The Zanett Securities Corporation (the "Placement Agency Agreement") and the term "Holders" shall refer to the holders of Warrants.

This Warrant is subject to the following terms, provisions and conditions:

1. Manner of Exercise; Issuance of Certificates; Payment for Shares. Subject to the provisions hereof, including, without limitation, the limitations contained in Section 7 hereof, this Warrant may be exercised by the Holder hereof, in whole or in part, by the surrender of this Warrant, together with a completed exercise agreement in the form attached hereto (the "Exercise Agreement"), to the Company by 11:59 p.m., New York time on any business day at the Company's principal executive offices (or such other office or agency of the Company as it may designate by notice to the Holder hereof), and upon payment to the Company in cash, by certified or official bank check or by wire transfer for the account of the Company, of the Exercise Price for the Warrant Shares specified in the Exercise Agreement. Notwithstanding any provision hereof to the contrary, this Warrant shall be deemed exercised in full immediately upon closing by the Company on an initial public offering of shares of the Company's Common Stock at an initial public offering price of \$5.00 or more and pursuant to a Registration Statement (as defined herein) which registers the resale of the Warrant Shares in compliance with Section 8 below. The Warrant Shares so purchased shall be deemed to be issued to the Holder hereof or the Holder's designee, as the record owner of such shares, as of the close of business on the date on which this Warrant shall have been surrendered, the completed Exercise Agreement shall have been delivered and payment shall have been made for such Warrant Shares as set forth above, or, if such date is not a business date, on the next succeeding business day. Certificates for the Warrant Shares so purchased, representing the aggregate number of shares specified in the Exercise Agreement, shall be delivered to the Holder hereof within a reasonable time, not exceeding two (2) business days, after the Warrant shall have been so exercised (the "Delivery Period"). The certificates so delivered shall bear a standard restrictive legend and shall be in such denominations as may be requested by the Holder hereof and shall be registered in the name of the Holder or such other name as shall be designated by the Holder. If this Warrant shall have been exercised only in part, then, unless this Warrant has expired, the Company shall, at its expense, at the time of delivery of such certificates, deliver to the Holder a new Warrant representing the number of shares with respect to which this Warrant shall not then have been exercised.

2. Period of Exercise. This Warrant is exercisable at any time or from time to time on or after the date of the initial issuance of this Warrant (the "Issue Date") and before 5:00 p.m., New York City time, on the fifth (5th) year anniversary of the Issue Date (the "Exercise Period"). The Exercise Period shall automatically be extended by one (1) day for each day on which the Company does not have a number of shares of Common Stock reserved for issuance upon exercise hereof at least equal to the number of shares of Common Stock issuable upon exercise hereof.

3. Certain Agreements of the Company. The Company hereby covenants and agrees as follows:

(a) Shares to be Fully Paid. All Warrant Shares will, upon issuance in accordance with the terms of this Warrant, be validly issued, fully paid, and nonassessable and free from all taxes, liens, claims and encumbrances.

(b) Reservation of Shares. During the Exercise Period, the Company shall at all times have authorized and reserved for the purpose of issuance upon exercise of this Warrant, a sufficient number of shares of Common Stock to satisfy the exercise of this Warrant.

(c) Certain Actions Prohibited. The Company will not, by amendment of its charter or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, act to avoid the observance or performance of any of the terms to be observed or performed by it hereunder, but will in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may be requested by the Holder of this Warrant in order to protect the exercise privilege of the Holder of this Warrant against any action, consistent with the tenor and purpose of this Warrant. Without limiting the generality of the foregoing,

Company (i) will not increase the fair value of any shares of Common Stock issuable upon the exercise of this Warrant above the Exercise Price then in effect, and (ii) will take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant.

(d) Successors and Assigns. This Warrant will be binding upon any entity succeeding to the Company by merger, consolidation or acquisition of all or substantially all of the Company's assets.

4. Adjustment to Number of Warrant Shares. During the Exercise Period, the number of Warrant Shares shall be subject to adjustment from time to time as provided in this Section 4. In the event that any adjustment required herein results in a fraction of a share, such fraction shall be rounded up or down to the nearest whole share.

(a) Subdivision or Combination of Common Stock. If the Company, at any time during the Exercise Period subdivides (by any stock split, stock dividend, recapitalization, reorganization, reclassification or otherwise) its shares of Common Stock into a greater number of shares, then, after the date of record for effecting such subdivision, the number of shares of Common Stock issuable upon exercise of this Warrant and for which this Warrant is or may become exercisable will be proportionately increased. If the Company, at any time during the Exercise Period, combines (by reverse stock split, recapitalization, reorganization, reclassification or otherwise) its shares of Common Stock into a smaller number of shares, then, after the date of record for effecting such combination, the number of shares of Common Stock issuable upon exercise of this Warrant and for which this Warrant is or may become exercisable will be proportionately decreased.

(b) Consolidation or Merger. In case of any consolidation of the Company with, or merger of the Company into, any other corporation, or in case of any sale or conveyance of all or substantially all of the assets of the Company at any time during the Exercise Period, then as a condition of such consolidation, merger or sale or conveyance, adequate provision will be made whereby the Holder of this Warrant will have the right to acquire and receive upon exercise of this Warrant in lieu of the shares of Common Stock immediately theretofore acquirable upon the exercise of this Warrant, such shares of stock, securities, cash or assets as may be issued or payable with respect to or in exchange for the number of shares of Common Stock immediately theretofore acquirable and receivable upon exercise of this Warrant had such consolidation, merger, sale or conveyance not taken place. In any such case, the Company will make appropriate provision to insure that the provisions of this Section 4 hereof will thereafter be applicable as nearly as may be in relation to any shares of stock or securities thereafter deliverable upon the exercise of this Warrant. The Company will not effect any consolidation, merger, sale or conveyance unless prior to the consummation thereof, the successor corporation (if other than the Company) assumes by written instrument the obligations under this Warrant and the obligations to deliver to the Holder of this Warrant such share of stock, securities or assets as, in accordance with the foregoing provisions, the Holder may be entitled to acquire. Notwithstanding the foregoing, in the event of any consolidation of the Company with, or merger of the Company into, any other corporation, or the sale or conveyance of all or substantially all of the assets of the Company, at any time during the Exercise Period, the Holder of the Warrant shall, at its option, have the right to receive, in connection with such transaction, cash consideration equal to the fair market value of this Warrant as determined in accordance with customary valuation methodology used in the investment banking industry.

(c) Distribution of Assets. In case the Company shall declare or make any distribution of its assets (or rights to acquire its assets) to Holders of Common Stock as a dividend, by way of return of capital or otherwise (including any dividend or distribution to the Company's shareholders of cash or shares (or rights to acquire shares) of capital stock of a subsidiary (a "Distribution"), at any time during the Exercise Period, then the Holder of this Warrant shall be entitled upon exercise of this Warrant for the purchase of any or all of the shares of Common Stock subject hereto, to receive the amount of such asset (or rights) which would have been payable to the Holder had the Holder been the holder of such shares of Common Stock on the record date for the determination of shareholders entitled to such Distribution.

(d) Notice of Adjustment. Upon the occurrence of any event which requires any adjustment of the number of Warrant Shares issuable hereunder, then, and in each such case, the Company shall give notice thereof to the Holder of this Warrant, which notice shall state the increase or decrease in the number of Warrant Shares purchasable hereunder resulting from such adjustment, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Such calculation shall be certified by the chief financial officer of the Company.

(e) Certain Events. If, at any time after the Issue Date, any event occurs of the type contemplated by the adjustment provisions of this Section 4 but not expressly provided for by such provisions, the Company will give notice of such event as provided in Section 4(d) hereof, and the Company's Board of Directors will make an appropriate adjustment in the number of Warrant Shares purchasable upon exercise of this Warrant so that the rights of the Holder shall be neither enhanced nor diminished by such event.

5. Issue Tax. The issuance of certificates for Warrant Shares upon the exercise of this Warrant shall be made without charge to the Holder of this Warrant or such shares for any issuance tax or other costs in respect thereof, provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than the Holder of this Warrant.

6. No Rights or Liabilities as a Stockholder. This Warrant shall not entitle the Holder hereof to any voting rights or other rights as a stockholder of the Company. No provision of this Warrant, in the absence of affirmative action by the Holder hereof to purchase Warrant Shares, and no mere enumeration herein of the rights or privileges of the Holder hereof, shall give rise to any liability of the Holder for the Exercise Price or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

7. Transfer, Exchange, Redemption and Replacement of Warrant.

(a) Restriction on Transfer. This Warrant and the rights granted to the Holder hereof are transferable, in whole or in part, upon surrender of this Warrant, together with a properly executed assignment in the form attached hereto, at the office or agency of the Company referred to in Section 7(e) below, provided, however, that any transfer or assignment shall be subject to the conditions set forth in Section 7(f) hereof and to the provisions of Sections 2(f) and (g) of the Securities Purchase Agreement. Until due presentment for registration of transfer on the books of the Company, the Company may treat the registered holder hereof as the owner and Holder hereof for all purposes, and the Company shall not be affected by any notice to the contrary. Notwithstanding anything to the contrary contained herein, the registration rights described in Section 8 hereof are assignable only in accordance with the provisions of the Registration Rights Agreement.

(b) Warrant Exchangeable for Different Denominations. This Warrant is exchangeable, upon the surrender hereof by the Holder hereof at the office or agency of the Company referred to in Section 7(e) below, for new Warrants of like tenor of different denominations representing in the aggregate the right to purchase the number of shares of Common Stock which may be purchased hereunder, each of such new Warrants to represent the right to purchase such number of shares as shall be designated by the Holder hereof at the time of such surrender.

(c) Replacement of Warrant. Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction, or mutilation of this Warrant and, in the case of any such loss, theft, or destruction, upon delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company, or, in the case of any such mutilation, upon surrender and cancellation of this Warrant, the Company, at its expense, will execute and deliver, in lieu thereof, a new Warrant of like tenor.

(d) Cancellation; Payment of Expenses. Upon the surrender of this Warrant in connection with any transfer, exchange, or replacement as provided in this Section 7, this Warrant shall be promptly canceled by the Company. The Company shall pay all taxes (other than securities transfer taxes) and all other expenses (other than legal expenses, if any incurred by the Holder or transferees) and charges payable in connection with the preparation, execution, and delivery of Warrants pursuant to this Section 7. The Company shall indemnify and reimburse the Holder of this Warrant for all costs and expenses (including legal fees) incurred by the Holder in connection with the enforcement of its rights hereunder.

(e) Warrant Register. The Company shall maintain, at its principal executive offices (or such other office or agency of the Company as it may designate by notice to the Holder hereof), a register for this Warrant, in which the Company shall record the name and address of the person in whose name this Warrant has been issued, as well as the name and address of each transferee and each prior owner of this Warrant.

(f) Exercise or Transfer Without Registration. If, at the time of the surrender of this Warrant in connection with an exercise, transfer, or exchange of this Warrant, this Warrant (or, in the case of any exercise, the Warrant Shares issued hereunder), shall not be registered under the Securities Act and under applicable state securities or blue sky laws, the Company may require, as a condition of allowing such exercise, transfer, or exchange, (i) that the Holder or transferee of this Warrant, as the case may be, furnish to the Company a written opinion of counsel (which opinion shall be in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that such exercise, transfer, or exchange may be made without registration under the Securities Act and under applicable state securities or blue sky laws (the cost of which shall be borne by the Company if the Company's counsel renders such opinion and up to \$ 250.00 of such cost shall be borne by the Company if the Holder's counsel is requested to render such opinion), (ii) that the Holder or transferee execute and deliver to the Company an investment letter in form and substance acceptable to the Company and (iii) that the transferee be an "accredited investor" as defined in Rule 501(a) promulgated under the Securities Act; provided that no such opinion letter or status as an "accredited investor" shall be required in connection with any transfer pursuant to Rule 144 under the Securities Act.

## 8. Registration Rights.

(a) Piggy-Back Registrations. If at any time prior to the expiration of the Registration Period (as hereinafter defined) the Company shall file with the Securities and Exchange Commission ("SEC") a registration statement (a "Registration Statement") under the Securities Act of 1933 (the "Securities Act") relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities (other than on Form S-4 or Form S-8 or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans), the Company shall include in such Registration Statement all of the Warrant Shares, except that if, in connection with any underwritten public offering, the managing underwriter(s) thereof shall impose a limitation on the number of shares of the Company's Common Stock which may be included in the Registration Statement because, in such underwriter(s)' judgment, marketing or other factors dictate such limitation is necessary to facilitate public distribution, then the Company shall be obligated to include in such Registration Statement only such limited portion of the Warrant Shares as the underwriter shall permit. Any exclusion of Warrant Shares shall be made *pro rata* among the Holders of Warrants and/or Warrant Shares, in proportion to the number of Warrant Shares held or purchasable by such Holders; provided, however, that the Company shall not exclude any Warrant Shares unless the Company has first excluded all outstanding securities, the holders of which are not entitled to inclusion of such securities in such Registration Statement or are not entitled to *pro rata* inclusion with the Warrant Shares; and provided, further, however that, after giving effect to the immediately preceding proviso, any exclusion of Warrant Shares shall be made *pro rata* with holders of other securities having the right to include such securities in the Registration Statement other than holders of securities entitled to inclusion of their securities in such Registration Statement by reason of demand registration rights.

(b) The Company shall keep the Registration Statements effective pursuant to Rule 415 at all times until such date as is the earlier of (i) the date on which at least 90% of the Warrant Shares have been sold, (ii) the date on which all of the Warrant Shares (in the reasonable opinion of counsel to the Holder) may be immediately sold to the public without registration or restriction pursuant to Rule 144(k) under the Securities Act or any successor provision, or (iii) the date on which all restrictive legends have been removed from all Warrant Shares all "stop transfer" instructions issued to the Company's transfer agent have been canceled (the "Registration Period"), which Registration Statement (including any amendments or supplements thereto and prospectuses contained therein and all documents incorporated by reference therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statement therein not misleading.

(c) The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration Statement and the prospectuses used in connection with the Registration Statement as may be necessary to keep the Registration Statement effective at all times during the Registration Period, and, during such period comply with the provisions of the Securities Act with respect to the disposition of all Warrant Shares of the Company covered by the Registration Statement until such time as all of such Warrant Shares have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in the Registration Statement.

(d) The Company shall furnish to the Holder and its legal counsel (i) promptly after the same is prepared and publicly distributed, filed with the SEC, or received by the Company, one copy of each Registration Statement and an amendment thereto, each preliminary prospectus and prospectus and each amendment or supplement thereto, (ii) on the date of effectiveness of a Registration Statement or any amendment thereto, a notice stating that the Registration Statement or amendment has been declared effective, and (iii) such number of copies of a prospectus, including a preliminary prospectus and all amendments and supplements thereto and such other documents as the Holder may reasonably request in order to facilitate the disposition of the Warrant Shares owned by the Holder.

(e) The Company shall use its best efforts to (i) register and qualify the Warrant Shares covered by the Registration Statement under such other securities or "blue sky" laws of such jurisdictions in the United States as the Holder reasonably requests, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Warrant Shares for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (a) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Subsection, (b) subject itself to general taxation in any such jurisdiction, (c) file a general consent to service of process in any such jurisdiction, (d) provide any undertakings that cause the Company undue expense or burden, or (e) make any change in its charter or bylaws, which in each case the Board of Directors of the Company determines to be contrary to the best interests of the Company and its stockholders.

...practicable after becoming aware of such event, the Company shall notify the Holder of any event, of which the Company has knowledge, as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and use its best efforts promptly to supplement or amend such Registration Statement to correct such untrue statement or omission, and deliver a reasonable number of copies of such supplement or amendment to the Holder as the Holder may reasonably request.

(g) The Company shall use its best efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, and, if such an order is issued, to obtain the withdrawal of such order at the earliest practicable moment (including in each case by amending or supplementing such Registration Statement) and to notify the Holder of the issuance of such order and the resolution thereof (and if such Registration Statement is supplemented or amended, deliver such number of copies of such supplement or amendment to the Holder as the Holder may reasonably request).

(h) The Company shall permit a single firm of counsel designated by the Holders to review each Registration Statement and all amendments and supplements thereto a reasonable period of time prior to their filing with the SEC, and file any document in a form to which such counsel reasonably objects.

(i) The Company shall make generally available to its security holders as soon as practical, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with the provisions of Rule 158 under the Securities Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal year next following the effective date of a Registration Statement.

(j) At the request of the Holders, the Company shall make available, on the date of effectiveness of a Registration Statement (i) an opinion, dated as of such date, from counsel representing the Company addressed to the Holders and in form, scope and substance as is customarily given in an underwritten public offering and (ii) in the case of an underwriting, a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and the Holders.

(k) The Company shall make available for inspection by (i) the Holder, and (ii) one firm of attorneys and one firm of accountants or other agents retained by the Holders, (collectively, the "Inspectors") all pertinent financial and other records and pertinent corporate documents and properties of the Company (collectively, the "Records"), as shall be reasonably deemed necessary by each Inspector to enable each Inspector to exercise its due diligence responsibility, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request for purposes of such due diligence; provided, however, that each Inspector shall hold in confidence and shall not make any disclosure (except to a Holder) or use of any Record or other information which the Company determines in good faith to be confidential, and to which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement, (b) the release of such Records is ordered pursuant to a subpoena or other order from a court or government body of competent jurisdiction or (c) the information in such Records has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company shall not be required to disclose any confidential information in such Records to any Inspector until and unless such Inspector shall have entered into confidentiality agreements (in form and substance satisfactory to the Company) with the Company with respect thereto, substantially in the form of this Subsection. The Holder agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein shall be deemed to limit the Holder's ability to sell Warrant Shares in a manner which is otherwise consistent with applicable laws and regulations.

(l) The Company shall hold in confidence and not make any disclosure of information concerning the Holder provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other order from a court or government body of competent jurisdiction, (iv) such information has been made generally available to the public other than by disclosure in violation of this or any other agreement, or (v) the Holder consents to the form and content of any such disclosure. The Company agrees that it shall, upon learning that disclosure of such information concerning the Holder is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Holder prior to making such disclosure, and allow the Holder, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

(m) The Company shall provide a transfer agent and registrar, which may be a single entity, for the Warrant Shares not later than the effective date of the Registration Statement.

(n) At the reasonable request of the Holder, the Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and the prospectus used in connection with the Registration Statement as may be necessary in order to change the plan of distribution set forth in the Registration Statement.

(o) The Company shall comply with all applicable laws related to the Registration Statement and offering and sale of securities and all applicable rules and regulations of governmental authorities in connection therewith (including, without limitation, the Securities Act and the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the SEC).

(p) The Company shall take all such other actions as the Holder reasonably request in order to expedite or facilitate the disposition of the Warrant Shares.

(q) It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Warrant with respect to the Warrant Shares that the Holder shall furnish to the Company such information regarding itself, the Warrant Shares and the intended method of disposition of the Warrant Shares held by it as shall be reasonably required to effect the registration of such Warrant Shares and shall execute such documents in connection with such registration as the Company may reasonably request. At least five (5) business days prior to the first anticipated filing date of the Registration Statement, the Company shall notify the Holder of the information the Company requires from each the Holder.

(r) The Holder, by the Holder's acceptance of the Warrant Shares, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of the Registration Statement hereunder.

(s) All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, the fees and disbursements of counsel for the Company, and the reasonable fees and disbursements of one counsel selected by the Holders pursuant hereto shall be borne by the Company. In addition, the Company shall pay all of the Holders' costs and expenses (including legal fees) incurred in connection with the enforcement of the rights of the Holders hereunder.

(t) To the extent permitted by law, the Company will indemnify, hold harmless and defend (i) the Holder, and (ii) the directors, officers, partners, members employees, agents and each person who controls the Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), if any, (each, an "Indemnified Person"), against any joint or several losses, claims, damages, liabilities or expenses (collectively, together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened, in respect thereof, "Claims") to which any of them may become subject insofar as such Claims arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or the omission or omission to state therein a material fact required to be stated or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Warrant Shares (the matters in the foregoing clauses (i) through (iii) being, collectively, "Violations"). Subject to the restrictions set forth in Section 6(c) with respect to the number of legal counsel, the Company shall reimburse the Holder and each other Indemnified Person, promptly as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable, actual and appropriate out of pocket expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Subsection: (i) shall not apply to a Claim arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Indemnified Person expressly for use in a Registration Statement or any such amendment thereof or supplement thereto; (ii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld; and (iii) with respect to any preliminary prospectus, shall not inure to the benefit of any Indemnified Person if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected on a timely basis in the prospectus, as then amended or supplemented, if such corrected prospectus was timely made available by the Company and the Indemnified Person was promptly advised in writing not to use the incorrect prospectus prior to the use giving rise to

Violation and such Indemnified Person, notwithstanding such advice, used such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Warrant Shares by the Holders pursuant to Section 9 hereof.

(u) In connection with any Registration Statement in which the Holder is participating, the Holder agrees to indemnify, harmless and defend, to the same extent and in the same manner set forth in Subsection (t), the Company, each of its directors, each of its officers who signs the Registration Statement, its employees, agents and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, and any other stockholder selling securities pursuant to the Registration Statement or any of its directors or officers or any person who controls such stockholder within the meaning of the Securities Act or the Exchange Act (collectively and together with the Indemnified Person, an "Indemnified Party"), against any Claim to which any of them may become subject, under the Securities Act, the Exchange Act or otherwise, insofar as such Claim arises out of or is based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by the Holder expressly for use in connection with such Registration Statement; and subject to Subsection (v) the Holder will reimburse any legal or other expenses (promptly as such expenses are incurred and are due and payable) reasonably incurred by them in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Subsection shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Holder, which consent shall not be unreasonably withheld; provided, further, however, that the Holder shall be liable under this Agreement (including this Subsection and Subsection (w)) for only an amount as does not exceed the net proceeds actually received by the Holder as a result of the sale of Warrant Shares pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made or on behalf of such Indemnified Party. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Subsection with respect to any preliminary prospectus shall not inure to the benefit of the Indemnified Party if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected on a timely basis in the prospectus, as then amended or supplemented, and the Indemnified Party failed to utilize such corrected prospectus.

(v) Promptly after receipt by an Indemnified Person or Indemnified Party of notice of the commencement of any action (including any governmental action), such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is made against any indemnifying party, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; provided, however, that such indemnifying party shall not be entitled to assume such defense if an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential conflicts of interest between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding or the actual or potential defendants in, or targets of, any such action include both the Indemnified Person or the Indemnified Party and the indemnifying party and any such Indemnified Person or Indemnified Party reasonably determines that there may be legal defenses available to such Indemnified Person or Indemnified Party which are different from or in addition to those available to such indemnifying party. The indemnifying party shall pay for only one separate legal counsel for the Indemnified Persons or the Indemnified Parties, as applicable, and such legal counsel shall be selected by the Holder if the Holder is entitled to indemnification hereunder, or by the Company, if the Company is entitled to indemnification hereunder, as applicable. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party, except to the extent that the indemnifying party is actually prejudiced in its ability to defend such action. The indemnification required hereby shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.

(w) To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Subsection (t) or (u) to the fullest extent permitted by law; provided, however, that (i) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Subsections (t) and (u); (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any seller of Warrant Shares who was not guilty of such fraudulent misrepresentation, and (iii) contribution (together with any indemnification or other obligations under this Agreement) by any seller of Warrant Shares shall be limited in amount to the net amount of proceeds received by such seller from the sale of such Warrant Shares pursuant to the Registration Statement.

9. Notices. Any notices required or permitted to be given under the terms of this Warrant shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier or by confirmed telecopy, and shall be effective five days after being placed in the mail, if mailed, or upon receipt or refusal of receipt, if delivered personally or by courier or confirmed telecopy, in each case addressed to a party. The addresses for such communications shall be:

If to the Company:

Computer Business Sciences, Inc.  
80-02 Kew Gardens Road  
Suite 5000  
Kew Gardens, NY 11415  
Telecopy:  
Attention:

and if to the Holder, at such address as the Holder shall have provided in writing to the Company, or at such other address as each such party furnishes by notice given in accordance with this Section 9.

10. Governing Law; Jurisdiction. This Warrant shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of choice of law or conflict of laws that would defer to the substantive law of another jurisdiction. The Company irrevocably consents to the jurisdiction of the United States federal courts and state courts located in the City of New York in the State of New York in any suit or proceeding based on or arising under this Warrant and irrevocably agrees that all claims in respect of such suit or proceeding shall be determined exclusively in such courts. The Company irrevocably waives the defense of an inconvenient forum to the maintenance of such suit or proceeding. The Company agrees that service of process upon the Company mailed by first class mail shall be deemed in every respect effective service of process upon the Company in any such suit or proceeding. Nothing herein shall affect the Holder's right to serve process in any other manner permitted by law. The Company agrees that a final non-appealable judgment in any such suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on such judgment or in any other lawful manner.

11. Miscellaneous.

(a) Amendments. This Warrant and any provision hereof may only be amended by an instrument in writing signed by the Company and the Holder hereof.

(b) Descriptive Headings. The descriptive headings of the several Sections of this Warrant are inserted for purpose of reference only, and shall not affect the meaning or construction of any of the provisions hereof.

IN WITNESS WHEREOF, the Company has caused this Warrant to be signed by its duly authorized officer.

COMPUTER BUSINESS SCIENCES, INC.

By:

Name:

Title:

By:

Name:

Title:

FORM OF EXERCISE AGREEMENT

(To be Executed by the Holder in order to Exercise the Warrant)

The undersigned hereby irrevocably exercises the right to purchase \_\_\_\_\_ of the shares of Common Stock of Computer Business Sciences, Inc., a Delaware corporation (the "Company"), evidenced by the attached Warrant, a

herewith makes payment of the Exercise Price with respect to such shares, all in accordance with the conditions and provisions of said Warrant.

(i) The undersigned agrees not to offer, sell, transfer or otherwise dispose of any Common Stock obtained on exercise of the Warrant, except under circumstances that will not result in a violation of the Securities Act of 1933, as amended, or any state securities laws, and agrees that the following legend may be affixed to the stock certificate for the Common Stock hereby subscribed for if resale of such Common Stock is not registered or if Rule 144 is unavailable for the immediate resale of such shares:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE SECURITIES REPRESENTED HEREBY MAY NOT BE OFFERED OR SOLD IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER APPLICABLE SECURITIES LAWS UNLESS OFFERED SOLD OR TRANSFERRED UNDER AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS.

(ii) The undersigned requests that stock certificates for such shares be issued, and a Warrant representing any unexercised portion hereof be issued, pursuant to the Warrant in the name of the Holder and delivered to the undersigned at the address set forth below:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Holder

\_\_\_\_\_  
Name of Holder (Print)

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

**FORM OF ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers all the rights of the undersigned under the within Warrant, with respect to the number of shares of Common Stock covered thereby set forth hereinbelow, to:

<u>Name of Assignee</u>	<u>Address</u>	<u>Number of Shares</u>
-------------------------	----------------	-------------------------

, and hereby irrevocably constitutes and appoints \_\_\_\_\_ as agent and attorney-in-fact to transfer said Warrant on the books of the within-named corporation, with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_

In the presence of

\_\_\_\_\_

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

Signature: \_\_\_\_\_

Title of Signing Officer or Agent (if any): \_\_\_\_\_

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

Note: The above signature should  
correspond exactly with the name on  
the face of the within Warrant.

**THIS CONVERTIBLE SUBORDINATED TERM DEBENTURE AND THE SECURITIES ISSUABLE UPON CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. THE SECURITIES REPRESENTED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED UNLESS THE SECURITIES ARE REGISTERED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, OR ANY SUCH OFFER, SALE OR TRANSFER IS MADE UNDER AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS.**

**CONVERTIBLE SUBORDINATED TERM DEBENTURE**

Date: January 25, 1999

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

FOR VALUE RECEIVED, FIDELITY HOLDINGS, INC., a corporation organized under the laws of the State of Nevada (hereinafter called the "Borrower" or the "Corporation") hereby promises to pay to the order of \_\_\_\_\_ or registered assigns (individually, the "Holder", and collectively with the holders of all other debentures of same like and tenor, the "Holders") the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) together with interest at the rate of twelve percent (12%) per annum (the "Interest Rate"), as follows: Interest shall accrue on the unconverted face amount hereof from the date hereof (the "Issue Date") through that date which is one hundred eighty (180) days from the Issue Date (the "Accrual Period"), at which time all accrued interest shall be added to the unconverted face amount hereof and the resulting balance, together with interest at the Interest Rate shall be due and payable in sixteen (16) equal monthly installments of \$ \_\_\_\_\_ commencing one month following the end of the Accrual Period and continuing on the same day of each month with a final payment on that date which is seventeen (17) months following the end of the Accrual Period (the "Scheduled Maturity Date"). Interest shall accrue on a daily basis. Any amount of principal or interest on this Debenture which is not paid when due shall bear interest at the rate of fifteen percent (15%) per annum from the due date thereof until the same is paid. Interest shall be calculated based on a 360 day year having twelve months of thirty days each. All payments of principal and interest (to the extent not converted in accordance with the terms hereof) shall be made in, and all references herein to monetary denominations shall refer to, lawful money of the United States of America, subject to the Holder's conversion right set below. All payments shall be made at such address as the Holder shall hereafter give to the Borrower by written notice made in accordance with the provisions of this Debenture.

Notwithstanding any provision hereof to the contrary, the Holder shall have the option to receive each payment of principal and interest hereunder in cash or to convert all or any portion of such payment into shares of Common Stock (defined below) pursuant to Article III below. The Holder shall be required to deliver a Notice of Conversion in order to convert any payment of principal and interest hereunder (or a portion thereof) into shares of Common Stock. Such written notice of its election to convert shall be delivered no later than two (2) business days prior to the payment due date. In such event, the Conversion Date with respect to any such conversion shall be the payment due date.

This Debenture is being issued by the Borrower along with similar convertible term debentures (the "Other Debentures" and, together with this Debenture, the "Debentures") pursuant to that certain Securities Purchase Agreement, dated as of January 25, 1999 by and among the Borrower and the other signatories thereto (the "Securities Purchase Agreement").

**ARTICLE I**

**PREPAYMENT; SUBORDINATION**

A. Limited Right to Prepay. Upon the occurrence of an Event of Default (as defined herein), this Debenture shall be prepaid by the Borrower in accordance with the provisions of Article VII hereof. Except as provided in Paragraph B of this Article I, this Debenture may not be prepaid at the option of Borrower without the prior written consent of the Holder.

B. Prepayment at Borrower's Option. Subject to prior conversion, the Borrower shall have the right to prepay the unpaid principal balance of and accrued but unpaid interest on this Debenture in whole or in part at any time upon not less than sixty (60) days written notice to the Holders; provided that (i) any such prepayment of principal shall be accompanied by prepayment premium equal to ten percent (10%) of the principal amount being prepaid, and (ii) all payments shall be applied first to the payment of costs and expenses, if any, due from the Borrower to the Holder, if any, then to accrued but unpaid interest on the principal balance hereof and then to the scheduled payments of principal in inverse order of maturity.

C. Subordination.

(i) The indebtedness evidenced by the Debenture shall be subordinated and junior in right of payment to all Senior Indebtedness (as defined below) to the extent and in the manner set forth in this Article I.C.

(ii) In the event of (a) any insolvency, bankruptcy, receivership, liquidation, reorganization, debt readjustment or composition or other similar proceeding relative to the Corporation or its creditors or its property, (b) any proceeding for voluntary liquidation, dissolution or other winding up of the Corporation, whether or not involving insolvency or bankruptcy proceedings or (c) any assignment for the benefit of creditors or any other marshaling of the assets of the Corporation, then and in any such event the holders of all Senior Indebtedness shall first be paid in full the principal thereof and prepayment charges, if any, and interest at the time due thereon before any payment or distribution of any character, whether in cash, securities or other property, shall be made on account of the Debenture.

(iii) Until the Senior Indebtedness is paid in full, the holder of the Debenture shall be subordinated to the rights of the holder of Senior Indebtedness to receive cash payments, but not with respect to receive Common Stock as contemplated by the conversion provisions hereunder.

(iv) Upon any distribution of assets or securities of the Corporation referred to in this Article I.C, the holder of the debenture shall be entitled to rely upon a certificate of any liquidating trustee or agent or other person making any distribution to the holder of the Debenture for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of Senior Indebtedness and other indebtedness of the Corporation, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article I.C.

(v) In the event and during the continuation of any default in the payment of principal of, or prepayment charge, if any, or interest on, any Senior Indebtedness beyond any applicable period of grace, or in the event that any event of default with respect to any Senior Indebtedness shall have occurred and be continuing permitting the holders of such Senior Indebtedness (or a trustee on behalf of the holders thereof) to accelerate the maturity thereof, then unless and until such default or event of default shall have been cured or waived or shall have ceased to exist, no cash payment of principal, premium, if any, or interest shall be made by the Corporation on the Debenture.

(vi) No right of any present or future holder of any Senior Indebtedness of the Corporation to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Corporation or by any act or failure to act, in good faith, by any such holder, or by any non-compliance by the Corporation with the covenants, agreements and conditions of the Debenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

(vii) "Senior Indebtedness" means all loans, advances, reimbursement obligations regarding letters of credit, liabilities, covenants, guarantees and duties now existing or arising from time to time hereafter and renewals, extensions and refunding of any such indebtedness, whether for principal, premium or interest or otherwise of the Corporation or any subsidiary of the Corporation (including without limitation Major Acquisition Corp.) (i) outstanding as of January 25, 1999, or (ii) to, but only to, any bank or other commercial financing institution and either (A) incurred in connection with the acquisition of the securities or assets of another entity constituting the acquisition of the business of such entity, or (B) constituting "floor planning" financing of automobile dealerships (all indebtedness described in clauses (i) and (ii) above shall be referred to herein as "Qualifying Debt"), absolute or contingent, secured or unsecured, due or to become due, including (1) any Qualifying Debt which such bank or other commercial financing institution may have obtained by assignment, pledge, purchase or otherwise, (2) any overdraft or overadvance to the Corporation with respect to Qualifying Debt, and (3) all interest, charges, expenses and attorney's fees for which the Corporation or any subsidiary of the Corporation is now or hereafter becomes liable with respect to Qualifying Debt (unless in the instrument creating or evidencing such indebtedness, or pursuant to which the same is outstanding, it is provided that such indebtedness or such renewal, extension or refunding thereof is subordinated in right of payment to the Debentures).

## ARTICLE II

### CERTAIN DEFINITIONS

The following terms shall have the following meanings:

A. "Closing Bid Price" means, for any security as of any date, the closing bid price of such security on the principal United States securities exchange or trading market where such security is listed or traded as reported by Bloomberg Financial Markets (or a comparable reporting service of national reputation selected by the Corporation and reasonably acceptable to holders of a majority of the aggregate principal amount represented by the then outstanding Debentures ("Majority Holders

if Bloomberg Financial Markets is not then reporting closing bid prices of such security) (collectively, "Bloomberg"), or if the foregoing does not apply, the last reported bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no bid price is reported for such security by Bloomberg, the average of the bid prices of any market makers for such security as reported in the "pink sheets" by the National Quotation Bureau, Inc., in each case for such date or, if such date was not a trading date for such security, on the next preceding date which was a trading date. If the Closing Bid Price cannot be calculated for such security as of either of such dates on any of the foregoing bases, the Closing Bid Price of such security on such date shall be the fair market value as reasonably determined by an investment banking firm selected by the Corporation and reasonably acceptable to the Majority Holders, with the costs of such appraisal to be borne by the Corporation.

B. "Conversion Amount" means the portion of the unconverted principal amount of this Debenture being converted plus any accrued and unpaid interest thereon through the Conversion Date and any Prepayment Default Payments payable with respect thereto, each as specified in the notice of conversion in the form attached hereto (the "Notice of Conversion").

C. "Conversion Date" means, for any Optional Conversion (as defined below), the date specified in the Notice of Conversion so long as the copy of the Notice of Conversion is faxed (or delivered by other means resulting in notice) to the Corporation at or before 11:59 p.m., New York City time, on the Conversion Date indicated in the Notice of Conversion; provided, however, that if the Notice of Conversion is not so faxed or otherwise delivered before such time, then the Conversion Date shall be the date the holder faxes or otherwise delivers the Notice of Conversion to the Corporation.

D. "Conversion Price" means the lower of the Fixed Conversion Price and the Variable Conversion Price, each in effect as of such date and subject to adjustment as provided herein, but in no event less than the Floor Conversion Price.

E. "Fixed Conversion Price" means \$4.20, and shall be subject to adjustment as provided herein.

F. "Floor Conversion Price" means \$3.00, subject to applicable adjustment as provided herein.

G. "Variable Conversion Price" means, as of any date of determination, an amount equal to 90% (the "Conversion Percentage") of the average of the Closing Bid Prices for the Corporation's common stock, par value \$0.001 per share ("Common Stock"), for any three (3) trading days selected by the Holder during the twenty (20) consecutive trading days ending on the trading day immediately preceding such date of determination (the "Lookback Period") (subject to equitable adjustment for any stock splits, stock dividends, reclassifications or similar events during such twenty (20) trading day period), and shall be subject to adjustment as provided herein. For the avoidance of doubt, the trading day immediately preceding any Conversion Date is the last calendar day that is a trading day and which is immediately preceding the Conversion Date. As of the end of the Accrual Period, the Lookback Period shall be increased to twenty-one (21) days, and it shall increase by one date as of the same day of each succeeding calendar month.

### ARTICLE III

#### CONVERSION

A. Conversion at the Option of the Holder. (i) Subject to the limitations on conversions contained in Paragraph C of this Article III and the rights of prepayment set forth in Article I, the Holder may, at any time and from time to time on or after the Issue Date and prior to payment in full of the outstanding unconverted principal balance of and accrued interest on this Debenture, convert (an "Optional Conversion") all or any part of the outstanding principal amount of this Debenture, plus accrued interest thereon through the Conversion Date, into a number of fully paid and nonassessable shares of Common Stock determined in accordance with the following formula:

Conversion Amount

Conversion Price

B. Mechanics of Conversion. In order to effect an Optional Conversion, a Holder shall: (x) fax (or otherwise deliver) a copy of the fully executed Notice of Conversion to the Corporation or its transfer agent for the Common Stock and (y) surrender cause to be surrendered this Debenture, duly endorsed, along with a copy of the Notice of Conversion as soon as practicable thereafter to the Corporation. Upon receipt by the Corporation or its transfer agent of a facsimile copy of a Notice of Conversion from a Holder, the Corporation shall immediately send, via facsimile, a confirmation to such Holder stating that the Notice of Conversion has been received, the date upon which the Corporation expects to deliver the Common Stock issuable upon such conversion and the name and telephone number of a contact person at the Corporation regarding the conversion. The Corporation shall not be obligated to issue shares of Common Stock upon a conversion unless either this Debenture

delivered to the Corporation as provided above, or the Holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and delivers the documentation to the Corporation required by Article IX.H hereof.

(i) **Delivery of Common Stock Upon Conversion.** Upon the surrender of this Debenture accompanied by a Notice of Conversion, the Corporation shall, no later than the later of (a) the fifth business day following the Conversion Date and (b) the business day following the date of such surrender (or, in the case of lost, stolen or destroyed certificates, after provision of indemnity pursuant to Article IX.H) (the "Delivery Period"), issue and deliver to the Holder or its nominee (x) that number of shares of Common Stock issuable upon conversion of the portion of this Debenture being converted and (y) a new Debenture in the form hereof representing the balance of the principal amount hereof not being converted, if any. If the Corporation's transfer agent is participating in the Depository Trust Corporation ("DTC") Fast Automated Securities Transfer program, and if, but only if, as the certificates therefor do not bear a legend and the holder thereof is not then obligated to return such certificate for the placement of a legend thereon, the Corporation shall cause its transfer agent to electronically transmit the Common Stock issuable upon conversion to the holder by crediting the account of the holder or its nominee with DTC through its Deposit Withdrawal Agent Commission system ("DTC Transfer"). If the aforementioned conditions to a DTC Transfer are not satisfied, the Corporation shall deliver to the holder physical certificates representing the Common Stock issuable upon conversion. Further, a Holder may instruct the Corporation to deliver to the holder physical certificates representing the Common Stock issuable upon conversion in lieu of delivering such shares by way of DTC Transfer.

(ii) **Taxes.** The Corporation shall pay any and all taxes which may be imposed upon it with respect to the issuance and delivery of the shares of Common Stock upon the conversion of this Debenture.

(iii) **No Fractional Shares.** If any conversion of this Debenture would result in the issuance of a fractional share of Common Stock, such fractional share shall not be issued and an amount equal to the product of such fraction and the Closing Bid Price as of the date of Conversion Date shall be paid in lieu thereof.

(iv) **Conversion Disputes.** In the case of any dispute with respect to a conversion, the Corporation shall promptly issue such number of shares of Common Stock as are not disputed in accordance with subparagraph (i) above. If such dispute involves the calculation of the Conversion Price, the Corporation shall submit the disputed calculations to an independent outside accountant via facsimile within two (2) business days of receipt of the Notice of Conversion. The accountant, at the Corporation's sole expense (unless the accountant concludes that the Corporation's initial calculation was correct, in which event at the holder's expense), shall audit the calculations and notify the Corporation and the holder of the results no later than two business days from the date it receives the disputed calculations. The accountant's calculation shall be deemed conclusive absent manifest error. The Corporation shall then issue the appropriate number of shares of Common Stock in accordance with subparagraph (i) above.

**C. Limitations on Conversions.** The conversion of this Debenture shall be subject to the following limitations (each of which limitations shall be applied independently):

(i) **Cap Amount.** If, notwithstanding the representations and warranties of the Corporation contained in Section 3(c) of the Securities Purchase Agreement, the Corporation is prohibited by Rule 4310(a)(25)(H) or Rule 4460(i) (as the case may be) of the National Association of Securities Dealers, Inc. ("NASD"), or any successor or similar rule, or the rules or regulation of any other securities exchange on which the Common Stock is then listed or traded, from issuing a number of shares of Common Stock in excess of a prescribed amount (the "Cap Amount"), then the Corporation shall not be required to issue shares in excess of the Cap Amount; provided, however, that this limitation in this Article III.C.(i) shall not apply and shall be of no further force and effect after the date of the effectiveness of the shareholder approval (the "Shareholder Approval Date" referred to in Section 4(o) of the Securities Purchase Agreement. Assuming solely for purposes of this paragraph C that Rule 4310(a)(25)(H) or Rule 4460(i) is applicable, the Cap Amount shall be 1,494,800 shares. The Cap Amount shall be allocated pro rata to the Holders of the Debentures as provided in Article IX.D. In the event the Corporation is prohibited from issuing shares of Common Stock as a result of the operation of this subparagraph (i), the Corporation shall comply with Article VI.

(ii) **No Five Percent Holders.** Unless waived in accordance with the last sentence of this subparagraph, in no event shall a holder of the Debentures be entitled to receive shares of Common Stock upon a conversion to the extent that the sum of (x) the number of shares of Common Stock beneficially owned by the Holder and its affiliates (exclusive of shares issuable upon conversion of the unconverted portion of the Debentures or the unexercised or unconverted portion of any other securities of the Corporation (including, without limitation, the warrants (the "Warrants") issued by the Corporation pursuant to the Securities Purchase Agreement) subject to a limitation on conversion or exercise analogous to the limitations contained herein and (y) the number of shares of Common Stock issuable upon the conversion of the Debentures with respect to which the determination of this subparagraph is being made, would result in beneficial ownership by the holder and its affiliates of more than 4.99% of the outstanding shares of Common Stock. For purposes of this subparagraph, beneficial ownership shall be determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended, and Regulation 13 D-

thereunder, except as otherwise provided in clause (x) above. Except as provided in the immediately succeeding sentence, the restriction contained in this subparagraph (ii) shall not be altered, amended, deleted or changed in any manner whatsoever unless the holders of a majority of the outstanding shares of Common Stock and the holders of a majority of the outstanding principal amount of the Debentures shall approve such alteration, amendment, deletion or change. In applying the foregoing such limitation should be applied in conjunction with the application of limitations on conversion or exercise analogous to the foregoing limitation. Notwithstanding the foregoing, the holder of this Debenture may waive the foregoing limitations and restrictions by written notice to the Corporation.

#### ARTICLE IV

##### RESERVATION OF SHARES OF COMMON STOCK

A. **Reserved Amount.** On the Issue Date, the Corporation shall reserve \_\_\_\_\_ of the authorized but unissued shares of Common Stock for issuance upon conversion of the Debentures and thereafter the number of authorized but unissued shares of Common Stock so reserved (as so increased, the "Reserved Amount") shall not be decreased and shall at all time be sufficient to provide for the conversion of the Debentures at the then current Floor Conversion Price thereof. The Reserve Amount shall be allocated to the Holders of the Debentures as provided in Article IX.D.

B. **Increases to Reserved Amount.** If the Reserved Amount for any three consecutive trading days (the last of such three trading days being the "Authorization Trigger Date") shall be less than 100% of the number of shares of Common Stock issuable upon conversion of the Debentures at the then-current Floor Conversion Price, the Corporation shall immediately notify the Holders of the Debentures of such occurrence and shall take immediate action (including, if necessary, seeking shareholder approval to authorize the issuance of additional shares of Common Stock) to increase the Reserved Amount to 100% of the number of shares of Common Stock then issuable upon conversion of the Debentures at the then-current Floor Conversion Price. In the event the Corporation fails to so increase the Reserved Amount within, in the event shareholder approval is required, ninety (90) days, or, in the event only approval of the Company's Board of Directors is required, ten (10) days after an Authorization Trigger Date, each Holder of the Debentures shall thereafter have the option, exercisable in whole or in part at any time and from time to time by delivery of a Default Notice (as defined in Article VII.C) to the Corporation, require the Corporation to prepay for cash, at the Default Amount (as defined in Article VII.B), a portion of the Holder's principal amount outstanding of the Debentures (plus accrued interest thereon) such that, after giving effect to such prepayment, the holder's allocated portion of the Reserved Amount exceeds 100% of the total number of shares of Common Stock issuable to such holder upon conversion of its Debenture at the then-current Floor Conversion Price. If the Corporation fails to pay the Default Amount within five (5) business days after its receipt of such Default Notice, then such Holder shall be entitled to the remedies provided in Article VII.C. Subject to the limitations on issuance of shares of Common Stock in excess of any Holder's Cap Amount, notwithstanding anything else contained herein, if the Corporation has a sufficient number of authorized shares of Common Stock, the Corporation shall immediately issue additional shares of Common Stock to any Holder who has exceeded its allocated portion of the Reserved Amount upon conversions by such Holder of its Debentures.

C. **Adjustment to Conversion Price.** If the Corporation is prohibited, at any time, from issuing shares of Common Stock upon conversion of the Debentures to any Holder because the Corporation does not then have available a sufficient number of authorized and reserved shares of Common Stock, then the Fixed Conversion Price in respect of any Debentures held by any Holder (including Debentures submitted to the Corporation for conversion, but for which shares of Common Stock have not been issued to any such Holder) shall be adjusted as provided in Article V.A.

#### ARTICLE V

##### FAILURE TO SATISFY CONVERSIONS

A. **Conversion Defaults; Adjustments to Conversion Price.** The following shall constitute a "Conversion Default": following the submission by a Holder of a Notice of Conversion, the Corporation fails for any reason (other than because an event described in clause (iii) below) to deliver, on or prior to the fourth business day following the expiration of the Delivery Period for such conversion, such number of shares of Common Stock without a restrictive legend (provided that appropriate stop transfer instructions may be given to the transfer agent as provided in the Registration Rights Agreement) to which such Holder is entitled upon such conversion (unless as of the Conversion Date the Corporation is not required to have effect a registration statement covering the resale of such shares under the terms of the Registration Rights Agreement (defined below)), (ii) the Corporation provides notice to any Holder of a Debenture at any time of its intention not to issue shares of Common Stock without a restrictive legend (provided that appropriate stop transfer instructions may be given to the transfer agent as provided in the Registration Rights Agreement) upon exercise by any Holder of its conversion rights in accordance with the terms of the Debentures (other than because of an event described in clause (iii) below at a time when the Corporation is required under the Registration Rights Agreement to have an effective registration statement covering the resale of shares

issuable upon conversion, or the Corporation is prohibited, at any time from issuing shares of Common Stock upon conversion of the Debentures to any Holder because the Corporation (A) does not have available at the date of such conversion a sufficient number of authorized and reserved shares of Common Stock or (B) such issuance would exceed the then unissued portion of such Holder's Cap Amount. In the case of a Conversion Default described in clause (i) or (iii) above, the Fixed Conversion Price in respect of any Debentures held by such Holder (including Debentures submitted to the Corporation for conversion, but for which shares of Common Stock have not been issued to such Holder) shall thereafter be the lesser of (x) the Fixed Conversion Price on the date of the Conversion Default and (y) the lowest Conversion Price in effect during the period beginning on, and including, such date through and including (A) in the case of a Conversion Default referred to in clause (i) above, the earlier of (1) the day such shares of Common Stock are delivered to the Holder and (2) the day on which the holder regains its rights as a holder of the Debentures with respect to such unconverted Debentures pursuant to the provisions of Article IX.L hereof, and (B) in the case of a Conversion Default referred to in clause (iii) above, the date on which the prohibition on issuances of Common Stock terminates. In the case of a Conversion Default described in clause (ii) above, the Fixed Conversion Price with respect to any conversion thereafter shall be the lowest Conversion Price in effect at any time during the period beginning on, and including, the date of the occurrence of such Conversion Default through and including the Default Cure Date (as hereinafter defined). Following any adjustment to the Fixed Conversion Price pursuant to this Article V.A, the Fixed Conversion Price shall thereafter be subject to further adjustment for any events described in Article VIII. Upon the occurrence of each reset of the Fixed Conversion Price pursuant to this Paragraph A, the Corporation, at its expense, shall promptly compute the new Fixed Conversion Price and prepare and furnish to each Holder of the Debentures a certificate setting forth such new Fixed Conversion Price and showing in detail each Conversion Price in effect during such reset period.

"Default Cure Date" means (i) with respect to a Conversion Default described in clause (i) of its definition, the date the Corporation effects the conversion of all of the outstanding Debentures, and (ii) with respect to a Conversion Default described in clause (ii) of its definition, the date the Corporation issues freely tradeable shares of Common Stock in satisfaction of all conversions of the Debentures in accordance with Article III.A, and (iii) with respect to either type of a Conversion Default, the date on which the Corporation prepays the Debentures held by such holder pursuant to paragraph C of this Article V.

B. Buy-In Cure. Unless the Corporation has notified the applicable holder in writing prior to the delivery by such holder of a Notice of Conversion that the Corporation is unable to honor conversions, if (i) (a) the Corporation fails for any reason to deliver during the Delivery Period shares of Common Stock to a Holder upon a conversion of the Debentures or (b) there shall occur a Legend Removal Failure (as defined in Article VII.A (iv) below) and (ii) thereafter, such Holder purchases (in an open market transaction or otherwise) shares of Common Stock to make delivery in satisfaction of a sale by such Holder of the unlegended shares of Common Stock (the "Sold Shares") which such Holder anticipated receiving upon such conversion (a "Buy-In"), the Corporation shall pay such Holder (in addition to any other remedies available to the Holder) the amount by which (x) such Holder's total purchase price (including brokerage commissions, if any) for the unlegended shares of Common Stock so purchased exceeds (y) the net proceeds received by such Holder from the sale of the Sold Shares. For example, if a Holder purchases unlegended shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to shares of Common Stock it sold for \$10,000, the Corporation will be required to pay the Holder \$1,000. A Holder shall provide the Corporation written notification and supporting documentation indicating any amounts payable to such Holder pursuant to this Paragraph B. The Corporation shall make any payments required pursuant to this Paragraph B in accordance with and subject to the provisions of Article IX.J.

C. Right to Require Prepayment. If the Corporation fails, and such failure continues uncured for five (5) business days after the Corporation has been notified thereof in writing by the Holder, for any reason (other than because such issuance would exceed such Holder's allocated portion of the Reserved Amount or Cap Amount, for which failures the Holders shall have the remedies set forth in Articles IV and VI, respectively) to issue shares of Common Stock within 10 business days after the expiration of the Delivery Period with respect to any conversion of the Debentures, then the Holder may elect at any time and from time to time prior to the Default Cure Date for such Conversion Default, by delivery of a Default Notice (as defined in Article VII.C) to the Corporation, to have all or any portion of such Holder's outstanding Debentures prepaid by Corporation for cash, at the Default Amount (as defined in Article VII.B). If the Corporation fails to pay such Default Amount within five business days after its receipt of a Default Notice, then such Holder shall be entitled to the remedies provided in Article VII.C.

## ARTICLE VIII

### INABILITY TO CONVERT DUE TO CAP AMOUNT

A. Obligation to Cure. If at any time prior to the Shareholder Approval Date the then unissued portion of any Holder's Cap Amount is less than 100% of the number of shares of Common Stock then issuable upon conversion of such Holder's Debentures at the then-current Floor Conversion Price (a "Trading Market Trigger Event"), the Corporation shall immediately notify the Holders of Debentures of such occurrence and shall take immediate action (including, if necessary, seeking the approval of its shareholders to authorize the issuance of the full number of shares of Common Stock which would be issuable

upon the conversion of the Debentures but for the Cap Amount) to eliminate any prohibitions under applicable law or the rules or regulations of any stock exchange, interdealer quotation system or other self-regulatory organization with jurisdiction over the Corporation or any of its securities on the Corporation's ability to issue shares of Common Stock in excess of the Cap Amount ("Trading Market Prohibitions"). In the event the Corporation fails to eliminate all such Trading Market Prohibitions within ninety (90) days after the Trading Market Trigger Event, then each Holder of Debentures shall thereafter have the option, exercisable in whole or in part at any time and from time to time until such date that all such Trading Market Prohibitions are eliminated, by delivery of a Default Notice (as defined in Article VII.C) to the Corporation, to require the Corporation to repay for cash, at the Default Amount, a principal amount of the Holder's Debentures such that, after giving effect to such repayment, the then unissued portion of such Holder's Cap Amount exceeds 100% of the total number of shares of Common Stock issuable upon conversion of such Holder's Debentures at the then-current Floor Conversion Price. If the Corporation fails to pay the Default Amount within five (5) business days after its receipt of a Default Notice, then such Holder shall be entitled to the remedies provided in Articles VI.B and VII.C. On or after the Shareholder Approval Date, the Corporation shall treat any such Trading Market Prohibitions as eliminated.

B. Adjustment to Conversion Price. If the Corporation is prohibited, at any time, from issuing shares of Common Stock upon conversion of the Debentures to any Holder because such issuance would exceed the then unissued portion of such Holder's Cap Amount because of applicable law or the rules or regulations of any stock exchange, interdealer quotation system or other self-regulatory organization with jurisdiction over the Corporation or its securities then the Fixed Conversion Price in respect of any Debentures held by any Holder (including Debentures submitted to the Corporation for conversion, but for which shares of Common Stock have not been issued) shall be adjusted as provided in Article V.A.

## ARTICLE IX

### EVENTS OF DEFAULT

A. Events of Default. In the event (each of the events described in clauses (i)-(ix) below after expiration of the applicable cure period (if any) being an "Event of Default"):

(i) the Corporation fails (i) to pay the unconverted portion of the principal hereof when due, whether at maturity, upon acceleration or otherwise or (ii) to pay any unconverted portion of an installment of interest hereon when due and such failure continues for a period of five (5) business days after the due date hereof;

(ii) the Common Stock (including any of the shares of Common Stock issuable upon conversion of the Debenture) is suspended from trading on any of, or is not listed (and authorized) for trading on at least one of, the New York Stock Exchange, the American Stock Exchange, the Nasdaq National Market or the Nasdaq SmallCap Market for an aggregate of 10 trading days in any nine month period;

(iii) the Registration Statements required to be filed by the Corporation pursuant to Section 2(a) of that certain Registration Rights Agreement by and among the Corporation and the other signatories thereto entered into in connection with the Securities Purchase Agreement (the "Registration Rights Agreement") have not been filed and declared effective within the time period(s) described therein or any such Registration Statements, after being declared effective, cannot be utilized by the Holders of the Debentures for the resale of all of their Registrable Securities (as defined in the Registration Rights Agreement) (other than solely for reasons within the control of the Holders of the Debentures) for an aggregate of more than 30 days;

(iv) Provided that either a Registration Statement covering the resale of shares of Common Stock issuable upon conversion of the Debentures is in effect, or upon compliance with the requirements of Rule 144, the Corporation fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to the Holders of the Debentures upon conversion of any of the Debentures as and when required by this Debenture, the Securities Purchase Agreement or the Registration Rights Agreement (but provided that appropriate stop-transfer instructions may be given to the transfer agent provided in the Registration Rights Agreement) (a "Legend Removal Failure"), and any such failure continues uncured for five business days after the Corporation has been notified thereof in writing by the Holder;

(v) the Corporation provides notice to any Holder of the Debentures, including by way of public announcement, at any time, of its intention not to issue, or otherwise refuses to issue, shares of Common Stock to any Holder of the Debentures upon conversion in accordance with the terms of the Debentures (other than due to the circumstances contemplated by Article IV or VI for which the holders shall have the remedies set forth in such Articles);

(vi) the Corporation shall:

(a) sell, convey or dispose of all or substantially all of its assets (stockholder approval of such transaction being conclusive evidence that such transaction involves the sale of all or substantially all of the assets of the Corporation);

(b) merge, consolidate or engage in any other business combination with any other entity (other than pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Corporation and other than pursuant to a merger in which the Corporation is the surviving or continuing entity and the voting capital stock of the Corporation immediately prior to such merger, consolidation or combination represents at least 50% of the voting power of the capital stock of the Corporation after the merger, consolidation or combination) and its capital stock is unchanged; or

(c) have fifty percent (50%) or more of the voting power of its capital stock owned beneficially by one person, entity or "group" (as such term is used under Section 13(d) of the Securities Exchange Act of 1934, as amended) exclusive of Bruce Bendell, Doron Cohen or any of their family members or affiliates; or

(vii) the Corporation otherwise shall breach any term hereunder (including; without limitation, Article IV hereof) or under the Securities Purchase Agreement or the Registration Rights Agreement, including, without limitation, the representations and warranties in the Securities Purchase Agreement or the Registration Rights Agreement and such breach continues uncured for 10 business days after the Corporation has been notified thereof in writing by any Holder and which breach actually causes a Material Adverse Effect (as such term is defined in the Securities Purchase Agreement);

(viii) the Corporation or any subsidiary of the Corporation shall make an assignment for the benefit of creditors, or apply for or consent to the appointment of a receiver or trustee for it or for a substantial part of its property or business; or such a receiver or trustee shall otherwise be appointed; or

(ix) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for relief under any bankruptcy law or any law for the relief of debtors shall be instituted by or against the Corporation or any subsidiary of the Corporation, which petition, if filed against the Corporation, is not dismissed within ninety (90) days. then, upon the occurrence of any such Event of Default, at the option of each Holder, exercisable in whole or in part at any time and from time to time by delivery of a Default Notice (as defined in Paragraph C below) to the Corporation while such Event of Default continues, the Corporation shall pay the Holders (and upon the occurrence of an Event of Default specified in subparagraphs (viii) and (ix) of this Paragraph A, the Corporation shall be required to pay the Holders), in satisfaction of its obligation to pay the outstanding principal amount of the Debentures and accrued and unpaid interest thereon, an amount equal to the Default Amount and such Default Amount, together with all other ancillary amounts payable hereunder, shall immediately become due and payable, all without demand, presentment or notice, all of which are hereby expressly waived, together with all costs, including, without limitation, reasonable legal fees and expenses of collection, and the Holder shall be entitled to exercise all other rights and remedies available at law or in equity. For the avoidance of doubt, the occurrence of any event described in clauses (v), (vi), (viii) or (ix) above shall immediately constitute an Event of Default and there shall be no cure period. Upon the Corporation's receipt of any Default Notice hereunder (other than during the three trading day period following the Corporation's delivery of a Default Announcement (as defined below) to a of the Holders in response to the Corporation's initial receipt of a Default Notice from a holder of the Debentures, the Corporation shall immediately (and in any event within one business day following such receipt) deliver a written notice (a "Default Announcement") to all holders of the Debentures stating the date upon which the Corporation received such Default Notice and the amount of the Debentures covered thereby. The Corporation shall not redeem any Debentures during the three trading day period following the delivery of a required Default Announcement hereunder. At any time and from time to time during such three trading day period, each holder of the Debentures may request (either orally or in writing) information from the Corporation with respect to the instant default (including, but not limited to, the aggregate principal amount outstanding of Debentures covered by Default Notices received by the Corporation) and the Corporation shall furnish (either orally or in writing) as soon as practicable such requested information to such requesting holder.

B. Definition of Default Amount. The "Default Amount" with respect to a Debenture means an amount equal to the great of:

(i)  $(V / CP) \times M$

and (ii)  $V \times 114\%$

where:

"V" means the principal amount aggregate outstanding of the Debentures being paid plus all accrued and unpaid interest thereon and any Prepayment Default Payments (if any) through the payment date;

"CP" means the Conversion Price in effect on the date on which the Corporation receives the Default Notice; and

"M" means (i) with respect to all repayments other than repayments pursuant to Article VII.A(vi) hereof, the highest Closing Bid Price of the Corporation's Common Stock during the period beginning on the date on which the Corporation receives the Default Notice and ending on the date immediately preceding the date of payment of the Default Amount and (ii) with respect to repayments pursuant to Article VII.A(vi) hereof, the greater of (a) the amount determined pursuant to clause (i) of this definition or (b) the fair market value, as of the date on which the Corporation receives the Default Notice, of the consideration payable to the holder of a share of Common Stock pursuant to the transaction which triggers the repayment obligation. For purposes of this definition, "fair market value" shall be determined by the mutual agreement of the Corporation and Holders of a majority-in-interest of the then outstanding principal amount of the Debentures, or if such agreement cannot be reached within five business days prior to the date of repayment, by an investment banking firm selected by the Corporation and reasonably acceptable to Holders of a majority-in-interest of the then outstanding principal amount of the Debentures, with the costs of such appraisal to be borne by the Corporation.

C. Failure to Pay Default Amounts. If the Corporation fails to pay any Holder the Default Amount with respect to any Debenture within five business days after its receipt of a notice requiring such repayment (a "Default Notice"), then the holder of any Debenture delivering such Default Notice (i) shall be entitled to interest on the Default Amount at a per annum rate equal to the lower of twenty-four percent (24%) and the highest interest rate permitted by applicable law from the date on which the Corporation receives the Default Notice until the date of payment of the Default Amount hereunder, and (ii) shall have the right at any time and from time to time, to require the Corporation, upon written notice, to immediately convert (in accordance with the terms of Paragraph A of Article III) all or any portion of the Default Amount, plus interest as aforesaid, into shares of Common Stock at the lowest Conversion Price in effect during the period beginning on the date on which the Corporation receives the Default Notice and ending on the Conversion Date with respect to the conversion of such Default Amount. In the event the Corporation is not able to repay all of the outstanding Debentures subject to Default Notices delivered prior to the date upon which such repayment is to be effected, the Corporation shall repay the outstanding Debentures from each holder pro rata, based on the total amounts due the Debentures at the time of repayment included by such holder in all Default Notices delivered prior to the date upon which such repayment is to be effected relative to the total amounts due under the Debentures at the time of repayment included in all of the Default Notices delivered prior to the date upon which such repayment is to be effected.

## ARTICLE X

### ADJUSTMENTS TO THE CONVERSION PRICE

The Conversion Price shall be subject to adjustment from time to time as follows:

- A. Stock Splits, Stock Dividends, Etc. If, at any time on or after the First Closing Date, the number of outstanding shares of Common Stock is increased by a stock split, stock dividend, combination, reclassification or other similar event, the Fixed Conversion Price and the Floor Conversion Price shall be proportionately reduced, or if the number of outstanding shares of Common Stock is decreased by a reverse stock split, combination or reclassification of shares, or other similar event, the Fixed Conversion Price and the Floor Conversion Price shall be proportionately increased. In such event, the Corporation shall notify the Corporation's transfer agent of such change on or before the effective date thereof.
- B. Adjustment Due to Merger, Consolidation, Etc. If, at any time after the First Closing Date, there shall be (i) a reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any consolidation or merger of the Corporation with any other entity (other than a merger in which the Corporation is the surviving or continuing entity and its capital stock is unchanged), (iii) any sale or transfer of all or substantially all of the assets of the Corporation or (iv) any share exchange pursuant to which all of the outstanding shares of Common Stock are converted into other securities or property (each of (i) - (iv) above being a "Corporate Change"), then the Holders of the Debentures shall thereafter have the right to receive upon conversion, in lieu of the shares of Common Stock otherwise issuable, such shares of stock, securities and/or other property as would have been issued or payable in such Corporate Change with respect to or in exchange for the number of shares of Common Stock which would have been issuable upon conversion (without giving effect to the limitations contained in Article III.C) had such Corporate Change not taken place, and in any such case, appropriate provisions shall be made with respect to the rights and interests of the Holders of the Debentures to the end that the economic value of the Debentures are in no way diminished by such Corporate Change (as reasonably determined by the Holders of a majority of the principal amount of Debentures then outstanding) and that the provisions hereof (including, without limitation, in the case of any sale

consolidation, merger or in which the successor entity or purchasing entity is not the Corporation, an immediate adjustment of the Fixed Conversion Price and the Floor Conversion Price so that the Fixed Conversion Price and the Floor Conversion Price immediately after the Corporate Change reflects the same relative value as compared to the value of the surviving entity's common stock that existed between the Fixed Conversion Price and the Floor Conversion Price, respectively, and the value of the Corporation's Common Stock immediately prior to such Corporate Change and an immediate revision to the Variable Conversion Price so that it is determined as provided in Article II.H but based on the price of the common stock of the surviving entity and the market in which such common stock is traded) shall thereafter be applicable, as nearly as may be practicable in relation to any shares of stock or securities thereafter deliverable upon the conversion thereof. The Corporation shall not effect any Corporate Change unless (i) each holder of the Debentures, along with notice sent to the holders of the Common Stock of the Corporation, has received written notice of such transaction at least 75 days prior thereto, but in no event later than 20 days prior to the record date for the determination of shareholders entitled to vote with respect thereto, and (ii) the resulting successor or acquiring entity (if not the Corporation) assumes by written instrument (in form and substance reasonably satisfactory to the Holders of a majority of the principal amount of the Debentures then outstanding) the obligations of the Debentures. The above provisions shall apply regardless of whether or not there would have been a sufficient number of shares of Common Stock authorized and available for issuance upon conversion of the Debentures outstanding as of the date of such transaction, and shall similarly apply to successive reclassifications, consolidations, mergers, sales, transfers or share exchanges.

C. Adjustment Due to Major Announcement. In the event the Corporation at any time after the First Closing Date (i) makes a public announcement that it intends to consolidate or merge with any other entity (other than a merger in which the Corporation is the surviving or continuing entity and its capital stock is unchanged) or to sell or transfer all or substantially all of the assets of the Corporation or (ii) any person, group or entity (including the Corporation) publicly announces a tender offer, exchange offer or another transaction to purchase 50% or more of the Corporation's Common Stock or otherwise publicly announces an intention to replace a majority of the Corporation's Board of Directors by waging a proxy battle or otherwise (the date of the announcement referred to in clause (i) or (ii) of this Paragraph C is hereinafter referred to as the "Announcement Date"), then the Conversion Price shall, effective upon the Announcement Date and continuing through the tenth trading day following the earlier of the consummation of the proposed transaction or tender offer, exchange offer or another transaction or the Abandonment Date (as defined below), be equal to the lower of (x) the Conversion Price which would have been applicable for an Optional Conversion occurring on the Announcement Date and (y) the Conversion Price determined in accordance with Article II.E on the Conversion Date set forth in the Notice of Conversion for the Optional Conversion. From and after the tenth trading day following the Abandonment Date, the Conversion Price shall be determined as set forth in Article II.E. "Abandonment Date" means with respect to any proposed transaction or tender offer, exchange offer or another transaction for which a public announcement as contemplated by this Paragraph C has been made, the date upon which the Corporation (in the case of clause (i) above) or the person, group or entity (in the case of clause (ii) above) publicly announces the termination or abandonment of the proposed transaction or tender offer, exchange offer or another transaction which caused this Paragraph C to become operative.

D. Adjustment Due to Distribution. If, at any time after the First Closing Date, the Corporation shall declare or make any distribution of its assets (or rights to acquire its assets) to holders of Common Stock as a partial liquidating dividend, by way of return of capital or otherwise (including any dividend or distribution to the Corporation's shareholders in cash or shares (or rights to acquire shares) of capital stock of a subsidiary (i.e. a spin-off)) (a "Distribution"), then the Holders of the Debentures shall be entitled, upon any conversion of the Debentures after the date of record for determining shareholders entitled to such Distribution, to receive the amount of such assets which would have been payable to the Holder with respect to the shares of Common Stock issuable upon such conversion (without giving effect to the limitation contained in Article III.C) had such Holder been the holder of such shares of Common Stock on the record date for the determination of shareholders entitled to such Distribution.

E. Issuance of Other Securities With Variable Conversion Price. If, at any time after the First Closing Date, the Corporation shall issue any securities which are convertible into or exchangeable for Common Stock ("Convertible Securities") at a conversion or exchange rate based on a discount to the market price of the Common Stock at the time of conversion or exercise, then the Conversion Percentage in respect of any conversion of any portion of this Debenture after such issuance shall be calculated utilizing the higher of the greatest discount applicable to any such Convertible Securities and the discount then in effect in calculating the Variable Conversion Price; provided, that no adjustment be made (i) upon the grant or exercise of any stock or options which may hereafter be granted or exercised under any employee benefit plan of the Corporation now existing or to be implemented in the future, or upon grant or exercise of stock or options to or by any officer, director, employee, agent, consultant or other entity providing services to the Corporation, whether or not under a plan, so long as the issuance of such stock or options is approved by a majority of the non-employee members of the Board of Directors of the Corporation or a majority of the members of a committee of non-employee directors established for such purpose; (ii) upon the issuance of any Debentures or Warrants issued or issuable in accordance with the terms of the Securities Purchase Agreement; (iii) upon the issuance of securities

connection with an underwritten public offering of the Corporation; (iv) upon issuance of securities in connection with any merger, acquisition or consolidation, or purchase of assets or business from another person, so long as the Corporation is the surviving corporation; (v) upon the issuance of securities issued as the result of anti-dilution rights granted to a third party; and (vi) in connection with the issuance of securities upon the exercise of warrants or other rights granted as "equity kickers" to the holders of Senior Indebtedness.

F. Purchase Rights. If, at any time after the First Closing Date, the Corporation issues any Convertible Securities or rights to purchase stock, warrants, securities or other property (the "Purchase Rights") pro rata to the record holders of any class of Common Stock, then the Holders of the Debentures will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such Holder could have acquired if such holder had held the number of shares of Common Stock acquirable upon complete conversion of the Debentures (without giving effect to the limitations contained in Article III.C) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

G. Notice of Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Article VIII, the Corporation, at its expense, shall promptly compute such adjustment or readjustment and prepare and furnish to each Holder of the Debentures a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any Holder of the Debentures, furnish to such Holder a like certificate setting forth (i) such adjustment or readjustment, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other securities or property which at the time would be received upon conversion of any Debenture.

## ARTICLE XI

### MISCELLANEOUS

A. Failure or Indulgency Not Waiver. No failure or delay on the part of any Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

B. Notices. Any notices required or permitted to be given under the terms of this Debenture shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier or by confirmed telecopy, and shall be effective five days after being placed in the mail, if mailed, or upon receipt or refusal of receipt, if delivered personally or by courier or confirmed telecopy, in each case addressed to a party. The addresses for such communications shall be:

If to the Corporation:

Fidelity Holdings, Inc.  
80-02 Kew Gardens Road  
Suite 5000  
Kew Gardens, NY 11415  
Telecopy: (718) 793-2455

If to the Holder, to the address set forth under such Holder's name on the signature page to the Securities Purchase Agreement executed by such Holder. Each party shall provide notice to the other parties of any change in address.

C. Amendment Provision. This Debenture and any provision hereof may only be amended by an instrument in writing signed by the Corporation and all of the Holders. The term "Debenture" and all references thereto, as used throughout this instrument, shall mean this instrument as originally executed, or if later amended or supplemented, then as so amended or supplemented.

D. Assignability; Allocation of Cap Amount and Reserved Amount. This Debenture shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of the holder and its successors and assigns. The initial Cap Amount and Reserved Amount shall be allocated pro rata among the Holders of the Debentures based on the aggregate principal amount of Debentures issued to each Holder. Each increase to the Cap Amount and the Reserved Amount shall be allocated pro rata among the Holders of Debentures based on the outstanding principal amount of Debentures held by each Holder at the time of the increase in the Cap Amount or Reserved Amount. In the event a Holder shall sell or otherwise transfer any of such Holder's Debentures, each transferee shall be allocated a pro rata portion of such transferor's Cap Amount and Reserved Amount. Any portion of the Cap Amount or Reserved Amount which remains allocated to any person or entity which

does not hold any Debenture shall be allocated to the remaining Holders of Debentures, pro rata based on the outstanding principal amount of Debentures then held by such Holders. Each transferee of a Debenture shall agree in writing to be bound by the terms of the Securities Purchase Agreement and shall make the representations and warranties set forth in Section 2 thereof.

E. Cost of Collection. If default is made in the payment of this Debenture, the Corporation shall pay the Holder hereof costs of collection, including reasonable attorneys' fees.

F. Governing Law; Jurisdiction. This Debenture shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of choice of laws or conflict of laws that would defer to the substantive law of another jurisdiction. The Corporation irrevocably consents to the jurisdiction of the United States federal courts and the state courts located in New York in any suit or proceeding based on or arising under this Debenture and irrevocably agrees that all claims in respect of such suit or proceeding shall be exclusively determined in such courts. The Corporation irrevocably waives the defense of an inconvenient forum to the maintenance of such suit or proceeding. The Corporation further agrees that service of process upon the Corporation mailed by first class mail shall be deemed in every respect effective service of process upon the Corporation in any such suit or proceeding. Nothing herein shall affect the right of any Holder to serve process in any other manner permitted by law. The Corporation agrees that a final non-appealable judgment in any such suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on such judgment or in any other lawful manner.

G. Denominations. At the request of Holder, upon surrender of this Debenture, the Corporation shall promptly issue new Debentures in the aggregate outstanding principal amount hereof, in the form hereof, in such denominations of at least \$25,000 as Holder shall request.

H. Lost or Stolen Debentures. Upon receipt by the Corporation of (i) evidence of the loss, theft, destruction or mutilation of any Debenture and (ii) (y) in the case of loss, theft or destruction, of indemnity (without any bond or other security reasonably satisfactory to the Corporation, or (z) in the case of mutilation, upon surrender and cancellation of any Debenture the Corporation shall execute and deliver a new Debenture of like tenor and date. However, the Corporation shall not be obligated to reissue such lost or stolen Debenture if the holder contemporaneously requests the Corporation to convert such Debenture.

I. Quarterly Statements of Available Shares. For each calendar quarter beginning in the quarter in which the initial registration statement required to be filed pursuant to Section 2(a) of the Registration Rights Agreement is declared effective and thereafter so long as any Debentures are outstanding, the Corporation shall deliver (or cause its transfer agent to deliver if so requested in writing by a Holder a written report notifying the holders of any occurrence which prohibits the Corporation from issuing Common Stock upon any such conversion. The report, if so delivered, shall also specify (i) the total outstanding principal amounts of Debentures as of the end of such quarter, (ii) the total number of shares of Common Stock issued upon all conversions of Debentures prior to the end of such quarter, (iii) the total number of shares of Common Stock which are reserved for issuance upon conversion of the Debentures as of the end of such quarter and (iv) the total number of shares of Common Stock which may thereafter be issued by the Corporation upon conversion of the Debentures before the Corporation would exceed the Cap Amount and the Reserved Amount. The Corporation (or its transfer agent) shall deliver the report for each quarter to each Holder prior to the tenth day of the calendar month following the quarter to which such report relates. In addition, the Corporation (or its transfer agent) shall provide, within 15 days after delivery to the Corporation of a written request by any holder, any of the information enumerated in clauses (i) - (iv) of this Paragraph I as of the date of such request. Simultaneously with delivering such quarterly statements or responding to such written request, the Corporation shall issue a press release with substantially the same information.

J. Payment of Cash; Defaults. Whenever the Corporation is required to make any cash payment to a Holder under the Debentures (as a Conversion Default Payment, upon prepayment, repayment or otherwise), such cash payment shall be made to the Holder within five business days after delivery by such Holder of a notice specifying that the Holder elects to receive such payment in cash and the method (e.g., by check, wire transfer) in which such payment should be made. If such payment is not delivered within such five business day period, such Holder shall thereafter be entitled to interest on the unpaid amount at a per annum rate equal to the lower of twenty-four percent (24%) and the highest interest rate permitted by applicable law until such amount is paid in full to the Holder.

K. Restrictions on Shares. The shares of Common Stock issuable upon conversion of this Debenture may not be sold or transferred unless (i) they first shall have been registered under the Securities Act and applicable state securities laws, (ii) the Corporation shall have been furnished with an opinion of legal counsel (in form, substance and scope customary for opinions in such circumstances) to the effect that such sale or transfer is exempt from the registration requirements of the Securities Act or (iii) they are sold under Rule 144 under the Act. Except as otherwise provided in the Securities Purchase Agreement, each certificate for shares of Common Stock issuable upon conversion of this Debenture that have not been s

registered and that have not been sold under an exemption that permits removal of the legend, shall bear a legend substantially in the following form, as appropriate:

**THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE SECURITIES REPRESENTED HEREBY MAY NOT BE OFFERED OR SOLD IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER APPLICABLE SECURITIES LAWS UNLESS OFFERED, SOLD OR TRANSFERRED UNDER AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS.**

Upon the request of a holder of a certificate representing any shares of Common Stock issuable upon conversion of this Debenture, the Corporation shall remove the foregoing legend from the certificate and issue to such holder a new certificate therefor free of any transfer legend, if (i) with such request, the Corporation shall have received either (A) an opinion of counsel, in form, substance and scope customary for opinions in such circumstances, to the effect that any such legend may be removed from such certificate, or (B) satisfactory documentation from Holder that Holder is selling such security in compliance with Rule 144 or that such Holder and such security meet the requirements of Rule 144(k) or (ii) a registration statement under the Securities Act covering the resale of such securities is in effect. Nothing in this Debenture shall (i) limit the Corporation's obligation under the Registration Rights Agreement, or (ii) affect in any way Holder's obligations to comply with applicable securities laws upon the resale of the securities referred to herein.

L. Status as Debentureholder. Upon submission of a Notice of Conversion by a Holder of the Debentures, (i) the principal amount of the Debentures and the interest thereon covered thereby (other than any portion of the Debentures, if any, which cannot be converted because their conversion would exceed such Holder's allocated portion of the Reserved Amount or Cap Amount) shall be deemed converted into shares of Common Stock as of the Conversion Date and (ii) the Holder's rights as a holder of such Debentures shall cease and terminate (but only with respect to that portion of the Debentures covered by such Notice of Conversion), excepting only the right to receive certificates for such shares of Common Stock and to any remedies provided herein or otherwise available at law or in equity to such Holder because of a failure by the Corporation to comply with the terms of the Debentures. In situations where Article V.B is applicable, the number of shares of Common Stock referred to in clauses (i) and (ii) of the immediately preceding sentence shall be determined on the date on which such shares of Common Stock are delivered to the Holder. Notwithstanding the foregoing, if a Holder has not received certificates for all shares of Common Stock prior to the tenth business day after the expiration of the Delivery Period with respect to a conversion of Debentures for any reason, then (unless the Holder otherwise elects to retain its status as a holder of Common Stock by so notifying the Corporation within five business days after the expiration of such 10 business day period) the portion of the principal amount and interest thereon subject to such conversion shall be deemed outstanding under the Debentures and the Corporation shall, as soon as practicable, return the Debentures to the Holder. In all cases, the Holder shall retain all of its rights and remedies (including, without limitation, (i) the right to receive payments pursuant to Article V.C to the extent required thereby for such Conversion Default and any subsequent Conversion Default and (ii) the right to have the Conversion Price with respect to subsequent conversions determined in accordance with Article V.A) for the Corporation's failure to convert the Debentures.

M. Remedies Cumulative. The remedies provided in this Debenture shall be cumulative and in addition to all other remedies available under this Debenture, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit a holder's right to pursue actual damages for any failure by the Corporation to comply with the terms of this Debenture. The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of the Debentures and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees, in the event of any such breach or threatened breach, that the holders of the Debentures shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Borrower has caused this Debenture to be executed by its duly authorized officer.

FIDELITY HOLDINGS, INC.

By:

Name:

Title:

## NOTICE OF CONVERSION

To: Fidelity Holdings, Inc.  
80-02 Kew Gardens Road  
Suite 5000  
Kew Gardens, NY 11415  
Telecopy: (718) 793-2455  
Attention: \_\_\_\_\_

The undersigned hereby irrevocably elects to convert \$ \_\_\_\_\_ [principal] [and] [interest] amount of the Debenture (the "Conversion"), into shares of common stock ("Common Stock") of Fidelity Holdings, Inc. (the "Corporation") according to the conditions of the Convertible Term Debenture dated January 25, 1999 (the "Debenture"), as of the date written below. If securities are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the holder for any conversion, except for transfer taxes, if any. A copy of the Debenture is attached hereto (or evidence of loss, theft or destruction thereof).

If so able, the Corporation shall electronically transmit the Common Stock issuable pursuant to this Notice of Conversion to the account of the undersigned or its nominee (which is \_\_\_\_\_) with DTC through its Deposit Withdrawal Agent Commission System ("DTC Transfer").

The undersigned represents and warrants that all offers and sales by the undersigned of the securities issuable to the undersigned upon conversion of this Debenture shall be made pursuant to registration of the Common Stock under the Securities Act or pursuant to an exemption from registration under the Act.

*In the event of partial exercise, please reissue an appropriate Debenture(s) for the principal balance which shall not have been converted.*

Check Box if Applicable:

- ☐ In lieu of receiving the shares of Common Stock issuable pursuant to this Notice of Conversion by way of DTC Transfer, the undersigned hereby requests that the Corporation issue and deliver to the undersigned physical certificates representing such shares of Common Stock.

Date of Conversion: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Amount of Accrued and Unpaid  
Interest on the Principal  
Amount to be converted, if any: \_\_\_\_\_

Amount of Conversion Default Payments or Prepayment Default  
Payments to be converted, if any: \_\_\_\_\_

Number of Shares of  
Common Stock to be Issued: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Placement Agency Agreement

January 25, 1999

The Zanett Securities Corporation  
Tower 49, 31st Floor  
12 East 49th Street  
New York, NY 10017

Gentlemen:

This agreement ("Agreement") will confirm that Fidelity Holdings, Inc., a Nevada corporation (the "Company"), has retained The Zanett Securities Corporation ("Zanett" or the "Placement Agent") as its exclusive placement agent to assist the Company, during the 30 day period commencing on the date hereof (the "Term"), on a "best-efforts" basis, in connection with the placement of up to 2,750 units (the "Units") at a price of \$4,127.27 per Unit, each Unit consisting of (i) \$4,127.27 face amount of the Company's Convertible Term Debentures (each, a "Debenture"), convertible into shares of the Company's Common Stock, par value \$0.01 per share (the "Common Stock"), (ii) 36.3636 shares of Common Stock (the "Purchased Shares"), (iii) Warrants to acquire 25.4545 shares of Common Stock, par value \$0.01 per share, of Computer Business Sciences, Inc. a Delaware corporation ("CBS") (each, a "CBS Warrant" and collectively the "CBS Warrants") and (iv) Warrants to acquire 343.9394 shares of Common Stock (each, a "Warrant" and collectively the "Warrants"). The Debentures shall be in a form to be agreed upon by the Company and the Placement Agent. The shares of Common Stock issuable upon conversion of the Debentures are referred to herein as the "Conversion Shares" and the shares of Common Stock issuable upon exercise of or otherwise pursuant to the Warrants are referred to herein as the "Warrant Shares" and the shares of CBS Common Stock issuable upon exercise of or otherwise pursuant to the CBS Warrants are referred to herein as the "CBS Shares". The Debentures, the Purchased Shares, the CBS Warrants, the CBS Shares, the Warrants, the Conversion Shares and the Warrant Shares are collectively referred to herein as the "Securities." The Company agrees that, during the Term, Zanett shall have the exclusive right to offer and place the Securities and that all conversations, negotiations, documents and other materials exchanged between the Company and the Placement Agent shall not be disclosed or released to any third party without the prior written consent of Zanett, which consent shall not be unreasonably withheld or delayed. The Company acknowledges that certain of the aforementioned Securities may be purchased by affiliates of Zanett.

The Units are being offered to "accredited investors" in accordance with Regulation D promulgated under the Securities Act of 1933, as amended (the "Securities Act"). Each prospective investor ("Investor") subscribing to purchase the Units will be required to deliver, among other things, a Securities Purchase Agreement between the Company and the Investor (the "Securities Purchase Agreement") in form and substance reasonably satisfactory to Zanett and the Company, representing and warranting, among other things, that such Investor is an "accredited investor" as such term is defined in Regulation D. Contemporaneous with the execution and delivery of the Securities Purchase Agreement, the Investors shall execute and deliver a Registration Rights Agreement (the "Registration Rights Agreement") in form and substance reasonably satisfactory to Zanett and the Company pursuant to which the Company will agree to provide the Investors certain registration rights under the Securities Act with respect to the Conversion Shares and Warrant Shares.

The Securities Purchase Agreement, the form of Debenture, the Warrants and the Registration Rights Agreement are referred to herein collectively as the "Offering Documents." The offering of Units described in the Offering Documents is referred to herein as the "Offering."

1. Appointment of Placement Agent. Zanett is hereby appointed Placement Agent of the Company for the purposes of assisting the Company in finding qualified Investors to participate in the Offering. On the basis of the representations and warranties and subject to the terms and conditions contained herein, Zanett hereby accepts such agency and agrees to assist the Company in finding qualified Investors to participate in the Offering during the Term. Zanett's agency hereunder is not terminable by the Company except upon termination of the Offering or at the end of the Term. Upon termination of the Offering all subscriptions received, if any, shall be returned to Investors without interest or deduction.

2. Closing; Placement Fee and Warrant; Expenses.

a. Closing. Upon satisfaction of the conditions to the closing contained in the Securities Purchase Agreement, the closings (each, a "Closing") of the purchase and sale of the Units shall take place at the offices of Klehr, Harrison, Harvey Branzburg & Ellers LLP or such other mutually agreed place, at such time and date (the "Closing Dates") as may be agreed upon between the Placement Agent, the Investors and the Company.

b. Procedures at Closing. Counsel for the Placement Agent shall act as escrow agent for the Closings (the "Escrow Agent"). At each Closing:

(i) The Company shall deliver to the Escrow Agent, on behalf of the Placement Agent and the Investors, an opinion of the Company's outside legal counsel, dated as of the applicable Closing Date, in such form as may be reasonably acceptable to the Placement Agent and its counsel.

(ii) The Company shall deliver to the Escrow Agent certificates from the Company, signed by the President or a Vice President thereof, certifying that attached thereto is a true and correct copy of resolutions adopted by the Company's Board of Directors authorizing (A) the execution, delivery and performance of this Agreement, the Securities Purchase Agreement, the Registration Rights Agreement, the Debentures, the Warrants and other documentation related to the Offering and (B) the issuance of the Purchased Shares and the reservation for issuance and issuance of the Conversion Shares and the Warrant Shares. CBS shall deliver to the Escrow Agent certificates from CBS, signed by the President or a Vice President thereof, certifying that attached thereto is a true and correct copy of resolutions adopted by CBS's Board of Directors authorizing (A) the execution, delivery and performance of the Securities Purchase Agreement and the CBS Warrants, and (B) the reservation for issuance of the CBS Shares. Each certificate shall also certify that such resolutions have not been modified, rescinded or amended and are in full force and effect.

(iii) The Company shall deliver to the Escrow Agent certificates of good standing of the Company and of CBS Corp., dated as of a recent date, from the Secretaries of States of their respective states of incorporation.

(iv) Each Investor shall deliver to the Escrow Agent two executed copies of the Securities Purchase Agreement and Registration Rights Agreement signed by such Investor, and the Company shall deliver to the Escrow Agent with respect to each Investor, two executed copies of its acceptance of the Securities Purchase Agreement and Registration Rights Agreement executed by such Investor.

(v) Each Investor shall have wire transferred immediately available funds to an escrow account designated by the Escrow Agent in an amount equal to that portion of the aggregate purchase price of the Units(s) being purchased by such Investor due at such Closing.

(vi) The Company shall have delivered to the Escrow Agent the duly executed Debentures and Warrants being purchased by the Investors, (and, at the First Closing, the duly executed CBS Warrants and certificates evidencing the Purchased Shares being purchased by the Investors) in such denominations as the Investors shall request.

(vii) The Company and the Placement Agent shall instruct the Escrow Agent to pay to the Company the portion of the purchase price (collectively, the "Purchase Price") for the Units subscribed for due at such Closing, less the Placement Agent Fee (as defined below) and other authorized expenses of the Offering, out of the funds on deposit in the escrow account received from Investors whose Securities Purchase Agreements have been accepted.

c. Placement Fee; Expenses. The Company covenants and agrees to pay to the Placement Agent at each Closing a fee (the "Placement Agent Fees") equal to six percent 6% of the aggregate Purchase Price paid at such Closing. Such Placement Agent Fee shall be delivered by the Escrow Agent to Zanett by wire transfer, in accordance with Zanett's written wiring instructions, from the funds on deposit in the escrow account simultaneously with payment for and delivery of the Units at each Closing under the Securities Purchase Agreement as provided in paragraph 2(a) above. In addition, the Placement Agent shall be entitled to receive from the Company a non-accountable expense allowance (the "Expense Allowance") equal to nine-tenths of one percent (0.9%) of the aggregate Purchase Price. Such Expense Allowance shall be delivered in the same manner as the Placement Agent Fee. In addition, the Company shall pay to the Placement Agent, on the first day of each calendar month during which any Debentures or Warrants are outstanding, a monitoring and financial advisory fee of One Thousand Seven Hundred Fifty Dollars (\$1,750.00) for which the Placement Agent shall periodically consult with the Company concerning market conditions, investor perceptions of the Company and related matters.

d. Stock and Warrants. In addition to the Placement Agent Fees, at the First Closing under the Securities Purchase Agreement, the Company shall issue to the Placement Agent or to its officers set forth on Schedule 2(d), each of whom is an accredited investor (the "Zanett Officers"), as directed by the Placement Agent (i) 18.1818 shares of the Company's Common Stock for each Unit, (ii) CBS Warrants for 10.9091 CBS Shares for each Unit and (iii) Warrants, in substantially the form attached hereto as Exhibit A, to purchase, in the aggregate, 41.6667 shares of the Company's Common Stock for each Unit ("Placement Warrants"). At each of the Second Closing and the Third Closing under the Securities Purchase Agreement, the Company shall issue to the Placement Agent or the Zanett Officers, as directed by the Placement Agent, Placement Warrants to purchase, in the aggregate, 65.1515 shares of the Company's Common Stock for each Unit. The shares of the Company

Common Stock issuable upon exercise of the Placement Warrants shall hereinafter be referred to as the "Placement Warrant Shares." The Company shall grant the Placement Agent certain registration rights under the Securities Act with respect to the Placement Warrant Shares pursuant to the Registration Rights Agreement.

e. Expenses of Offering. The Company shall be responsible for and shall bear all expenses directly and necessarily incurred by it in connection with the Offering. In the event the Closing does not occur during the Term, the Company shall reimburse the Placement Agent for its reasonable attorneys' fees and expenses and up to \$3,500 of other reasonable, actual and accountable out-of-pocket expenses incurred in connection with the Offering.

f. Non-Circumvention Period; Lockup Period; Additional Financing Period.

(i) The Company agrees that, during the period beginning on the date hereof and ending four (4) years following the later of the date hereof and the date of the Closing (as defined in Section 2(a) hereof) (the "Non-Circumvention Period"), it will not, without the prior written consent of the Placement Agent, negotiate or contract or have discussions concerning any such matters with any Investor or any other party introduced to the Company by Placement Agent, each of which are listed Schedule 2(f)(i) hereto to obtain additional financing in any form.

(ii) The Company agrees that, during the period beginning on the date hereof and ending two (2) years following the first Closing Date (the "Lock-Up Period"), it will not, without the prior written consent of the Placement Agent, contract with any other party to obtain additional financing in which any below market equity or equity-linked securities are issued ("Future Offerings"); provided, that if at such time the outstanding principal balance of, and accrued but unpaid interest on, the Debentures is less than 40% of the aggregate original principal amount of the Debentures, and such Future Offering is for an aggregate amount (including the aggregate exercise price of warrants or similar rights) of \$1,000,000 or less, such consent shall not unreasonably be withheld. In addition, and independent of the foregoing sentence, the Company will not conduct any Future Offering during the period beginning on the date hereof and ending one year after the conclusion of the Lock-Up Period unless it shall have first delivered to the Placement Agent written notice of such proposed Future Offering, including the terms and conditions thereof, and providing the Placement Agent an option, which option must be exercised within fifteen (15) days following delivery of such notice, to act as the placement agent for such Future Offering on terms, including fees, no less favorable to the Company as those set forth in such notice and to place the securities being offered by the Company in the Future Offering to the Investors or to such other persons or entities as the Placement Agent shall determine (the limitations referred to in this and the immediately preceding sentence are hereinafter collectively referred to as the "Capital Raising Limitation"). In the event that the Placement Agent does not exercise the foregoing option, the Company may proceed with such Future Offering on the terms and conditions set forth in the notice to the Placement Agent. The Capital Raising Limitation shall not apply to any transaction involving issuances of securities as consideration in a merger, consolidation or acquisition of assets, or in connection with any strategic partnership or joint venture (the primary purpose of which is not to raise equity capital), or as consideration for the acquisition of a business, product or license by the Company. The Capital Raising Limitation shall also not apply to (i) the issuance of securities pursuant to an underwritten public offering, (ii) the issuance of securities upon exercise or conversion of the Company's options, warrants or other convertible securities outstanding as of the date hereof or issued as part of the Offering, (iii) the grant of additional options or warrants, or the issuance of additional securities, under any Company stock option, bonus or restricted stock plan for the benefit of the Company's employees, consultants or directors, or (iv) the issuance of securities upon the exercise of warrants issued to a bank or other commercial financing institution as an "equity kicker" in connection with floor plan financing or financing of the acquisition of substantially all of the assets or equity securities of other entities. In the event that the Purchasers (as defined in the Securities Purchase Agreement) exercise their right to elect not to fund the second or third tranche of the Units (as described in the Securities Purchase Agreement), the provisions of the first sentence of this Section 2(f)(ii) shall no longer be applicable and, for purposes of the second sentence of this Section 2(f)(ii), the Capital Raising Limitations thereafter shall not apply to any Future Offering the terms and conditions of which are not materially more favorable to the investor than the second and third tranches under the Securities Purchase Agreement.

### 3. Representations and Warranties and Covenants.

a. The Company represents and warrants to Zanett that:

(i) This Agreement has been duly authorized, executed and delivered by the Company and, assuming the due execution by Zanett, constitutes a legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general application affecting enforcement of creditors' rights generally, as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies, or (ii) to the extent the indemnification provisions contained in the Registration Rights Agreement may be limited by applicable federal or state securities laws.

(ii) The Company has delivered to Zanett true and complete copies of the SEC Documents (as defined in the Securities Purchase Agreement) filed by the Company on or after December 31, 1996 with the Securities and Exchange Commission (the "SEC") pursuant to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

(iii) The Company recognizes and confirms that Zanett (i) will use and rely primarily on the SEC Documents and on information available from generally recognized public sources in performing the services contemplated by this Agreement without having independently verified the same; (ii) is authorized to assist the Company in the structuring of the Offering with any prospective purchaser who is an "accredited investor" as defined in Regulation D under the Securities Act and to provide copies of the SEC Documents and forms of the Securities Purchase Agreement and other Offering Documents to prospective purchasers of the Company's securities in connection with the performance of Zanett's services hereunder; and (iii) does not assume responsibility for the accuracy or completeness of the SEC Documents.

(iv) In addition to the foregoing, the Company hereby incorporates by reference all of the representations and warranties and covenants to be set forth in the Securities Purchase Agreement and the other Offering Documents with the same force and effect as if specifically set forth herein.

(v) So long as the Debentures remain outstanding, (i) the Company shall provide Zanett, within three (3) business days of the filing or preparation thereof, with such financial and other statements including, without limitation, management letters and consolidated financial statements as are provided to any other lenders to or security holders of the Company; (ii) in the event any current officer, director, employee, consultant or other agent ceases, subsequent to the date hereof, to have such relationship with the Company and such cessation has, or is likely to have, a material adverse effect on the Company, taken as a whole, the Company shall promptly notify Zanett of such event, which notification shall comprehensively describe such circumstances; (iii) the Company shall, on a regular basis, provide to Zanett updates of any material litigation and/or governmental proceedings which could reasonably be expected to have a material adverse effect on the business of the Company; and (iv) the Company shall promptly provide to Zanett notice of any event of default under any agreement or other document with any lender or holder of any security of the Company, which default reasonably could be expected to have a material adverse effect on the Company, taken as a whole. Zanett shall hold in confidence and shall not make any disclosure (except to an Investor who has agreed in writing to restrictions on disclosure substantially equivalent to this Subsection) or use of (including without limitation market activities) any such information disclosed to it pursuant to clauses (i) through (iv) above which the Company determines in good faith to be confidential, and of which determination Zanett is so notified, unless (a) the release of such information is ordered pursuant to a subpoena or other order from a court or government body of competent jurisdiction or (b) the information has been made generally available to the public other than by disclosure in violation of this or any other agreement. Anything contained herein to the contrary notwithstanding, Placement Agent's obligations to proceed with the Offering is conditioned upon Placement Agent's due diligence investigation of the Company. Zanett shall be fully informed by the Company of any events which might have a material effect on the financial condition of the Company. If, in Zanett's opinion, the condition of the Company, financial or otherwise, and its prospects are affected in a material and/or adverse manner and do not fulfill Zanett's expectations, Zanett shall have the sole discretion to review and determine its continued interest in the Offering. In the event that Zanett elects not to proceed with the Offering, this Agreement shall terminate.

(vi) So long as the Debentures remain outstanding, the Company shall make available, during regular business hours on one (1) Business Day's prior written notice, all records and books of account of the Company for inspection by Zanett. The Company shall permit Zanett, during regular business hours on one (1) Business Day's prior written notice, to inspect its properties.

(vii) The Company has the requisite corporate power and authority to enter into and perform its obligation under this Agreement and to issue the Placement Warrants in accordance with the terms hereof. The execution and delivery of this Agreement and the Placement Warrants by the Company and the consummation by it of the transactions contemplated hereby (including, without limitation, the issuance of the Placement Warrants and the reservation for issuance and issuance of the Placement Warrant Shares issuable upon exercise of the Placement Warrants) have been duly authorized by the Company's Board of Directors and no further consent or authorization of the Company, its Board of Directors, or its shareholders is required, except for the shareholder approval described in Section 4(n) of the Securities Purchase Agreement.

(viii) The Placement Warrant and the Placement Warrant Shares issuable upon the exercise thereof are duly authorized and, upon issuance of the Placement Warrants in accordance with the terms hereof and the Warrant Shares upon exercise of the Placement Warrants in accordance with the terms thereof, will be validly issued, fully paid and non-assessable and free from all taxes, liens and charges with respect to the issue thereof and shall not be subject to preemptive rights or other

similar rights of the shareholders of the Company, other than restrictions on transfer imposed by federal and state securities laws.

(ix) The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby will not (A) result in a violation of the Company's Certificate of Incorporation or By-laws or (B) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any material agreement, indenture or instrument to which the Company is a party, or, to its knowledge, result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations) applicable to the Company or by which any property or asset of the Company is bound or affected (except, with respect to clause (B), for such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate, have a material adverse effect on the operation, properties, prospects or financial condition of the Company ("Material Adverse Effect")). The Company is not in violation of its Certificate of Incorporation or By-laws and is not in default (and no event has occurred which with notice or lapse of time of both would put the Company in default) under, nor has there occurred any event giving others (with notice or lapse of time or both) any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company is a party, except for possible defaults as would not, individually or in the aggregate, have a Material Adverse Effect. The business of the Company is not being conducted, and shall not be conducted, in violation of any law, ordinance or regulation of any governmental entity, except for possible violations which either singly or in the aggregate do not have a Material Adverse Effect. Except as specifically contemplated by this Agreement and as required under the Securities Act and any applicable state securities laws, the Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency or any regulatory or self regulatory agency in order for it to execute, deliver or perform any of its obligations under this Agreement in accordance with the terms hereof.

(x) The Company shall at all times have authorized, and reserved for the purpose of issuance, a sufficient number of Placement Warrant Shares to provide for the full exercise of the outstanding Placement Warrants.

(xi) The Company shall promptly secure the listing of the Placement Warrant Shares upon each national securities exchange or automated quotation system, if any, upon which shares of Common Stock are then listed (subject to official notice of issuance) and shall maintain, so long as any other shares of Common Stock shall be so listed, such listing of all Placement Warrant Shares from time to time issuable upon exercise of the Placement Warrants.

b. The Zanett Officers each individually represent and warrant to the Company that:

(i) The Zanett Officer is acquiring the Placement Warrants and the Placement Warrant Shares for its own account and not with a present view towards the public sale or distribution thereof.

(ii) The Zanett Officer is an "Accredited Investor" as that term is defined in Rule 501(a) of Regulation D.

(iii) The Zanett Officer understands that the Placement Warrants and the Placement Warrant Shares are being issued to the Zanett Officer in reliance upon specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Zanett Officer's compliance with, the representations, warranties, agreements, acknowledgments and understandings set forth herein in order to determine the availability of such exemptions and the eligibility of the Zanett Officer to acquire the Placement Warrants and the Placement Warrant Shares.

(iv) The Zanett Officer understands that (i) except as provided in the Registration Rights Agreement, the sale or resale of the Placement Warrants and the Placement Warrant Shares issuable upon exercise thereof have not been and are not being registered under the Securities Act or any state securities laws, and may not be transferred unless (a) the resale of the Securities has been registered thereunder; or (b) the Zanett Officer shall have delivered to the Company an opinion of counsel (which opinion shall be in form, substance and scope customary for opinions of counsel in comparable transactions to the effect that the securities to be sold or transferred may be sold or transferred pursuant to an exemption from such registration; or (c) the Securities are sold under Rule 144 promulgated under the Securities Act (or a successor rule) ("Rule 144"); or (d) the Securities are sold or transferred to a non-broker dealer affiliate of the Zanett Officer who agrees to sell or otherwise transfer such securities only in accordance with the provisions of the terms hereof and who is an Accredited Investor; and (ii) neither the Company nor any other person is under any obligation to register such Securities under the Securities Act or any state securities laws (other than pursuant to the Registration Rights Agreement). Notwithstanding the foregoing or anything else contained herein to the contrary, such securities may be pledged as collateral in connection with a bona fide margin account or other lending arrangement so long as the pledgee is an accredited investor.

(v) This Agreement has been duly and validly authorized, executed and delivered on behalf of Placement Agent and duly and validly executed and delivered by each Zanett Officer and is the valid and binding agreement of each of them enforceable against each of them in accordance with its terms.

(vi) Neither the Placement Agent nor the Zanett Officers have any authority to act on behalf of, or otherwise bind, the Company.

c. The Placement Agent represents and warrants to the Company that:

(i) The Placement Agent is (i) a registered broker-dealer under the Securities Exchange Act of 1934, (ii) a member in good standing of the National Association of Securities Dealers, Inc. ("NASD") and (iii) registered as a broker-dealer in any state in which it is required to be in order to offer and sell the Securities in such state.

(ii) The Placement Agent will cooperate with the Company to ensure that the offering and sale of the Securities complies with the requirements of Rule 506, including, without limitation, the general conditions contained in Regulation D, the federal securities laws and the state securities or "blue sky" laws of the jurisdiction in which the Securities are offered, and the Placement Agent will not make an offer of Securities in any jurisdictions in which such offer would be unlawful. The Placement Agent shall fully conform with all Federal, state and NASD rules and regulations (including without limitation those described in NASD Notices to Members) with respect to escrow provisions and requirements.

(iii) The Placement Agent will not offer the Securities by any form of general solicitation or general advertising (as prohibited by Rule 502(c) of Regulation D), including any communication published in any newspaper, magazine or electronic media, or by any seminar or meeting whose attendees have been invited by any general solicitation or general advertising. Additionally, the Placement Agent will not employ any sales literature except the Securities Purchase Agreement.

(iv) The Placement Agent has the necessary power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

(v) The Placement Agent is a corporation duly organized and validly existing under the laws of the state of Delaware; and the consummation of the transactions herein contemplated will not result in any violation of, or be in conflict with or constitute a default under, any material agreement or instrument to which the Placement Agent is a party or by which the Placement Agent or its properties are bound, or to its knowledge, any judgment, decree, order or any statute, rule or regulation applicable to the Placement Agent.

(vi) Neither the Placement Agent nor any of its directors or officers are subject to disqualification under Regulation D or applicable state securities laws.

4. Publicity. The Company shall not make any reference to Zanett, the Zanett Officers or to any of their affiliates in any release or other communication without Zanett's prior written consent, which shall not be unreasonably withheld or delayed; provided, that the foregoing shall not prohibit the Company from complying with applicable law. Without Zanett's prior written consent, which shall not be unreasonably withheld or delayed, no advice rendered by Zanett in connection with the service performed by Zanett pursuant to this Agreement will be quoted by the Company, its affiliates or representatives nor will any such advice be referred to in any report, document, release or other communication, whether oral or written, prepared or issued or transmitted by such person, except to the extent required by law (in which case the appropriate party shall so advise Zanett in writing prior to such use and shall consult with Zanett with respect to the form and timing of the disclosure).

#### 5. Indemnification and Contribution.

a. To the extent permitted by law, the Company will indemnify, hold harmless and defend Zanett and each of its directors, officers, partners, members, employees, agents and each person who controls Zanett within the meaning of the Securities Act or the Exchange Act, if any, (each, a "Zanett Indemnified Person"), against any joint or several losses, claim damages, liabilities or expenses (collectively, together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened, in respect thereof, "Claims") to which any of them may become subject insofar as such Claims arise out of or are based upon: (i) any transaction contemplated by this Agreement, the retention of Zanett as Placement Agent under this Agreement, the performance of services by Zanett hereunder or any involvement or alleged involvement of Zanett in the Offering or (ii) any breach of any of the Company's representations, warranties or covenants contained herein. The Company shall reimburse each of the Zanett Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable expenses incurred by the

in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 5(a) shall not (i) apply in instances where the Claims were the result of Zanett's gross negligence or based on Zanett's wilful misconduct, and (ii) apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld.

b. To the extent permitted by law, Zanett will indemnify, hold harmless and defend the Company and each of its directors, officers, partners, members, employees, agents and each person who controls the Company within the meaning of the Securities Act or the Exchange Act, if any, (each, a "Company Indemnified Person"), against any joint or several losses, claims, damages, liabilities or expenses (collectively, together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened, in respect thereof, "Claims") to which any of them may become subject insofar as such Claims arise out of or are based upon: (i) any failure by Zanett to comply with Federal, state or any other applicable securities laws or (ii) any breach of any of Zanett's representations, warranties or covenants contained herein. Zanett shall reimburse each of the Company Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 5(b) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of Zanett, which consent shall not be unreasonably withheld.

c. Promptly after receipt by a Zanett Indemnified Person or Company Indemnified Person, as the case may be (each an "Indemnified Person") under this Section 5 of notice of the commencement of any action (including any governmental action), such Indemnified Person shall, if a Claim in respect thereof is made against the Company under Section 5(a) or against Zanett under Section 5(b), deliver to the Company or Zanett, as the case may be (each an "Indemnifying Party"): written notice of the commencement thereof, and the Indemnifying Person shall have the right to participate in, and, to the extent the Indemnifying Person so desires, to assume control of the defense thereof with counsel mutually satisfactory to the Indemnifying Person and the Indemnified Person; provided, however, that an Indemnified Person shall have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnifying Person, if, in the reasonable opinion of counsel retained by the Indemnified Person, the representation by such counsel of the Indemnified Person and the Indemnifying Person would be inappropriate due to actual or potential differing interests between such Indemnified Person and any other party represented by the Indemnifying Person's counsel in such proceeding. The Indemnifying Person shall pay for only one separate legal counsel for the Indemnified Persons, and such legal counsel shall be selected by the Indemnifying Person. The failure to deliver written notice to the Indemnifying Person within a reasonable time of the commencement of any such action shall not relieve the Indemnifying Person of any liability to the Indemnified Person under this Section 5, except to the extent that the Indemnifying Person is actually prejudiced in its ability to defend such action. The indemnification required by this Section shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expenses, loss, damage or liability is incurred and is due and payable.

d. To the extent any indemnification by the Indemnifying Person of an Indemnified Person is prohibited or limited by law or otherwise unavailable in respect of any Claim, the Indemnifying Person agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 5 to the fullest extent permitted by law. In that regard, the Indemnifying Person shall contribute to the amount paid or payable by such Indemnified Person as a result of any such Claim (i) in such portion as is appropriate to reflect the relative benefits received by the Indemnifying Person, on the one hand, and the Indemnified Person, on the other, from the structuring and issuance of the securities in the Offering or any other transaction in which Zanett rendered services hereunder or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Indemnifying Person, on the one hand, and of the Indemnified Person, on the other, in connection with untrue statements or omissions or other actions (or alleged untrue statements, omissions or other actions) which resulted in such Claim as well as any other relevant equitable considerations. The relative benefits received by the Indemnifying Person on the one hand, and the Indemnified Person, on the other, shall be deemed to be in the same proportion as the total gross proceeds received by the Indemnifying Person in the Offering or any other financing bears to such Indemnified Person's compensation. The relative fault of the Indemnifying Person on the one hand and of the Indemnified Person on the other shall be determined by reference to, among other things, whether such untrue statements or omissions or other actions (or alleged untrue statements, omissions or other actions) relate to information supplied or action taken by the Indemnifying Person, on the one hand, by the Indemnified Person, on the other, and the relevant persons' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statements, omission or actions. The amount paid or payable by a party as a result of the Claim shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The parties agree that it would not be just and equitable if contribution pursuant to this Section 5 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above.

e. The aforesaid indemnity and contribution agreements shall apply to any related activities engaged in by any Indemnified Person prior to this date and to any modification of this Agreement, and shall remain in full force and effect regardless of any investigation made by or on behalf of either party or any of its respective agents, employees, officers, directors or controlling persons and shall survive the issuance of any securities in any transaction referred to hereunder (including the Offering) and any termination of this Agreement or Placement Agent's engagement hereunder. The Indemnifying Person agrees to promptly notify the Indemnified Person of the commencement of any litigation or proceeding against it or any of its directors, officers, agents or employees in connection with the transactions contemplated hereby.

f. The Indemnifying Person also agrees that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Indemnifying Person, its owners, creditors or security holders for or in connection with advice or services rendered or to be rendered by Zanett pursuant to this Agreement, the transactions contemplated hereby or any Indemnified Person's actions or inactions in connection with any such advice, services or transactions except for liabilities (and related expenses) of the Indemnifying Person that are determined by a final judgment of a court of competent jurisdiction to have resulted primarily from such Indemnified Person's gross negligence or wilful misconduct in connection with any such advice, actions, inactions or services.

6. Survival of Certain Provisions. The representations, warranties, covenants and provisions contained in Section 2(f), Section 3, Section 4 and Section 5 hereof shall survive in full force and effect until that date which is three (3) years from the date hereof (or such longer period as may be specified in such provisions) regardless of (a) any completion or termination of any financing contemplated by this Agreement (including the Offering), (b) any termination of this Agreement, or (c) any investigation made by or on behalf of Placement Agent or any affiliate of Placement Agent, and shall be binding upon, and shall inure to the benefit of, any successors, assigns, heirs and personal representatives of the Company, Zanett, the Indemnified Parties and any holder of Placement Warrants.

#### 7. Miscellaneous.

a. All notices, requests, demands and other communications which are required or may be given hereunder shall be in writing and shall be deemed to have been duly given when delivered personally, receipt acknowledged or five (5) days after being sent by registered or certified mail, return receipt requested, postage prepaid. All notices shall be made to the parties at the addresses designated above or at such other or different addresses which party may subsequently provide with notice thereof, and, to their respective legal counsel, as follows:

(i) If to Placement Agent, to

The Zanett Securities Corporation  
Tower 49, 31st Floor  
12 East 49th Street  
New York, NY 10017  
Attention: Claudio Guazzoni

- with a copy to -

Klehr, Harrison, Harvey, Branzburg & Ellers  
1401 Walnut Street  
Philadelphia, PA 19102  
Attention: Lawrence D. Rovin, Esquire

(ii) If to the Company, to

Fidelity Holdings, Inc.  
80-02 Kew Gardens Road  
Suite 5000  
Kew Gardens, NY 11415  
Attention: Doron Cohen, President

-with a copy to -

Littman Krooks Roth & Ball P.C.  
655 Third Avenue, 20th Floor  
New York, New York 10017  
Attention: Mitchell C. Littman, Esquire

b. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Agreement, once executed by a party, may be delivered to the other parties hereto by facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

c. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York (without regard to its conflict of laws provisions). The Company hereby agrees to submit to the exclusive jurisdiction of an arbitration panel of the National Association of Securities Dealers, Inc. located in the City of New York in connection with any suit, action or proceeding related to this Agreement or any of the matters contemplated hereby, irrevocably waives any defense of lack of personal jurisdiction and irrevocably agrees that all claims in respect of any suit, action or proceeding may be heard and determined in by such panel. The Company irrevocably waives, to the fullest extent it may effectively do so under applicable law any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding brought before any such court and any claims that any such suit, action or proceeding brought in any such arbitration panel has been brought in an inconvenient forum. Each party further agrees to pay or reimburse the other party for all reasonable costs and expenses incurred by the other party in connection with the enforcement of any of its rights under this Agreement including without limitation, all attorneys' fees and expenses of its counsel.

d. The section headings in this Agreement have been inserted as a matter of convenience of reference and are not a part of this Agreement.

e. This Agreement may not be modified or amended except in writing duly signed by the parties hereto.

f. If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

g. Each party to this Agreement has participated in the negotiation and drafting of this Agreement. As such, the language used herein shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party to this Agreement.

Please sign and return the original and one copy of this letter to indicate your acceptance of the terms set forth here: whereupon this letter and your acceptance shall constitute a binding agreement between you and the Company.

Very truly yours,

FIDELITY HOLDINGS, INC.

By: /s/ Doron Cohen

Name: Doron Cohen  
Title: President

Accepted and Agreed to this 25th day of January, 1999.

**THE ZANETT SECURITIES CORPORATION**

By: /s/ Claudio Guazzoni

Name: Claudio Guazzoni  
Title: President

/s/ Claudio Guazzoni

Claudio Guazzoni

/s/ David McCarthy

David McCarthy

/s/ Tony Milbank

Tony Milbank

## Schedule 2(d)

Officer	Number of Warrants per Unit	Number of Shares of Common Stock per Unit	Number of CBS Warrants per Unit
Claudio Guazzoni	1st: 15.6250 2nd: 24.4318 3rd: 24.4318	6.8182	4.0909
David McCarthy	1st: 15.6250 2nd: 24.4318 3rd: 24.4318	6.8182	4.0909
Tony Milbank	1st: 10.4167 2nd: 16.2879 3rd: 16.2879	4.5455	2.7273
Total			

Exhibit 10.61

**SECURITIES PURCHASE AGREEMENT**

SECURITIES PURCHASE AGREEMENT (this "Agreement"), dated as of January 25, 1999 by and among FIDELITY HOLDINGS, INC., a corporation organized under the laws of the State of Nevada (the "Company"), with headquarters located at 80-02 Kew Gardens Road, Suite 5000, Kew Gardens, New York 11415, COMPUTER BUSINESS SCIENCES, INC., a corporation organized under the laws of the State of Delaware and a wholly-owned subsidiary of the Company ("CBS") and each of the purchasers (collectively, the "Purchasers") set forth on the execution pages hereof (the "Execution Pages").

**WHEREAS:**

A. The Company, CBS and each Purchaser are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by the provisions of Regulation D ("Regulation D"), as promulgated by the United States Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "Securities Act") and Section 4(2) of the Securities Act.

B. The Company and CBS desire to sell, and the Purchasers, severally and not jointly, desire to purchase, upon the terms and conditions stated in this Agreement up to 2,750 Units (the "Units"), each Unit consisting of no less than one and up to three tranches, (a) in the first tranche, (i) a Convertible Debenture in the principal amount of One Thousand Dollars (\$1,000) of the Company, in the form attached hereto as Exhibit A (the "Debentures"), convertible on certain terms and conditions into shares of the Company's common stock, par value \$0.01 per share (the "Common Stock"), (ii) 36.3636 shares of Common Stock, (iii) warrants (the "Warrants"), in the form attached hereto as Exhibit B, to acquire 83.3333 shares of Common Stock and (iv) warrants (the "CBS Warrants") in the form attached hereto as Exhibit C, to acquire 25.4545 shares of common stock, par value \$0.01 per share, of CBS (the "CBS Shares"), and (b), in the second tranche, (i) a Debenture in the principal amount of One Thousand Five Hundred Sixty-Three and 64/100 Dollars (\$1,563.64) and (ii) Warrants to acquire 130.3030 shares of Common Stock and (c) in the third tranche, (i) Debentures in an aggregate principal amount of One Thousand Five Hundred Sixty-Three and 64/100 Dollars (\$1,563.64) and (ii) Warrants to purchase 130.3030 shares of Common Stock. The shares of Common Stock issuable upon conversion of or otherwise pursuant to the Debentures are referred to herein as the "Conversion Shares" and the shares of Common Stock issuable upon exercise of or otherwise pursuant to the Warrants are referred to herein as the "Warrant Shares." The Debentures, the Common Stock, the Warrants, the CBS Warrants, the CBS Stock, the Conversion Shares and the Warrant Shares are collectively referred to herein as the "Securities."

C. Contemporaneous with the execution and delivery of this Agreement, the Company and the Purchasers are executing and delivering a Registration Rights Agreement, in the form attached hereto as Exhibit D (the "Registration Rights Agreement"), pursuant to which the Company has agreed to provide certain registration rights under the Securities Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

NOW, THEREFORE, the Company and the Purchasers hereby agree as follows:

**1. PURCHASE AND SALE OF UNITS**

a. **Purchase of Units.** The issuance, sale and purchase of the Debentures, the Common Stock, the CBS Warrants and the Warrants shall occur in three tranches with separate closings, hereinafter referred to as the "First Closing," the "Second Closing" and the "Third Closing," respectively. Each of the First Closing, the Second Closing and the Third Closing is hereinafter referred to as a "Closing". On the date of each Closing, subject to the satisfaction (or waiver) of the relevant conditions set forth in Section 6 and Section 7 below, the Company shall issue and sell to each Purchaser, and each Purchaser severally (but not jointly) agrees to purchase from the Company, such Units for the relevant purchase price as is set forth on such Purchaser's Execution Page attached hereto (the "Purchase Price"). Each Purchaser's obligation to purchase Units hereunder is distinct and separate from each other Purchaser's obligation to purchase and no Purchaser shall be required to purchase hereunder more than the principal amount of its Debentures and the number of its Common Stock, CBS Warrants and Warrants set forth on such Purchaser's Execution Page hereto notwithstanding any failure by any other Purchaser to purchase Units hereunder nor shall any Purchaser have any liability by reason of any such failure by any other Purchaser.

b. **Form of Payment.** At each Closing, each Purchaser shall pay the aggregate Purchase Price of the Securities being purchased by such Purchaser hereunder at such Closing by wire transfer of immediately available funds to the Company, in accordance with the Company's written wiring instructions, in each case, against delivery of the duly executed Debentures, certificates representing the Common Stock and duly executed CBS Warrants (at the First Closing only) and duly executed Warrants being purchased by such Purchaser and the Company shall deliver such Debentures, certificates, Warrants and CBS Warrants, each bearing the restrictive legend set forth in Section 2(f), against delivery of such aggregate Purchase Price.

c. **Closing Date.** Subject to the satisfaction (or waiver) of the relevant conditions thereto set forth in Section 6 and Section 7 below, the date and time of the issuance and sale of the Units shall be (i) in the case of the First Closing, 12:00 noon Eastern Time on January 25, 1999 and (ii) in the case of the Second Closing and the Third Closing, 12:00 noon Eastern Time on the fifth (5th) trading day following notification of satisfaction (or waiver) of the relevant conditions to such Closing and (iii) in the case of the Third Closing 12:00 noon Eastern Time on the fifth (5th) trading day following notification of satisfaction (or waiver) of the relevant conditions to such Closing, or, in each case, such other time as may be mutually agreed upon by the Company and the Purchasers. The date of the First Closing, the Second Closing, or the Third Closing, as the case may be, shall hereinafter be referred to as the "First Closing Date," "Second Closing Date," or the "Third Closing Date," respectively. Each Closing shall occur at the offices of Klehr, Harrison, Harvey, Branzburg & Ellers, LLP, 1401 Walnut Street, Philadelphia Pennsylvania 19102.

## **2. PURCHASERS' REPRESENTATIONS AND WARRANTIES**

Each Purchaser severally represents and warrants to the Company as follows:

a. **Investment Purpose.** The Purchaser is purchasing the Securities for the Purchaser's own account, not as nominee or agent, for investment purposes only and not with a present view towards the public sale or distribution thereof, except pursuant to sales that are exempt from the registration requirements of the Securities Act and/or sales registered under the Securities Act. The Purchaser understands that the Purchaser must bear the economic risk of this investment indefinitely, unless the Securities are registered pursuant to the Securities Act and any applicable state securities or blue sky laws or an exemption from such registration is available, and that the Company has no present intention of registering the resale of any such Securities other than as contemplated by the Registration Rights Agreement. Notwithstanding anything in this Section 2(a) to the contrary, by making the representations herein, the Purchaser does not agree to hold the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time, provided that any such disposition shall be in accordance with or pursuant to a registration statement or an exemption under the Securities Act. By executing this Agreement, the Purchaser further represents that the Purchaser does not presently have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities. The Purchaser has not been formed for the specific purpose of acquiring the Securities. The Purchaser is not a registered broker-dealer and is not engaged in the business of being a broker-dealer.

b. **Accredited Investor Status.** The Purchaser is an "Accredited Investor" as that term is defined in Rule 501(a) of Regulation D.

c. **Reliance on Exemptions.** The Purchaser understands that the Units are being offered and sold to the Purchaser in reliance upon specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Purchaser's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of the Purchaser to acquire the Units. The Purchaser understands that the resale of Securities is "restricted" under applicable U.S. Federal and state securities laws and that, pursuant to these laws, the Purchaser must hold the Securities indefinitely unless they are registered for resale with the Securities and Exchange

Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. The Purchaser acknowledges that the Company has no obligation to register or qualify the Securities for resale except as set forth in the Registration Rights Agreement. The Purchaser further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Securities, and on requirements relating to the Company which are outside of the Purchaser's control.

d. Information. The Purchaser and its counsel have been furnished all materials relating to the business, management, finances and operations of the Company and of CBS materials relating to the offer and sale of the Units which have been specifically requested by the Purchaser or its counsel. The Purchaser and its counsel have been afforded access and the opportunity to ask questions of the Company and have received what the Purchaser believes to be satisfactory answers to any such inquiries. Although neither such inquiries nor any other due diligence investigation conducted by the Purchaser or its counsel or any of its representatives shall modify, amend or affect the Purchaser's right to rely on the Company's representations and warranties contained in Section 3 below, Purchaser acknowledges and agrees that it has conducted its own due diligence investigation of the Company and CBS. The Purchaser understands that its investment in the Units involves a high degree of risk. Specifically, Purchaser acknowledges that CBS, following the merger described in Section 4(k) below, will be a private company engaged in developing technology which may never prove to become commercially accepted and that no assurance can be given that CBS will effect an initial public offering in the near future or ever.

e. Governmental Review. The Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Units. THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF CERTAIN STATES AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SAID ACT AND SUCH LAWS. THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER SAID ACT AND SUCH LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OF THE ACCURACY OR ADEQUACY OF THIS AGREEMENT. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

f. Transfer or Resale. The Purchaser understands that (i) except as provided in the Registration Rights Agreement, the sale or resale of the Securities have not been and are not being registered under the Securities Act or any state securities laws and may not be transferred unless (a) the resale of the Securities has been registered thereunder, or (b) the Purchaser shall have delivered to the Company an opinion of counsel (which opinion shall be in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that the Securities to be sold or transferred may be sold or transferred under an exemption from such registration, or (c) sold under Rule 144 promulgated under the Securities Act (or a successor rule) ("Rule 144"), or (d) sold or transferred to an affiliate of the Purchaser which agrees in writing to be bound by the terms hereof and which makes written representations and warranties as set forth in this Section 2; and (ii) neither the Company nor any other person is under any obligation to register such Securities under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder (in each case, other than pursuant to the Registration Rights Agreement).

g. Legends. The Purchaser understands that the Debentures, the certificates for the Common Stock, the CBS Warrants and the Warrants and, until such time as the Conversion Shares, Warrant Shares and/or CBS Shares have been registered under the Securities Act as contemplated by the Registration Rights Agreement or otherwise may be sold by the Purchaser under Rule 144, the certificates for the Conversion Shares, Warrant Shares and CBS Shares, may bear a restrictive legend in substantially the following form:

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended, or the securities laws of any state of the United States. The securities represented hereby may not be offered or sold in the absence of an effective registration statement for the securities under applicable securities laws unless offered, sold or transferred under an available exemption from the registration requirements of those laws.

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of any Security upon which such legend is stamped, if, unless otherwise required by state securities laws, (a) the resale of such Security is registered pursuant to an effective registration statement under the Securities Act or (b) such holder provides the Company with an opinion of counsel, in form, substance and scope customary for opinions of counsel in comparable transactions, to the effect that a public sale or transfer of such Security may be made without registration under the Securities

Act or (c) such holder provides the Company with reasonable assurances that the resale of such Security is covered by Rule 144(k). The Purchaser agrees to sell all Securities, including those represented by a certificate(s) from which the legend has been removed, only pursuant to an effective registration statement or under an exemption from the registration requirements of the Securities Act. In the event the above legend is removed from any Security subject to an effective registration statement and thereafter the effectiveness of the registration statement covering such Security is suspended or the Company determines that a supplement or amendment thereto is required by applicable securities laws, then upon reasonable advance notice to the Purchaser the Company may require that the above legend be placed on any such Security subject to an effective registration statement, or may place appropriate "stop transfer" instructions with its transfer agent, and the Purchaser shall cooperate in the prompt replacement of such legend. The Company shall use its best efforts to remove such suspension or file such amendment as promptly as possible, and such legend shall be removed or "stop transfer" instructions canceled, when such Security again may be sold pursuant to an effective registration statement or such legend otherwise may be removed under conditions (b) or (c) above.

h. Authorization; Enforcement. This Agreement, when executed and delivered by the Purchaser, will constitute the valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of a specific performance, injunctive relief, or other equitable remedies, or (b) to the extent the indemnification provisions contained in the Registration Rights Agreement may be limited by applicable federal or state securities laws.

i. Residency. The Purchaser is a resident of the jurisdiction set forth under the Purchaser's name on the Execution Page hereto executed by such Purchaser.

j. No General Solicitation. The Purchaser is unaware of, is not relying on, and did not become aware of the offering of the Securities through or as a result of, any form of general solicitation or general advertising including, without limitation any article, notice, advertisement or other communication published in any newspaper, magazine or similar media or broadcast over television or radio, in connection with the offering and sale of the Securities and is not subscribing for Securities and did not become aware of the offering of the Securities through or as a result of any seminar or meeting to which the Purchaser was invited by, or any solicitation of a subscription by, a person not previously known to the Purchaser in connection with investments in securities generally.

k. No Finders. The Purchaser has taken no action which would give rise to any claim by any person for brokerage commissions, finders' fees or the like relating to this Agreement or the transactions contemplated hereby, except for Zanet Securities Corporation, the sole placement agent in connection with the offering of Securities, whose fees shall be the sole responsibility of the Company.

l. Knowledge and Experience. The Purchaser has such knowledge and experience in financial, tax, and business matters and, in particular, investments in securities, so as to enable it to utilize the information made available to it in connection with the offering of the Securities to evaluate the merits and risks of an investment in the Securities and the Company and to make an informed investment decision with respect thereto. The Purchaser is not relying on the Company or any of its employees or agents with respect to the legal, tax, economic and related considerations of an investment in the Securities, and the Purchaser has relied on the advice of, or has consulted with, only his own advisors. The Purchaser has significant prior investment experience, including investment in non-listed and non-registered securities. The Purchaser is knowledgeable about investment considerations in development-stage companies. The Purchaser has a sufficient net worth to sustain a loss of its entire investment in the Company in the event such a loss should occur. The Purchaser's overall commitment to investment which are not readily marketable is not excessive in view of its net worth and financial circumstances and the purchase of the Securities will not cause such commitment to become excessive. The investment is a suitable one for the Purchaser. The Purchaser has reviewed or had the opportunity to review the Company's public filings under the Securities Exchange Act of 1934 (the "Exchange Act") as filed with the SEC.

m. No Need for Liquidity. The Purchaser has adequate means of providing for such Purchaser's current financial needs and foreseeable contingencies and has no need for liquidity of the investment in the Securities for an indefinite period of time.

n. Limited Trading Market of the Company. The Purchaser represents and warrants that it understands that the Common Stock thinly trades and no assurance can be given that an active market for the Common Stock will develop or be maintained.

o. No Trading Market for CBS. The Purchaser understands and acknowledges that there is no trading market for CBS securities nor is there any assurance that such market shall ever develop or be maintained.

### 3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND CBS.

a. The Company represents and warrants to each Purchaser as follows:

(i) Organization and Qualification. The Company and each of its subsidiaries is a corporation duly organized existing in good standing under the laws of the jurisdiction in which it is incorporated, and has the requisite corporate power to own its properties and to carry on its business as it is now being conducted. The Company and each of its subsidiaries is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of business conducted by it makes such qualification necessary and where the failure so to qualify would have a Material Adverse Effect. "Material Adverse Effect" means any material adverse effect on (i) the Securities, (ii) the ability of the Company to perform its obligations hereunder and under the Debentures, the Warrants or the Registration Rights Agreement or (iii) its business, operations, properties, financial condition or previously publicly announced prospects of the Company and subsidiaries, taken as a whole.

(ii) Authorization; Enforcement. (i) The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Debentures, the Warrants and the Registration Rights Agreement, to issue and sell the Debentures, the Common Stock and the Warrants, in accordance with the terms hereof and to issue Conversion Shares upon conversion of the Debentures in accordance with the terms of the Debentures and to issue the Warrant Shares upon exercise of the Warrants in accordance with the terms of such Warrants; (ii) the execution, delivery and performance of this Agreement, the Debentures, the Warrants and the Registration Rights Agreement by the Company and the consummation by it of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Debentures, Common Stock and Warrants and the issuance and reservation for issuance of the Conversion Shares and Warrant Shares) have been duly authorized by the Company's Board of Directors and no further consent or authorization of the Company, its Board or Directors or its stockholders is required (under the rules promulgated by the National Association of Securities Dealers ("NASD") or otherwise, except for the shareholder approval required pursuant to Rule 4310(a)(25)(H) promulgated by the NASD); (iii) this Agreement has been duly executed and delivered by the Company; and (iv) assuming due execution and delivery of this Agreement, the Placement Agency Agreement and the Registration Rights Agreement by parties other than the Company and compliance by Zanett with applicable Federal and state securities laws, this Agreement constitutes, and, upon execution and delivery by the Company of the Debentures, the Warrants and the Registration Rights Agreement, such instruments and agreements will constitute, valid and binding obligations of the Company enforceable against the Company in accordance with their terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general application affecting enforcement of creditors' rights generally, as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, or (ii) to the extent the indemnification provisions contained in the Registration Rights Agreement may be limited by applicable federal or state securities laws.

(iii) Capitalization. The capitalization of the Company and CBS as of the date hereof, including the authorized capital stock, the number of shares issued and outstanding, the number of shares issuable and reserved for issuance pursuant to stock option plans, the number of shares issuable and reserved for issuance pursuant to securities exercisable for, or convertible into or exchangeable for any shares of capital stock and the number of shares to be reserved for issuance upon conversion of Debentures and exercise of Warrants is set forth on Schedule 3(a)(iii). All of such outstanding shares of capital stock have been, or upon issuance will be, validly issued, fully paid and nonassessable. No shares of capital stock of the Company (including the Conversion Shares and the Warrant Shares) are subject to preemptive rights or any other similar right of the stockholders of the Company or any liens or encumbrances, pursuant to the Company's Certificate of Incorporation or bylaws or any agreement to which the Company is a party. Except for the obligation of the Company to issue the Conversion Shares in accordance with the terms of the Debentures and the Warrant Shares in accordance with the terms of the Warrants and except as disclosed in Schedule 3(a)(iii), as of the date of this Agreement, (i) there are no outstanding options, warrant scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exercisable or exchangeable for, any shares of capital stock of the Company or any of its subsidiaries, or arrangements by which the Company or any of its subsidiaries is or may become bound to issue additional shares of capital stock of the Company or any of its subsidiaries, and (ii) there are no agreements or arrangements under which the Company or any of its subsidiaries is obligated to register the sale of any of its or their securities under the Securities Act (except the Registration Rights Agreement). Except as set forth on Schedule 3(a)(iii), there are no securities or instruments containing antidilution or similar provisions that will be triggered by the issuance of the Securities in accordance with the terms of this Agreement, the Debentures or the Warrants. The Company has furnished to each Purchaser true and correct copies of the Company's and CBS's Certificates of Incorporation as in effect on the date hereof ("Certificates of Incorporation"), the Company's and CBS's By-laws as in effect on the date hereof (the "By-laws"), and all other instruments and agreements governing securities convertible into or exercisable or exchangeable for capital stock of the Company or CBS.

(iv) Issuance of Shares. The Conversion Shares and Warrant Shares are duly authorized and reserved for issuance, and, upon conversion of the Debentures in accordance with the terms of the Debentures, and exercise of

Warrants in accordance with the terms thereof, will be validly issued, fully paid and non-assessable, and free from all taxes, liens, claims and encumbrances and will not be subject to preemptive rights or other similar rights of stockholders of the Company and will not impose personal liability upon the holder thereof other than restrictions on transfer imposed by Federal and state securities laws.

(v) No Conflicts. Except as set forth in Schedule 3(a)(v), the execution, delivery and performance of this Agreement, the Debentures, the Warrants and the Registration Rights Agreement by the Company, and this Agreement and the CBS Warrants by CBS and the consummation by the Company and CBS of the transactions contemplated hereby and thereby (including, without limitation, the issuance and reservation for issuance, as applicable, of the Common Stock, Warrants, Conversion Shares and Warrant Shares, CBS Warrants and CBS Shares) will not (i) result in a violation of the Certificates of Incorporation or By-laws or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any material agreement, indenture or instrument to which the Company or any of its subsidiaries is a party, or, to the Company's knowledge, result in a violation of any material law, rule, regulation, order, judgment or decree (including U.S. federal and state securities laws and regulations and rules or regulations of any self-regulatory organizations to which either the Company or its securities are subject) applicable to the Company or any of its subsidiaries or by which any property or asset of the Company or any of its subsidiaries is bound or affected (except, with respect to clause (ii), for such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate, have a Material Adverse Effect). Neither the Company nor any of its subsidiaries is in violation of its Certificate of Incorporation, By-laws or other organizational documents and, to the Company's knowledge, neither the Company nor any of its subsidiaries is in default (and no event has occurred which, with notice or lapse of time or both, would put the Company or any of its subsidiaries in default) under, nor has there occurred any event giving others (with notice or lapse of time or both) any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its subsidiaries is a party, except for actual or possible violations, defaults or rights as would not, individually or in the aggregate, have a Material Adverse Effect. The businesses of the Company and its subsidiaries are not being conducted, and shall not be conducted so long as any Debentures are outstanding, in violation of any law, ordinance or regulation of any governmental entity, except for actual or possible violations, if any, the sanctions for which either singly or in the aggregate would not have a Material Adverse Effect. Except as specifically contemplated by this Agreement and as required under the Securities Act and any applicable state securities laws, the Company is not required to obtain any consent, approval, authorization or order of, or make any filing or registration with, any court or governmental agency or any regulatory or self regulatory agency in order for it to execute, deliver or perform any of its obligations under this Agreement, the Debentures, the Warrants or the Registration Rights Agreement, in each case in accordance with the terms hereof or thereof, the failure to obtain would have a Material Adverse Effect. Except as disclosed in Schedule 3(a)(v), the Company is not in violation of the listing requirements of the Nasdaq Smallcap Market ("NASDAQ") and the Company does not reasonably anticipate that the Common Stock will be delisted by NASDAQ for the foreseeable future.

(vi) SEC Documents, Financial Statements. Since December 31, 1996, the Company has timely filed (giving effect to applicable extension periods) all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (all of the foregoing filed prior to the date hereof and after December 31, 1995, and all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein, being hereinafter referred to herein as the "SEC Documents"). The Company has delivered to the Purchasers true and complete copies of the SEC Documents. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the Exchange Act of the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the statements made in any such SEC Documents is, or has been, required to be updated or amended under applicable law, where the failure to update or amend would have a Material Adverse Effect. As of their respective dates, the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC applicable with respect thereto. Such financial statements have been prepared in accordance with U.S. generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may not include footnotes or may be condensed or summary statements) and fairly present in all material respect the consolidated financial position of the Company and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited statements to typical year-end audit adjustments). Except as set forth in the financial statements of the Company included in the SEC Documents filed prior to the date hereof, the Company has no liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to the date of such financial statements and (ii) obligations under contracts or commitments incurred in the ordinary course of business and not required under generally accepted accounting principles

be reflected in such financial statements, which liabilities and obligations referred to in clauses (i) and (ii), individually or in the aggregate, are not material to the financial condition or operating results of the Company. Neither the Company nor any of its officers, directors, employees or agents have provided Purchasers with any material nonpublic information.

(vii) Absence of Certain Changes. Since December 31, 1997, there has been no change and no development in the business, properties, operations, financial condition, results of operations or previously publicly announced prospects of the Company or any of its subsidiaries which has had or reasonably could have a Material Adverse Effect, except as disclosed in Schedule 3(a)(vii) or in the SEC Documents filed prior to the date hereof.

(viii) Absence of Litigation. Except as expressly disclosed in the SEC Documents filed prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company or any of its subsidiaries, threatened against or affecting the Company, any of its subsidiaries, or any of their respective directors or officers in their capacities as such which could reasonably be anticipated to have a Material Adverse Effect. To the Company's knowledge, there are no facts which, if known by a potential claimant or governmental authority, could give rise to a claim or proceeding which, if asserted or conducted with results unfavorable to the Company or any of its subsidiaries, could reasonably be anticipated to have a Material Adverse Effect.

(ix) Intellectual Property. Each of the Company and its subsidiaries owns or is licensed to use all patents, patent applications, trademarks, trademark applications, trade names, service marks, copyrights, copyright applications, licenses, permits, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) and other similar rights and proprietary knowledge (collectively, "Intangibles") which are material to the conduct of its business as now being conducted and as described in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1997. To the best knowledge of the Company, neither the Company nor any subsidiary of the Company infringes or is in material conflict with any right of any other person with respect to any Intangibles which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received written notice of any pending conflict with or infringement upon such third party Intangibles which alleged pending conflict or alleged infringement, if adversely determined, would have a Material Adverse Effect. Neither the Company nor any of its subsidiaries has entered into any consent Agreement, indemnification agreement, forbearance to sue or settlement agreements with respect to the validity of the Company's or its subsidiaries' ownership or right to use its Intangibles and, to the best knowledge of the Company, there is no reasonable basis for any such claim to be successful. The Intangibles are valid and enforceable and to the Company's knowledge, no registration relating thereto has lapsed, expired or been abandoned or canceled or is the subject of cancellation or other adversarial proceedings, and all applications therefor are pending and in good standing. The Company and its subsidiaries have complied, in all material respects, with their respective contractual obligations relating to the protection of the Intangibles used pursuant to licenses. To the best knowledge of the Company, no person is infringing on or violating the Intangibles owned or used by the Company or its subsidiaries.

(x) Foreign Corrupt Practices. Neither the Company, nor any of its subsidiaries, nor any director, officer, agent, employee or other person acting on behalf of the Company or any subsidiary has, in the course of his actions for, or on behalf of, the Company, used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977; or made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

(xi) Disclosure. All information relating to or concerning the Company and its subsidiaries set forth in this Agreement or provided by the Company to the Purchasers pursuant to Section 2(d) hereof or otherwise provided by the Company to the Purchasers in connection with the transactions contemplated hereby is true and correct in all material respects and the Company has not omitted to state any material fact necessary in order to make the statements made herein or therein, in light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or exists with respect to the Company or its subsidiaries or their respective businesses, properties, prospects, operations or financial conditions, which has not been publicly disclosed but, under applicable law, rule or regulation, would be required to be disclosed by the Company in a registration statement filed on the date hereof by the Company under the Securities Act with respect to a primary issuance of the Company's securities.

(xii) Acknowledgment Regarding the Purchasers' Purchase of the Securities. The Company acknowledges and agrees that none of the Purchasers or the Placement Agent is acting as a financial advisor or fiduciary of the Company (or any similar capacity) with respect to this Agreement or the transactions contemplated hereby, and the relationship between

the Company and each of its Purchasers and the Placement Agent is "as is" and that any statement made by any Purchaser or the Placement Agent or any of their respective representatives or agents in connection with this Agreement and the transactions contemplated hereby is not advice or a recommendation and is merely incidental to such Purchaser's purchase of Securities or such Placement Agent's role as a placement agent and has not been relied upon by the Company or its officers or directors in any way. The Company further acknowledges that the Company's decision to enter into this Agreement has been based solely on an independent evaluation by the Company and its representatives.

(xiii) Form S-3 Eligibility. Except for the circumstances described in Schedule 3(a)(xiii), the Company is currently eligible to register the resale of its Common Stock on a registration statement on Form S-3 under the Securities Act. Except as set forth in Schedule 3(a)(xiii), there exist no facts or circumstances that would prohibit or delay the preparation and filing of a registration statement on Form S-3 with respect to the Registrable Securities (as defined in the Registration Rights Agreement).

(xiv) No General Solicitation. Neither the Company nor any distributor participating on the Company's behalf in the transactions contemplated hereby (if any) nor any person acting for the Company, or any such distributor, has conducted any "general solicitation," as such term is defined in Regulation D, with respect to any of the Securities being offered hereby.

(xv) No Integrated Offering. Neither the Company, nor any of its affiliates, nor any person acting on its or the behalf, has directly or indirectly made any offers or sales of any security or solicited any offers to buy any security under circumstances that would require registration of the Securities being offered hereby under the Securities Act or cause this offering of Securities to be integrated with any prior offering of securities of the Company for purposes of the Securities Act or any applicable stockholder approval provisions.

(xvi) Brokers. The Company has taken no action which would give rise to any claim by any person for brokerage commissions, finder's fees or similar payments by any Purchaser relating to this Agreement or the transactions contemplated hereby except for dealings with The Zanett Securities Corporation, whose commissions and fees will be paid by the Company.

(xvii) Acknowledgment of Dilution. The number of Conversion Shares issuable upon conversion of the Debentures may increase substantially in certain circumstances, including the circumstance wherein the trading price of the Common Stock declines (subject to the Floor Conversion Price set forth in the Debentures). The Company's executive officers have studied and fully understand the nature of the Securities being sold hereunder. The Company acknowledges that its obligation to issue Conversion Shares upon conversion of the Debentures in accordance with the terms of the Debentures is absolute and unconditional, regardless of the dilution that such issuance may have on the ownership interests of other stockholders. Taking the foregoing into account, the Company's Board of Directors has determined in its good faith business judgment that the issuance of the Debentures and the Warrants hereunder and the consummation of the other transactions contemplated hereby are in the best interests of the Company and its stockholders.

(xviii) Tax Status. Except as set forth in the SEC Documents filed prior to the date hereof or on Schedule 3(a)(xviii), the Company and each of its subsidiaries has made or filed all federal, state and local income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject (unless and only to the extent that the Company and each of its subsidiaries has set aside on its books provisions reasonably adequate for the payment of all unpaid and unreported taxes) and has paid all taxes and other governmental assessments and charges that are material in amount, shown to be due on such returns, reports and declarations, except those being contested in good faith and has set aside on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the tax authority of any jurisdiction, and the officers of the Company know of no basis for any such claim. Except as set forth in Schedule 3(a)(xviii), the Company has not executed a waiver with respect to any statute of limitations relating to the assessment or collection of any federal, state or local tax. Except as set forth in Schedule 3(a)(xviii), none of the Company's tax returns has been or is being audited by any taxing authority.

(xix) Title. The Company and its subsidiaries have good and merchantable title in fee simple to all real property and good and marketable title to all personal property owned by them which is material to the business of the Company and its subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as are described in Schedule 3(a)(xix) or such as do not materially affect the value of such property and do not materially interfere with the use made or proposed to be made of such property by the Company and its subsidiaries. Any real property and facilities held under lease by the Company and its subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not materially interfere with the use made and proposed to be made of such property and buildings by the Company and its subsidiaries.

b. CBS represents and warrants to each Purchaser as follows:

(i) Organization and Qualification. CBS and each of its subsidiaries is a corporation duly organized and existing in good standing under the laws of the jurisdiction in which it is incorporated, and has the requisite corporate power to own its properties and to carry on its business as it is now being conducted. CBS and each of its subsidiaries is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the business conducted by it makes such qualification necessary and where the failure so to qualify would have a CBS Material Adverse Effect. "CBS Material Adverse Effect" means any material adverse effect on (i) the CBS Warrants or CBS Shares, (ii) the ability of the CBS to perform its obligations hereunder and under the CBS Warrants or (iii) the business, operations, properties, financial condition or previously publicly announced prospects of CBS and its subsidiaries, taken as a whole.

(ii) Authorization; Enforcement. (i) CBS has the requisite corporate power and authority to enter into and perform its obligations under this Agreement and the CBS Warrants, to issue and sell the CBS Warrants in accordance with the terms hereof and to issue the CBS Shares upon exercise of the CBS Warrants in accordance with the terms of such CBS Warrants; (ii) the execution, delivery and performance of this Agreement and the CBS Warrants by the CBS and the consummation of it of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the CBS Warrants and the issuance and reservation for issuance of the CBS Shares) have been duly authorized by CBS's Board of Directors and no further consent or authorization of CBS, its Board or Directors or its stockholders is required; (iii) this Agreement has been duly executed and delivered by CBS; and (iv) assuming due execution and delivery of this Agreement by parties other than CBS and compliance by Zanett with applicable Federal and state securities laws, this Agreement constitutes, and, upon execution and delivery by the Company of the CBS Warrants, such instruments and agreements will constitute, valid and binding obligations of CBS enforceable against CBS in accordance with their terms except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general application affecting enforcement of creditors' rights generally, as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

(iii) Issuance of Shares. The CBS Shares are duly authorized and reserved for issuance, and, upon exercise of the CBS Warrants in accordance with the terms thereof, will be validly issued, fully paid and non-assessable, and free from taxes, liens, claims and encumbrances and will not be subject to preemptive rights or other similar rights of stockholders of CBS and will not impose personal liability upon the holder thereof other than restrictions on transfer imposed by Federal and state securities laws.

#### 4. COVENANTS.

a. Best Efforts. The parties shall use their commercially reasonable efforts timely to satisfy each of the conditions described in Section 6 and Section 7 of this Agreement.

b. Form D; Blue Sky Laws. The Company agrees to cooperate with the filing of a Form D with respect to the Securities as required under Regulation D. The Company shall, on or before the applicable Closing Date, cooperate with The Zanett Securities Corporation ("Zanett") to take such action as the Company shall reasonably determine is necessary to qualify the Securities for sale to the Purchasers pursuant to this Agreement under applicable securities or "blue sky" laws of the state of the United States or obtain exemption therefrom, and shall provide evidence of any such action so taken to the Purchaser on or prior to the First Closing Date. In a timely fashion after the First Closing, the Company agrees to file a Form 8-K concerning this Agreement and the transactions contemplated hereby, which Form 8-K shall attach this Agreement and Exhibits as exhibits to such Form 8-K.

c. Reporting Status. So long as any Purchaser beneficially owns any of the Securities, the Company shall timely file reports required to be filed with the SEC pursuant to the Exchange Act, and the Company shall not terminate its status as issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would permit such termination.

d. Use of Proceeds. The Company shall use the proceeds from the sale of the Units as set forth on Schedule 4(d).

e. Financial Information. The Company agrees to send the following reports to each Purchaser until such Purchaser transfers, assigns or sells all of its Securities: (i) within ten (10) business days after the filing with the SEC, a copy of its Annual Report on Form 10-K or Form 10-KSB, its Quarterly Reports on Form 10-Q or Form 10-QSB, its proxy statements and its Current Reports on Form 8-K; and (ii) within one (1) business day after release, copies of all press releases issued by the Company or any of its subsidiaries.

f. **Reservation of Shares.** The Company shall at all times have authorized and reserved for the purpose of issuance a sufficient number of shares of Common Stock to provide for the full conversion of the Debentures and issuance of the Conversion Shares in connection therewith and the full exercise of the Warrants and the issuance of the Warrant Shares in connection therewith, subject to and as otherwise required by the Debentures and the Warrants, and for the issuance of shares of Common Stock pursuant to Section 4(e) below. In that regard, a "sufficient number of shares" with respect to the Debentures shall be deemed to be equal to the number of shares of Common Stock required to be reserved for issuance by the Company pursuant to Article IV of the Debentures, including without limitation, any increase in the number of shares so reserved that may be required in certain circumstances pursuant to such Article. The Company shall not reduce the number of shares reserved for issuance upon conversion of the Debentures and the full exercise of the Warrants (except as a result of any such conversion or exercise) without the consent of the Purchasers. Following the Merger, CBS(Del) shall at all times have authorized and reserved for the purpose of issuance a sufficient number of shares of its common stock to provide for the full exercise of the CBS Warrants and the issuance of the CBS Shares in connection therewith.

g. **Listing.** The Company shall promptly secure the listing of the Conversion Shares and Warrant Shares upon each national securities exchange or automated quotation system, if any, upon which shares of Common Stock are then listed (subject to official notice of issuance) and shall maintain, so long as any purchaser owns any Securities, such listing of all of the Conversion Shares and Warrant Shares; provided, however, that the Purchasers acknowledge and agree that the Company may be required to obtain shareholder approval for the issuance of the Conversion Shares and the Warrant Shares subsequent to the First Closing in order to secure such listing with respect to listing a number of shares in excess of the Cap Amount (as defined in the Debenture). The Company will take all action necessary to continue the listing and trading of its Common Stock on the NASDAQ, the Nasdaq National Market ("NNM"), the New York Stock Exchange ("NYSE") or the American Stock Exchange ("AMEX") and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of such exchanges and the NASD, as applicable. In the event the Common Stock is not eligible to be traded on any of the NASDAQ, NNM, NYSE or AMEX and the Common Stock is not eligible for listing on any such exchange or system, the Company shall use its best efforts to cause the Common Stock to be eligible for trading on the over-the-counter bulletin board at the earliest practicable date and remain eligible for trading while any Securities are outstanding. The Company shall promptly provide to the Purchasers copies of any notices it receives regarding the continued eligibility of the Common Stock for trading in the over-the-counter market or, if applicable, any securities exchange (including the NASDAQ) on which securities of the same class or series issued by the Company are then listed or quoted, if any.

h. **Corporate Existence.** So long as a Purchaser beneficially owns any Securities, the Company shall maintain its corporate existence, except in the event of a merger, consolidation or sale of all or substantially all of the Company's assets, as long as the surviving or successor entity in such transaction (i) assumes the Company's obligations hereunder and under the Debentures, the Warrants and the agreements and instruments entered into in connection herewith (except as expressly provided herein) regardless of whether or not the Company would have had a sufficient number of shares of Common Stock authorized and available for issuance in order to effect the conversion of all Debentures and the exercise in full of all Warrants outstanding as of the date of such transaction and (ii) is a publicly traded corporation whose common stock is listed for trading on the NASDAQ, NYSE or AMEX. Notwithstanding the foregoing, the Company covenants and agrees that it will not engage in any merger, consolidation or sale of all or substantially all of its assets at any time prior to the effectiveness of the registration statement required to be filed pursuant to the Registration Rights Agreement without (A) providing each Purchaser with written notice of such transaction at least sixty (60) days prior to the consummation of the transaction and (B) obtaining the written consent of all of the Purchasers of the then outstanding principal amount of the Debentures on or before the 10th day after the delivery of such notice by the Company.

i. **No Integrated Offerings.** The Company shall not make any offers or sales of any security (other than pursuant to this Agreement and the Registration Rights Agreement) under circumstances that would require registration of the Securities being offered or sold hereunder under the Securities Act or cause the offering of the Securities to be integrated with any other offering of securities by the Company for purposes of any stockholder approval provision applicable to the Company or its securities.

j. **Redemptions and Dividends.** So long as any Purchaser beneficially owns any Debentures, the Company shall not, without first obtaining the written approval of such Purchaser, redeem, or declare or pay any cash dividend or distribution on any shares of capital stock of the Company.

k. **CBS Reorganization.** Within fifteen (15) days following the date of this agreement, CBS shall effect a merger (the "Merger") with Computer Business Sciences, Inc., a new York corporation ("CBS(NY)"), pursuant to which CBS will be the surviving entity with no change to its capital structure.

l. **CBS Offering.** In the event that (i) the Merger does not occur in a timely fashion, (ii) during the period commencing with the First Closing Date and ending with the first anniversary of the First Closing Date (the "CBS Deadline"), CBS(Del) or CBS whoever is the issuer of the CBS Warrants, does not successfully complete an initial public offering (an "IPO") for shares c

its common stock (pursuant to an effective registration statement which also covers the resale of the CBS Shares to the extent required by Section 8 of the CBS Warrants), (iii) following an IPO, the average Closing Bid Price (calculated in a manner consistent with the definition thereof in the Debentures) of CBS(Del) or CBS, as the case may be, common stock is less than \$5.00 for the twenty (20) trading days commencing either (A) sixty (60) days following closing on the IPO, if the Purchasers are not subject to "lockup" agreements, or (B) with the first trading day following expiration of any "lock-up" period, or (iv) at any time CBS, as the case may be, fails to issue CBS Shares upon a Purchaser's exercise of CBS Warrants, then the Company shall immediately on written demand from a Purchaser accompanied by such Purchaser's CBS Warrants and/or certificates evidencing such Purchaser's CBS Shares endorsed in blank, issue to such Purchaser, in exchange for such CBS Warrants and/or CBS Shares, shares of Common Stock equal to the sum of the surrendered CBS Shares and the CBS Shares issuable upon exercise of the surrendered CBS Warrants.

m. No Manipulations. So as long as a Purchaser beneficially owns any Debentures or Warrants, neither the Purchaser nor any person acting on behalf of such Purchaser shall take any action intended to decrease the trading price of the Company's Common Stock during any period in which the Conversion Price (as defined in the Debenture) is being computed for purposes of any conversion under the Debenture. For as long as the Debentures or Warrants are outstanding, each Purchaser agrees not to effect "short" sales in the Common Stock, loan shares or otherwise participate in any transaction which could be considered as a "short sale" under the rules and regulations promulgated under the Exchange Act (a "Short Sale") and agrees to prohibit each stockholder, executive, employee, representative, affiliate, officer, director or control person of the Purchaser from effecting any Short Sale. Notwithstanding the foregoing, so long as an effective registration statement covering a resale of Common Stock of Purchaser is timely delivered, the provisions of this subsection (n) shall not prohibit a sale, including a Short Sale, by a Purchaser of shares of Common Stock effected within two business days of the date on which a notice of conversion of the Debenture is delivered to the Company entitling such Purchaser to receive a number of shares of Common Stock at least equal to the number of shares so sold.

n. Proxy. The Company shall use its best efforts to cause Doron Cohen and Bruce Bendell to each execute a proxy in form and substance satisfactory to the Purchasers (collectively, the "Proxies") wherein such persons would agree with the Company to vote all shares of Common Stock they own in favor of the transactions contemplated by this Agreement in connection with the shareholder vote required by Section 4(o) hereof and the Company shall use its best efforts to enforce such Proxies in any such shareholder vote.

o. Stockholders' Meeting. The Company shall use its best efforts to hold its 1999 annual meeting of stockholders prior to September 30, 1999 for the purpose, among other things, of voting upon and approving this Agreement, the Debentures Warrants and Registration Rights Agreement, the issuance of Conversion Shares and Warrant Shares and the transaction contemplated hereby and thereby, including, without limitation, the issuance of the Securities. The Company shall, through its Board of Directors, recommend to its stockholders approval of such matters. The Company shall use its best efforts to solicit from its stockholders proxies in favor of such matters.

p. The Company and the Placement Agent, on behalf of the Purchasers, shall negotiate in good faith milestones to be met by the Company (the "Company Milestones") prior to closing on the second and third tranches.

## **5. TRANSFER AGENT INSTRUCTIONS.**

a. The Company shall instruct its transfer agent to issue certificates, registered in the name of each Purchaser or its nominee, for the Conversion Shares and the Warrant Shares in such amounts as specified from time to time by such Purchaser to the Company upon conversion or exercise, as the case may be. To the extent and during the periods provided in Section 2(f) and Section 2(g) of this Agreement, all such certificates shall bear the restrictive legend specified in Section 2(g) of the Agreement.

b. The Company warrants that no instruction other than such instructions referred to in this Section 5, and stop transfer instructions to give effect to Sections 2(f) and 2(g) hereof in the case of the transfer of the Conversion Shares and the Warrant Shares prior to registration of the resale of the Conversion Shares and the Warrant Shares under the Securities Act or without an exemption therefrom, will be given by the Company to its transfer agent and that the Warrant Shares and Conversion Shares shall otherwise be freely transferable on the books and records of the Company as and to the extent, but only to the extent, provided in this Agreement and the Registration Rights Agreement; provided that the Company may issue stop transfer instructions with respect to the resale of the Warrant Shares and Conversion Shares following registration thereof requiring that the selling party represent in writing that it has complied with applicable law in effecting such resale. Nothing in this Section shall affect in any way each Purchaser's obligations, requirements and agreement set forth in Section 2(g) hereof to resell the Securities pursuant to an effective registration statement or under an exemption from the registration requirements of applicable securities law.

c. If a Purchaser provides the Company and its transfer agent with an opinion of counsel, which opinion of counsel shall be in form, substance and scope customary for opinions of counsel in comparable transactions, to the effect that the Securities to be sold or transferred may be sold or transferred pursuant to an exemption from registration, or a Purchaser provides the Company with reasonable assurances that the resale of such Securities is covered by Rule 144(k) or pursuant to an effective registration statement, the Company shall permit the transfer, and, in the case of the Conversion Shares and Warrant Shares, promptly instruct its transfer agent to issue one or more certificates in such name and in such denominations as specified by such Purchaser.

## **6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.**

The obligation of the Company hereunder to issue and sell the Units to a Purchaser hereunder is subject to the satisfaction, at or before the relevant Closing Date, of each of the following conditions thereto, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing prior written notice to each Purchaser. The obligations of the Company and CBS to issue and sell the Securities to any Purchaser hereunder are distinct and separate from their obligation to issue and sell Securities to any other Purchaser hereunder and any failure by one or more Purchasers to fulfill the conditions set forth herein or to consummate the purchase of Securities hereunder will not relieve the Company and CBS of their obligations with respect to any other Purchaser.

a. At or prior to the First Closing, the applicable Purchaser shall have executed this Agreement and the Registration Rights Agreement, and delivered executed copies to the Company.

b. The applicable Purchaser shall have delivered the Purchase Price for that portion of the Units being purchased by at such Closing in accordance with Section 1(b) above.

c. The representations and warranties of the applicable Purchaser shall be true and correct in all material respects as of the date when made and as of the date and time of such Closing as though made at that time (except for representations and warranties that relate to a specific date, which representations and warranties shall be true and correct as of such date and the applicable Purchaser shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the applicable Purchaser at or prior to the applicable Closing Date.

d. No litigation, statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby that prohibits the consummation of any of the transactions contemplated by this Agreement.

e. With respect to the Second and Third Closings, the Company has elected to close by written notice to the Placeme Agent.

## **7. CONDITIONS TO EACH PURCHASER'S OBLIGATION TO PURCHASE.**

The obligation of each Purchaser hereunder to purchase the Units to be purchased by it hereunder is subject to the satisfaction, at or before the relevant Closing Date, of each of the following conditions, provided that these conditions are for such Purchaser's sole benefit and may be waived by such Purchaser at any time in the Purchaser's sole discretion:

a. With respect to the First Closing:

(i) The Company shall have executed this Agreement and the Registration Rights Agreement, and delivered executed copies of each to such Purchaser.

(ii) The Company shall have delivered to such Purchaser such Purchaser's duly executed Debenture Warrants and CBS Warrants, and certificates representing the Common Stock being purchased by such Purchaser (in such denominations as such Purchaser shall request in writing prior to Closing) in accordance with Section 1(b) above.

(iii) The Common Stock shall be authorized for quotation on NASDAQ and trading in the Common Stock (NASDAQ generally) shall not have been suspended by the SEC or NASDAQ.

(iv) The representations and warranties of the Company shall be true and correct in all material respects as of the date when made and as of the First Closing Date as though made at that time (except for representations and warranties

that relate to a specific date, which representations and warranties shall be true and correct as of such date) and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to the First Closing Date. Each Purchaser shall have received a certificate, executed by the Chief Executive Officer of the Company, dated as of the First Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by any Purchaser in writing prior to Closing.

(v) No litigation, statute, rule, regulation, executive order, decree, ruling, injunction, action or proceeding shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby that questions the validity of, or challenges or prohibits the consummation of, any of the transactions contemplated by this Agreement.

(vi) Such Purchaser shall have received an opinion of the Company's counsel, dated as of the First Closing Date, in form, scope and substance reasonably satisfactory to such Purchaser and in substantially the form of Exhibit E attached hereto.

(vii) The Company shall have delivered evidence reasonably satisfactory to each Purchaser that the Company's transfer agent has agreed to act in accordance with irrevocable instructions in the form attached hereto as Exhibit F.

(viii) There shall have been no changes and no developments in the business, properties, operations, financial condition, results of operations or publicly announced prospects of the Company and its subsidiaries, taken as a whole, which have had or will have a Material Adverse Effect, since the date hereof, and no information, of which the Purchasers are not currently aware, shall come to the attention of the Purchasers that is materially adverse to the Company.

(viii) The Purchasers shall have completed their due diligence regarding the Company to their complete satisfaction in their sole discretion.

b. With respect to the Second Closing:

(i) The Company shall have delivered to such Purchaser such Purchaser's duly executed Debentures and Warrants (in such denominations as such Purchaser shall request in writing prior to the Closing in accordance with Section 1(b) above.

(ii) The Common Stock shall be authorized for quotation on NASDAQ and trading in the Common Stock (or NASDAQ generally) shall not have been suspended by the SEC or NASDAQ.

(iii) The representations and warranties of the Company shall be true and correct in all material respects as of the date when made and as of the Second Closing Date as though made at that time (except for representations and warranties that relate to a specific date, which representations and warranties shall be true and correct as of such date) and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to the Second Closing Date. Each Purchaser shall have received a certificate, executed by the Chief Executive Officer of the Company, dated as of the Second Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by any Purchaser.

(iv) No litigation, statute, rule, regulation, executive order, decree, ruling, injunction, action or proceeding shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby that questions the validity of, or challenges or prohibits the consummation of, any of the transactions contemplated by this Agreement.

(v) The Purchasers shall have received an opinion of the Company's counsel, dated as of the Second Closing Date, in form, scope and substance reasonably satisfactory to the Purchasers and in substantially the form of Exhibit E attached hereto.

(vi) The Company shall have delivered evidence reasonably satisfactory to each Purchaser that the Company's transfer agent has agreed to act in accordance with irrevocable instructions in the form attached hereto as Exhibit F.

(vii) There shall have been no changes and no developments in the business, properties, operations, financial condition, results of operations or publicly announced prospects of the Company and its subsidiaries, taken as a whole, which

have had or will have a Material Adverse Effect, since the date hereof, and no information, of which the Purchasers are not currently aware, shall come to the attention of the Purchasers that is materially adverse to the Company.

(viii) The First Closing shall have occurred.

(ix) The Company Milestones for the Second Closing shall have been met.

(x) The Placement Agent, on behalf of the Purchasers, has elected to close by written notice to the Company.

c. With respect to the Third Closing:

(i) The Company shall have delivered to such Purchaser such Purchaser's duly executed Debentures and Warrants (in such denominations as such Purchaser shall request in writing prior to the Closing) in accordance with Section 1(b) above.

(ii) The Common Stock shall be authorized for quotation on NASDAQ and trading in the Common Stock (NASDAQ generally) shall not have been suspended by the SEC or NASDAQ.

(iii) The representations and warranties of the Company shall be true and correct in all material respects as of the date when made and as of the Third Closing Date as though made at that time (except for representations and warranties that relate to a specific date, which representations and warranties shall be true and correct as of such date) and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to the Third Closing Date. Each Purchaser shall have received a certificate, executed by the Chief Executive Officer of the Company, dated as of the Third Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by any Purchaser in writing prior to Closing.

(iv) No litigation, statute, rule, regulation, executive order, decree, ruling, injunction, action or proceeding shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby that questions the validity of, or challenges or prohibits the consummation of, any of the transactions contemplated by this Agreement.

(v) The Purchasers shall have received an opinion of the Company's counsel, dated as of the Third Closing Date, in form, scope and substance reasonably satisfactory to the Purchasers and in substantially the form of Exhibit E attached hereto.

(vi) The Company shall have delivered evidence reasonably satisfactory to each Purchaser that the Company's transfer agent has agreed to act in accordance with irrevocable instructions in the form attached hereto as Exhibit F.

(vii) There shall have been no changes and no developments in the business, properties, operations, financial condition, results of operations or publicly announced prospects of the Company and its subsidiaries, taken as a whole, which have had or will have a Material Adverse Effect, since the date hereof, and no information, of which the Purchasers are not currently aware, shall come to the attention of the Purchasers that is materially adverse to the Company.

(viii) The Second Closing shall have occurred.

(ix) The Company Milestones for the Third Closing shall have been met.

(x) This Agreement, the Debentures, Warrants and Registration Rights Agreement and the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Securities, shall have been approved and adopted by the stockholders of the Company at the stockholders' meeting referred to in Section 4(o) hereof.

(xi) The Placement Agent, on behalf of the Purchasers, has elected to close by written notice to the Company.

## 8. GOVERNING LAW; MISCELLANEOUS.

a. Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of choice of law or conflict of laws that would defer to the substantive law of another jurisdiction. The Company irrevocably consents to the jurisdiction of the United States federal courts and the state courts located in the City of New York in the State of New York in any suit or proceeding based on or arising under this Agreement and irrevocably agrees that all claims in respect of such suit or proceeding shall be

determined exclusively in state courts. The Company irrevocably waives the defense of an inconvenient forum to the maintenance of such suit or proceeding. The Company further agrees that service of process mailed by first class mail shall be deemed in every respect effective service of process in any such suit or proceeding. Nothing herein shall affect the right of any Purchaser to serve process in any other manner permitted by law. The Company agrees that a final non-appealable judgment in any such suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on such judgment or in any other lawful manner.

b. Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. This Agreement, once executed by a party, may be delivered to the other parties hereto by facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement. In the event any signature is delivered by facsimile transmission, the party using such means of delivery shall cause the manually executed Execution Page(s) hereof to be physically delivered to the other party within five (5) days of the execution hereof.

c. Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

d. Severability. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement or the validity or enforceability of this Agreement in any other jurisdiction.

e. Entire Agreement; Amendments. This Agreement and the other agreements and instruments referenced herein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor any Purchaser makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be waived other than by an instrument in writing signed by the party to be charged with enforcement and no provision of this Agreement may be amended other than by an instrument in writing signed by the Company and each Purchaser.

f. Notices. Any notices required or permitted to be given under the terms of this Agreement shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier or by confirmed telecopy, and shall be effective five days after being placed in the mail, if mailed, or upon receipt or refusal of receipt, if delivered personally or by courier or confirmed telecopy, in each case addressed to a party. The addresses for such communications shall be:

If to the Company:

Fidelity Holdings, Inc.  
80-02 Kew Gardens Road  
Suite 5000  
Kew Gardens, NY 11415  
Telecopy: (718) 793-2455  
Attention: Chief Executive Officer

With a copy to:

Littman Krooks Roth & Ball P.C.  
655 Third Avenue  
New York, NY 10017  
Telecopy: (212) 490-2020  
Attention: Mitchell C. Littman, Esquire

If to a Purchaser, to the address set forth under such Purchaser's name on the signature page hereto executed by the Purchaser.

Each party shall provide notice to the other parties of any change in address.

g. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. Except as provided herein, neither the Company nor any Purchaser shall assign this Agreement or any rights or obligations hereunder. Notwithstanding the foregoing, any Purchaser may assign its rights hereunder to any of its "affiliates," as that term is defined under the Exchange Act, without the consent of the Company or to any other person or entity with the consent of the Company, so long as each assignee agrees in writing to be bound by the terms hereof and

make the representations and warranties set forth in Section 2 hereof. This provision shall not limit a Purchaser's right to transfer the Securities pursuant to the terms of this Agreement, the Debentures, the Warrants or the Registration Rights Agreement or to assign such Purchaser's rights hereunder and/or thereunder to any such transferee. In addition, and notwithstanding anything to the contrary contained in this Agreement, the Debentures, the Warrants or the Registration Rights Agreement, the Securities may be pledged and all rights of Purchaser under this Agreement or any other agreement or document related to the transaction contemplated hereby may be assigned, without further consent of the Company, to a bona fide pledgee in connection with a Purchaser's margin or brokerage accounts.

h. Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

i. Survival. The representations and warranties of the Company and the agreements and covenants set forth in Sections 3, 4, 5 and 8 shall survive the Closing hereunder notwithstanding any due diligence investigation conducted by or on behalf of any Purchasers. Moreover, none of the representations and warranties made by the Company herein shall act as a waiver of any rights or remedies a Purchaser may have under applicable federal or state securities laws.

j. Indemnity. (i) The Company agrees to indemnify and hold harmless each Purchaser and each other holder of the Securities and all of their stockholders, officers, directors, employees, partners, members, agents and direct or indirect investors and affiliates and any of the foregoing person's agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "Purchaser Indemnitees") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "Indemnified Liabilities"), incurred by any Purchaser Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in this Agreement, the Debentures, the Warrants, the Registration Rights Agreement or any other certificate, instrument or document contemplated hereby or thereby, (b) any breach of any covenant, agreement or obligation of the Company contained in this Agreement, the Debentures, the Warrants, the Registration Rights Agreement or any other certificate, instrument or document contemplated hereby or thereby, (c) any cause of action, suit or claim brought or made against such Indemnitee and arising out of or resulting from the execution, delivery, performance or enforcement of this Agreement, the Debentures, the Warrants, the Registration Rights Agreement or any other certificate, instrument or document contemplated hereby or thereby, (d) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities or (e) the status of such Purchaser or holder of the Securities as an investor in the Company. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

(ii) Each Purchaser, severally and not jointly, agrees to indemnify and hold harmless the Company and all of its stockholders, officers, directors, employees, agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "Company Indemnitees") from and against any and all "Indemnified Liabilities" incurred by any Company Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Purchaser in this Agreement, or (b) any breach of any covenant, agreement or obligation of the Purchaser contained in this Agreement.

k. Publicity. The Company and each Purchaser shall have the right to approve before issuance any press releases, SEC, NASDAQ or NASD filings, or any other public statements with respect to the transactions contemplated hereby; provided, however, that the Company shall be entitled, without the prior approval of the Purchasers, to make any press release which does not name the Purchasers or SEC, NASDAQ or NASD filings with respect to such transactions as is required by applicable law and regulations (although the Purchasers shall be consulted by the Company in connection with any such press release and filing prior to its release and shall be provided with a copy thereof).

l. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

m. Termination. In the event that the First Closing Date shall not have occurred on or before January 31, 1999, unless the parties agree otherwise, this Agreement shall terminate at the close of business on such date. Notwithstanding any termination of this Agreement, any party not in breach of this Agreement shall preserve all rights and remedies it may have against another party hereto for a breach of this Agreement prior to or relating to the termination hereof.

n. Joint Participation in Drafting. Each party to this Agreement has participated in the negotiation and drafting of this Agreement, the Debentures, the Warrants and the Registration Rights Agreement. As such, the language used herein and therein shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party to this Agreement.

o. Equitable Relief. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to a Purchaser by vitiating the intent and purpose of the transactions contemplated hereby. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations hereunder (including, but not limited to, its obligations pursuant to Section 5 hereof) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Agreement (including, but not limited to, its obligations pursuant to Section 5 hereof), that a Purchaser shall be entitled, in addition to all other available remedies, to an injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required.

p. "Trading day" and "business day" shall mean any day on which the New York Stock Exchange is open for trading.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned Purchaser and the Company have caused this Agreement to be duly executed as of the date first above written.

**FIDELITY HOLDINGS, INC.**

**CBS CORP.**

By: /s/ Doron Cohen

By: /s/ Doron Cohen

Name: Doron Cohen

Title: President

Name: Doron Cohen

Title: President

By:

By:

Name:

Title:

Name:

Title:

**PURCHASER:**

**ZANETT LOMBARDIER, LTD.**

**PURCHASE PRICE**

First Closing	Second Closing	Third Closing
------------------	-------------------	------------------

By: /s/ Gianluca Cicogna

\$500,000	\$781,818.18	\$781,818.18
-----------	--------------	--------------

Name: Gianluca Cicogna

Title: Director to Advisor

RESIDENCE: Cayman Islands

ADDRESS: c/o Bank Julius Baer Trust Co.  
Kirk House, P.O. Box 1100  
Grand Cayman, Cayman Islands  
British West Indies  
Telecopy: (345) 949-0993  
Attention: Peter Goulden

with copies of all notices to:

The Zanett Securities Corporation  
Tower 49, 31st Floor  
12 East 49th Street  
New York, New York 10017  
Telecopy: (212) 343-2121  
Attention: Claudio Guazzoni

**SUBSCRIPTION AMOUNT:**

Number of Units 500

IN WITNESS WHEREOF, the undersigned Purchaser and the Company have caused this Agreement to be duly executed as of the date first above written.

**FIDELITY HOLDINGS, INC.**

By: /s/ Doron Cohen

Name: Doron Cohen

Title: President

**PURCHASER:**

**GOLDMAN SACHS PERFORMANCE PURCHASE PRICE  
PARTNERS, L.P.**

By: Commodities Corporation LLC, its general partner	Closing	First Closing	Second Closing	Third
---	---------	------------------	-------------------	-------

By: /s/ Karen M. Judge	\$1,120,000	\$1,751,272.73	\$1,751,272.73	
------------------------	-------------	----------------	----------------	--

Name: Karen M. Judge  
Title: Vice President

RESIDENCE: Delaware

ADDRESS: c/o Commodities Corporation LLC  
701 Mount Lucas Road  
CN 850  
Princeton, NJ 08540

**SUBSCRIPTION AMOUNT:**

Number of Units 1,120

IN WITNESS WHEREOF, the undersigned Purchasor and the Company have caused this Agreement to be duly executed as of the date first above written.

**FIDELITY HOLDINGS, INC.**

By: /s/ Doron Cohen

Name: Doron Cohen  
Title: President

**PURCHASER:**

**GOLDMAN SACHS PERFORMANCE PURCHASE PRICE  
PARTNERS (OFFSHORE), L.P.**

By: Commodities Corporation LLC, its general partner	Closing	First Closing	Second Closing	Third
---	---------	------------------	-------------------	-------

By: /s/ Karen M. Judge	\$880,000	\$1,376,000	\$1,376,000	
------------------------	-----------	-------------	-------------	--

Name: Karen M. Judge  
Title: Vice President

RESIDENCE: Cayman Islands

ADDRESS: P.O. Box 309  
South Church Street  
George Town, Grand Cayman  
Cayman Islands

with copies of all notices to:

c/o Commodities Corporation LLC  
701 Mount Lucas Road  
CN 850  
Princeton, NJ 08540

**SUBSCRIPTION AMOUNT:**

Number of Units 880

IN WITNESS WHEREOF, the undersigned Purchaser and the Company have caused this Agreement to be duly executed as of the date first above written.

**FIDELITY HOLDINGS, INC.**

**CBS CORP.**

By: /s/ Doron Cohen

By: /s/ Doron Cohen

Name: Doron Cohen  
Title: President

Name: Doron Cohen  
Title: President

By:

By:

Name:  
Title:

Name:  
Title:

**PURCHASER:**

**BRUNO GUAZZONI**

**PURCHASE PRICE**

First Closing	Second Closing	Third Closing
------------------	-------------------	------------------

/s/ Bruno Guazzoni

\$230,000	\$359,636.36	\$359,636.36
-----------	--------------	--------------

Bruno Guazzoni

RESIDENCE: New York

**ADDRESS:**

c/o The Zanett Securities Corporation  
Tower 49, 31st Floor  
12 East 49th Street  
New York, New York 10017  
Telecopy: (212) 343-2121  
Attention: Bruno Guazzoni

**SUBSCRIPTION AMOUNT:**

Number of Units 230

IN WITNESS WHEREOF, the undersigned Purchaser and the Company have caused this Agreement to be duly executed as of the date first above written.

**FIDELITY HOLDINGS, INC.**

**CBS CORP.**

By: /s/ Doron Cohen

By: /s/ Doron Cohen

Name: Doron Cohen  
Title: President

Name: Doron Cohen  
Title: President

By:

By:

Name:  
Title:

Name:  
Title:

**PURCHASER:**

DAVID MCCARTHY

**PURCHASE PRICE**

First Closing	Second Closing	Third Closing
------------------	-------------------	------------------

<u>/s/ David McCarthy</u>	\$20,000	\$31,272.73	\$31,272.73
---------------------------	----------	-------------	-------------

David McCarthy

RESIDENCE: New York

**ADDRESS:**

c/o The Zanett Securities Corporation  
Tower 49, 31st Floor  
12 East 49th Street  
New York, New York 10017  
Telecopy: (212) 343-2121  
Attention: Bruno Guazzoni

**SUBSCRIPTION AMOUNT:**

Number of Units 20

Exhibit 10.62

**REGISTRATION RIGHTS AGREEMENT**

REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of January 25, 1999, by and among FIDELIT HOLDINGS, INC., a corporation organized under the laws of the State of Nevada, with headquarters located at 80-02 Kew Gardens Road, Suite 5000, Kew Gardens, NY 11415 (the "Company"), and the undersigned (together with affiliates, the "Initial Investors").

**WHEREAS:**

A. In connection with that certain Securities Purchase Agreement dated as of the date hereof by and among the Company and the Initial Investors (the "Purchase Agreement"), the Company has agreed, upon the terms and subject to the conditions contained therein, to issue and sell to the Initial Investors (i) Convertible Term Debentures (the "Debentures") that are convertible into shares (the "Conversion Shares") of the Company's Class A Common Stock, par value \$0.001 per share (the "Common Stock"), upon the terms and subject to the limitations and conditions set forth in the form of Debenture, (ii) shares of Common Stock (the "Purchased Shares"), and (iii) Warrants (the "Investor Warrants") to acquire shares (the "Warrant Shares") of Common Stock;

B. To induce the Initial Investors to execute and deliver the Securities Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "Securities Act"), and applicable state securities laws; and

C. The Company has agreed to issue to The Zanett Securities Corporation or its assigns (the "Placement Agent") shares of Common Stock and Warrants (the "Placement Warrants" and, together with the Investor Warrants, the "Warrants") to purchase shares of Common Stock, pursuant to that certain Placement Agency Agreement, dated as of even date herewith, by and between the Company and the Placement Agent and has agreed to provide the Placement Agent the rights set forth herein. For purposes of this Agreement, the Placement Agent shall be deemed an "Initial Investor," the shares of common stock issued to it at Closing shall be deemed "Purchased Shares," and the shares of Common Stock issuable upon the exercise of, or otherwise pursuant to, the Placement Agent Warrants shall be deemed "Warrant Shares."

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Initial Investors hereby agree as follows:

## 1. DEFINITIONS.

a. As used in this Agreement, the following terms shall have the following meanings:

(i) "Investors" means the Initial Investors and any transferees or assignees who agree to become bound by the provisions of this Agreement in accordance with Section 9 hereof.

(ii) "register," "registered," and "registration" refer to a registration effected by preparing and filing a Registration Statement or Statements in compliance with the Securities Act and pursuant to Rule 415 under the Securities Act or any successor rule providing for offering securities on a continuous basis ("Rule 415"), and the declaration or ordering of effectiveness of such Registration Statement by the United States Securities and Exchange Commission (the "SEC").

(iii) "Registrable Securities" means the Purchased Shares, the Conversion Shares and the Warrant Shares (including any Conversion Shares issuable in redemption of any Debentures and any Warrant Shares issuable with respect to Exercise Default Payments under the Warrants) issued or issuable with respect to the Debentures and the Warrants and any shares of capital stock issued or issuable, from time to time (with any adjustments), as a distribution on or in exchange for or otherwise with respect to any of the foregoing, but excluding any shares of Common Stock satisfying the foregoing sold by an Investor in a transaction in which such Investor's registration rights under this Agreement are not assigned.

(iv) "Registration Statement" means a registration statement of the Company under the Securities Act.

b. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Securities Purchase Agreement.

## 2. REGISTRATION.

a. **Mandatory Registration.** Subject to this Subsection 2(a), the Company shall prepare and, on or before March 1, 1999 (the "First Filing Date", and thereafter within 45 days after each Closing Date (as defined in the Securities Purchase Agreement) (each a "Filing Date"), file with the SEC a Registration Statement on Form S-3 (or, if Form S-3 is not then available on such form of Registration Statement as is then available to effect a registration of all of the Registrable Securities issued at such Closing or upon the conversion of Debentures (assuming conversion at the Floor Conversion Price) or exercise of Warrants issued at such Closing, subject to the consent of the Initial Investors (as determined pursuant to Section 11(j) hereof) covering the resale of at least 1,410,417 Registrable Securities following the First Closing and 1,970,834 Registrable Securities following each of the Second and Third Closings, which Registration Statements, to the extent allowable under the Securities Act and the Rules promulgated thereunder (including Rule 416), shall each state that such Registration Statement also covers such indeterminate number of additional shares of Common Stock as may become issuable upon conversion of the Debentures and exercise of the Warrants to prevent dilution resulting from stock splits, stock dividends or similar transactions. The Registrable Securities initially set forth in each Registration Statement shall be allocated to the Investors as set forth in Section 11(k) hereof. Each Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) shall be provided to (and subject to the approval of) the Initial Investors and their counsel prior to its filing or other submission. Notwithstanding anything to the contrary contained in this Agreement, the Company shall have the right to defer the filing of a Registration Statement (i) for such reasonable period of time until the Company receives or prepares financial statements for the fiscal period most recently ended prior to such written request, if necessary to avoid the use of stale financial statements or (ii) for a reasonable period of time not to exceed 90 days if the Company would

required to divulge in such Registration Statement the existence of any fact relating to a material business transaction or negotiation not otherwise required to be disclosed and the Board of Directors of the Company shall determine in good faith that the disclosure of such fact at such time would not be in the best interest of the Company (the "Deferral Period").

b. Underwritten Offering. If any offering pursuant to a Registration Statement pursuant to Section 2(a) hereof involves an underwritten offering, the Investors who hold a majority in interest of the Registrable Securities subject to such underwritten offering, with the consent of the Initial Investors, shall have the right to select one legal counsel to represent the Investors and an investment banker or bankers and manager or managers to administer the offering, which investment banker or bankers or manager or managers shall be reasonably satisfactory to the Company. In the event that any Investors elect not to participate in such underwritten offering, the Registration Statement covering all of the Registrable Securities shall contain appropriate plans of distribution reasonably satisfactory to the Investors participating in such underwritten offering and the Investors electing not to participate in such underwritten offering (including, without limitation, the ability of nonparticipating Investors to sell from time to time and at any time during the effectiveness of such Registration Statement).

c. Registration Deadline; Payments by the Company. The Company shall cause each Registration Statement required to be filed pursuant to Section 2(a) hereof to become effective as soon as practicable, but in no event later than 120 days after the applicable Filing Date deadline, or at the end of the applicable Deferral Period, as the case may be (the "Registration Deadline"); provided, that in the event that the effectiveness of a Registration Statement is delayed beyond the Registration Deadline solely as the result of the SEC's failure to provide or respond to comments on a timely basis, or by reason of any other unilateral action of or position taken by the SEC with respect to the filing, and notwithstanding the Company's best efforts, the Registration Deadline shall be deemed extended by a period equal to such delay. If (i) any Registration Statement(s) covering the Registrable Securities required to be filed by the Company pursuant to Section 2(a) hereof is not filed with the SEC by the applicable Filing Date or is not declared effective by the SEC on or before the applicable Registration Deadline, or if, after a Registration Statement has been declared effective by the SEC, sales of all of the applicable Registrable Securities (including any Registrable Securities required to be registered pursuant to Section 3(b) hereof) cannot be made pursuant to such Registration Statement (by reason of a stop order or the Company's failure to update the Registration Statement or any other reason outside the control of the Investors) or (ii) the Common Stock is not listed or included for quotation on the Nasdaq SmallCap Market (the "SmallCap"), the Nasdaq National Market (the "NNM"), the New York Stock Exchange (the "NYSE") or the American Stock Exchange (the "AMEX") at any time after the applicable Registration Deadline, then the Company will make payments to the Investors in such amounts and at such times as shall be determined pursuant to this Section 2(c) as partial relief for the damages to the Investors by reason of any such delay in or reduction of their ability to sell the Registrable Securities (which remedy shall not be exclusive of any other remedies available at law or in equity). The Company shall pay to each Investor an amount equal to the product of (i) the aggregate Purchase Price of the Debentures, Purchased Shares, CBS Shares and Warrants held by such Investor and purchased at the applicable Closing (including, without limitation, Debentures that have been converted into Conversion Shares and Warrants that have been exercised for Warrant Shares then held by such Investor) (the "Aggregate Purchase Price"), multiplied by (ii) one hundredth (.01), for each thirty (30) day period (or portion thereof) (A) after the Filing Date and prior to the date on which the Registration Statement required to be filed pursuant to Section 2(a) hereof is filed with the SEC, (B) after the Registration Deadline and prior to the date on which the Registration Statement required to be filed pursuant to Section 2(a) hereof is declared effective by the SEC, and (C) during which sales of any Registrable Securities cannot be made pursuant to the Registration Statement after the Registration Statement has been declared effective or the Common Stock is not listed or included for quotation on the SmallCap, NNM, NYSE or AMEX; provided, however, that there shall be excluded from each such period any delays which are solely attributable to changes (other than corrections of Company mistakes with respect to information previously provided by the Investors) required by the Investors in the Registration Statement with respect to information relating to the Investors including, without limitation, changes to the plan of distribution. (For example, if the Registration Statement is not effective by the Registration Deadline, the Company would pay \$10,000 for each thirty (30) day period thereafter with respect to each \$1,000,000 of Aggregate Purchase Price until the Registration Statement becomes effective). Such amounts shall be paid in cash or, at each Investor's option, may be convertible into Common Stock at the "Conversion Price" (as defined in the Debenture) then in effect. Any shares of Common Stock issued upon conversion of such amounts shall be Registrable Securities. If the Investor desires to convert the amounts due hereunder into Registrable Securities it shall so notify the Company in writing within two (2) business days after the date on which such amounts are first payable in cash and such amounts shall be so convertible pursuant to the mechanics set forth under Article IV of the Debenture), beginning on the last day upon which the cash amount would otherwise be due in accordance with the following sentence. Payments of cash pursuant hereto shall be made within five (5) days after the end of each period that gives rise to such obligation, provided that if any such period extends for more than thirty (30) days, interim payments shall be made for each such thirty (30) day period.

d. Restrictions on Sale. Notwithstanding the effectiveness of a Registration Statement filed pursuant to Section 2(a) hereof, the Investors hereby agree not to transfer, sell, assign, hypothecate or otherwise dispose of any Registrable Securities without the prior written consent of the Company prior to July 26, 1999.

e. Piggy-Back Registrations. If at any time prior to the expiration of the Registration Period (as hereinafter defined) the Company shall file with the SEC a Registration Statement relating to an offering for its own account or the account of other under the Securities Act of any of its equity securities (other than on Form S-4 or Form S-8 or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans), the Company shall send to each Investor who is entitled to registration rights under this Section 2(e) written notice of such determination and, if within fifteen (15) days after the date of such notice, such Investor shall so request in writing, the Company shall include in such Registration Statement all or any part of the Registrable Securities such Investor requests to be registered, except that if, in connection with any underwritten public offering, the managing underwriter(s) thereof shall impose a limitation on the number of shares of Common Stock which may be included in the Registration Statement because, in such underwriter(s)' judgment, marketing or other factors dictate such limitation is necessary to facilitate public distribution, then the Company shall be obligated to include in such Registration Statement only such limited portion of the Registrable Securities with respect to which such Investor has requested inclusion hereunder as the underwriter shall permit. Any exclusion of Registrable Securities shall be made pro rata among the Investor seeking to include Registrable Securities, in proportion to the number of Registrable Securities sought to be included by such Investors; provided, however, that the Company shall not exclude any Registrable Securities unless the Company has first excluded all outstanding securities, the holders of which are not entitled to inclusion of such securities in such Registration Statement or are not entitled to pro rata inclusion with the Registrable Securities; and provided, further, however, that, after giving effect to the immediately preceding proviso, any exclusion of Registrable Securities shall be made pro rata with holders of other securities having the right to include such securities in the Registration Statement other than holders of securities entitled to inclusion of their securities in such Registration Statement by reason of demand registration rights. No right to registration of Registrable Securities under this Section 2(e) shall be construed to limit any registration required under Section 2(a) hereof. If an offering in connection with which an Investor is entitled to registration under this Section 2(e) is an underwritten offering, then each Investor whose Registrable Securities are included in such Registration Statement shall, unless otherwise agreed by the Company, offer and sell such Registrable Securities in an underwritten offering using the same underwriter or underwriters and, subject to the provisions of this Agreement (to the extent not inconsistent with the terms of such underwritten offering), on the same terms and conditions as other shares of Common Stock included in such underwritten offering.

f. Eligibility for Form S-3. The Company represents and warrants that, to its knowledge, except as set forth in Schedule 3(a)(xiii) to the Securities Purchase Agreement, it meets the requirements for the use of Form S-3 for registration of the sale by the Initial Investors and any other Investor of the Registrable Securities and the Company shall file all reports required to be filed by the Company with the SEC in a timely manner so as to maintain such eligibility for the use of Form S-3.

### 3. OBLIGATIONS OF THE COMPANY.

In connection with the registration of the Registrable Securities, the Company shall have the following obligations:

a. The Company shall prepare and file with the SEC each Registration Statement required by Section 2(a) as soon as practicable after the date hereof (but in no event later than the applicable Filing Date), and cause such Registration Statement relating to Registrable Securities to become effective as soon as practicable after such filing (but in no event later than the applicable Registration Deadline), and keep the Registration Statements effective pursuant to Rule 415 at all times until such date as is the earlier of (i) the date on which at least 90% of the Registrable Securities have been sold, (ii) the date on which all of the Registrable Securities (in the reasonable opinion of counsel to the Initial Investors) may be immediately sold to the public without registration or restriction pursuant to Rule 144(k) under the Securities Act or any successor provision, (iii) the date on which all restrictive legends (including without limitation the legend required by Section 2(g) of the Securities Purchase Agreement and Article IX.K of the Debentures) have been removed from all Registrable Securities and all "stop-transfer" instructions issued to the Company's transfer agent have been canceled (the "Registration Period"), when the Registration Statement (including any amendments or supplements thereto and prospectuses contained therein and documents incorporated by reference therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein not misleading.

b. The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration Statements and the prospectuses used in connection with the Registration Statements as may be necessary to keep the Registration Statements effective at all times during the Registration Period, and, during such period, comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities of the Company covered by the Registration Statements until such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in the Registration Statement. In the event the number of shares available under the Registration Statements filed pursuant to this Agreement is, for any three (3) consecutive trading days (the last of such three (3) trading days being the "Registration Trigger Date"), insufficient to cover one hundred percent (100%) of the Registrable Securities issued or issuable upon conversion (without giving effect to

limitations on conversion contained in Section III.C of the Debentures and assuming conversion at the Floor Conversion Price then in effect) of the Debentures and exercise of the Warrants (without giving effect to any limitations on exercise contained in Section 7 of the Warrants), the Company shall amend the Registration Statements, or file a new Registration Statement (or the short form available therefor, if applicable), or both, so as to cover one hundred percent (100%) of the Registrable Securities issued or issuable (without giving effect to any limitations on conversion or exercise contained in the Debentures and assuming conversion at the Floor Conversion Price then in effect) as of the Registration Trigger Date, in each case, as soon as practicable, but in any event within fifteen (15) days after the Registration Trigger Date (based on the market price then in effect of the Common Stock and other relevant factors on which the Company reasonably elects to rely). The Company shall cause such amendment(s) and/or new Registration Statement to become effective as soon as practicable following the filing thereof. The Company shall cause such amendment and/or new Registration Statement to become effective as soon as practicable following the filing thereof. In the event the Company fails to obtain the effectiveness of any such Registration Statement within sixty (60) days after a Registration Trigger Date, each Investor shall thereafter be entitled to the remedies provided for in Section 2(c) above.

c. The Company shall furnish to each Investor whose Registrable Securities are included in the Registration Statements and its legal counsel (i) promptly after the same is prepared and publicly distributed, filed with the SEC, or received by the Company, one copy of each Registration Statement and any amendment thereto, each preliminary prospectus and prospectus and each amendment or supplement thereto, and, in the case of the Registration Statements referred to in Section 2(a), each letter written by or on behalf of the Company to the SEC or the staff of the SEC (including, without limitation, any request to accelerate the effectiveness of any Registration Statement or amendment thereto), and each item of correspondence from the SEC or the staff of the SEC, in each case relating to such Registration Statement (other than any portion, if any, thereof which contains information for which the Company has sought confidential treatment), (ii) on the date of effectiveness of a Registration Statement or any amendment thereto, a notice stating that the Registration Statement or amendment has been declared effective, and (iii) such number of copies of a prospectus, including a preliminary prospectus and all amendments and supplements thereto and such other documents as such Investor may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Investor.

d. The Company shall use its best efforts to (i) register and qualify the Registrable Securities covered by the Registration Statements under such other securities or "blue sky" laws of such jurisdictions in the United States as each Investor who holds Registrable Securities being offered reasonably requests, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provide, however, that the Company shall not be required in connection therewith or as a condition thereto to (a) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d), (b) subject itself to general taxation in any such jurisdiction, (c) file a general consent to service of process in any such jurisdiction, (d) provide any undertakings that cause the Company undue expense or burden, or (e) make any change in its charter or bylaws, which in each case the Board of Directors of the Company determines to be contrary to the best interests of the Company and its stockholders.

e. In the event the Investors who hold a majority in interest of the Registrable Securities being offered in an offering select underwriters for the offering, the Company shall enter into and perform its obligations under an underwriting agreement in usual and customary form, including, without limitation, customary indemnification and contribution obligations, with the underwriters of such offering.

f. As promptly as practicable after becoming aware of such event, the Company shall notify each Investor of the happening of any event, of which the Company has knowledge, as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading (including without limitation any transfer of Registrable Securities by a person named as a selling shareholder in a Registration Statement), and use its best efforts promptly to prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission, and deliver such number of copies of such supplement or amendment to each Investor as such Investor may reasonably request.

g. The Company shall use its best efforts to prevent the issuance of any stop order or other suspension or ineffectiveness of a Registration Statement, and, if such an order is issued, to obtain the withdrawal of such order at the earliest practicable moment (including in each case by amending or supplementing such Registration Statement) and to notify each Investor who holds Registrable Securities being sold (or, in the event of an underwritten offering, the managing underwriter

of the issuance of such order and the resolution thereof (and if such Registration Statement is supplemented or amended deliver such number of copies of such supplement or amendment to each Investor as such Investor may reasonably request)

h. The Company shall permit a single firm of counsel designated by the Initial Investors to review each Registration Statement and all amendments and supplements thereto a reasonable period of time prior to their filing with the SEC, and no file any document in a form to which such counsel reasonably objects.

i. The Company shall make generally available to its security holders as soon as practical, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with the provisions of Rule 158 under the Securities Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the effective date of a Registration Statement.

j. At the request of any Investor, the Company shall make available, on the date of effectiveness of a Registration Statement (i) an opinion, dated as of such date, from counsel representing the Company addressed to the Investors and in form, scope and substance as is customarily given in an underwritten public offering and (ii) in the case of an underwriting a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and the Investors.

k. The Company shall make available for inspection by (i) any Investor, (ii) any underwriter participating in an disposition pursuant to a Registration Statement, (iii) one firm of attorneys and one firm of accountants or other agents retained by the Investors, and (iv) one firm of attorneys retained by all such underwriters (collectively, the "Inspectors") all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "Records") as shall be reasonably deemed necessary by each Inspector to enable each Inspector to exercise its due diligence responsibility, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request for purposes of such due diligence; provided, however, that each Inspector shall hold in confidence and shall not make any disclosure (except to an Investor) or use of any Record or other information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement, (b) the release of such Records is ordered pursuant to a subpoena or other order from a court or government body of competent jurisdiction or (c) the information in such Records has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company shall not be required to disclose any confidential information in such Records to an Inspector until and unless such Inspector shall have entered into confidentiality agreements (in form and substance satisfactory to the Company) with the Company with respect thereto, substantially in the form of this Section 3(k). Each Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing here shall be deemed to limit the Investors' ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

l. The Company shall hold in confidence and not make any disclosure of information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities law, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other order from a court or government body of competent jurisdiction, (iv) such information has been made generally available to the public other than by disclosure in violation of this or any other agreement, or (v) such Investor consents to the form and content of any such disclosure. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to such Investor prior to making such disclosure, and allow the Investor, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

m. The Company shall use its best efforts to promptly secure the designation and quotation of all of the Registrable Securities covered by the Registration Statements on the NNM or the SmallCap and, without limiting the generality of the foregoing, to arrange for or maintain at least two market makers to register with the National Association of Securities Dealers Inc. ("NASD") as such with respect to such Registrable Securities.

n. The Company shall provide a transfer agent and registrar, which may be a single entity, for the Registrable Securities not later than the effective date of the first Registration Statement.

o. The Company shall cooperate with the Investors who hold Registrable Securities being offered and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the managing underwriter or underwriters, if any, or the Investors may reasonably request and registered in such names as the managing underwriter or underwriters, if any, or the Investors may request, and, within three (3) business days after a Registration Statement which includes Registrable Securities is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel selected by the Company to deliver, to the transfer agent for the Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) an opinion of such counsel in the form attached hereto as Exhibit 1.

p. At the reasonable request of any Investor, the Company shall prepare and file with the SEC such amendment (including post-effective amendments) and supplements to a Registration Statement and the prospectus used in connection with a Registration Statement as may be necessary in order to change the plan of distribution set forth in such Registration Statement.

q. The Company shall comply with all applicable laws related to a Registration Statement and offering and sale of securities and all applicable rules and regulations of governmental authorities in connection therewith (including, without limitation, the Securities Act and the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the SEC).

r. The Company shall take all such other actions as any Investor or the underwriters, if any, reasonably require in order to expedite or facilitate the disposition of the Registrable Securities.

s. From and after the date of this Agreement, the Company shall not, and shall not agree to, allow the holders of any securities of the Company to include any of their securities in any Registration Statement under Section 2(a) hereof or an amendment or supplement thereto under Section 3(b) hereof without the consent of the holders of a majority in interest of the Registrable Securities.

#### **4. OBLIGATIONS OF THE INVESTORS.**

In connection with the registration of the Registrable Securities, the Investors shall have the following obligations:

a. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. At least five (5) business days prior to the first anticipated filing date of the Registration Statement, the Company shall notify each Investor of the information the Company requires from each such Investor.

b. Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of the Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from the Registration Statement.

c. In the event Investors holding a majority in interest of the Registrable Securities being offered determine to engage the services of an underwriter, each Investor agrees to enter into and perform such Investor's obligations under an underwriting agreement, in usual and customary form, including, without limitation, customary indemnification and contribution obligations, with the managing underwriter of such offering and take such other actions as are reasonably required in order to expedite or facilitate the disposition of the Registrable Securities, unless such Investor has notified the Company in writing of such Investor's election not to participate in such underwritten distribution.

d. Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Sections 3(f) or 3(g), such Investor will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Investor's receipt of the copies of the prospectus supplemented or amended prospectus contemplated by Sections 3(f) or 3(g) and, if so directed by the Company, such Investor shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in such Investor's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

e. No Investor may participate in any underwritten distribution hereunder unless such Investor (i) agrees to sell such Investor's Registrable Securities on the basis provided in any underwriting arrangements in usual and customary form entered into by the Company, (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements, and (iii) agrees to pay its pro rata share of all underwriting discounts and commissions and any expenses in excess of those payable by the Company pursuant to Section 5 below.

f. Each Investor agrees that all resales of Registrable Securities that are covered by an effective Registration Statement shall be made only in compliance with applicable provisions of the Securities Act and applicable state law.

## **5. EXPENSES OF REGISTRATION.**

All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, the fees and disbursements of counsel for the Company, the fees and disbursements contemplated by Section 3(k) hereof, and the reasonable fees (up to \$5,000 in the aggregate) and disbursements of one counsel selected by the Investors pursuant to Section 2(b) hereof shall be borne by the Company. In addition, the Company shall pay all of the Investors' costs and expenses (including legal fees) incurred in connection with the enforcement of the rights of the Investors hereunder.

## **6. INDEMNIFICATION.**

In the event any Registrable Securities are included in a Registration Statement under this Agreement:

a. To the extent permitted by law, the Company will indemnify, hold harmless and defend (i) each Investor who holds such Registrable Securities, and (ii) the directors, officers, partners, members, employees, agents and each person who controls any Investor within the meaning of Section 15 of the Securities Act or Section 20 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), if any, (each, an "Indemnified Person"), against any joint or several losses, claims, damages, liabilities or expenses (collectively, together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened, in respect thereof, "Claims") to which any of them may become subject insofar as such Claims arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or the omission or alleged omission to state therein a material fact required to be stated or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities (the matters in the foregoing clauses (i) through (iii) being, collectively, "Violations"). Subject to the restrictions set forth in Section 6(c) with respect to the number of legal counsel, the Company shall reimburse the Investors and each other Indemnified Person, promptly such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable, actual & appropriate out of pocket expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing by the Company to such Indemnified Person expressly for use in a Registration Statement or any such amendment or supplement thereto; (ii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld; and (iii) with respect to a preliminary prospectus, shall not inure to the benefit of any Indemnified Person if the untrue statement or omission of fact contained in the preliminary prospectus was corrected on a timely basis in the prospectus, as then amended or supplemented, if such corrected prospectus was timely made available by the Company pursuant to Section 3(c) hereof and the Indemnified Person was promptly advised in writing not to use the incorrect prospectus prior to the use giving rise to the Violation and such Indemnified Person, notwithstanding such advice, used it. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9 hereof.

Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement, its employees, agents and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, and any other stockholder selling securities pursuant to the Registration Statement or any of its directors or officers or any person who controls such stockholder within the meaning of the Securities Act or the Exchange Act (collectively and together with an Indemnified Person, an "Indemnified Party"), against any Claim to which any of them may become subject, under the Securities Act, the Exchange Act or otherwise, insofar as such Claim arises out of or is based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement; and subject to Section 6(c) such Investor will reimburse any legal or other expenses (promptly as such expenses are incurred and are due and payable) reasonably incurred by them in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 6(b) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld; provided, further, however, that the Investor shall be liable under this Agreement (including this Section 6(b) and Section 7) for only that amount as does not exceed the net proceeds actually received by such Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9 hereof. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(b) with respect to any preliminary prospectus shall not inure to the benefit of any Indemnified Party if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected on a timely basis in the prospectus, as then amended or supplemented, and the Indemnified Party failed to utilize such corrected prospectus.

c. Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 6 of notice of the commencement of any action (including any governmental action), such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; provided, however, that such indemnifying party shall not be entitled to assume such defense and an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential conflicts of interest between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding or the actual or potential defendants in, or targets of, any such action include both the Indemnified Person or the Indemnified Party and the indemnifying party and any such Indemnified Person or Indemnified Party reasonably determines that there may be legal defenses available to such Indemnified Person or Indemnified Party which are different from or in addition to those available to such indemnifying party. The indemnifying party shall pay for only one separate legal counsel for the Indemnified Persons or the Indemnified Parties, as applicable, and such legal counsel shall be selected by Investors holding a majority-in-interest of the Registrable Securities included in the Registration Statement to which the Claim relates (with the approval of the Initial Investors if they hold Registrable Securities included in such Registration Statement), if the Investors are entitled to indemnification hereunder, or by the Company, if the Company is entitled to indemnification hereunder as applicable. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 6, except to the extent that the indemnifying party is actually prejudiced in its ability to defend such action. The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.

## **7. CONTRIBUTION.**

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that (i) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 6, (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any seller of Registrable Securities who was not guilty of such fraudulent misrepresentation, and (iii) contribution (together with any indemnification or other obligations under this Agreement) by any seller of Registrable Securities shall be limited in amount to the net amount of proceeds received by such seller from the sale of such Registrable Securities pursuant to such Registration Statement.

## **8. REPORTS UNDER THE EXCHANGE ACT.**

With a view to making available to the Investors the benefits of Rule 144 promulgated under the Securities Act or any other similar rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration ("Rule 144"), the Company agrees to:

- a. File with the SEC in a timely manner and make and keep available all reports and other documents required of the Company under the Securities Act and the Exchange Act so long as the Company remains subject to such requirements (it being understood that nothing herein shall limit the Company's obligations under Section 4(c) of the Securities Purchase Agreement) and the filing and availability of such reports and other documents is required for the applicable provisions of Rule 144; and
- b. Furnish to each Investor so long as such Investor owns Debentures, Warrants or Registrable Securities promptly upon request, (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144, the Securities Act and the Exchange Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities under Rule 144 without registration.

#### **9. ASSIGNMENT OF REGISTRATION RIGHTS.**

The rights of the Investors hereunder, including the right to have the Company register Registrable Securities pursuant to this Agreement, shall be automatically assignable by each Investor to any transferee of all or any portion of the Debentures, the Warrants or the Registrable Securities if: (i) Debentures are transferred in increments of \$10,000 and the Warrants and Registrable Securities are transferred in increments of that number of shares of Common Stock issuable in relation to such increments of \$10,000 of face amount of the Debentures, (ii) the Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company after such assignment, (iii) the Company is furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned, (iv) following such transfer or assignment, the further disposition of such securities by the transferee or assignee is restricted under the Securities Act and applicable state securities laws (unless and to the extent registered hereunder), (v) the transferee or assignee agrees in writing for the benefit of the Company to be bound by all of the provisions contained herein, and (vi) such transfer shall have been made in accordance with the applicable requirements of the Securities Purchase Agreement.

#### **10. AMENDMENT OF REGISTRATION RIGHTS.**

Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in particular instance and either retroactively or prospectively), only with written consent of the Company and Investors who hold a majority in interest of the Registrable Securities; provided, however, that no amendment hereto which restricts the ability of an Investor to elect not to participate in an underwritten offering shall be effective against any Investor which does not consent in writing to such amendment provided, further, however, that no consideration shall be paid to an Investor by the Company in connection with an amendment hereto unless each Investor similarly affected by such amendment receives a pro-rata amount of consideration from the Company. Unless an Investor otherwise agrees, each amendment hereto must similarly affect each Investor. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company.

#### **11. MISCELLANEOUS.**

a. A person or entity is deemed to be a holder of Registrable Securities whenever such person or entity owns record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more persons or entities with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notices or election received from the registered owner of such Registrable Securities.

b. Any notices required or permitted to be given under the terms of this Agreement shall be sent by certified registered mail (return receipt requested) or delivered personally or by courier or by confirmed telecopy, and shall be effective five (5) days after being placed in the mail, if mailed, or upon receipt or refusal of receipt, if delivered personally or by courier or confirmed telecopy, in each case addressed to a party. The addresses for such communications shall be:

If to the Company:

80-02 Kew Gardens Road  
Suite 5000

Kew Garden, NY 11415  
Telecopy: (718) 793-4830  
Attention: Chief Executive Officer

and if to any Investor, at such address as such Investor shall have provided in writing to the Company, or at such other address as each such party furnishes by notice given in accordance with this Section 11(b).

c. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

d. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of choice of law or conflict of laws that would defer to the substantive law of another jurisdiction. The Company irrevocably consents to the jurisdiction of the United States federal courts and the state courts located in the City of New York in the State of New York in any suit or proceeding based on or arising under this Agreement and irrevocably agrees that all claims in respect of such suit or proceeding shall be determined exclusively in such courts. The Company irrevocably waives the defense of an inconvenient forum to the maintenance of such suit or proceeding. The Company further agrees that service of process upon the Company, mailed by first class mail shall be deemed in every respect effective service of process upon the Company in any such suit or proceeding. Nothing herein shall affect the Investors' right to serve process in any other manner permitted by law. The Company agrees that a final non-appealable judgment in any such suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on such judgment or in any other lawful manner.

e. This Agreement, the Securities Purchase Agreement (including all schedules and exhibits thereto) and the Warrants constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. This Agreement, the Securities Purchase Agreement and the Warrants supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

f. Subject to the requirements of Section 9 hereof, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.

g. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

h. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

i. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

j. All consents, approvals and other determinations to be made by the Investors or the Initial Investors pursuant to this Agreement shall be made by the Investors or the Initial Investors holding a majority in interest of the Registrable Securities (determined as if all Debentures and Warrants then outstanding had been converted into or exercised for Registrable Securities) held by all Investors or Initial Investors, as the case may be.

k. The initial number of Registrable Securities included on any Registration Statement and each increase (if any) to the number of Registrable Securities included thereon shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time of such establishment or increase, as the case may be. In the event an Investor shall sell or otherwise transfer any of such holder's Registrable Securities, each transferee shall be allocated a pro rata portion of the number of Registrable Securities included on a Registration Statement for such transferor. Any shares of Common Stock included on a Registration Statement and which remain allocated to any person or entity which does not hold any Registrable Securities shall be allocated to the remaining Investors, pro rata based on the number of shares of Registrable Securities then held by such Investors. For the avoidance of doubt, the number of Registrable Securities held by any Investor shall be determined as if all Debentures and Warrants then outstanding were converted into or exercised for Registrable Securities on the date of determination.

l. Each party to this Agreement has participated in the negotiation and drafting of this Agreement. At such time, the language used herein shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and the rule of strict construction will be applied against any party to this Agreement.

m. For purposes of this Agreement, the term "business day" means any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law, regulation or executive order to close.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first above written

**FIDELITY HOLDINGS, INC.**

By: /s/ Doron Cohen

Name: Doron Cohen  
Title: President

By:

Name:  
Title:

**INITIAL INVESTORS:**

**ZANETT LOMBARDIER, LTD. GOLDMAN SACHS PERFORMANCE PARTNERS, L.P.**

By: Commodities Corporation LLC, general partner

By: /s/ Gianluca Cicogna      By: /s/ Karen M. Judge

Name:                                  Name: Karen M. Judge

Title:                                  Title: Vice President

**GOLDMAN SACHS PERFORMANCE  
PARTNERS (OFFSHORE), L.P.**

By: Commodities Corporation LLC, general partner

By: /s/ Karen M. Judge

Name: Karen M. Judge  
Title: Vice President

/s/ David McCarthy

David McCarthy

/s/ Bruno Guazzoni

Bruno Guazzoni

EXHIBIT 1  
to  
Registration  
Rights  
Agreement  
[Date]

[Name and address  
of transfer agent]

RE: Fidelity Holdings, Inc.

Ladies and Gentlemen:

We are counsel to Fidelity Holdings, Inc., a corporation organized under the laws of the State of Nevada (the "Company"), and we understand that [Name of Investor] (the "Holder") has purchased from the Company Convertible Subordinated Term Debentures (the "Debentures") that are convertible into shares of the Company's Common Stock, par value \$.001 per share (the "Common Stock"), and (ii) warrants (the "Warrants") to acquire shares of Common Stock. Pursuant to a Registration Rights Agreement, dated as of January 25, 1999, by and among the Company, the Holder and the other signatories thereto (the "Registration Rights Agreement"), the Company agreed with the Holder, among other things, to register the Registrable Securities (as that term is defined in the Registration Rights Agreement) under the Securities Act of 1933, as amended (the "Securities Act"), upon the terms provided in the Registration Rights Agreement. In connection with the Company's obligations under the Registration Rights Agreement, on \_\_\_\_\_, \_\_\_\_\_, the Company filed a Registration Statement on Form S-\_\_\_\_ (File No. 333-\_\_\_\_\_) (the "Registration Statement") with the Securities and Exchange Commission (the "SEC") relating to the Registrable Securities, which names the Holder as a selling stockholder thereunder. The Registration Statement was declared effective by the SEC on \_\_\_\_\_, 1999.

[Other customary introductory and scope of examination language to be inserted]

Based on the foregoing, we are of the opinion that the Registrable Securities have been registered for resale under the Securities Act.

[Other customary language to be included including compliance with delivery of resale prospectus.]

Very truly yours,

cc: [Name of Investor]