AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON MARCH 6, 2002

REGISTRATION NO. 333-

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

NETFLIX, INC.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE	7841	77-0467272
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(PRIMARY STANDARD INDUSTRIAL CLASSIFICATION CODE NUMBER)	(I.R.S. EMPLOYER IDENTIFICATION NUMBER)

970 UNIVERSITY AVENUE
LOS GATOS, CA 95032
(408) 399-3700
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

W. BARRY MCCARTHY, JR.
CHIEF FINANCIAL OFFICER
970 UNIVERSITY AVENUE
LOS GATOS, CA 95032
(408) 399-3700

(Name, address, including zip code, and telephone number, including area code, of agent for service)

COPIES TO:

LARRY W. SONSINI, ESQ.	ROBERT SANCHEZ, ESQ.	JONATHAN A. SCHAFFZIN, ESQ.
WILSON SONSINI GOODRICH & ROSATI	WILSON SONSINI GOODRICH & ROSATI	CAHILL GORDON & REINDEL
PROFESSIONAL CORPORATION	PROFESSIONAL CORPORATION	80 PINE STREET
650 PAGE MILL ROAD	7927 JONES BRANCH DRIVE	NEW YORK, NEW YORK 10005
PALO ALTO, CA 94304	LANCASTER BUILDING WESTPARK,	(212) 701-3000
(650) 493-9300	SUITE 400	
	MCLEAN, VIRGINIA 22102	
	(703) 734-3100	

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: As soon

as practicable after the effective date of this Registration Statement.

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

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [_]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [_]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [_]

If delivery of the prospectus is expected to be made pursuant to rule 434, please check the following box. [_]

TITLE OF EACH CLASS OF SECURITIES TO BE REGISTERED	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE(1)	AMOUNT OF REGISTRATION FEE(2)
Common Stock $0.001 par value.....	$115,000,000	$10,580

(1) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933.
(2) Amount shall be offset against the registration fee of $22,770 previously paid by Netflix.com, Inc., our prior name, in connection with Registration Statement on Form S-1(No. 333-35014) filed on April 18, 2000 and withdrawn by Registrant on July 21, 2000 pursuant to Rule 457(p) of the Securities Act of 1933.

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

THE INFORMATION IN THIS PROSPECTUS IS NOT COMPLETE AND MAY BE CHANGED. WE MAY NOT SELL THESE SECURITIES UNTIL THE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IS EFFECTIVE. THIS PROSPECTUS IS NOT AN OFFER TO SELL THESE SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY THESE SECURITIES IN ANY STATE WHERE THE OFFER OR SALE IS NOT PERMITTED.

SUBJECT TO COMPLETION
PRELIMINARY PROSPECTUS DATED , 2002

PROSPECTUS

SHARES

[LOGO] NETFLIX.COM, INC.

COMMON STOCK

This is Netflix, Inc.'s initial public offering of common stock. We are selling all of the shares.

We expect the public offering price to be between $ and $ per share. Currently, no public market exists for the shares. After pricing of the offering, we expect that the shares will be quoted on the Nasdaq National Market under the symbol "NFLX."

INVESTING IN OUR COMMON STOCK INVOLVES RISKS THAT ARE DESCRIBED IN THE

"RISK FACTORS" SECTION BEGINNING ON PAGE 5 OF THIS PROSPECTUS.

	PER SHARE	TOTAL
Public offering price	$	$
Underwriting discount	$	$
Proceeds, before expenses, to Netflix, Inc.	$	$

The underwriters may also purchase up to an additional shares from us at the public offering price, less the underwriting discount, within 30 days from the date of this prospectus to cover over-allotments.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The shares will be ready for delivery on or about , 2002.

MERRILL LYNCH & CO.

THOMAS WEISEL PARTNERS LLC

U.S. BANCORP PIPER JAFFRAY

The date of this prospectus is , 2002.

[INSIDE FRONT COVER]

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You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized any other person to provide you with different information. If

anyone provides you with different or inconsistent information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus or other date stated in this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.

Netflix, Netflix.com, CineMatch and Mr. DVD are our trademarks. Each trademark, trade name or service mark of any other company appearing in this prospectus belongs to its holder.

SUMMARY

THIS SUMMARY HIGHLIGHTS INFORMATION CONTAINED ELSEWHERE IN THIS PROSPECTUS. YOU SHOULD READ THE ENTIRE PROSPECTUS CAREFULLY, INCLUDING "RISK FACTORS" AND OUR FINANCIAL STATEMENTS AND THE NOTES TO THOSE FINANCIAL STATEMENTS APPEARING ELSEWHERE IN THIS PROSPECTUS BEFORE YOU DECIDE TO INVEST IN OUR COMMON STOCK.

OUR COMPANY

We are the world's largest online entertainment subscription service providing more than 500,000 subscribers access to a comprehensive library of more than 11,500 movie, television and other filmed entertainment titles. Our standard subscription plan allows subscribers to have three titles out at the same time with no due dates, late fees or shipping charges for $19.95 per month. Subscribers can view as many titles as they want in a month. Subscribers select titles at our Web site (WWW.NETFLIX.COM) aided by our proprietary CineMatch technology, receive them on DVD by first-class mail and return them to us at their convenience using our prepaid mailers. Once a title has been returned, we mail the next available title in a subscriber's queue.

In 2001, domestic consumers spent more than $32 billion on in-home filmed entertainment, representing approximately 80% of total filmed entertainment expenditures, according to Adams Media Research. Consumer video rentals and purchases comprised the largest portion of in-home filmed entertainment, representing $23 billion, or 73% of the market in 2001, according to Adams Media Research.

The home video segment of the in-home filmed entertainment market is undergoing a rapid technology transition away from VHS to DVD. The DVD player is the fastest selling consumer electronics device in history, according to DVD Entertainment Group. In September 2001, standalone set-top DVD player shipments outpaced VCR shipments for the first time in history, and this trend continued throughout the remainder of 2001. At the end of 2001, approximately 25 million U.S. households had a standalone set-top DVD player, representing an increase of 97% in 2001. Adams Media Research estimates that the number of U.S. households with a DVD player will grow to 67 million in 2006, representing approximately 60% of U.S. television households in 2006.

Our subscription service has grown rapidly since its launch in September 1999. We believe our growth has been driven primarily by our unrivalled selection, consistently high levels of customer satisfaction, rapid customer adoption of DVD players and our increasingly effective marketing strategy. We primarily use pay-for-performance marketing programs and free trial offers to acquire new subscribers. In the San Francisco Bay area, where the U.S. Post Office can make one- or two-day deliveries from our San Jose distribution center, more than 2.6% of all households subscribe to Netflix.

Our proprietary CineMatch technology enables us to create a customized store for each subscriber and to generate personalized recommendations which effectively merchandize our comprehensive library of titles. We provide more than 18 million personal recommendations daily. In January 2002, more than 10,500 of our 11,500 titles were selected by our subscribers.

We currently provide titles on DVD only. We are focused on rapidly growing our subscriber base and revenues and utilizing our proprietary technology to minimize operating costs. Our technology is extensively employed to manage and integrate our business, including our Web site interface, order processing, fulfillment operations and customer service. We believe our technology also allows us to maximize our library utilization and to run our fulfillment operations in a flexible manner with minimal capital requirements.

Our scalable infrastructure and online interface eliminate the need for expensive retail outlets and allow us to service our large and expanding subscriber base from a series of low-cost regional distribution centers. We

utilize proprietary technology developed in-house to manage the shipping and receiving of a total of 5.1 million DVDs per month. Our software automates the process of tracking and routing titles to and from each of our distribution centers and allocates order responsibilities among them. We plan to operate low-cost regional distribution centers throughout the United States to reduce delivery times and increase library utilization.

We were incorporated in Delaware in August 1997 and changed our name to Netflix, Inc. in March 2002. Our executive offices are located at 970 University Avenue, Los Gatos, California 95032, and our telephone number at that address is (408) 399-3700. Our Web site is located at http://www.netflix.com. The information contained in our Web site does not constitute a part of this prospectus.

THE OFFERING

Common stock offered by Netflix.....	shares
Common stock to be outstanding after the offering.....	shares
Use of proceeds.....	We estimate that our net proceeds from this offering will be approximately $ million. We intend to use the net proceeds for: . repayment of approximately $13.7 million of indebtedness under our subordinated promissory notes, including accrued interest as of December 31, 2001; and . general corporate purposes, including, among other things, additional working capital, financing of capital expenditures and additional marketing efforts.
Risk factors.....	See "Risk Factors" and other information included in this prospectus for a discussion of factors you should carefully consider before deciding to invest in shares of our common stock.
Proposed Nasdaq National Market symbol.	NFLX

Unless we indicate otherwise, all information in this prospectus: (1) assumes no exercise of the over-allotment option granted to the underwriters;
(2) assumes the conversion into common stock of each outstanding share of our preferred stock, which will occur automatically upon the completion of this offering; (3) is based upon 45,129,402 shares outstanding as of February 28, 2002, including shares to be issued to certain studios immediately prior to this offering based on our capitalization as of February 28, 2002; (4) does not give effect to a for reverse stock split to be effected in 2002; and (5) excludes:

. 12,998,864 shares of common stock issuable upon the exercise of stock options outstanding as of February 28, 2002, with a weighted average exercise price of $1.00 per share and 3,331,456 shares of common stock available for future option grants under our 1997 Stock Plan and 2002 Stock Plan, each as of February 28, 2002;

. 21,053,931 shares of common stock issuable upon exercise of warrants with a weighted average exercise price of $1.07 per share; and

. 1,750,000 shares of common stock reserved for issuance under our 2002 Employee Stock Purchase Plan.

SUMMARY FINANCIAL AND OTHER DATA

The summary financial data below should be read together with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and the related notes included elsewhere in this prospectus.

	YEAR ENDED DECEMBER 31,		
	1999	2000	2001
			(IN THOUSANDS)
STATEMENT OF OPERATIONS DATA:			
Total revenues	$ 5,006	$ 35,894	$ 75,912
Gross profit	633	11,033	26,005
Operating loss	(30,031)	(57,557)	(36,867)
Net loss	(29,845)	(57,363)	(38,258)
OTHER DATA:			
EBITDA(1) (unaudited)	$(21,223)	$(28,179)	$ (1,716)
Number of subscribers (unaudited)	107	292	456
Net cash provided by (used in):			
Operating activities	$(16,529)	$(22,706)	$ 4,847
Investing activities	(19,742)	(24,972)	(12,670)
Financing activities	49,408	48,375	9,059

	AS OF DECEMBER 31, 2001
	PRO FORMA

	ACTUAL	PRO FORMA (2)	AS ADJUSTED (3)
		(IN THOUSANDS)	
BALANCE SHEET DATA:			
Cash and cash equivalents	$ 16,131	$ 16,131	$
Working capital (deficit)	(6,656)	(6,656)	
Total assets	41,630	41,630	
Long-term debt, less current portion	3,856	3,856	
Redeemable convertible preferred stock	101,830	--	
Stockholders' equity (deficit)	(90,504)	11,326	

(1) EBITDA consists of operating loss before depreciation, amortization, non-cash charges for equity instruments granted to non-employees and stock-based compensation. EBITDA provides an alternative measure of cash flow from operations. You should not consider EBITDA as a substitute for operating loss, as an indicator of our operating performance or as an alternative to cash flows from operating activities as a measure of liquidity. We may calculate EBITDA differently from other companies.
(2) The pro forma column gives effect to the conversion of all outstanding shares of our preferred stock, including shares to be issued to certain studios immediately prior to this offering, into shares of common stock automatically upon completion of this offering.
(3) The pro forma as adjusted column gives effect to the sale of shares of common stock offered by us at an assumed initial public offering price of $ per share and the application of the net proceeds from the offering, after deducting underwriting discounts and commissions and estimated offering expenses, including repayment of our subordinated promissory notes.

RISK FACTORS

YOU SHOULD CAREFULLY CONSIDER THE RISKS DESCRIBED BELOW BEFORE BUYING SHARES IN THIS OFFERING. IF ANY OF THE FOLLOWING RISKS ACTUALLY OCCUR, OUR BUSINESS, FINANCIAL CONDITION AND RESULTS OF OPERATIONS COULD BE HARMED. IN THAT CASE, THE TRADING PRICE OF OUR COMMON STOCK COULD DECLINE, AND YOU COULD LOSE ALL OR PART OF YOUR INVESTMENT.

RISKS RELATED TO OUR BUSINESS

WE HAVE A LIMITED OPERATING HISTORY AND HISTORY OF NET LOSSES, AND WE ANTICIPATE THAT WE WILL EXPERIENCE NET LOSSES FOR THE FORESEEABLE FUTURE.

You should consider our business and prospects in light of the risks, expenses and difficulties encountered by companies in their early stage of development. We have experienced significant net losses since our inception and, given the significant operating and capital expenditures associated with our business plan, anticipate continuing net losses for the foreseeable future. If we do achieve profitability, we cannot be certain that we will be able to sustain or increase such profitability. We incurred net losses of $38.3 million for the year ended 2001. As of December 31, 2001, we had stockholders' deficit of $90.5 million. Only recently, beginning in 2001, have we generated positive cash flow from operations, and we cannot be certain that we will be able to sustain or increase such positive cash flow from operations from period to period in the future.

To achieve and sustain profitability, we must accomplish numerous objectives, including:

. substantially increasing the number of paying subscribers to our service; and

. improving operating margins.

We cannot assure you that we will be able to achieve these objectives.

IF OUR EFFORTS TO ATTRACT SUBSCRIBERS ARE NOT SUCCESSFUL, OUR REVENUE GROWTH WILL BE AFFECTED ADVERSELY.

We must continue to attract and retain subscribers. To succeed, we must continue to attract a large number of subscribers who have traditionally used video retailers, video rental outlets, pay cable channels, such as HBO and Showtime, and pay-per-view and video-on-demand, or VOD, for in-home filmed entertainment. Our ability to attract and retain subscribers will depend in part on our ability to consistently provide our subscribers a high quality experience for selecting, viewing, receiving and returning titles, including providing accurate recommendations through our CineMatch technology. If consumers do not perceive our service offering to be of high quality, or if we introduce new services that are not favorably received by them, we may not be able to attract or retain subscribers. In addition, many of our new subscribers originate from word-of-mouth advertising and referrals from existing subscribers. If our efforts to satisfy our existing subscribers are not successful, we may not be able to attract new subscribers, and as a result, our revenue growth will be affected adversely.

WE RELY HEAVILY ON OUR PROPRIETARY TECHNOLOGY AND THE FAILURE OF THIS TECHNOLOGY TO OPERATE EFFECTIVELY COULD ADVERSELY AFFECT OUR BUSINESS.

We use complex proprietary software to manage the processing and allocation of deliveries and returns at our distribution centers. If we are unable to enhance and maintain software to manage the delivery and returns among our distribution centers in a timely and efficient manner, our ability to retain existing subscribers and to add new subscribers will be impaired.

IF WE ARE NOT ABLE TO MANAGE OUR GROWTH, OUR SUBSCRIBER GROWTH COULD BE AFFECTED ADVERSELY.

We have expanded rapidly since we launched our Web site in April 1998. We anticipate that further expansion of our operations will be required to address any significant growth in our subscriber base and to take advantage of favorable market opportunities. Any future expansion may place significant demands on our

managerial, operational, administrative and financial resources. Our primary distribution center is in San Jose, California. We recently began to open regional distribution centers outside of the San Francisco Bay area.

IF WE EXPERIENCE EXCESSIVE RATES OF SUBSCRIBER CHURN, OUR REVENUES AND BUSINESS WILL BE HARMED.

We must minimize the rate of loss of existing subscribers while adding new subscribers. Subscribers cancel their subscription to our service for many reasons, including a perception that they do not use the service sufficiently, delivery takes too long, the service is a poor value and customer service issues are not satisfactorily resolved. We must continually add new subscribers both to replace subscribers who cancel and to continue to grow our business beyond our current subscriber base. If too many of our subscribers cancel our service, or if we are unable to attract new subscribers in numbers sufficient to grow our business, our operating results will be adversely affected. Further, if excessive numbers of subscribers cancel our service, we may be required to incur significantly higher marketing expenditures than we currently anticipate to attract large numbers of new subscribers.

IF WE EXPERIENCE DELIVERY PROBLEMS OR IF OUR SUBSCRIBERS OR POTENTIAL SUBSCRIBERS LOSE CONFIDENCE IN THE U.S. MAIL SYSTEM, WE COULD LOSE SUBSCRIBERS, WHICH COULD ADVERSELY AFFECT OUR REVENUES.

We rely on the U.S. Postal Service to deliver DVDs from our distribution centers and for subscribers to return DVDs to us. We are subject to the risks associated with the public mail system to meet our shipping needs, including delays caused by bioterrorism, potential labor activism and inclement weather. For example, in the fall of 2001 terrorists used the U.S. Postal Service to deliver envelopes containing Anthrax, following which mail deliveries around the United States experienced significant delays. Our DVDs also are subject to risks of breakage during delivery and handling by the U.S. Postal Service. Our failure to timely deliver DVDs to our subscribers could cause them to become dissatisfied and cancel our service.

INCREASES IN THE COST OF DELIVERING DVDS WOULD ADVERSELY AFFECT OUR GROSS MARGINS AND MARKETING EXPENSES.

Increases in postage delivery rates would adversely affect our gross margins if we are unable to raise our subscription rates to offset the increase. Currently, most filmed entertainment is packaged on a single DVD. Our delivery process is designed to accommodate the delivery of one DVD to fulfill a selection. However, studios occasionally provide additional content on a second

DVD, or may package certain filmed entertainment on two DVDs. Also, DVDs are generally manufactured on lightweight plastic allowing us to mail one envelope containing a title using standard first-class postage. If packaging of filmed entertainment on multiple DVDs were to become more prevalent, or if the weight of DVDs were to increase, our costs of delivery and fulfillment processing would increase. In addition, we expense shipping costs of free trial programs to new subscribers as marketing expense. Therefore, if the cost of delivering titles were to increase, our marketing expense would be adversely affected.

IF WE DO NOT CORRECTLY ANTICIPATE OUR SHORT AND LONG-TERM NEEDS FOR TITLES, OUR SUBSCRIBER SATISFACTION AND RESULTS OF OPERATIONS MAY BE AFFECTED ADVERSELY.

We may not acquire sufficient numbers of certain titles to meet the demands of our subscribers. If we do not accurately forecast subscriber demand for new titles, our subscriber satisfaction and operating results will be harmed. Under our revenue sharing agreements with studios, the number of copies we buy before the street date of each title must be sufficient to meet subscriber demand for the revenue sharing life of each title, typically 12 months. If we underestimate demand for particular titles under any revenue sharing agreements, our subscribers may become dissatisfied and cancel our service. Alternatively, if we overestimate demand and acquire excess quantities of certain titles our inventory utilization would become less effective.

IF OUR SUBSCRIBERS SELECT MORE NEW RELEASES AS A PERCENTAGE OF TITLES SELECTED, OR IF WE EXPERIENCE INCREASED DEMAND FOR TITLES ON A SUBSCRIBER-BY-SUBSCRIBER BASIS, OUR EXPENSES AND GROSS MARGINS MAY BE AFFECTED ADVERSELY.

Depending on the service, subscribers are allowed to have between two and eight movies at a time. If our subscribers select new releases more often as a percentage of overall titles selected, we may have to acquire more copies of each new release. As a result, our costs of DVD acquisition and our revenue sharing costs may increase. In addition, if our subscribers take more titles per month than we have anticipated, we will incur increased shipping and fulfillment costs and will be required to acquire more DVDs, which will adversely affect our margins. Subscriber demand for movies, or new releases in particular, may increase for a variety of reasons beyond our control, including promotions by studios and seasonal variations in movie watching. Our subscriber growth and retention may be affected adversely if we attempt to increase our monthly subscription fee to offset increased costs.

WE FACE INTENSE COMPETITION FROM TRADITIONAL AND ONLINE COMPANIES, WHICH COULD RESULT IN OUR FAILURE TO ACHIEVE ADEQUATE MARKET SHARE.

The market for in-home filmed entertainment is intensely competitive and subject to rapid change. Many consumers maintain simultaneous relationships with multiple in-home filmed

entertainment providers and can easily shift spending from one provider to another. For example, consumers may subscribe to HBO, rent a DVD from Blockbuster, buy a DVD from Wal-Mart and subscribe to Netflix, or some combination thereof, all in the same month. Competitors may be able to launch new businesses at relatively low cost. DVDs represent only one of many existing and potential new technologies for viewing filmed entertainment. In addition, the growth in adoption of DVD technology is not mutually exclusive from the growth of other technologies. If we are unable to successfully compete with current and new competitors and technologies, we may not be able to achieve adequate market share. Our principal competitors include, or could include:

. video rental outlets, such as Blockbuster Video and Hollywood Entertainment;

. movie retail stores, such as Best Buy, Wal-Mart and Amazon.com;

. subscription entertainment services, such as HBO and Showtime;

. pay-per-view and video-on-demand services;

. online DVD sites, such as dvdovernight and Rentmydvd.com;

. Internet movie providers, such as Movielink, backed by Columbia TriStar, Warner Bros. and a few other studios, Movies.com, backed by Walt Disney and Twentieth Century Fox, and CinemaNow.com;

. cable providers, such as AOL Time Warner and Comcast; and

. direct broadcast satellite providers, such as DirectTV and Echostar.

Many of our competitors have longer operating histories, larger customer bases, greater brand recognition and significantly greater financial, marketing and other resources than we do. Some of our competitors have adopted, and may continue to adopt, aggressive pricing policies and devote substantially more resources to Web site and systems development than we do. Increased competition may result in reduced operating margins, loss of market share and diminished brand recognition. In addition, our competitors may form strategic alliances with studios and distributors that could affect adversely our ability to obtain filmed entertainment on favorable terms.

IF CONSUMER ADOPTION OF DVD PLAYERS SLOWS, OUR BUSINESS COULD BE ADVERSELY AFFECTED.

The rapid adoption of DVD players has been fueled by strong retail support, strong studio support and falling DVD player prices. If retailers or studios reduce their support of the DVD format, or if manufacturers

raise prices, continued DVD adoption by consumers would slow. If new or existing technologies, such as D-VHS, were to become more popular at the expense of the adoption or use of DVD technology, consumers may delay or avoid purchasing a DVD player. Our subscriber growth will be substantially influenced by future consumer adoption of DVD players, and if such adoption slows, our subscriber growth may also slow.

WE DEPEND ON STUDIOS TO RELEASE TITLES ON DVD FOR AN EXCLUSIVE TIME PERIOD FOLLOWING THEATRICAL RELEASE.

Our ability to attract and retain subscribers is related to our ability to offer new releases of filmed entertainment on DVD prior to their release to other distribution channels. Except for theatrical release, DVD and VHS currently enjoy a significant competitive advantage over other distribution channels, such as pay-per-view and VOD, because of the early timing of the distribution window for DVD and VHS. The window for DVD and VHS rental and retail sales is generally exclusive against other forms of non-theatrical movie distribution, such as pay-per-view, premium television, basic cable and network and syndicated television. The length of the exclusive window for movie rental and retail sales varies, typically ranging from 30 to 90 days.

Our business could suffer increased competition if:

. the window for rental were no longer the first following the theatrical release; or

. the length of this window were shortened.

The order, length and exclusivity of each window for each distribution channel is determined solely by the studio releasing the title, and we cannot assure you that the studios will not change their policies in the future in a manner that would be adverse to our business and results of operations. In addition, any conditions that adversely affect the movie industry, including constraints on capital, financial difficulties, regulatory requirements and strikes, work stoppages or other disruptions involving writers, actors or other essential personnel, could affect adversely the availability of new titles, consumer demand for filmed entertainment and our business.

IF WE ARE UNABLE TO RENEGOTIATE OUR REVENUE SHARING AGREEMENTS WHEN THEY EXPIRE ON TERMS FAVORABLE TO US, OR IF THE COST TO US OF PURCHASING TITLES ON A WHOLESALE BASIS INCREASES, OUR GROSS MARGINS MAY BE AFFECTED ADVERSELY.

In 2001, we acquired approximately 80% of our titles through revenue sharing agreements with studios and distributors. These revenue sharing agreements generally have terms of up to five years. The length of time we share revenue on each title ends after a fixed period. As our revenue sharing agreements expire, we may be required to negotiate new terms that could be disadvantageous to us.

Titles that we do not acquire under a revenue sharing agreement are purchased on a wholesale basis from studios or other distributors. If the price of titles that we purchase wholesale increases, our gross margin will be affected adversely.

IF THE SALES PRICE OF DVDS TO RETAIL CONSUMERS DECREASES, OUR ABILITY TO ATTRACT NEW SUBSCRIBERS MAY BE AFFECTED ADVERSELY.

The cost of manufacturing DVDs is substantially less than the price for which new DVDs are generally sold in the retail market. Thus, we believe that studios and other resellers of DVDs have significant flexibility in pricing DVDs for retail sale. If the retail price of DVDs were to become significantly lower, consumers may choose to purchase DVDs rather than subscribe to our service.

IF DISPOSABLE DVDS ARE DEVELOPED, ADOPTED AND SUPPORTED AS A METHOD OF CONTENT DELIVERY BY THE STUDIOS, OUR BUSINESS COULD BE ADVERSELY AFFECTED.

We are currently aware that certain entities are attempting to develop disposable DVDs. As currently contemplated, disposable DVDs would allow a consumer to view a DVD for an unlimited number of times

during a given time period, following which the DVD becomes unplayable by a chemical reaction, and is then disposable.

IF WE ARE UNABLE TO PROVIDE CONSISTENTLY ACCURATE PREDICTIONS THROUGH OUR PERSONAL MOVIE RECOMMENDATION SERVICE OR OUR PERSONAL MOVIE RECOMMENDATION SERVICE IS NOT WIDELY ADOPTED, OUR BUSINESS MAY SUFFER.

Our CineMatch technology uses proprietary algorithms to predict and recommend titles to our subscribers. We rely on this technology to effectively merchandize our library. We cannot assure you that our personal movie recommendation service or experts' recommendations will effectively entice subscribers to select from our back catalogue of titles. In addition, our CineMatch technology may not effectively predict titles that our subscribers will enjoy. If our recommendations are not useful, we may not effectively utilize our library or retain subscribers. In addition, we believe that in order for CineMatch to function effectively, it must access a large database of recommendation information from a large number of users. We cannot assure you that we will be successful in continuing to attract a large number of users to rate movies.

IF WE FAIL TO MAINTAIN OR ADEQUATELY REPLACE OUR RELATIONSHIPS WITH THIRD PARTIES WITH WHOM WE HAVE MARKETING RELATIONSHIPS AND ON WHOM WE RELY FOR MANY OF OUR SUBSCRIBERS, OUR SUBSCRIPTION ACQUISITION RATES MAY BE AFFECTED ADVERSELY.

We rely on third parties, including DVD player manufacturers, Web portals and online advertising promoters, to aid in our marketing efforts. If we are not able to continue our current or similar promotional campaigns, our ability to attract new subscribers may be affected

adversely. Our competitors may offer our promotional affiliates better terms or otherwise provide them incentives to discontinue their participation in our marketing campaigns. In addition, while the DVD player manufacturers with whom we have promotional relationships are required to include our promotional materials with every DVD player they sell, we cannot effectively control what portion of DVD players sold by them actually include the promotional materials.

FOLLOWING THE OFFERING, WE MAY NEED ADDITIONAL CAPITAL, AND WE CANNOT BE SURE THAT ADDITIONAL FINANCING WILL BE AVAILABLE.

Historically, we have funded our operating losses and capital expenditures through proceeds from private equity and debt financings and equipment leases. Although we currently anticipate that the proceeds of this offering, together with our available funds and cash flow from operations, will be sufficient to meet our cash needs for the foreseeable future, we may require additional financing. Our ability to obtain financing will depend, among other things, on our development efforts, business plans, operating performance and condition of the capital markets at the time we seek financing. We cannot assure you that additional financing will be available to us on favorable terms when required, or at all. If we raise additional funds through the issuance of equity, equity-linked or debt securities, those securities may have rights, preferences or privileges senior to the rights of our common stock, and our stockholders may experience dilution.

ANY SIGNIFICANT DISRUPTION IN SERVICE ON OUR WEB SITE OR IN OUR COMPUTER SYSTEMS COULD RESULT IN A LOSS OF SUBSCRIBERS.

Subscribers and potential subscribers access our service through our Web site, where the title selection process is integrated with our delivery processing systems and software. Our reputation and ability to attract, retain and serve our subscribers is dependent upon the reliable performance of our Web site, network infrastructure and fulfillment processes. Interruptions in these systems could make our Web site unavailable and hinder our ability to fulfill selections. Much of our software is proprietary, and we rely on the expertise of members of our engineering and software development teams for the continued performance of our software and computer systems. Service interruptions or the unavailability of our Web site could diminish the overall attractiveness of our subscription service to existing and potential subscribers.

Our servers are vulnerable to computer viruses, physical or electronic break-ins and similar disruptions, which could lead to interruptions and delays in our service and operations and loss, misuse or theft of data. Our Web site periodically experiences directed attacks intended to cause a disruption in service. Any attempts by hackers to disrupt our Web site service or our internal systems, if successful, could harm our business, be expensive to remedy and damage our reputation. Our general business disruption insurance does not cover expenses related to direct attacks on our Web site or internal systems. Efforts to prevent hackers from entering our computer systems are expensive to implement and may limit the functionality of our services.

Any significant disruption to our Web site or internal computer systems could result in a loss of subscribers and adversely affect our business and results of operations.

Our communications hardware and the computer hardware used to operate our Web site are hosted at the facilities of a third party provider. Hardware for our delivery systems is maintained in our distribution centers. Fires, floods, earthquakes, power losses, telecommunications failures, break-ins and similar events could damage these systems and hardware or cause them to fail completely. Problems faced by our third party Web hosting provider, with the telecommunications network providers with whom it contracts or with the systems by which it allocates capacity among its subscribers, including us, could impact adversely the experience of our subscribers. Any of these problems could result in a loss of subscribers.

OUR EXECUTIVE OFFICES AND PRIMARY DISTRIBUTION CENTER ARE LOCATED IN THE SAN FRANCISCO BAY AREA. IN THE EVENT OF AN EARTHQUAKE, OTHER NATURAL OR MAN-MADE DISASTER OR POWER LOSS, OUR OPERATIONS WOULD BE AFFECTED ADVERSELY.

Our executive offices and primary distribution center are located in the San Francisco Bay area. Our business and operations could be materially adversely affected in the event of electrical blackouts, fires, floods, earthquakes, power losses, telecommunications failures, break-ins or similar events. We may not be able to effectively shift our fulfillment and delivery operations due to disruptions in service in the San Francisco Bay area or any other facility. Because the San Francisco Bay area is located in an earthquake-sensitive area, we are particularly susceptible to the risk of damage to, or total destruction of, our primary distribution center and the surrounding transportation infrastructure. We are not insured against any losses or expenses that arise from a disruption to our business due to earthquakes.

THE LOSS OF ONE OR MORE OF OUR EXECUTIVE OFFICERS OR OTHER KEY PERSONNEL, OR OUR FAILURE TO ATTRACT, ASSIMILATE AND RETAIN OTHER HIGHLY QUALIFIED PERSONNEL IN THE FUTURE, COULD SERIOUSLY HARM OUR EXISTING BUSINESS AND NEW SERVICE DEVELOPMENTS.

We depend on the continued services and performance of our executive officers and other key personnel. Much of our key technology and systems are custom made for our business by our personnel and the loss of our key technology personnel could disrupt the operation of our title selection and fulfillment systems and have an adverse effect on our ability to grow and expand our systems. Our future success also depends upon the continued service of our other key technology, marketing, finance and support personnel. Our relationships with our executive officers and key employees are at will.

PRIVACY CONCERNS COULD LIMIT OUR ABILITY TO LEVERAGE OUR SUBSCRIBER DATA.

In the ordinary course of business, and in particular, in connection with providing our personal movie recommendation service, we collect and utilize data supplied by our subscribers. We currently face certain legal obligations regarding the manner in which we treat such information.

Other businesses have been criticized by privacy groups and governmental bodies for attempts to link personal identities and other information to data collected on the Internet regarding users' browsing and other habits. Increased regulation of data utilization practices, including self-regulation, as well as increased enforcement of existing laws could have an adverse effect on our business.

OUR REPUTATION AND RELATIONSHIPS WITH SUBSCRIBERS WOULD BE HARMED IF THE ONLINE SECURITY MEASURES USED BY US OR ANY OTHER MAJOR CONSUMER WEB SITE FAIL OR IF WE EXPERIENCE PROBLEMS WITH OUR BILLING SOFTWARE.

To secure transmission of our subscribers' confidential information, including their credit card numbers, we rely on licensed encryption and authentication technology. In conjunction with the credit card companies, we take measures to protect against unauthorized intrusion into our data that may prove inadequate to protect our subscribers' personal information. A failure to adequately control fraudulent credit card transactions would harm our results of operations because we do not currently carry insurance against this risk. We may suffer losses as a result of orders placed with fraudulent credit card data even though the associated financial institution approved payment of the orders. Under current credit card practices, we are liable for fraudulent credit card transactions because we do not obtain a cardholder's signature. In addition, if another major consumer Web site experienced significant credit card fraud or a well-publicized breach of subscriber data security on the Internet were to occur, there could be a general public loss of confidence in use of the Internet, which could adversely affect our business.

Further, we have occasionally experienced problems with our subscriber billing software causing us to overbill subscribers. Problems with our billing software may have an adverse effect on our subscriber satisfaction and may cause one or more of the major credit companies to disallow our continued use of their payment products.

IF THE PROTECTION OF OUR TRADEMARKS AND PROPRIETARY RIGHTS IS INADEQUATE, OUR BRAND MAY BE DIMINISHED, AND WE MAY ENCOUNTER INCREASED COMPETITION.

We rely or may rely on confidentiality or license agreements with our employees, partners and others, as well as trademark, copyright and patent law and trade secret protection laws generally, to protect our proprietary rights. Our failure to protect our proprietary rights could affect adversely our business and competitive position. We have filed trademark applications in the United States for the Netflix, Netflix.com, CineMatch and Mr. DVD names, and have filed a U.S. patent application for aspects of our technology. We filed for but did not receive approval for the Netflix design logo and thus, intend to file an amended application for the Netflix design logo. From time to time, we expect to file additional trademark and patent applications. We cannot assure you that any of these applications will be approved, that any issued patents will protect our intellectual property or that third parties will not challenge any issued patents. Other

parties may independently develop similar or competing technology or design around any patents that may be issued to us. We could incur significant expenses in preserving and defending our intellectual property rights.

INTELLECTUAL PROPERTY CLAIMS AGAINST US COULD BE COSTLY AND RESULT IN THE LOSS OF SIGNIFICANT RIGHTS RELATED TO, AMONG OTHER THINGS, OUR WEB SITE, CINEMATCH TECHNOLOGY AND TITLE SELECTION PROCESSES.

Trademark, patent and other intellectual property rights are becoming increasingly important to us and other Internet companies. If there is a successful claim of patent infringement against us and we are unable to develop non-infringing technology or license the infringed or similar technology on a timely basis, our business and competitive position may be affected materially and adversely. Many companies are devoting significant resources to developing patents that could potentially affect many aspects of our business. There are numerous patents that broadly claim means and methods of conducting business on the Internet. We may be accused of infringing certain of these patents. In addition, other parties may assert infringement or unfair competition claims against us that could relate to any aspect of our technology, business processes or other intellectual property. We have not exhaustively searched patents relative to our technology. We cannot predict whether third parties will assert claims of infringement against us, the subject matter of any of these claims or whether these assertions or prosecutions will adversely affect our business. If we are forced to defend ourselves against any of these claims, whether they are with or without merit or are determined in our favor, we may face costly litigation, diversion of technical and management personnel, inability to use our current Web site or CineMatch technology or product shipment delays. As a result of a dispute, we may have to develop non-infringing technology or enter into royalty

or licensing agreements. These royalty or licensing agreements, if required, may be unavailable on terms acceptable to us, or at all.

IF WE ARE UNABLE TO PROTECT OUR DOMAIN NAMES, OUR REPUTATION AND BRAND COULD BE AFFECTED ADVERSELY.

We currently hold various domain names relating to our brand, including Netflix.com. Failure to protect our domain names could affect adversely our reputation and brand, and make it more difficult for users to find our Web site and our service. The acquisition and maintenance of domain names generally are regulated by governmental agencies and their designees. The regulation of domain names in the United States may change in the near future. Governing bodies may establish additional top-level domains, appoint additional domain name registrars or modify the requirements for holding domain names. As a result, we may be unable to acquire or maintain relevant domain names. Furthermore, the relationship between regulations governing domain names and laws protecting trademarks and similar proprietary rights is unclear. We may be unable to prevent third parties from acquiring domain names that are similar to, infringe upon or otherwise decrease the value of our trademarks and other proprietary rights.

BECAUSE OUR BUSINESS IS ACCESSED OVER THE INTERNET, IF THE INTERNET INFRASTRUCTURE IS NOT DEVELOPED OR MAINTAINED, WE WILL LOSE SUBSCRIBERS.

The Internet may not become a viable commercial marketplace for many potential subscribers due to inadequate development of network infrastructure and enabling technologies that address consumer concerns about:

. network performance;

. security;

. reliability;

. speed of access;

. ease of use; and

. bandwidth availability.

The Internet has experienced a variety of outages and delays as a result of damage to portions of its infrastructure, and it could face outages and delays in the future. These outages and delays could frustrate public use of the Internet, including use of our Web site offerings. In addition, the Internet could lose its viability due to delays in the development or adoption of new standards and protocols to handle increased levels of activity or due to governmental regulation.

IF WE BECOME SUBJECT TO LIABILITY FOR THE INTERNET CONTENT THAT WE PUBLISH OR UPLOAD FROM OUR USERS, OUR RESULTS OF OPERATIONS WOULD BE AFFECTED ADVERSELY IF SUCH LIABILITY EXCEEDS OUR INSURANCE COVERAGE.

As a publisher of online content, we face potential liability for negligence, copyright, patent or trademark infringement or other claims based on the nature and content of materials that we publish or distribute. We also may face potential liability for content uploaded from our users in connection with our community-related content or movie reviews. If we become liable, particularly for claims that are not covered by our insurance or are in excess of our insurance coverage, then our business may suffer. Litigation to defend these claims could be costly and harm our results of operations. We cannot assure you that we are adequately insured to cover claims of these types or to indemnify us for all liability that may be imposed on us.

WE MAY NEED TO CHANGE THE MANNER IN WHICH WE CONDUCT OUR BUSINESS, OR INCUR

GREATER OPERATING EXPENSES, IF GOVERNMENT REGULATION OF THE INTERNET INCREASES.

The adoption or modification of laws or regulations relating to the Internet could limit or otherwise adversely affect the manner in which we currently conduct our business. In addition, the growth and development of the market for online commerce may lead to more stringent consumer protection laws, which may impose additional burdens on us. If we are required to comply with new regulations or legislation or new interpretations of existing regulations or legislation, this compliance could cause us to incur additional expenses or alter our business model.

The manner in which Internet legislation may be interpreted and enforced cannot be fully determined and may subject either us or our customers to potential liability, which in turn could have an adverse effect on our business, results of operations and financial condition. The adoption of any of these laws or regulations may decrease the popularity or growth in use of the Internet, which in turn could decrease the demand for our subscription service and increase the cost of doing business or in some other manner have an adverse effect on our business, results of operations and financial condition.

RISKS RELATED TO THIS OFFERING

OUR OFFICERS AND DIRECTORS AND THEIR AFFILIATES WILL EXERCISE SIGNIFICANT CONTROL OVER NETFLIX.

After the completion of this offering, our executive officers and directors, their immediate family members and affiliated venture capital funds will beneficially own, in the aggregate, approximately % of our outstanding common stock. In addition, Jay Hoag, one of our directors, will beneficially own approximately % of our outstanding common stock, Reed Hastings, our president, chief executive officer, and chairman of our board of directors will beneficially own approximately % of our outstanding common stock and Michael Schuh, one of our directors, will beneficially own approximately % of our outstanding common stock. These stockholders may have individual interests that are different from yours and will be able to exercise significant control over all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions, which could delay or prevent someone from acquiring or merging with us.

PROVISIONS IN OUR CHARTER DOCUMENTS AND UNDER DELAWARE LAW COULD DISCOURAGE A TAKEOVER THAT STOCKHOLDERS MAY CONSIDER FAVORABLE.

Following this offering, our charter documents may discourage, delay or prevent a merger or acquisition that a stockholder may consider favorable because they:

. authorize our board of directors, without stockholder approval, to issue up to 10,000,000 shares of undesignated preferred stock;

. provide for a classified board of directors;

. prohibit our stockholders from acting by written consent;

. establish advance notice requirements for proposing matters to be approved by stockholders at stockholder meetings; and

. prohibit stockholders from calling a special meeting of stockholders.

As a Delaware corporation, we are also subject to certain Delaware anti-takeover provisions. Under Delaware law, a corporation may not engage in a business combination with any holder of 15% or more of its capital stock unless the holder has held the stock for three years or, among other things, the board of directors has approved the transaction. Our board of directors could rely on Delaware law to prevent or delay an acquisition of us. For a description of our capital stock, see "Description of Capital Stock."

OUR STOCK PRICE COULD BE VOLATILE AND COULD DECLINE FOLLOWING THIS OFFERING.

Prior to this offering, there has been no public market for shares of our common stock. An active market may not develop following completion of this offering, or if developed, may not be maintained.

The market prices of the securities of Internet and technology-related companies have been extremely volatile. The price at which our common stock will trade after this offering could be extremely volatile and may fluctuate substantially due to the following factors, some of which are beyond our control:

. variations in our operating results;

. variations between our actual operating results and the expectations of securities analysts, investors and the financial community;

. announcements of developments affecting our business, systems or expansion plans by us or others; and

. the operating results of our competitors.

As a result of these and other factors, investors in our common stock may not be able to resell their shares at or above the initial offering price.

In the past, securities class action litigation often has been instituted against companies following periods of volatility in the market price of their securities. This type of litigation, if directed at us, could result in substantial costs and a diversion of management's attention and resources.

WE WILL RECORD SUBSTANTIAL EXPENSES RELATED TO OUR ISSUANCE OF STOCK OPTIONS THAT MAY HAVE A MATERIAL NEGATIVE IMPACT ON OUR OPERATING RESULTS FOR THE FORESEEABLE FUTURE.

We are required to recognize, as a reduction of stockholders' equity, deferred compensation equal to the difference between the deemed fair market value of our common stock for financial reporting purposes and the exercise price of these options at the date of grant. This deferred compensation is amortized over the vesting period of the applicable options, generally three to four years, using the graded vesting method. At December 31, 2001, approximately $3.6 million of deferred compensation related to employee stock options remained unamortized. The resulting amortization expense will have a material negative impact on our operating results in future periods. In addition, in August and September 2001 we repriced options to purchase an aggregate of 2,741,386 shares of our common stock to $1.00 per share. We will recognize compensation expense for these repriced options for the life of these options, generally ten years, to the extent that the intrinsic value of the repriced option exceeds their original intrinsic value. We cannot predict the amount of compensation expense that we will have to recognize on a quarterly basis for these repriced options, and it could materially negatively impact our operating results for future periods.

FUTURE SALES OF OUR COMMON STOCK, INCLUDING THOSE PURCHASED IN THIS OFFERING, MAY DEPRESS OUR STOCK PRICE.

Sales of substantial amounts of our common stock in the public market following this offering by our existing stockholders may adversely affect the market price of our common stock. Shares issued upon the exercise of outstanding options also may be sold in the public market. Such sales could create public perception of difficulties or problems with our business. As a result, these sales might make it more difficult for us to sell securities in the future at a time and price that we deem necessary or appropriate.

Upon completion of this offering, we will have outstanding shares of common stock, assuming no exercise of the underwriters' over-allotment option and no exercise of outstanding options and warrants after February 28, 2002. Of these shares, only shares sold in this offering to persons not subject to a lock-up agreement with our underwriters are freely tradable without restriction immediately following this offering.

After the lockup agreements pertaining to this offering expire 180 days from the date of this prospectus, an additional shares will be eligible for sale in the public market, of which are currently held by directors, executive officers and other affiliates and are subject to volume limitations under Rule 144 of the Securities Act and certain other restrictions. Merrill Lynch may

also, in its sole discretion, permit our officers, directors and current stockholders to sell shares prior to the expiration of the lockup agreements. See "Shares Eligible for Future Sale" for more information regarding shares of our common stock that may be sold by existing stockholders after the closing of this offering.

FINANCIAL FORECASTING BY US AND FINANCIAL ANALYSTS WHO MAY PUBLISH ESTIMATES OF OUR FINANCIAL RESULTS WILL BE DIFFICULT BECAUSE OF OUR LIMITED OPERATING HISTORY, AND OUR ACTUAL RESULTS MAY DIFFER FROM FORECASTS.

As a result of our recent growth and our limited operating history, it is difficult to accurately forecast our revenues, operating expenses, number of DVDs shipped per day and other financial and operating data. The inability by us or the financial community to accurately forecast our operating results could cause our net losses in a given quarter to be greater than expected, which could cause a decline in the trading price of our common stock. We have a limited amount of meaningful historical financial data upon which to base planned operating expenses. We base our current and forecasted expense levels and DVD acquisitions on our operating plans and estimates of future revenues, which are dependent on the growth of our subscriber base and the demand for titles by our subscribers. As a result, we may be unable to make accurate financial forecasts or to adjust our spending in a timely manner to compensate for any unexpected shortfalls in revenues. We believe that these difficulties in forecasting are even greater for financial analysts that may publish their own estimates of our financial results.

OUR MANAGEMENT MAY NOT USE THE PROCEEDS OF THIS OFFERING EFFECTIVELY.

Our management has broad discretion over the use of proceeds of this offering. In addition, our management has not designated a specific use for a substantial portion of the proceeds of this offering. Accordingly, it is possible that our management may allocate the proceeds in ways that do not improve our operating results. In addition, these proceeds may not be invested to yield a favorable rate of return.

FORWARD-LOOKING STATEMENTS

You should not place undue reliance on forward-looking statements in this prospectus. This prospectus contains forward-looking statements that involve risks and uncertainties. These statements relate to our future plans, objectives, expectations and intentions. We use words such as "anticipates," "believes," "plans," "expects," "future," "intends" and similar expressions to identify such forward-looking statements. Forward- looking statements include statements regarding our business strategy, future operating performance, the size of the market for our services and our prospects. You should not place undue reliance on these forward-looking statements, which apply only as of the date of this prospectus. Our actual results could differ materially from those anticipated in these forward-looking statements for many reasons,

including the risks faced by us described in "Risk Factors" starting on page 5 and elsewhere in this prospectus. We caution you not to rely on these statements without also considering the risks and uncertainties associated with these statements and our business that are addressed in this prospectus.

This prospectus contains various estimates related to the Internet, e-commerce and the filmed entertainment industry. These estimates have been included in studies published or produced by market research and other firms including Adams Media Research, DVD Entertainment Group and the National Cable Television Association. These estimates have been produced by industry analysts based on trends to date, their knowledge of technologies and markets, and customer research, but these are forecasts only and are subject to inherent uncertainty.

USE OF PROCEEDS

We plan to use the net proceeds from our sale of common stock, approximately $ million after underwriting discounts and commissions and expenses, to repay all outstanding indebtedness under our subordinated promissory notes of approximately $13.7 million, including accrued interest as of December 31, 2001, and for general corporate purposes, including working capital, capital expenditures and additional marketing efforts. Our subordinated promissory notes, issued in July 2001, accrue interest at a stated rate of 10% per year compounded annually and mature upon the earlier of July 10, 2011 and the completion of this offering. Proceeds from the sale of the notes were used for general corporate purposes, including working capital and capital expenditures. Pending use of the net proceeds of this offering, we intend to invest the net proceeds in short-term, investment-grade securities.

DIVIDEND POLICY

We have never declared or paid any cash dividends on our capital stock. We currently expect to retain future earnings, if any, to finance the growth and development of our business and do not anticipate paying any cash dividends in the foreseeable future. Our existing lease financing agreements prohibit us from paying any dividends.

CAPITALIZATION

The following table sets forth our cash, cash equivalents and capitalization as of December 31, 2001:

. on an actual basis;

. on a pro forma basis assuming the conversion of all shares of our preferred stock into shares of common stock automatically upon completion of this offering and the filing of our amended and restated certificate of incorporation upon completion of this offering, including shares to be issued to certain studios immediately prior to this offering; and

. on a pro forma as adjusted basis to reflect the sale of shares of our common stock at an assumed initial public offering price of $ per share, less the underwriting discounts and commissions and estimated offering expenses, and the application of the net proceeds from this offering.

This information should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and our financial statements and notes to those statements appearing elsewhere in this prospectus.

AS OF DECEMBER 31, 2001			
	ACTUAL	PRO FORMA	PRO FORMA AS ADJUSTED
(IN THOUSANDS)			
Cash and cash equivalents	$ 16,131	$ 16,131	
Subordinated promissory notes, net of unamortized discount of $10.9 million	$ 2,799	$ 2,799	$ --
Capital lease obligations, net of current portion	1,057	1,057	1,057
Total long-term debt	3,856	3,856	1,057
Redeemable convertible preferred stock and warrants:			
Series B, C, D, E and E-1 Convertible Preferred Stock: 26,925,014 shares authorized; 20,316,909 shares issued and outstanding (actual); no shares issued or outstanding	101,479	--	--
Convertible preferred stock warrants	351	--	--
Total redeemable convertible preferred stock and warrants	101,830	--	--
Stockholders' equity (deficit):			
Preferred stock, $0.001 par value: 10,000,000 shares authorized (pro forma and			

pro forma as adjusted); no shares issued and outstanding	--	--	--
Series A Convertible Preferred Stock, $0.001 par value: 5,000,000 shares authorized; 4,444,545 shares issued and outstanding (actual); no shares issued or outstanding (pro forma and pro forma as adjusted)	4	--	--
Series F Convertible Preferred Stock, $0.001 par value: 3,500,000 shares authorized; 1,712,954 outstanding (actual); no shares issued and outstanding (pro forma and pro forma as adjusted)	2	--	--
Common stock, $0.001 par value: 100,000,000 shares authorized (actual); 150,000,000 shares authorized (pro forma and pro forma as adjusted); 6,485,737 shares issued and outstanding (actual); 44,849,633 shares issued and outstanding (pro forma) and shares issued and outstanding (pro forma as adjusted)	7	45	--
Additional paid-in capital	49,974	151,772	--
Deferred stock-based compensation	(3,585)	(3,585)	(3,585)
Accumulated deficit	(136,906)	(136,906)	(147,757)
Total stockholders' equity (deficit)	$ (90,504)	$ 11,326	$
Total capitalization	$ 15,182	$ 15,182	$

DILUTION

If you invest in our stock, your interest will be diluted to the extent of the difference between the public offering price per share of our common stock and the pro forma net tangible book value per share of our common stock after this offering.

The pro forma net tangible book value of our common stock on December 31, 2001 was $ million or $ per share of common stock. Pro forma net tangible book value per share represents the amount of our total tangible assets less total liabilities, divided by the number of shares of common stock outstanding, after giving effect to the automatic conversion of our preferred stock into common stock upon the completion of this offering at an assumed initial public offering price of $ per share. Dilution in net tangible book value per share represents the difference between the amount per share paid by purchasers of shares of our common stock in this offering and the net tangible book value per share of our common stock immediately afterwards. After giving effect to our sale of million shares of common stock offered by this prospectus at an assumed initial public offering price of $ per share and after deducting the underwriting discounts, commissions and estimated offering expenses payable by us, and the application of a portion of the net proceeds to repay all outstanding indebtedness under our subordinated promissory notes, our pro forma net tangible book value would have been $ million, or approximately $ per share. This represents an immediate increase in pro forma net tangible book value of $ per share to existing stockholders and an immediate dilution in pro forma net tangible book value of $ per share to new investors. The following table illustrates the per share dilution:

```
Estimated public offering price per
share.....................................     $

--
   Pro forma net tangible book value per share as of December 31,
2001..... $

--
   Increase per share attributable to new
investors.............................

--
Pro forma net tangible book value per share after this
offering.............

--
Dilution in pro forma net tangible book value per share to new
investors.......     $

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This table excludes all options and warrants that will remain outstanding upon completion of this offering. See Notes 4, 6 and 7 to Notes to Financial Statements. The exercise of outstanding options and warrants having an exercise price less than the offering price would increase the dilutive effect to new investors.

The following table sets forth on a pro forma basis, as of December 31, 2001, the differences between the number of shares of common stock purchased from us, the total price and average price per share paid by existing stockholders and by the new investors, before deducting expenses payable by us, using the estimated public offering price of $ per share.

	Shares Purchased		Total Consideration	Average Price Per
	Number	Percentage	Amount	Share
Existing stockholders		%	$	$
New investors				
Total		100.0%	$	100.0%

If the underwriter's over-allotment option is exercised in full, the number of shares held by new public investors will be increased to or approximately % of the total number of shares of our common stock outstanding after this offering.

SELECTED FINANCIAL AND OTHER DATA

The following selected financial data should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," and are qualified by reference to our financial statements and notes thereto appearing elsewhere in this prospectus. The audited statement of operations data set forth below for the years ended December 31, 1999, 2000 and 2001 and the audited balance sheet data as of December 31, 2000 and 2001 are derived from, and are qualified by reference to, the financial statements of Netflix included elsewhere in this prospectus. The statement of operations data for the years ended December 31, 1998 and for the period from August 29, 1997 (inception) to December 31, 1997 and the balance sheet data as of December 31, 1997, 1998 and 1999 are derived from, and are qualified by reference to, the financial statements of Netflix not included elsewhere in this prospectus. The historical results are not necessarily indicative of results to be expected for any future period.

	PERIOD FROM AUGUST 29, 1997 (INCEPTION) TO DECEMBER 31,		YEAR ENDED DECEMBER 31,		
	1997	1998	1999	2000	2001

(IN THOUSANDS, EXCEPT PER SHARE DATA)

STATEMENT OF OPERATIONS DATA:

Revenues:						
Subscription	$ --	$ 585	$ 4,854	$ 35,894	$ 74,255	
Sales	--	754	152	--	1,657	
Total revenues	--	1,339	5,006	35,894	75,912	
Cost of revenues:						
Subscription	--	535	4,217	24,861	49,088	
Sales	--	776	156	--	819	
Total cost of revenues	--	1,311	4,373	24,861	49,907	
Gross profit	--	28	633	11,033	26,005	
Operating expenses:						
Fulfillment	--	763	2,153	8,267	10,267	
Technology and development	100	3,857	7,413	16,823	17,734	
Marketing	103	4,052	14,271	27,707	24,216	
General and administrative	158	1,358	2,085	6,990	4,658	
Restructuring charges	--	--	--	--	671	
Stock-based compensation	--	1,151	4,742	8,803	5,326	
Total operating expenses	361	11,181	30,664	68,590	62,872	
Operating loss	(361)	(11,153)	(30,031)	(57,557)	(36,867)	
Interest and other income (expense), net	2	72	186	194	(1,391)	
Net loss	$ (359)	$(11,081)	$(29,845)	$(57,363)	$(38,258)	

Basic and diluted net loss per share.....						
Weighted average shares outstanding in computing net loss per share.....						
OTHER DATA:						
EBITDA(1) (unaudited).....	$ (356)	$ (9,575)	$(21,223)	$(28,179)	$ (1,716)	
Number of subscribers (unaudited).....	--	--	107	292	456	
Net cash provided by (used in):						
Operating activities.....	(261)	(5,408)	$(16,529)	$(22,706)	$ 4,847	
Investing activities.....	(152)	(2,363)	(19,742)	(24,972)	(12,670)	
Financing activities.....	(1,995)	(7,250)	49,408	48,375	9,059	

	AS OF DECEMBER 31,				
	1997	1998	1999	2000	2001
(IN THOUSANDS)					
BALANCE SHEET DATA:					
Cash and cash equivalents.....	$ 1,582	$ 1,061	$ 14,198	$ 14,895	$ 16,131
Working capital (deficit).....	1,360	(4,704)	11,028	(1,655)	(6,656)
Total assets.....	1,901	4,849	34,773	52,488	41,630
Capital lease obligations, less current portion.....	--	172	811	2,024	1,057
Notes payable, less current portion.....	--	--	3,959	1,843	--
Subordinated notes payable.....	--	--	--	--	2,799
Redeemable convertible preferred stock.....	--	6,321	51,819	101,830	101,830
Stockholders' equity (deficit).....	1,636	(8,044)	(32,028)	(73,267)	(90,504)

(1) See definition of EBITDA elsewhere in this prospectus.

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

THE FOLLOWING DISCUSSION OF OUR FINANCIAL CONDITION AND RESULTS OF OPERATIONS SHOULD BE READ IN CONJUNCTION WITH OUR FINANCIAL STATEMENTS AND RELATED NOTES. THIS DISCUSSION CONTAINS FORWARD-LOOKING STATEMENTS, THE ACCURACY OF WHICH INVOLVES RISKS AND UNCERTAINTIES. OUR ACTUAL RESULTS COULD DIFFER MATERIALLY FROM THOSE ANTICIPATED IN THESE FORWARD-LOOKING STATEMENTS FOR MANY REASONS, INCLUDING THE RISKS FACED BY US DESCRIBED IN "RISK FACTORS" STARTING ON PAGE 5 AND ELSEWHERE IN THIS PROSPECTUS.

OVERVIEW

We are the world's largest online entertainment subscription service providing more than 500,000 subscribers access to a comprehensive library of more than 11,500 movie, television and other filmed entertainment titles. Our standard subscription plan allows subscribers to have three titles out at the same time with no due dates, late fees or shipping charges for $19.95 per month. Subscribers can view as many titles as they want in a month. Subscribers select titles at our Web site (WWW.NETFLIX.COM) aided by our proprietary CineMatch technology, receive them on DVD by first-class mail and return them to us at their convenience using our prepaid mailers. Once a title has been returned, we mail the next available title in a subscriber's queue.

We were organized as a Delaware corporation in August 1997. We have incurred significant losses since our inception. As of December 31, 2001, we had a stockholders' deficit of $90.5 million. We expect that we will continue to incur substantial losses for the foreseeable future. We also expect to incur significant marketing, technology and development, and general and administrative expenses. As a result, we will need to significantly increase our operating margins to achieve profitability and may never achieve profitability.

CRITICAL ACCOUNTING POLICIES

We believe our change to the estimated life over which we amortize the costs of acquiring titles for our library, and the selection of a method of amortization for the costs we incur to acquire titles for our library, are critical accounting policies because they involve some of the more significant judgments and estimates used in the preparation of our financial statements.

CHANGE IN ESTIMATED LIFE OF THE COST OF OUR LIBRARY

In late 2000 and early 2001, we entered into a series of revenue sharing agreements with studios which substantially changed our business model for acquiring DVDs and satisfying subscriber demand for titles. These revenue sharing agreements enable us to acquire DVDs at a lower upfront cost than traditional buying arrangements. We share a percentage of the net revenues generated by the use of each particular title with these studios over a fixed period of time, generally 12 months. Before the change in our business model, we typically acquired fewer copies of a particular title and utilized each copy over a longer period of time. The implementation of these revenue sharing agreements improved our ability to acquire larger quantities of newly released titles and satisfy a substantial portion of subscriber demand for such titles over a shorter period of time. On January 1, 2001, we revised the amortization policy for

the cost of our library from an accelerated method using a three year life to the same accelerated method of amortization using a one year life.

The change in life has been accounted for as a change in accounting estimate and is accounted for on a prospective basis from January 1, 2001. Had the DVDs acquired prior to January 1, 2001 been amortized using a three year life, amortization expense for 2001 would have been $4.7 million lower than the amount recorded in our financial statements, representing a $0.78 per share impact on loss per share in 2001.

SELECTION OF A METHOD OF AMORTIZATION OF UPFRONT COSTS OF OUR LIBRARY

Under certain revenue sharing agreements, we remit an upfront payment to acquire titles from the studios. This payment has two elements. The first element is an initial fixed license fee that is capitalized. The second element is a prepayment of future revenue sharing obligations. The amount attributable to the second element is classified as prepaid revenue sharing expense and is applied against future revenue sharing obligations. A nominal amount is also capitalized upon acquisition of a particular title for the cost of the estimated number of DVDs we expect to purchase at the end of the title term. This cost is amortized with the cost of the initial license fee on an accelerated basis over one year. We believe the use of an accelerated method is appropriate because we normally experience heavy initial demand for a title, which subsides once initial demand has been satisfied.

REVENUES

We derive substantially all of our revenues from monthly subscription fees. From the launch of our Web site in April 1998 through January 1999, we generated revenues primarily from individual DVD rentals and sales to customers. In March 1999, we stopped selling new DVDs. From February 1999 through October 1999, we generated revenues primarily from individual DVD rentals to customers. In September 1999, we launched our subscription service, and through February 2000, for a fixed monthly subscription fee of $15.95, subscribers could have up to four titles per month with no due dates or late fees, and for $3.98, could order an additional title. In February 2000, we modified our standard subscription service to provide subscribers access to an unlimited number of titles for $19.95 per month, with a maximum of four titles out at any time. Existing subscribers were switched to our new service, some at $15.95 per month and the rest at $19.95 per month. In October 2000, we again modified our standard subscription service to provide subscribers access to an unlimited number of titles for a fixed monthly fee, with a maximum of three titles out at the same time.

We had an insignificant amount of DVD sales in 1999 and no DVD sales in 2000. Beginning in late 2000, as part of the change in our business model, we began acquiring larger quantities of particular titles through our revenue sharing agreements. As a result, once initial demand for a particular title has been satisfied, we may hold a number of titles in excess of the quantities

needed to satisfy ongoing subscriber demand. Several studios allow us to sell the DVDs acquired from them at the end of the revenue sharing term. Before we sell a particular title, we compare the number of copies we hold to estimated future demand to determine the number of copies we can sell without jeopardizing our ability to satisfy future subscriber demand. From time to time, we expect to make bulk sales of our used DVDs to resellers.

We recognize subscription revenues ratably during each subscriber's monthly subscription period. We record refunds to subscribers as a reduction of revenues. We recognize revenues from the sale of used DVDs to resellers when the DVDs are shipped to the reseller from our distribution center. Historically, revenues from DVD rentals and shipping revenues also were recognized when the product was shipped to the customer from our distribution center.

In addition to our standard service, we also offer a lower priced plan in which subscribers can keep two titles at the same time for $13.95 per month, as well as higher priced plans offering four, five and eight titles out at the same time for $24.95, $29.95 and $39.95 per month, respectively. Approximately 91% of our paying subscribers pay $19.95 or more per month.

COST OF REVENUES AND GROSS PROFIT

COST OF SUBSCRIPTION REVENUES

We acquire titles for our library using traditional buying methods and revenue sharing agreements. Traditional buying methods normally result in higher upfront costs when compared to titles obtained through revenue sharing agreements. Cost of subscription revenues consists of revenue sharing costs, amortization of our

library, amortization of intangible assets related to equity instruments issued to certain studios and postage and packaging costs related to shipping titles to paying subscribers.

REVENUE SHARING COSTS. Many of our revenue sharing agreements commit us to pay the greater of a minimum fee or a percentage of the net revenue we realize on a monthly basis from each subscriber for the titles subject to revenue sharing that are mailed to that subscriber. We characterize these payments to the studios as revenue sharing costs. As of December 31, 2001, we had revenue sharing agreements with over 40 studios that expire at various dates beginning in 2002.

AMORTIZATION OF THE COST OF DVDS. Prior to January 1, 2001, we amortized our cost of DVDs using an accelerated method over an estimated life of three years and assumed no salvage value. On January 1, 2001, we revised the estimated life to one year and assumed a salvage value of $2.00 for the DVDs that we believe we will eventually sell.

AMORTIZATION OF INTANGIBLE ASSETS RELATED TO EQUITY ISSUED TO STUDIOS. In 2000, in connection with signing revenue sharing agreements with three studios,

we agreed to issue each of these studios an equity interest equal to 1.204% of our fully diluted equity securities outstanding. In 2001, in connection with signing revenue sharing agreements with two additional studios, we agreed to issue to each of the two studios an equity interest of 1.204% of our fully diluted equity securities outstanding. As of December 31, 2001, the aggregate equity interest granted to these five studios equaled 6.02% of our fully diluted equity securities outstanding. Prior to this offering, these studios are entitled to receive additional stock grants to maintain their equity interests at 1.204% of our fully diluted equity securities outstanding. Consequently, when we grant options or issue stock, we also are obligated to issue additional equity interests to these studios to maintain their ownership interest at 6.02% in the aggregate. These securities automatically convert into our common stock upon consummation of this offering. We recognize our obligation to grant these equity interests at fair value as an intangible asset and we increase additional paid-in capital on our balance sheet. We then amortize the intangible asset on a straight-line basis to cost of subscription revenues over the term of each revenue sharing agreement with each studio. The term for the three agreements entered into in 2000 is five years and the term for the two agreements entered into 2001 is three years. Each time there is a dilution event prior to the completion of this offering, we will determine the value of our obligation to issue additional equity interests. The determined value is added to the intangible asset and amortized to cost of subscription revenues over the remaining term of the applicable revenue sharing agreement.

POSTAGE AND PACKAGING. Postage and packaging costs consist of the postage costs to mail titles to and from our paying subscribers, each of which is $0.34, and the packaging costs for the mailers.

COST OF SALES REVENUES

Cost of revenues for DVD sales includes the salvage value for used DVDs sold and, historically, cost of merchandise sold to customers.

OPERATING EXPENSES

FULFILLMENT

Fulfillment expense represents those expenses incurred in operating and staffing our fulfillment and customer service centers, including costs attributable to receiving, inspecting and warehousing our library. Through December 2001, we maintained only one fulfillment center in San Jose, California. Since then, we have opened several additional fulfillment centers. We plan to open more fulfillment centers in 2002 in various locations across the United States. As we open and operate new fulfillment centers, we expect that our fulfillment costs will increase.

TECHNOLOGY AND DEVELOPMENT

Technology and development expense consists of payroll and related expenses we incur related to testing, maintaining and modifying our Web site, CineMatch technology, telecommunications systems and infrastructure and other internal-use software systems. Technology and development expense also includes depreciation of the computer hardware we use to run our Web site and store our data. We continuously research and test a variety of potential improvements to our internal hardware and software systems in an effort to improve our productivity and enhance our subscribers' experience. We expect to continue to invest in technology and improvements in our Web site and internal-use software and, as a result, we expect our technology and development expense will continue to increase. We believe certain costs we have incurred on several improvement projects have ongoing benefit. Consequently, we capitalized technology and development related expenses of $0.3 million in 1999, $1.3 million in 2000 and $1.2 million in 2001. The capitalized amounts are amortized on a straight-line basis over the estimated period of benefit of each improvement, ranging from one to two years.

MARKETING

Marketing expense consists of marketing expenditures and other promotional activities, including revenue sharing costs, postage and packaging costs and library amortization costs related to free trial periods. In the second half of 2001, we implemented several new subscriber acquisition activities which provide incentives in the form of pay-for-performance payments for each new subscriber provided to us. We anticipate that our marketing expense will increase in future periods as a result of the overall growth in our subscriber base, free trial offers and pay-for-performance arrangements.

GENERAL AND ADMINISTRATIVE

General and administrative expense consists of payroll and related expenses for executive, finance, content acquisition and administrative personnel, as well as recruiting, professional fees and other general corporate expenses.

STOCK-BASED COMPENSATION

Stock-based compensation for equity instruments issued to employees represents the aggregate difference, at the grant date, between the respective exercise price of stock options or stock grants and the deemed fair market value of the underlying stock. Stock-based compensation is generally amortized over the vesting period of the underlying options or grants based on an accelerated amortization method.

In 2001, we offered our employees and directors the right to exchange certain stock options. We exchanged employee options to purchase 2.7 million shares of common stock with varying exercise prices in exchange for options to purchase 2.7 million shares of common stock with an exercise price of $1.00. The stock option exchange resulted in variable award accounting treatment for all of the exchanged options. Variable award accounting will continue until all options subject to variable accounting are exercised, cancelled or expire. However, additional non-cash compensation will be recorded only to the extent the intrinsic value of the repriced awards exceeds the original intrinsic value of the replaced stock options. Variable accounting

treatment will result in unpredictable and potentially significant charges or credits to our operating expenses from fluctuations in the market price of our common stock.

RESULTS OF OPERATIONS FOR THE YEARS ENDED DECEMBER 31, 1999, 2000 AND 2001

REVENUES

SUBSCRIPTION REVENUES. Our subscription revenues increased from $4.9 million in 1999 to $35.9 million in 2000 and $74.3 million in 2001. The 639% increase from 1999 to 2000 and the 107% increase from 2000 to

2001 were attributable to the unrivalled selection offered by our subscription service, consistently high levels of customer satisfaction, the rapid consumer adoption of DVD players and our increasingly effective marketing programs. In addition, part of the increase in our subscription revenues for 2000 and 2001 was caused by a $4.00 increase in the monthly subscription fee charged to some of our subscribers beginning in October 2000.

SALES REVENUES. Sales revenues were $0.2 million in 1999, $0.0 in 2000 and $1.7 million in 2001. The increase in sales revenues in 2001 was due to an increase in the sale of used titles acquired through our revenue sharing agreements.

COST OF REVENUES AND GROSS PROFIT

COST OF SUBSCRIPTION REVENUES. Cost of subscription revenues increased from $4.2 million in 1999 to $24.9 million in 2000 and $49.1 million in 2001. The 490% increase from 1999 to 2000 and the 97% increase from 2000 to 2001 were primarily attributable to:

. REVENUE SHARING COSTS. Our revenue sharing costs increased from $0.0 in 1999 to $1.6 million in 2000 and $12.8 million in 2001. Our revenue sharing costs represented 4% of subscription revenues in 2000 and 17% of subscription revenues in 2001. The increase in revenue sharing costs as a percentage of subscription revenues from 2000 to 2001 was caused by a substantial increase in the percentage of titles mailed to our subscribers subject to revenue sharing agreements.

. AMORTIZATION OF DVD COSTS. Our DVD amortization costs increased from $1.8 million in 1999 to $11.3 million in 2000 and $19.5 million in 2001. Our DVD amortization costs represented 37% of subscription revenues in 1999, 31% of subscription revenues in 2000 and 26% of subscription revenues in 2001. The increase in DVD amortization costs as a percentage of subscription revenues from 1999 to 2000 resulted from building our library at a rate in excess of increases in the number of paying subscribers. The decrease in DVD amortization costs as a percentage of subscription revenues from 2000 to 2001 was primarily attributable to lower upfront prices paid for DVDs in connection with revenue sharing agreements.

. AMORTIZATION OF INTANGIBLE ASSETS RELATED TO EQUITY ISSUED TO CERTAIN STUDIOS. We recorded deferred costs of $6.1 million in 2000 and $4.1 million in 2001 related to our issuance of equity to certain studios. We recorded related amortization of intangible assets of $0.6 million in 2000 and $2.1 million in 2001. The increase in amortization of intangible assets from 2000 to 2001 is attributed to a full year of amortization in 2001 as compared to a partial year of amortization in 2000, additional deferred charges for two new revenue sharing agreements in 2001 and increases in deferred charges caused by our obligation to issue additional equity securities to these studios.

. POSTAGE AND PACKAGING COSTS. Postage and packaging costs increased from $2.4 million in 1999 to $11.4 million in 2000 and $14.7 million in 2001. The increases in postage and packaging costs each year were primarily attributable to increases in the number of DVDs mailed to our subscribers. As a percentage of subscription revenues, postage and packaging costs decreased from 49% in 1999 to 32% in 2000 and 20% in 2001. The decrease in postage and packaging costs as a percentage of subscription revenues from 1999 to 2000 was primarily attributable to lower postage costs per shipment due to a reduction in the weight of our packaging materials. The decrease in postage and packaging costs as a percentage of subscription revenues from 2000 to 2001 was primarily attributable to a decrease in the postage rate per title.

COST OF SALES REVENUES. Cost of sales revenues was $0.2 million in 1999, $0.0 in 2000 and $0.8 million in 2001. The increase in cost of sales revenues in 2001 was primarily attributable to the increase in the quantity of used DVDs sold to resellers.

GROSS PROFIT

Our gross profit increased from $0.6 million in 1999 to $11.0 million in 2000 and $26.0 million in 2001, representing gross profit percentages of 12% in 1999, 31% in 2000 and 34% in 2001. Our gross profit percentages increased each year as a result of growth in our subscription revenues and a decrease in our direct incremental costs of providing those subscription services.

OPERATING EXPENSES

FULFILLMENT. Fulfillment expenses increased from $2.2 million in 1999 to $8.3 million in 2000 and $10.3 million in 2001. The 284% increase from 1999 to 2000 and the 24% increase from 2000 to 2001 was primarily attributable to increases in the overall volume of the activities of our primary fulfillment center. As a percentage of subscription revenues, fulfillment expenses decreased from 44% in 1999 to 23% in 2000 and 14% in 2001. The decrease each year in fulfillment expenses as a percentage of subscription revenues results from a combination of an increasing revenue base and improvements in our fulfillment productivity. The improvements in our fulfillment productivity were due to continuous efforts to refine and streamline our fulfillment operations.

TECHNOLOGY AND DEVELOPMENT. Excluding capitalized software development costs, our technology and development expense increased from $7.4 million in 1999 to $16.8 million in 2000 and $17.7 million in 2001. The 127% increase in technology and development expense from 1999 to 2000 and the 5% increase from 2000 to 2001 were primarily the result of our investments in storing data, handling large increases in traffic to our Web site and maintaining and modifying our software related to our Web Site, CineMatch technology and our internal-software infrastructure. As a percentage of subscription revenues, technology and development expenses decreased from 153% in 1999 to 47% in 2000 and 24% in 2001. The decrease in technology and development expense as a percentage of subscription revenues was primarily attributable to an increase in our subscriber base.

MARKETING. Our marketing expense increased from $14.3 million in 1999 to $27.7 million in 2000 and $24.2 million in 2001. The 94% increase in marketing expense from 1999 to 2000 was primarily attributable to our intensified efforts to acquire new subscribers through external advertising agencies, television commercials and an increase in the length of our free trial period. The 13% decrease in marketing expense from 2000 to 2001 was primarily attributable to scaling back the number of free trial offers for part of 2001, and from a reduction in our free trial period of 30 days to typically 14 days for the balance of 2001. As a percentage of subscription revenues, marketing expense decreased from 294% in 1999 to 77% in 2000 and 33% in 2001. The decrease in marketing expense as a percentage of subscription revenues is primarily attributable to a larger base of subscription revenues and paying subscribers.

GENERAL AND ADMINISTRATIVE. Our general and administrative expense was $2.1 million in 1999, $7.0 million in 2000 and $4.7 million in 2001. The 235% increase in general and administrative expense from 1999 to 2000 was primarily attributable to increases in personnel and facility-related costs associated with the expansion of our business and the cost of our withdrawn initial public offering. The 33% decrease in general and administrative expense from 2000 to 2001 was primarily attributable to cost containment efforts in 2001 and the one-time cost of the withdrawn public offering in 2000. As a percentage of subscription revenues, general and administrative expense decreased from 43% in 1999 to 19% in 2000 and 6% in 2001. The decrease in general and administrative expense as a percentage of subscription revenues is primarily attributable to a larger base of subscription revenues and paying subscribers.

RESTRUCTURING. In 2001, we recorded a restructuring expense of $0.7 million relating to severance payments made to 45 employees we terminated in an effort to restructure our organization to streamline our processes and reduce expenses. We had no restructuring expense in prior years.

STOCK-BASED COMPENSATION. Stock-based compensation expense was $4.7 million in 1999, $8.8 million in 2000 and $5.3 million in 2001. The 86% increase from 1999 to 2000 was primarily attributable to charges we

recorded related to issuing options to employees at exercise prices below the deemed fair value at the dates of grant. The 39% decrease from 2000 to 2001 was primarily attributable to reduced charges caused by utilization of the graded vesting method of stock compensation amortization. The following table shows the amounts of stock-based compensation expense that would have been recorded under the following categories of operating expenses had stock-based compensation expense not been separately stated on the statements of operations:

	YEAR ENDED DECEMBER 31,		
	1999	2000	2001
	(IN THOUSANDS)		
Fulfillment	$ 604	$1,469	$ 705
Technology and development	907	2,855	1,788
Marketing	1,144	2,679	1,624
General and administrative	2,087	1,800	1,209
	$4,742	$8,803	$5,326

INTEREST AND OTHER INCOME (EXPENSE), NET

Interest and other income (expense), net was $0.2 million in 1999, $0.2 million in 2000 and $(1.4) million in 2001. Interest and other income (expense), net consists primarily of interest earned on our cash and cash equivalents less non-cash interest expense related to accretion of discounts on interest-bearing obligations from the issuance of our subordinated promissory notes and capital lease obligations at an amount less than the face amount of the debt.

SELECTED QUARTERLY OPERATING RESULTS

The following tables set forth unaudited quarterly statement of operations data for the eight quarters ended December 31, 2001 as well as the percentage of total revenues represented for selected items. The information for each of these quarters has been prepared on substantially the same basis as the audited financial statements included elsewhere in this prospectus and, in the opinion of management, include all adjustments, consisting only of normal recurring adjustments, necessary for the fair presentation of the results of operations for such periods. This data should be read in conjunction with the audited financial statements and the related notes included elsewhere in this prospectus. These quarterly operating results are not necessarily indicative of our operating results for any future period.

THREE MONTHS ENDED

	MARCH 31 2000	JUNE 30 2000	SEPT. 30 2000	DEC. 31 2000	MARCH 31 2001	JUNE 30 2001	SEPT. 30 2001	DEC. 31 2001
				(IN THOUSANDS)				
Revenues:								
Subscription	$ 5,174	$ 7,147	$ 10,182	$ 13,391	$ 17,057	$17,392	$18,444	$21,362
Sales	--	--	--	--	--	967	434	256
Total revenues	5,174	7,147	10,182	13,391	17,057	18,359	18,878	21,618
Cost of revenues:								
Subscription	3,128	5,150	7,213	9,370	18,177	10,776	9,667	10,468
Sales	--	--	--	--	--	446	176	197
Total cost of revenues	3,128	5,150	7,213	9,370	18,177	11,222	9,843	10,665
Gross profit	2,046	1,997	2,969	4,021	(1,120)	7,137	9,035	10,953
Operating expenses:								
Fulfillment	1,497	2,057	1,880	2,833	2,791	2,796	2,517	2,163
Technology and development	3,248	3,959	4,041	5,575	5,474	4,896	4,463	2,901
Marketing	6,448	6,059	7,104	8,096	7,475	4,883	4,210	7,648
General and administrative	764	1,761	1,863	2,602	1,514	1,031	1,003	1,110
Restructuring charges	--	--	--	--	--	--	671	--
Stock-based compensation	1,963	2,530	2,073	2,237	2,043	1,436	1,220	627
Total operating expenses	13,920	16,366	16,961	21,343	19,297	15,042	14,084	14,449
Operating loss	(11,874)	(14,369)	(13,992)	(17,322)	(20,417)	(7,905)	(5,049)	(3,496)
Interest and other income								

(expense), net.....	(102)	302	210	(216)	(181)	(96)	(505)	(609)				
Net loss.....	$(11,976)	$(14,067)	$(13,782)	$(17,538)	$(20,598)	$(8,001)	$(5,554)	$(4,105)				
Other Data:												
EBITDA (1) (unaudited).....	$ (6,248)	$ (7,366)	$ (6,175)	$ (8,390)	$ (3,610)	$ (131)	$ 623	$ 1,402				
Number of subscribers (unaudited).....	156	194	239	292	303	308	334	456				

(1) EBITDA consists of operating loss before depreciation, amortization, non-cash charges for equity instruments granted to non-employees and stock-based compensation. EBITDA provides an alternative measure of cash flow from operations. You should not consider EBITDA as a substitute for operating loss, as an indicator of our operating performance or as an alternative to cash flows from operating activities as a measure of liquidity. We may calculate EBITDA differently from other companies.

	THREE MONTHS ENDED											
	MARCH 31 2000	JUNE 30 2000	SEPT. 30 2000	DEC. 31 2000	MARCH 31 2001	JUNE 30 2001	SEPT. 30 2001	DEC. 31 2001				
Revenues:												
Subscription.....	100%	100%	100%	100%	100%	95%	98%	99%				
Sales.....	0	0	0	0	0	5	2	1				
Total revenues.....	100	100	100	100	100	100	100	100				
Cost of revenues:												
Subscription.....	60	72	71	70	107	59	51	48				
Sales.....	0	0	0	0	0	2	1	1				
Total cost of revenues.....	60	72	71	70	107	61	52	49				

Gross profit.....	40	28	29	30	(7)	39	48	51
Total operating expenses.....	269	229	166	159	113	82	75	67
Operating loss.....	(229)	(201)	(137)	(129)	(120)	(43)	(27)	(16)
Interest and other expense, net..	(2)	4	2	(2)	(1)	(1)	(2)	(3)
Net loss.....	(231)%	(197)%	(135)%	(131)%	(121)%	(44)%	(29)%	(19)%

SUBSCRIPTION REVENUES

The increase in total subscription revenues for all quarters presented was caused by increases in the number of our paying subscribers. We believe the number of paying subscribers increased for several reasons including the unrivalled selection offered by our subscription service, consistently high levels of customer satisfaction, the rapid consumer adoption of DVD players and our increasingly effective marketing programs.

COST OF SUBSCRIPTION REVENUES

On January 1, 2001, we revised the estimated life of our library from three years to one year. Amortization expense for the quarter ended March 31, 2001 includes an increase in amortization caused by the effect of revising the life of our library. The decrease in DVD amortization expense as a percentage of subscription revenues between the quarter ended March 31, 2001 and the quarter ended June 30, 2001 is caused primarily by a decrease in the amortizable cost of our library.

TECHNOLOGY AND DEVELOPMENT

The decrease between the quarter ended September 30, 2001 and the quarter ended December 31, 2001 was caused by decreases in personnel costs as a result of employees terminated as a part of our restructuring during the quarter ended September 30, 2001.

MARKETING

The decrease during each of the three quarters subsequent to the fourth quarter of 2000 is due to scaling back our free trial offers during the first two quarters of 2001. The increase in marketing

expense in the fourth quarter of 2001 results from an increase in the number of free trials offered to new subscribers as well as an increase in the expense we incurred for pay-for-performance subscriber referral programs.

GENERAL AND ADMINISTRATIVE

The decrease between the quarter ended December 31, 2000 and the quarter ended March 31, 2001 was caused by expenses incurred in relation to our withdrawn initial public offering that were expensed during the quarter ended December 31, 2000.

LIQUIDITY AND CAPITAL RESOURCES

We have financed our operations primarily with $117.5 million raised through private sales of our common and preferred equity securities and subordinated promissory notes. As of December 31, 2001, we had cash and cash equivalents of $16.1 million.

We expect to devote substantial resources to continue to expand our subscriber base, expand our library to meet subscriber demand, automate our fulfillment operations and maintain and enhance the systems necessary to support our growth. Although we anticipate that the proceeds of this offering, together with our current cash and cash equivalents and cash flows will be sufficient to fund our activities for at least the next 12 months and the foreseeable future, we cannot assure you that we will not require additional financing within this time period or that additional funding, if needed, will be available on terms acceptable to us, or at all. In addition, although there are no present understandings, commitments or agreements with respect to any acquisition of other businesses, products or technologies, we may, from time to time, evaluate acquisitions of other businesses, products and technologies. If we are unable to raise additional equity or debt financing, if and when needed, we could be forced to significantly curtail our operations.

In July 2001, we issued subordinated promissory notes and warrants to purchase 20,456,866 shares of our common stock at an exercise price of $1.00 per share for net proceeds of $12.8 million. We allocated $10.9 million of the proceeds to the warrants and recorded it as additional paid-in capital and $1.9 million to the notes payable. The resulting discount of $11.1 million is being accreted to interest expense using an effective annual interest rate of 21%. Our subordinated promissory notes accrue interest at a stated rate of 10% per year compounded annually. The subordinated notes and all accrued interest are due and payable upon the earlier to occur of July 10, 2011 or the completion of this offering.

At December 31, 2001 our current liabilities exceeded our current assets by $6.7 million, and we had cash of $16.1 million, accounts payable of $13.7 million and accrued expenses of $4.5 million. At December 31, 2001 we also had commitments to repay a note payable and make payments on capital leases and operating leases of approximately $5.5 million in 2002, $3.7 million in 2003, $2.6 million in 2004 and $1.5 million in 2005.

CASH FLOWS

Net cash used in operating activities was $16.5 million in 1999 and $22.7 million in 2000. Net cash provided by operating activities was $4.8 million in 2001. Cash used in operating activities in 1999 was primarily attributable to a net loss of $29.8 million, partially offset by deferred compensation expense, depreciation and amortization expense, non-cash interest expense, increases in accounts payable, accrued expenses, and deferred revenue. Cash used in operating activities in 2000 was primarily attributable to a net loss of $57.4 million and an increase in prepaid and other current assets, partially offset by deferred compensation expense, depreciation and amortization expense, non-cash interest expenses, increases in accounts payable, accrued expenses and deferred revenue. Cash provided by operating activities in 2001 was primarily attributable to an increase in revenue, a decrease in operating expenses and an increase in accounts payable.

Net cash used in investing activities was $19.7 million in 1999, $25.0 million in 2000 and $12.7 million in 2001. Net cash used in investing activities in 1999 was primarily attributable to our acquisition of titles for our DVD library, short-term investments and property and equipment. Net cash used in investing activities in 2000 was primarily attributable to our acquisition of titles for our library and property and equipment, partially offset by proceeds from the sale of short-term investments. Net cash used in investing activities in 2001 was primarily attributable to our acquisition of titles for our library and property and equipment. The 63% decrease in cash used to acquire DVDs in 2001 from 2000, primarily reflects the reduced cash requirements to acquire DVDs under our revenue sharing agreements. While DVD acquisitive expenditures are classified as cash flows from investing activities you may wish to consider these together with cash flows from operating activities.

Net cash provided by financing activities was approximately $49.4 million in 1999, $48.4 million in 2000 and $9.1 million in 2001. Net cash provided by financing activities in 1999 was primarily attributable to proceeds from the sale of our Series C and Series D Convertible Preferred Stock and from a loan, partially offset by payments on a note payable and capital lease obligations. Net cash provided by financing activities in 2000 was primarily attributable to proceeds from the sale of our Series E Convertible Preferred Stock, partially offset by payments on notes payable and capital lease obligations. Net cash provided by financing activities in 2001 was primarily attributable to proceeds from the sale of common stock warrants and subordinated promissory notes, partially offset by payments on notes payable and capital lease obligations.

GENERAL ECONOMIC TRENDS, QUARTERLY RESULTS OF OPERATIONS AND SEASONALITY

We anticipate that our business will be affected by general economic and other consumer trends. Our business may be subject to fluctuations in future operating periods due to a variety of factors, many of which are outside of our control. These fluctuations may be caused by, among

other things, a distinct seasonal pattern to the sale of DVD players which accelerates during the Christmas holiday season.

RECENT ACCOUNTING PRONOUNCEMENTS

In June 2001, the FASB issued SFAS No. 141, BUSINESS COMBINATIONS, or SFAS No. 141. The standard concludes that all business combinations within the scope of the statement will be accounted for using the purchase method. Previously, the pooling-of-interests method was required whenever certain criteria were met. Because those criteria did not distinguish economically dissimilar transactions, similar business combinations were accounted for using different methods that produced dramatically different financial statement results. SFAS No. 141 no longer permits the use of pooling-of-interest method of accounting. In addition, the statement also requires separate recognition of intangible assets apart from goodwill if they meet one of two criteria: the contractual-legal criterion or the separability criterion. SFAS No. 141 also requires the disclosure of the primary reasons for a business combination and the allocation of the purchase price paid to the assets acquired and liabilities assumed by major balance sheet caption. The provisions of SFAS No. 141 apply to all business combinations initiated after June 30, 2001. The adoption of this standard will not impact our financial statements.

In June 2001, the FASB also issued SFAS No. 142, GOODWILL AND OTHER INTANGIBLE ASSETS, or SFAS No. 142. It addressed how intangible assets that are acquired individually or within a group of assets (but not those acquired in a business combination) should be accounted for in the financial statements upon their acquisition. SFAS No. 142 adopts a more aggregate view of goodwill and bases the accounting on the units of the combined entity into which an acquired entity is aggregated. SFAS No. 142 also prescribes that goodwill and intangible assets that have indefinite useful lives will not be amortized but rather tested at least annually for impairment. Intangible assets that have definite lives will continue to be amortized over their useful lives, but no longer with the constraint of the 40-year ceiling. SFAS No. 142 provides specific guidance for the testing of goodwill for impairment, which may require re-measurement of the fair value of the reporting unit. Additional ongoing financial statement disclosures are also required. The provisions of the statement are required to be applied starting with fiscal years beginning after December 15, 2001. The statement is required to be applied at the beginning of the fiscal year and applied to all goodwill and other intangible assets recognized in the financials at that date. Impairment losses are to be reported as resulting from a change in accounting principle. We implemented SFAS No. 142 beginning January 1, 2002. The adoption of this standard will not impact our financial statements.

In August 2001, the FASB issued SFAS No. 144, ACCOUNTING FOR THE IMPAIRMENT OR DISPOSAL OF LONG-LIVED ASSETS, or SFAS No. 144. It supersedes SFAS No. 121, ACCOUNTING FOR IMPAIRMENT OF LONG-LIVED ASSETS AND FOR LONG-LIVED ASSETS TO BE DISPOSED OF, and APB Opinion No. 30, REPORTING THE EFFECTS OF DISPOSAL OF A SEGMENT OF A BUSINESS. It establishes a single account model based upon the framework of SFAS No. 121. It removes goodwill and intangible assets from its scope. It describes a probability-weighted cash flow estimation approach to deal with certain situations. It also establishes a "primary asset" approach to determine the cash flow estimation period for a

group of assets and liabilities that represents the unit of accounting for a long-lived asset to be held and

used. The provisions of SFAS 144 are effective for fiscal years beginning after December 15, 2001. The adoption of this standard will not impact our financial statements.

QUALITATIVE AND QUANTITATIVE DISCLOSURES ABOUT MARKET RISK

The primary objective of our investment activities is to preserve principal, while at the same time maximizing income we receive from investments without significantly increased risk. Some of the securities we invest in may be subject to market risk. This means that a change in prevailing interest rates may cause the principal amount of the investment to fluctuate. For example, if we hold a security that was issued with a fixed interest rate at the then-prevailing rate and the prevailing interest rate later rises, the value of our investment will decline. To minimize this risk in the future, we intend to maintain our portfolio of cash equivalents and investments in a variety of securities, including commercial paper, money market funds, government and non-government debt securities and certificates of deposit with maturities of less than thirteen months. In general, money market funds are not subject to market risk because the interest paid on such funds fluctuates with the prevailing interest rate.

BUSINESS

OUR COMPANY

We are the world's largest online entertainment subscription service providing more than 500,000 subscribers access to a comprehensive library of more than 11,500 movie, television and other filmed entertainment titles. Our standard subscription plan allows subscribers to have three titles out at the same time with no due dates, late fees or shipping charges for $19.95 per month. Subscribers can view as many titles as they want in a month. Subscribers select titles at our Web site (WWW.NETFLIX.COM) aided by our proprietary CineMatch technology, receive them on DVD by first-class mail and return them to us at their convenience using our prepaid mailers. Once a title has been returned, we mail the next available title in a subscriber's queue.

Our subscription service has grown rapidly since its launch in September 1999. We believe our growth has been driven primarily by our unrivalled selection, consistently high levels of customer satisfaction, rapid consumer adoption of DVD players and our increasingly effective marketing programs. In the San Francisco Bay area, where we have one- or two-day delivery, more than 2.6% of all households subscribe to Netflix.

Our proprietary CineMatch technology enables us to create a customized store for each subscriber and to generate personalized recommendations which effectively merchandize our comprehensive library of titles. We provide more than 18 million personal recommendations daily. In January 2002, more than 10,500 of our 11,500 titles were selected by our subscribers. In comparison, most entertainment service providers merchandize a narrow selection of box office hits. A national video rental chain generates nearly 70% of its rental revenues from new releases. We generate approximately 70% of our activity from back catalogue titles. We believe that our CineMatch technology, based on proprietary algorithms and the more than 70 million movie ratings we have collected from our users during the past two years, enables us to build deep subscriber relationships and maintain a high level of library utilization.

We market our service to consumers primarily through pay-for-performance marketing programs, including online promotions, advertising insertions with most leading DVD player manufacturers and promotions with electronics and video software retailers. These programs encourage consumers to subscribe to our service and include a free trial period of typically 14 days. At the end of the trial period, subscribers are automatically enrolled as paying subscribers, unless they cancel their subscription. Approximately 90% of trial subscribers become paying subscribers. All paying subscribers are billed monthly in advance by credit card.

We stock almost every title available on DVD, excluding mature and adult content. We have established revenue sharing relationships with more than 50 studios and distributors. These relationships provide us access to titles on terms attractive to us. We also purchase titles directly from studios, distributors and independent producers.

We are focused on rapidly growing our subscriber base and revenues and utilizing our proprietary technology to minimize operating costs. Our technology is extensively employed to manage and integrate our business, including our Web site interface, order processing, fulfillment operations and customer service. We believe that our technology also allows us to maximize our library utilization and to run our fulfillment operations in a flexible manner with minimal capital requirements.

We currently provide titles to our subscribers on DVD only. However, we continue to monitor additional delivery technologies and, when appropriate, believe that we are well-positioned to offer digital distribution and additional delivery options to our subscribers.

INDUSTRY OVERVIEW

Filmed entertainment is distributed broadly through a variety of distribution channels. Out-of-home distribution channels include movie theaters, airlines and hotels. In-home distribution channels include home

video rental and retail outlets, cable and satellite television, pay-per-view, video-on-demand, or VOD, and broadcast television. Currently, studios distribute their filmed entertainment content

approximately six months after theatrical release to the home video market, seven to nine months to pay-per-view and VOD, one year to satellite and cable and two to three years to basic cable and syndicated networks.

IN-HOME FILMED ENTERTAINMENT MARKET

Domestic consumer expenditures for in-home filmed entertainment reached $32 billion in 2001 and are projected to grow to $46 billion in 2006, according to Adams Media Research. This market is vital to studios. Consumer spending on in-home filmed entertainment was nearly four times the $8.1 billion consumers spent at theaters in 2001, according to Adams Media Research.

Consumer rentals and purchases of VHS and DVD titles are the largest source of domestic consumer expenditures on in-home filmed entertainment, representing approximately $23.4 billion, or 73% of the market in 2001, according to Adams Media Research. Video rental outlet inventory is generally heavily weighted toward new releases to satisfy current consumer demand generated by heavy advertising and promotional spending by the studios.

Consumers access subscription-based services, such as HBO or Showtime, primarily through cable or satellite providers. According to Adams Media Research, subscription delivered content is the second largest source of domestic consumer expenditures on in-home filmed entertainment, representing approximately $7.5 billion, or 24% of the market in 2001. The National Cable Television Association estimates that the number of available programming networks has grown from 82 in 1991 to 231 in 2001.

Pay-per-view and VOD currently represent the smallest segment of the market. Consumer selection is generally limited to less than 100 titles. Limited title selection may contribute to the relatively small size of the pay-per-view and VOD markets. The market for pay-per-view and near-VOD was $813 million in 2001, representing less than 3% of the in-home filmed entertainment market, and is expected to grow to $1.3 billion in 2006, according to Adams Media Research. The market for cable VOD was $85 million in 2001, representing less than 1% of the in-home filmed entertainment market, and is expected to grow to $1.1 billion in 2006, according to Adams Media Research.

CONSUMER TRANSITION TO DVD

The home video segment of the in-home filmed entertainment market is undergoing a rapid technology transition away from VHS to DVD. We believe this transition is analogous to the shift in the music industry from audio cassettes to compact discs that resulted in significant additional demand for both new releases and back catalogue inventory. Specifically, the music industry benefited from consumers replacing their old library of audio cassettes with higher quality compact discs. We believe the home video segment is likely to see a similar trend as consumers rediscover back catalogue titles on higher quality DVDs.

The DVD player is the fastest selling consumer electronics device in history, according to DVD Entertainment Group. At year-end 2001, there were 25 million U.S. television households with a standalone set-top DVD player, representing 23% of U.S. television households. The number of

homes with a standalone set-top DVD player increased 97% in 2001, according to Adams Media Research. In September 2001, DVD player shipments outpaced VCR shipments for the first time in history, and this trend continued throughout the remainder of 2001. The number of U.S. households with a DVD player is expected to grow to 67 million by the end of 2006, representing approximately 60% of U.S. television households in 2006, according to Adams Media Research.

Every major domestic movie studio supports the DVD format. DVD rentals reached $2.3 billion in 2001, up 214% from 2000 and are expected to account for more than 50% of video rental revenue by 2003, up

from 7% in 2000, according to Adams Media Research. We believe this projected growth in DVD rental revenue is the direct result of consumer adoption of the DVD.

CHALLENGES FACED BY CONSUMERS IN SELECTING IN-HOME FILMED ENTERTAINMENT

The proliferation of new releases available for in-home filmed entertainment combined with the additional demand for back catalogue titles on DVD create two primary challenges for consumers in selecting titles.

Despite the large number of titles, consumers lack a deep selection of titles from existing subscription channels and traditional video rental outlets. Subscription channels, such as HBO and Showtime, and pay-per-view services currently offer a narrow selection of titles at specified times due to programming schedule constraints and technological issues relating to channel capacity. Traditional video rental outlets primarily focus on offering new releases and devote limited space to display and stock back catalogue titles.

Even when consumers have access to the vast number of titles available, they generally have limited means to effectively sort through the titles. In 2000, over 750 domestic and foreign films were rated for theatrical release in the United States and over 5,300 new releases and back-catalogue titles, excluding adult titles, were released on DVD. In addition, consumers are faced with 161 network and cable television shows covering 126 hours of weekly television viewing. We believe our CineMatch technology provides our subscribers the tools to select titles within the vast array of options that appeal to their individual preferences.

COMPETITIVE STRENGTHS

We believe that our revenue and subscriber growth are a result of the following competitive strengths:

. COMPREHENSIVE LIBRARY OF TITLES. We have developed strategic relationships with top studios and distributors, enabling us to establish and maintain a broad and deep selection of

titles. Since our service is available nationally, we believe that we can economically acquire and provide subscribers a broader selection of titles than video rental outlets, video retailers, subscription channels, pay-per-view and VOD services. We currently offer virtually every title available from the more than 50 studios and distributors from whom we acquire titles. To maximize our selection of titles, we continuously add newly released titles to our library. Our library contains numerous copies of popular new releases, as well as the many titles that appeal to more select audiences.

. PERSONALIZED MERCHANDIZING. We utilize our proprietary CineMatch technology to create a custom interface for each subscriber to effectively merchandize our library. Titles are dynamically presented based upon proprietary algorithms that compare individual preferences to our ratings database and provides each subscriber a personalized list of "Best Bets." We believe that CineMatch allows us to create demand for our entire library and maximize utilization of each title. Although we offer a complete selection of new releases, many subscriber selections are from back catalogue titles. In January 2002, subscribers selected more than 10,500 of our 11,500 titles, representing over 90% of all titles in our library. We believe that as the number of our subscribers and ratings database grows, CineMatch will be able to more accurately predict individual preferences.

. SCALABLE BUSINESS MODEL. We believe that we have a scalable, low-cost business model designed to maximize our revenues and minimize our costs. Subscribers' prepaid monthly credit card payments and the recurring nature of our subscription business provide working capital benefits and significant near-term revenue visibility. In order to manage and contain subscriber acquisition costs, we primarily utilize pay-for-performance marketing programs with online affiliates and use low-cost inserts in DVD player boxes. We have entered into revenue sharing agreements with studios and distributors to lower our upfront cash payments which enhance our ability to expand

the depth and breadth of our library. Our library remains active beyond the new release window. In January 2002, approximately 70% of the titles we delivered were from our back catalogue. Our scalable infrastructure and online interface eliminate the need for expensive retail outlets and allow us to service our large and expanding subscriber base from a series of low-cost regional distribution centers. We employ temporary, hourly and part-time workers to contain labor costs and provide maximum operating flexibility. Finally, we have low delivery costs through the use of standard first class mail to ship and return titles to and from subscribers.

. CONVENIENCE, SELECTION AND DELIVERY. Subscribers can conveniently select titles by building and modifying a personalized queue of titles on our Web site. We create a unique experience for subscribers because most pages on our Web site are tailored to individual selection and ratings history. Under our standard service, subscribers can have three titles out at the same time with no due dates or late fees. Once selected, titles are sent to subscribers by first-class mail and returned to us in pre-paid mailers. Upon receipt of returned titles, we automatically mail subscribers the next available title in their queue of selected titles.

GROWTH STRATEGY

Our strategy to provide a premier filmed entertainment subscription service to our large and growing loyal subscriber base includes the following key elements:

. PROVIDING A COMPELLING VALUE PROPOSITION FOR SUBSCRIBERS. We provide subscribers access to our comprehensive library with no due dates, late fees or shipping charges for a fixed monthly fee. We merchandize titles in easy to recognize lists including new releases, genres and other targeted categories. Our convenient, easy to use Web site allows subscribers to quickly select current titles, reserve upcoming releases and build an individual queue for future viewing using our proprietary personalization technology. Our CineMatch technology provides subscribers with recommendations of titles from our library. We quickly deliver titles to subscribers from our regional distribution centers by standard first-class mail.

. UTILIZING TECHNOLOGY TO ENHANCE SUBSCRIBER EXPERIENCE AND OPERATE EFFICIENTLY. We utilize proprietary technology developed in-house to manage the processing and distribution of more than 100,000 DVDs per day from our distribution centers. Our software automates the process of tracking and routing titles to and from each of our distribution centers and allocates order responsibilities among them. We continuously monitor, test and seek to improve the efficiency of our distribution, processing and inventory management systems as our subscriber base and shipping volume grows. We plan to operate low-cost regional distribution centers throughout the United States to reduce delivery time and increase library utilization. We believe that shorter delivery time will result in improved customer acquisition, retention and satisfaction.

. BUILDING MUTUALLY BENEFICIAL RELATIONSHIPS WITH FILMED ENTERTAINMENT PROVIDERS. We have entered into revenue sharing agreements with studios that lower our upfront cost of acquiring titles, minimize our inventory risk and increase the depth and breadth of our library. Our growing subscriber base provides studios with an additional distribution outlet for popular movies and television series, as well as niche titles and programs. Through our growing subscriber and ratings database, we also help studios reach targeted audiences to promote new theatrical and home video releases.

. IMPLEMENTING DIGITAL DELIVERY. We continuously monitor the development of additional digital distribution technologies. Historically, new technologies, including the VCR and more recently the DVD player, have led to the creation of additional distribution channels for filmed entertainment. We intend to utilize our strong relationships with the studios to obtain rights to acquire and deliver filmed entertainment through emerging digital distribution platforms as they become economically, commercially and technologically viable for those subscribers who prefer digital distribution.

OUR WEB SITE -- WWW.NETFLIX.COM

We have applied substantial resources to plan, develop and maintain proprietary technology to implement the features of our Web site, such as subscription account signup and management, personalized movie merchandising, inventory optimization and customer support. Our software is written in a variety of languages and runs on industry standard platforms.

Our CineMatch technology uses proprietary algorithms to compare subscriber movie preferences with preferences of other users contained in our database. This technology enables us to provide personalized predictions and movie recommendations unique to each subscriber.

We believe our dynamic store software optimizes subscriber satisfaction and the management of our library by integrating CineMatch predictions, subscribers' current queues and viewing histories, inventory levels and other factors to determine which movies to merchandise to each subscriber.

Our proprietary movie search engine indexes our extensive library by title, actor, director and producer, and sorts them by genre into collections.

Our account signup and management tools provide a subscriber interface familiar to online shoppers. We use a real-time postal address validator to help our subscribers enter correct postal addresses and to determine the additional postal address fields required to assure speedy and accurate delivery. We use an online credit card authorization service to help our subscribers avoid typographic errors in their credit card entries. These features help prevent fraud and subscriber disappointment resulting from failures to initiate a trial.

Throughout our Web site, we have extensive measurement and testing capabilities, allowing us to continuously optimize our Web site according to our needs as well as those of our subscribers. We use random control testing extensively.

Our Web site is run on hardware and software co-located at a service provider offering reliable network connections, power, air conditioning and other essential infrastructure. We manage the Web site 24 hours a day, seven days a week. We utilize a variety of proprietary software, freely available tools and commercially supported tools, integrated in a system designed to rapidly and precisely diagnose and recover from failures. Many of our Web site systems are redundant, including most of the networking hardware and the Web servers. We conduct upgrades and installations of software in a manner designed to minimize disruptions to our subscribers.

MERCHANDIZING

The key to our merchandizing efforts is the personal recommendations generated by our CineMatch technology. All subscribers and site visitors are given many opportunities to rate titles. Based on the ratings we collect, we are able to determine how a particular subscriber will likely feel about other titles in our library. We can also generate "average" ratings for titles.

CineMatch ratings also determine which titles are displayed to a subscriber and in which order. For example, a list of new releases may be ranked by user preference rather than by release date, allowing subscribers to quickly find titles they are more likely to enjoy. Ratings also determine

which titles are featured in lead page positions on our Web site to increase customer satisfaction and selection activity. Finally, CineMatch data is used to generate lists of similar titles, which has proved to be a powerful method for catalogue browsing. Subscribers often start from a familiar title and use our CineMatch Similars to find other titles they may enjoy.

Recommendations are available to anyone who has rated titles on our Web site, whether or not they are a subscriber. By aggregating the ratings of our subscribers and other visitors, we have built what we believe to be the world's largest personal movie ratings database, containing more than 70 million ratings.

We also provide our subscribers with decision support information about each title in our library. This information includes:

. factual data, including length, rating, cast and crew, special DVD features and screen formats;

. editorial perspective, including plot synopses, movie trailers and reviews written by our editors and by other Netflix subscribers; and

. CineMatch data, including personal rating, average rating and other similar titles the subscriber may enjoy.

MARKETING

We have multiple marketing channels through which we attract subscribers to our service. We compensate the majority of our channel partners on a pay-for-performance basis. We believe that our paid marketing efforts are significantly enhanced by the benefits of word-of-mouth advertising, our subscriber referrals and our active public relations program. Approximately 30% of our subscribers are referrals from existing subscribers or come from other unpaid marketing channels. We believe that improvements we have made to the subscriber experience have enhanced our subscriber acquisition efforts. In a simple random sample conducted in January 2002, approximately 85% of respondents said they would be likely to recommend our service to a friend. We focus our paid marketing efforts on the following channels:

ONLINE ADVERTISING

Online advertising is our largest paid source of new subscribers. A significant portion of our subscribers acquired from this channel come from an affiliate program managed for us by a third party. In addition to our affiliate program, online advertising encompasses our relationships with online networks, online brokers and a number of Web sites. We generally pay for our online advertising based on the success of our affiliates and partners in referring subscribers to us.

DVD PLAYER MANUFACTURERS

We have agreements with leading DVD player manufacturers requiring them to place a Netflix insert inside DVD player boxes that describes our service and offers a free trial. Our insert advertisements were placed in approximately 84% of all standalone set-top DVD player boxes sold in the United States in 2001. Our DVD player manufacturer relationships include Apex Digital, JVC Corporation of America, Panasonic Consumer Electronics, Philips Consumer Electronics, RCA, Samsung, Sanyo-Fischer, Sharp, Sony Electronics and Toshiba.

OTHER CHANNELS

We also work with a number of other channels on an opportunistic basis. We have a relationship with a leading consumer electronics and video retailer, which uses point-of-sale materials and stickers on product packaging to promote Netflix in its stores.

CONTENT ACQUISITION

We have entered into revenue sharing arrangements with more than 50 studios and distributors. The arrangements cover six of the top eight studios, including Buena Vista Home Video, Columbia Tristar Home Entertainment, Dreamworks International Distribution, Twentieth Century Fox Home Entertainment, Universal Studios Home Video and Warner Bros. Under these agreements we generally obtain titles for a low initial cost in exchange for a commitment to share a percentage of our subscription revenues for a defined period of time. After the revenue sharing period expires for a title, the agreements generally grant us the right to acquire for a minimal fee a percentage of the units for retention or sale by us. The balance of the units are destroyed or returned to the

originating studio. The principal terms of each agreement are similar in nature but are generally unique to each studio. In addition to revenue sharing agreements, we also purchase titles from various studios and distributors, including Paramount and MGM, and other suppliers, including Ingram Entertainment, Inc. and Video Product Distributors, on a purchase order basis.

FULFILLMENT OPERATIONS

We currently stock more than 11,500 titles on more than 2.9 million DVDs. During January 2002, we shipped to and received from subscribers more than 5.1 million DVDs. We have applied substantial resources developing, maintaining and testing the proprietary technology that helps us manage the fulfillment of individual orders and the integration of our Web site, transaction processing systems, fulfillment operations, inventory levels and coordination of our distribution centers.

Our primary fulfillment operation is housed in a 50,000 square foot facility in San Jose, California. In addition, we operate several regional distribution centers and are in the process of opening and operating additional facilities. We estimate the set-up cost of a regional center to be approximately $60,000. We believe that we can ship up to 500,000 DVDs per day from our San

Jose distribution center and an additional 50,000 DVDs per day from each of our regional distribution centers.

We believe our regional distribution centers allow us to improve the subscription experience for non-San Francisco Bay area subscribers by shortening the transit time for our DVDs in the U.S. Postal Service. Based on performance standards established by the U.S. Postal Service for its postal zones and our planned roll-out of additional regional distribution centers, we expect to be able to provide one- or two-day delivery service to at least 90% of the U.S. population by the second half of 2002.

CUSTOMER SERVICE

We believe that our ability to establish and maintain long-term relationships with subscribers depends, in part, on the strength of our customer support and service operations. We encourage and utilize frequent communication with and feedback from our subscribers in order to continually improve our Web site and our service. Our customer service center operates 13 hours a day, seven days a week. We utilize email to proactively correspond with subscribers. We also offer phone support for subscribers who prefer to talk directly with a customer service representative. We focus on eliminating the causes of customer support calls and automating certain self-service features on our Web site, such as the ability to report and correct most shipping problems. Currently, we support over 10,000 subscribers per customer support representative. Our customer service operations are housed in our San Jose, California facility.

COMPETITION

The market for in-home filmed entertainment is intensely competitive and subject to rapid change. Many consumers maintain simultaneous relationships with multiple in-home filmed entertainment providers and can easily shift spending from one provider to another. For example, consumers may subscribe to HBO, rent a DVD from Blockbuster, buy a DVD from Wal-Mart and subscribe to Netflix, or some combination thereof, all in the same month.

Video rental outlets and retailers against whom we compete include Blockbuster Video, Hollywood Entertainment, Amazon.com, Wal-Mart and Best Buy. We believe that we compete with these video rental outlets and movie retailers primarily on the basis of title selection, convenience and price. We believe that our subscription service with home delivery and access to our comprehensive library of titles competes favorably against traditional video rental outlets.

We also compete against online DVD sites, such as Rentmydvd.com and dvdovernight, subscription entertainment services, such as HBO and Showtime, pay-per-view and VOD providers and cable and satellite

providers. We believe we are able to provide greater subscriber satisfaction due to our vast library, proprietary technology and extensive database of subscriber preferences.

VOD has received considerable media attention. VOD is now widely deployed in most major hotels, and has early deployments in many major cable systems. Within a few years, we believe VOD will become widely available to digital cable and satellite subscribers. VOD carries as many titles as can be effectively merchandized on a set-top box platform, generally up to 100 recent releases, plus adult content. For consumers who primarily want the latest big releases, VOD may be a convenient distribution channel. We believe that our strategy of developing a large and growing subscriber base positions us favorably to provide digital distribution of filmed entertainment as that market develops.

EMPLOYEES

As of December 31, 2001, we had 264 full-time employees. We utilize part-time and temporary employees to respond to fluctuating seasonal demand for DVD shipments. Our employees are not covered by a collective bargaining agreement and we consider our relations with our employees to be good.

INTELLECTUAL PROPERTY

We use a combination of trademark, copyright and trade secret laws and confidentiality agreements to protect our proprietary intellectual property. We have applied for several trademarks and one patent. Our trademark and patent applications may not be allowed. Even if these applications are allowed, they may not provide us a competitive advantage. To date, we have relied primarily on proprietary processes and know-how to protect our intellectual property related to our Web site and fulfillment processes. Competitors may challenge successfully the validity and scope of our trademarks.

From time to time, we may encounter disputes over rights and obligations concerning intellectual property. We believe that our service offering does not infringe the intellectual property rights of any third party. However, we cannot assure you that we will prevail in any intellectual property dispute.

FACILITIES

Our executive offices are located in Los Gatos, California, where we lease approximately 25,000 square feet under a lease that expires in October 2005, subject to the right of the lessor to terminate our lease which expires in 2003. We also lease approximately 50,000 square feet of space in San Jose, California, where we maintain our customer service center, information technology operations and primary distribution center under a lease that expires in December 2004. We also lease a total of approximately 20,000 square feet in five states, where we operate regional distribution centers.

LEGAL PROCEEDINGS

We are not a party to any material legal proceedings.

MANAGEMENT

EXECUTIVE OFFICERS, DIRECTORS AND KEY EMPLOYEES

The following table sets forth certain information with respect to our executive officers, directors and key employees as of February 28, 2002.

NAME	AGE	POSITION
EXECUTIVE OFFICERS AND DIRECTORS		
Reed Hastings	41	Chief Executive Officer, President and Chairman of the Board
W. Barry McCarthy, Jr.	48	Chief Financial Officer and Secretary
Thomas R. Dillon	58	Vice President of Operations
Leslie J. Kilgore	36	Vice President of Marketing
Timothy M. Haley(1)(2)	47	Director
Jay C. Hoag(2)	43	Director
A. Robert Pisano(1)	58	Director
Michael N. Schuh(1)	58	Director
KEY EMPLOYEES		
Marc B. Randolph	43	Vice President of New Markets
Neil Hunt	40	Vice President of Internet Engineering
J. Mitchell Lowe	49	Vice President of Business Development
Patricia J. McCord	48	Vice President of Human Resources
Michael Osier	39	Vice President of IT Operations
Ted Sarandos	37	Vice President of Content Acquisition
David Hyman	36	General Counsel

(1) Member of the audit committee.
(2) Member of the compensation committee.

REED HASTINGS has served as our Chief Executive Officer since September 1998, our President since July 1999 and Chairman of the Board since inception. Mr. Hastings also currently serves as President of the California State Board of Education. From June 1998 to July 1999, Mr. Hastings served as Chief Executive Officer of Technology Network, a political service organization for the technology industry. Mr. Hastings served as Chief Executive Officer of Pure Atria Software, a maker of software development tools, from its inception in October 1991 until it was acquired by Rational Software Corporation, a software development company, in August 1997. Mr. Hastings holds an M.S.C.S. degree from Stanford University and a B.A. from Bowdoin College.

W. BARRY MCCARTHY, JR. has served as our Chief Financial Officer since April 1999 and our Secretary since May 1999. From January 1993 to December 1999, Mr. McCarthy was Senior Vice President and Chief Financial Officer of Music Choice, a music programming service distributed over direct broadcast satellite and cable systems. From June 1990 to December 1992, Mr. McCarthy was Managing Partner of BMP Partners, a financial consulting and advisory firm.

From 1982 to 1990, Mr. McCarthy was an Associate, Vice President and Director with Credit Suisse First Boston, an investment banking firm. Mr. McCarthy holds an M.B.A. from The Wharton School of Business at the University of Pennsylvania and a B.A. from Williams College.

THOMAS R. DILLON has served as our Vice President of Operations since April 1999. From January 1998 to April 1999, Mr. Dillon served as Chief Information Officer at Candescent Technologies Corp., a manufacturer of flat panel displays. From May 1987 to December 1997, he served as Chief Information Officer of Seagate Technology, a maker of computer peripherals. Mr. Dillon currently serves on the board of directors of Tricord Systems, Inc., a designer, developer and marketer of server appliances. Mr. Dillon holds a B.S. from the University of Colorado.

LESLIE J. KILGORE has served as our Vice President of Marketing since March 2000. From February 1999 to March 2000, Ms. Kilgore served as a Director of Marketing for Amazon.com, an Internet retailer. Ms. Kilgore served as a brand manager for The Procter & Gamble Company, a manufacturer and marketer of consumer products, from August 1992 to February 1999. Ms. Kilgore holds an M.B.A. from the Stanford University Graduate School of Business and a B.S. from The Wharton School of Business at the University of Pennsylvania.

TIMOTHY M. HALEY has served as one of our directors since June 1998. Mr. Haley is a co-founder of Redpoint Ventures, a venture capital firm, and has been a Managing Director of the firm since November 1999. Mr. Haley has been a Managing Director of Institutional Venture Partners, a venture capital firm, since February 1998. From June 1986 to February 1998, Mr. Haley was the President of Haley Associates, an executive recruiting firm in the high technology industry. Mr. Haley currently serves on the Board of Directors of several private companies. Mr. Haley holds a B.A. from Santa Clara University.

JAY C. HOAG has served as one of our directors since June 1999. Since June 1995, Mr. Hoag has been a General Partner at Technology Crossover Ventures, a venture capital firm. Mr. Hoag serves on the board of directors of EXE Technologies, Inc., eLoyalty Corporation, Expedia, Inc. and several private companies. Mr. Hoag holds an M.B.A. from the University of Michigan and a B.A. from Northwestern University.

A. ROBERT PISANO has served as one of our directors since April 2000. Since September 2001, Mr. Pisano has been the National Executive Director and Chief Executive Officer of the Screen Actors Guild. From August 1993 to April 1999, Mr. Pisano served as Executive Vice President, and the Vice Chairman and Director of Metro-Goldwyn-Mayer Inc., a motion picture and television studio. Mr. Pisano holds an LL.B. from the Boalt Hall School of Law at the University of California, Berkeley and a B.A. from San Jose State University.

MICHAEL N. SCHUH has served as one of our directors since February 1999. From August 1998 to the present, Mr. Schuh has served as a member of Foundation Capital, a venture capital

firm. Prior to joining Foundation Capital, Mr. Schuh was a founder and Chief Executive Officer of Intrinsa Corporation, a supplier of productivity solutions for software development organizations from 1994 to 1998. Mr. Schuh serves on the board of directors of several private companies. Mr. Schuh holds a B.S.E.E. from the University of Maryland.

MARC B. RANDOLPH has served as our Vice President of New Markets since December 2001, as our Executive Producer since from October 1998 to November 2001, as our President and Chief Executive Officer from August 1997 to September 1998 and as a member of our board of directors from inception to February 2002. From October 1996 to August 1997, Mr. Randolph served as Vice President of Marketing for IntegrityQA, a maker of software development tools, and its successor, Pure Atria Software. Mr. Randolph holds a B.A. from Hamilton College.

NEIL HUNT has served as our Vice President of Internet Engineering since January 1999. From August 1997 to January 1999, Mr. Hunt served as a Director of Engineering of Rational Software Corporation, and from April 1992 to August 1997, in various engineering roles for its predecessor, Pure Atria Software. Mr. Hunt holds a Ph.D. from the University of Aberdeen, U.K and a B.S. from the University of Durham, U.K.

J. MITCHELL LOWE has served as our Vice President of Business Development since February 1998 and was a consultant to Netflix from October 1997 to February 1998. Mr. Lowe is a founder of and served as Chief Executive Officer and director of Interaction, Inc., a video rental chain, from January 1984 to June 2000. Mr. Lowe served on the Board of Directors of the Video Software Dealers Association from 1991 to 1998 and as its Chairman of the Board from 1996 to 1997.

PATRICIA J. MCCORD has served as our Vice President of Human Resources since November 1998. From January 1998 to November 1998, Ms. McCord was a principal of Patty McCord Consulting, consulting various startup businesses. From June 1994 to July 1997, Ms. McCord served as Director of Human Resources at Rational Software Corporation and Pure Atria Software.

MICHAEL OSIER has served as our Vice President of IT Operations since March 2000. From July 1997 to March 2000, Mr. Osier served as Director of Enterprise Operations for Quantum Corporation, a supplier of tape drives. From March 1995 to July 1997 Mr. Osier served as Senior Manager for Conner Peripherals, a storage company and Seagate Technologies.

TED SARANDOS has served as our Vice President of Content Acquisitions since March 2000. From May 1999 to March 2000, Mr. Sarandos served as Vice President of Product and Merchandising at Video City, a video rental company. From 1993 to May 1999, Mr. Sarandos served as Western Regional Director of Sales and Operations for ETD, a video rental company.

DAVID HYMAN has served as our general counsel since February 2002. From August 1999 to February 2002, Mr. Hyman served as General Counsel and Senior Corporate Counsel for

Webvan Group, Inc., an Internet retailer. From November 1995 to August 1999, Mr. Hyman served as an associate at Morrison & Foerster LLP, a law firm. Mr. Hyman holds a J.D. from the University of Virginia School of Law and a B.A. from the University of Virginia.

CLASSIFIED BOARD OF DIRECTORS

Our certificate of incorporation will provide for a classified board of directors consisting of three classes of directors, each serving staggered three year terms. As a result, a portion of our board of directors will be elected each year. To implement the classified structure, prior to the consummation of the offering, one of the nominees to the board will be elected to a one year term, two will be elected to two year terms and two will be elected to three-year terms. Thereafter, directors will be elected for three year terms. Mr. Pisano has been designated a Class I director whose term expires at the 2003 annual meeting of stockholders. Messrs. Schuh and Haley have been designated Class II directors whose term expires at the 2004 annual meeting of stockholders. Messrs. Hastings and Hoag have been designated Class III directors whose term expires at the 2005 annual meeting of stockholders.

Our executive officers are appointed by the board of directors on an annual basis and serve until their successors have been duly elected and qualified. There are no family relationships among any of our directors or executive officers.

BOARD COMMITTEES

We established an audit committee and compensation committee in March 2000.

Our audit committee consists of Messrs. Haley, Pisano and Schuh. The audit committee reviews our internal accounting procedures and consults with and reviews the services provided by our independent accountants.

Our compensation committee consists of Messrs. Haley and Hoag. The compensation committee reviews and recommends to the board of directors the compensation and benefits of our employees.

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

No member of our board of directors or compensation committee serves as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of our board of directors or compensation committee.

DIRECTOR COMPENSATION

In September 2001, we granted A. Robert Pisano an option to purchase 100,000 shares of our common stock. In June 2000, we granted Mr. Pisano an option to purchase 100,000 shares of our common stock. This option was repriced in September 2001. These options now have an exercise price of $1.00 per share and expire ten years after the date of grant. We do not currently have a plan to compensate our directors for their service as members of the board of directors.

EXECUTIVE COMPENSATION

The table below summarizes the compensation earned for services rendered to Netflix in all capacities for each of the years in the three-year period ended December 31, 2001 by our Chief Executive Officer and our executive officers in 2001. These executives are referred to as the named executive officers elsewhere in this prospectus.

SUMMARY COMPENSATION TABLE

NAME AND PRINCIPAL POSITIONS	YEAR	SALARY	LONG-TERM COMPENSATION AWARDS SECURITIES UNDERLYING OPTIONS	ALL OTHER COMPENSATION
Reed Hastings(1) Chief Executive Officer, President, Chairman of the Board	2001	$ 13,800	1,500,000	$ --
	2000	13,800	--	--
	1999	15,510	--	--
W. Barry McCarthy, Jr. Chief Financial Officer	2001	200,000	305,000	3,501(2)
	2000	196,538	--	64,794(3)
	1999	131,540	330,000	32,451(4)
Thomas R. Dillon Vice President of Operations	2001	200,000	583,000(5)	5,389(6)
	2000	195,962	50,000	774(7)
	1999	131,250	330,000	--
Leslie J. Kilgore Vice President of Marketing	2001	190,000	853,000(8)	3,914(9)
	2000	141,038	350,000	64,168(10)

			1999	--	--
Marc B. Randolph(11)			2001	200,000	500,000
	2,315(12)				
Vice President of New Markets			2000	196,538	--
	180(7)				
			1999	169,768	--
	--				

(1) Mr. Hastings' annual salary for 2002 has been increased to $200,000.
(2) Includes $3,231 representing our matching contribution made under our 401(k) plan and $270 for taxable amounts attributable to Mr. McCarthy under our group term life insurance policy.
(3) Includes $64,524 representing taxable amounts attributable to Mr. McCarthy for relocation expenses paid by us and $270 for taxable amounts attributable to Mr. McCarthy under our group term life insurance policy.
(4) Includes amounts attributable to Mr. McCarthy for relocation expenses paid by us.
(5) Includes 105,000 shares underlying options that were repriced in January 2001 and 155,000 shares underlying options that were repriced in August 2001. The options repriced in January 2001 were originally granted to Mr. Dillon in December 1999 and the options repriced in August 2001 include the options repriced in January 2001 and the options granted to Mr. Dillon in August 2000.
(6) Includes $4,615 representing our matching contribution made under our 401(k) plan and $774 for taxable amounts attributable to Mr. Dillon under our group term life insurance policy.
(7) Includes taxable amounts attributable to the employee under our group term life insurance policy.
(8) Includes 300,000 shares underlying options that were repriced in January 2001 and 350,000 shares underlying options that were repriced in August 2001. The options repriced in January 2001 were originally granted to Ms. Kilgore in March 2000 and the options repriced in August 2001 include the options repriced in January 2001 and an additional option granted to Ms. Kilgore in August 2000.
(9) Includes $3,752 representing our matching contribution made under our 401(k) plan and $162 for taxable amounts attributable to Ms. Kilgore under our group term life insurance policy.
(10) Includes $64,043 representing amounts attributable to Ms. Kilgore for relocation expenses paid by us and $125 for taxable amounts attributable to Ms. Kilgore under our group term life insurance policy.
(11) Mr. Randolph is no longer one of our executive officers.
(12) Includes $2,135 representing our matching contribution made under our 401(k) plan and $180 for taxable amounts attributable to Mr. Randolph under our group term life insurance policy.

OPTION GRANTS DURING LAST FISCAL YEAR

The following table sets forth certain information with respect to stock options granted to each of the named executive officers in the year ended December 31, 2001. The potential realizable value is calculated based on the term of the option, which is ten years and an assumed initial public offering price of $ and assumed rates of stock appreciation of 5% and 10%, compounded annually. These assumed rates of appreciation comply with the rules of the Securities and Exchange Commission and do not represent our estimate of future stock price. Actual gains, if any, on stock option exercises will be dependent on the future performance of our common stock.

In 2001, we granted options to purchase an aggregate of 10,372,978 shares to employees, including the repricing of options to purchase 1,354,600 shares in January 2001 and options to purchase 2,641,386 shares in August 2001. All options have a term of ten years. Optionees may pay the exercise price of their options by cash, check, promissory note or delivery of already-owned shares of our common stock. All options are immediately exercisable upon grant for restricted stock which is subject to repurchase by us at cost in the event of the optionee's termination of employment for any reason (including death or disability) to the extent our right of repurchase has not lapsed. See "--Employment Agreements and Change in Control Arrangements." Most options vest over four years, with 25% of the options vesting on the date one year after the vesting commencement date, and 1/48th of the remaining options vesting each month thereafter.

	INDIVIDUAL GRANTS				POTENTIAL REALIZABLE VALUE AT ASSUMED ANNUAL RATES OF STOCK PRICE APPRECIATION FOR OPTION TERM	
NAME	NUMBER OF SECURITIES UNDERLYING OPTIONS GRANTED	% OF TOTAL OPTIONS GRANTED TO EMPLOYEES IN LAST FISCAL YEAR	EXERCISE PRICE PER SHARE	EXPIRATION DATE	5%	10%
Reed Hastings	1,500,000	14.5%	$1.00	07/18/11	$	$
W. Barry McCarthy, Jr.	305,000(1)	3.0	1.00	07/18/11		
Thomas R. Dillon	583,000(2)	5.6	1.00	07/18/11		
Leslie J. Kilgore	853,000(3)	8.2	1.00	07/18/11		
Marc B. Randolph	500,000	4.8	1.00	07/18/11		

(1) Mr. McCarthy disclaims beneficial ownership of 23,400 shares of common stock underlying these options. See "Principal Stockholders."
(2) Includes 105,000 shares underlying options that were repriced in January 2001 and 155,000 shares underlying options that were repriced in August 2001. The options repriced in January 2001 were originally granted to Mr. Dillon in December 1999 and the options repriced in August 2001 include the options repriced in January 2001 and the options granted to Mr. Dillon in August 2000.
(3) Includes 300,000 shares underlying options that were repriced in January 2001 and 350,000 shares underlying options that were repriced in August 2001. The options repriced in January 2001 were originally granted to Ms. Kilgore in March 2000 and the options repriced in August 2001 include the options repriced in January 2001 and an additional option granted to Ms. Kilgore in August 2000.

AGGREGATE OPTION EXERCISES DURING THE LAST FISCAL YEAR AND FISCAL YEAR-END OPTION VALUES

The following table sets forth information with respect to the named executive officers concerning option exercises for the year ended December 31, 2001, and exercisable and unexercisable options held as of December 31, 2001.

The "Value of Unexercised In-the-Money Options at December 31, 2001" is based on an assumed initial public offering price of $ per share, less the per share exercise price of the option multiplied by the number of shares issued upon exercise of the option.

			NUMBER OF SECURITIES UNDERLYING		VALUE OF UNEXERCISED
	SHARES		UNEXERCISED OPTIONS AT		IN-THE-MONEY OPTIONS AT
	ACQUIRED		DECEMBER 31, 2001		DECEMBER 31, 2001
	ON	VALUE			
NAME	EXERCISE	REALIZED	UNEXERCISABLE	EXERCISABLE	UNEXERCISABLE EXERCISABLE
Reed Hastings	--	$ --	--	1,500,000	$ -- $
W. Barry McCarthy, Jr.	30,000	--	--	585,000(1)	--
Thomas R. Dillon	--	--	--	703,000	--
Leslie J. Kilgore	--	--	--	553,000	--

Marc B. Randolph.....	--	--	--	500,000
--				

(1) Mr. McCarthy disclaims beneficial ownership of 127,992 shares of common stock underlying these options. See "Principal Stockholders."

COMPENSATION PLANS

1997 STOCK PLAN

Our 1997 Stock Plan was adopted by our board of directors and approved by our stockholders in 1997 and was last amended and restated in October 2001. Our 1997 Stock Plan provided for the grant of incentive stock options, within the meaning of Section 422 of the Internal Revenue Code, to our employees, and for the grant of nonstatutory stock options and stock purchase rights to our employees, directors and consultants. The number of shares reserved under our 1997 Stock Plan will be reduced at the effective time of this offering in an amount equal to the number of shares then reserved for issuance, but not yet granted. Shares returned to the 1997 Stock Plan after this offering will be available for issuance at the discretion of our board of directors. As of February 28, 2002, we had reserved a total of 11,198,864 shares of our common stock for issuance pursuant to outstanding and unexercised options and an additional 1,331,456 shares available for future option grants.

Our 1997 Stock Plan provides that in the event of a merger or sale of substantially all of the assets, the successor corporation will assume or substitute each option or stock purchase right. If the outstanding options or stock purchase rights are not assumed or substituted, the administrator will provide notice to the optionee that he or she has the right to exercise the option or stock purchase right as to all of the shares subject to the option or stock purchase right, including shares which would not otherwise be exercisable, for a period of 15 days from the date of the notice. The option or stock purchase right will terminate upon the expiration of the 15-day period. In addition, if, within 12 months of a merger or sale of assets, a holder of an option under our 1997 Stock Plan is terminated involuntarily other than for cause, the vesting schedule for such holder's option will accelerate with respect to an amount of shares equal to the number of shares that would otherwise vest within 12 months after the date of the termination of such holder.

2002 STOCK PLAN

Our board of directors adopted the 2002 Stock Plan in February 2002 and our stockholders approved the 2002 Stock Plan in 2002. The 2002 Stock Plan provides for the grant of incentive stock options, within the meaning of
Section 422 of the Internal Revenue Code, to our employees, and for the grant of nonstatutory stock options and stock purchase rights to our employees, directors and consultants.

NUMBER OF SHARES OF COMMON STOCK AVAILABLE UNDER THE 2002 STOCK PLAN. We have reserved 2,000,000 shares of our common stock for issuance pursuant to the 2002 Stock Plan, in addition to the number of shares which have been reserved but not issued under our 1997 Stock Plan as of the effective date of this offering. In addition, our 2002 Stock Plan provides for annual increases in the number of shares available for issuance under our 2002 Stock Plan on the first day of each fiscal year, beginning with our fiscal year 2003, equal to the lesser of 5% of the outstanding shares of common stock on the first day of the applicable fiscal year, 3,000,000 shares, and another amount as our board of directors may determine.

ADMINISTRATION OF THE 2002 STOCK PLAN. Our board of directors or, with respect to different groups of optionees, different committees appointed by our board, will administer the 2002 Stock Plan. In the case of options intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Internal Revenue Code, the committee will consist of two or more "outside directors" within the meaning of Section 162(m). The administrator has the power to determine the terms of the options and stock purchase rights granted, not inconsistent with the terms of the 2002 Stock Plan, including the exercise price (which may be reduced by the administrator after the date of grant), the number of shares subject to each option or stock purchase right, the exercisability of the options and stock purchase rights and the form of consideration payable upon exercise.

OPTIONS. The administrator will determine the exercise price of options granted under the 2002 Stock Plan, but with respect to all incentive stock options and nonstatutory stock options intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Internal Revenue Code, the exercise price must at least equal the fair market value of our common stock on the date of grant. The term of an incentive stock option may not exceed ten years, except that with respect to any participant who owns 10% of the voting power of all classes of our outstanding capital stock, the term may not exceed five years and the exercise price must equal at least 110% of the fair market value on the grant date. The administrator determines the term of all other options.

No optionee may be granted an option to purchase more than 1,500,000 shares in any fiscal year. In connection with his or her initial service as an employee, an optionee may be granted an option to purchase up to an additional 500,000 shares.

After termination of employment, a participant may exercise his or her option for the period of time stated in the option agreement. Generally, if termination is due to death or disability, the option will remain exercisable for 12 months. In all other cases, the option will generally remain exercisable for three months. However, an option may never be exercised later than the expiration of its term.

STOCK PURCHASE RIGHTS. Stock purchase rights, which represent the right to purchase our common stock, may be issued under our 2002 Stock Plan. The administrator will determine the purchase price of stock purchase rights granted under our 2002 Stock Plan. Unless the administrator determines otherwise, a restricted stock purchase agreement will grant us a

repurchase option that we may exercise upon the voluntary or involuntary termination of the purchaser's service with us for any reason, including death or disability. The purchase price for shares we repurchase will generally be the original price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to us. The administrator determines the rate at which our repurchase option will lapse.

TRANSFERABILITY OF OPTIONS AND STOCK PURCHASE RIGHTS. Unless otherwise determined by the administrator, our 2002 Stock Plan generally does not allow for the transfer of options or stock purchase rights and only the optionee may exercise an option or stock purchase right during his or her lifetime.

ADJUSTMENTS UPON CHANGE IN CONTROL. Our 2002 Stock Plan provides that in the event of a change in control, the successor corporation will assume or substitute each option or stock purchase right. If the outstanding options or stock purchase rights are not assumed or substituted, the administrator will provide notice to the optionee that he or she has the right to exercise the option or stock purchase right as to all of the shares subject to the option

or stock purchase right, including shares which would not otherwise be exercisable, for a period of 15 days from the date of the notice. The option or stock purchase right will terminate upon the expiration of the 15-day period.

AMENDMENT AND TERMINATION OF THE 2002 STOCK PLAN. Our 2002 Stock Plan will automatically terminate in 2012, unless we terminate it sooner. In addition, our board of directors has the authority to amend, suspend or terminate the 2002 Stock Plan provided it does not impair the rights of any optionee.

2002 EMPLOYEE STOCK PURCHASE PLAN

Concurrently with this offering, we intend to implement an employee stock purchase plan. Our board of directors adopted the 2002 Employee Stock Purchase Plan in February 2002 and our stockholders approved our 2002 Employee Stock Purchase Plan in 2002.

NUMBER OF SHARES OF COMMON STOCK AVAILABLE UNDER THE 2002 EMPLOYEE STOCK PURCHASE PLAN. A total of 1,750,000 shares of our common stock will be made available for sale under the 2002 Employee Stock Purchase Plan. In addition, the plan provides for annual increases in the number of shares available for issuance under the 2002 Employee Stock Purchase Plan on the first day of each fiscal year, beginning with our fiscal year 2003, equal to the lesser of:

. 2% of the outstanding shares of our common stock on the first day of the applicable fiscal year;

. 1,000,000 shares; and

. such other amount as our board may determine.

ADMINISTRATION OF THE 2002 EMPLOYEE STOCK PURCHASE PLAN. Our board of directors or a committee established by our board will administer the 2002 Employee Stock Purchase Plan. Our board of directors or its committee has full and exclusive authority to interpret the terms of the plan and determine eligibility.

ELIGIBILITY TO PARTICIPATE. Our employees and employees of future designated subsidiaries are eligible to participate in the 2002 Employee Stock Purchase Plan if they are customarily employed for at least 20 hours per week and more than five months in any calendar year. However, an employee may not be granted an option to purchase stock under the 2002 Employee Stock Purchase Plan if:

. the employee immediately after grant owns stock possessing 5% or more of the total combined voting power or value of all classes of our capital stock, or

. the employee's rights to purchase stock under all of our employee stock purchase plans accrues at a rate that exceeds $25,000 worth of stock for each calendar year.

OFFERING PERIODS AND CONTRIBUTIONS. Our 2002 Employee Stock Purchase Plan is intended to qualify under Section 423 of the Internal Revenue Code and contains consecutive, overlapping 24-month offering periods. Each offering period includes four six-month purchase periods. The offering periods generally start on the first trading day on or after May 1 and November 1 of each year, except for the first such offering period which will commence on the first trading day on or after the effective date of this offering and most likely will end on the first trading day on or after May 1, 2004 and the second offering period which will commence on November 1, 2002. All eligible employees automatically will be enrolled in the first offering period, but payroll deductions and continued participation in the first offering period will not be determined until after the effective date of the Form S-8 registration statement which is intended to register the shares reserved for issuance under the plan. The plan permits participants to purchase common stock through payroll deductions of up to 15% of their eligible compensation which generally includes a participant's base salary, commissions, overtime pay, shift premium, incentive compensation, incentive payments and bonuses, but excludes all other compensation. A participant may purchase a maximum of 12,500 shares during a six-month purchase period.

PURCHASE OF SHARES. Amounts deducted and accumulated by the participant are used to purchase shares of our common stock at the end of each six-month purchase period. The price is 85% of the lower of the fair

market value of our common stock at the beginning of an offering period or at the end of a purchase period. If the fair market value at the end of a purchase period is less than the fair market value at the beginning of the offering period, participants will be withdrawn from the current offering period following their purchase of shares on the purchase date and automatically

will be re-enrolled in a new offering period. Participants may end their participation at any time during an offering period, and will be paid their payroll deductions to date. Participation ends automatically upon termination of employment with us.

TRANSFERABILITY OF RIGHTS. A participant may not transfer rights granted under the 2002 Employee Stock Purchase Plan other than by will, the laws of descent and distribution or as otherwise provided under the plan.

ADJUSTMENTS UPON CHANGE IN CONTROL. In the event of a change in control, a successor corporation may assume or substitute each outstanding option. If the successor corporation refuses to assume or substitute for the outstanding options, the offering period then in progress will be shortened, and a new exercise date will be set, which shall be before the date of the proposed change in control. In such event, the administrator will provide notice of the new exercise date to each optionee at least ten business days before the new exercise date.

AMENDMENT AND TERMINATION OF THE 2002 EMPLOYEE STOCK PURCHASE PLAN. The administrator has the authority to amend or terminate our plan, except that, subject to certain exceptions described in the 2002 Employee Stock Purchase Plan, no such action may adversely affect any outstanding rights to purchase stock under the plan.

401(K) RETIREMENT PLAN

On January 1, 1998, we adopted the Netflix 401(k) Retirement Plan which covers all of our eligible employees who are at least 21 years old and have completed one month of service with us. The 401(k) Plan currently excludes from participation employees of affiliated employers, employees under a collective bargaining agreement and nonresident alien employees. The 401(k) Plan is intended to qualify under Sections 401(a), 401(m) and 401(k) of the Internal Revenue Code and the 401(k) Plan trust is intended to qualify under Section 501(a) of the Internal Revenue Code. All contributions to the 401(k) Plan by eligible employees, and the investment earnings thereon, are not taxable to such employees until withdrawn and are 100% vested immediately. Our eligible employees may elect to reduce their current compensation up to the maximum statutorily prescribed annual limit and to have such salary reductions contributed on their behalf to the 401(k) Plan.

EMPLOYMENT AGREEMENTS AND CHANGE IN CONTROL ARRANGEMENTS

In a change in control, if the options under our amended and restated 1997 Stock Plan are not assumed or substituted for, each outstanding option will fully vest and become immediately exercisable. In addition, if, within 12 months of a change in control, a holder of an option under our amended and restated 1997 Stock Plan is terminated involuntarily other than for cause, the vesting schedule for such holder's option will accelerate with respect to an amount of shares equal to the number of shares that would otherwise vest over the following 12 months.

In April 1999, our board of directors awarded W. Barry McCarthy, Jr. an option to purchase 330,000 shares of our common stock under a stock option agreement. One-quarter of the shares underlying Mr. McCarthy's option vested in April 2000 and 1/48 of the total shares vest each

month thereafter. Pursuant to an offer letter from us to Mr. McCarthy, upon a change of control of Netflix, the vesting schedule will accelerate with respect to an amount of shares equal to the number of shares that would otherwise vest over the following 12 months or 50% of the unvested options, whichever is greater. All of the shares underlying this option will be fully vested on April 14, 2003, subject to Mr. McCarthy continuing to be our employee through that date.

In March 1999, our board of directors awarded Tom Dillon an option to purchase 225,000 shares of our common stock under a stock option agreement. One-quarter of the shares underlying Mr. Dillon's option vested

in March 2000 and 1/48th of the total shares vest each month thereafter. Pursuant to an offer letter from us to Mr. Dillon, if, upon a change of control of Netflix, Mr. Dillon is terminated, the vesting schedule will accelerate with respect to an amount of shares equal to the number of shares that would otherwise vest over the following 12 months. In the event that Mr. Dillon's employment is terminated by us not for cause, Mr. Dillon will be entitled to severance of three months continued salary and benefits. In addition, Mr. Dillon is entitled to an annual bonus targeted at $15,000 based on our performance.

In March 2000, our board of directors awarded Leslie Kilgore an option to purchase 300,000 shares of our common stock under a stock option agreement. One-quarter of the shares underlying Ms. Kilgore's option were to vest in March 2001 and 1/48 of the total shares each month thereafter. In January 2001, Ms. Kilgore's options were repriced and the terms adjusted such that one-quarter of the shares underlying Ms. Kilgore's option vested in December 2000 and 1/48 of the total shares vest each month thereafter. Pursuant to an offer letter from us to Ms. Kilgore, if, upon a change of control of Netflix, Ms. Kilgore is involuntarily terminated or her role within the subsequent company is substantially and materially altered without her consent, the vesting schedule will accelerate with respect to an amount of shares equal to the number of shares that would otherwise vest over the following 12 months. All of the shares underlying Ms. Kilgore's option will be fully vested on December 20, 2004, subject to Ms. Kilgore continuing to be our employee through that date. In the event that Ms. Kilgore's employment is terminated by us not for cause, Ms. Kilgore will be entitled to severance of three months continued salary and benefits.

LIMITATIONS ON DIRECTORS' LIABILITY AND INDEMNIFICATION

Our certificate of incorporation provides that our directors will not be personally liable to us or our stockholders for monetary damages for breach of their fiduciary duties as directors, except liability for any of the following:

. any breach of their duty of loyalty to the corporation or its stockholders;

. acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

. payments of dividends or approval of stock repurchases or redemptions that are prohibited by Delaware law; or

. any transaction from which the director derived an improper personal benefit.

This limitation of liability does not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our certificate of incorporation and bylaws will provide that we shall indemnify our directors, officers, employees and other agents to the fullest extent permitted by law. We believe that indemnification under our bylaws covers at least negligence and gross negligence on the part of indemnified parties. Our bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in such capacity, regardless of whether Delaware law would permit indemnification.

We have entered into agreements to indemnify our directors and executive officers, in addition to the indemnification provided for in our certificate of incorporation and bylaws. These agreements, among other things, provide for indemnification of our directors and officers for expenses, judgments, fines, penalties and settlement amounts incurred by any such person in any action or proceeding arising out of such person's services as a director or officer or at our request.

We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and executive officers. There is no pending litigation or proceeding involving any of our directors, officers, employees or agents. We are not aware of any pending or threatened litigation or proceeding that might result in a claim for indemnification by a director, officer, employee or agent.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

SUBORDINATED PROMISSORY NOTE AND WARRANT FINANCING

In July 2001, we issued $13.0 million aggregate original principal amount of subordinated promissory notes and warrants to acquire an aggregate of 20,456,866 shares of common stock to raise capital to finance our operations. The warrants were sold for $0.001 per underlying share of common stock and have an exercise price of $1.00 per share. The following executive officers, 5% stockholders and certain family members of our executive officers and directors participated in the subordinated promissory note and warrant financing:

PURCHASER	PRINCIPAL AMOUNT OF NOTES	UNDERLYING WARRANTS	AGGREGATE CONSIDERATION

Entities affiliated with Technology Crossover Ventures/(1)/	$8,290,287	13,815,411	$8,304,102	
Entities affiliated with Foundation Capital.....	2,772,388	4,620,067	2,777,008	
Entities affiliated with Institutional Venture Partners....	1,670,667	1,670,666	1,672,337	
W. Barry McCarthy, Jr.....	30,000	30,000	30,030	
Randolph Randolph.....	2,500	2,842	2,503	

(1)Consists of: (i) TCV II, VOF; (ii) Technology Crossover Ventures II, C.V.; (iii) TCV II Strategic Partners, L.P.; (iv) TCV II (Q), L.P.; (v) Technology Crossover Ventures II, L.P.; (vi) TCV IV, L.P.; (vii) TCV IV Strategic Partners, L.P.; and (viii) TCV Franchise Fund, L.P. These entities hold more than 5% of our stock in the aggregate. Jay C. Hoag, one of our directors, is the managing member of Technology Crossover Management II, LLC, Technology Crossover Management IV, LLC and TCVF Management, LLC. Technology Crossover VentureTechnology Crossover Management IV, LLC is the sole general partner of Technology Crossover Ventures II, L.P., TCV II (Q), L.P. and TCV II Strategic Partners, L.P. and the investment general partner of TCV II, VOF and Technology Crossover Ventures II, C.V. Technology Crossover Management IV, LLC is the general partner of CV IV, L.P. and TCV IV Strategic Partners, L.P. TCVF Management, LLC is the general partner of TCV Franchise Fund, L.P.

Entities affiliated with Foundation Capital hold more than 5% of our stock in the aggregate. Michael N. Schuh, one of our directors, is a member of the limited liability companies that serve as the investment advisers for certain funds affiliated with Foundation Capital. Entities and persons affiliated with Institutional Venture Partners hold more than 5% of our stock in the aggregate. Timothy M. Haley, one of our directors, is a Managing Director of the limited liability company that serves as the investment adviser for certain funds related to Institutional Venture Partners. Randolph Randolph is the brother of Marc B. Randolph, a former director and our Vice President of New Markets.

PREFERRED STOCK SALES

SERIES E PREFERRED STOCK. In April 2000, we sold 5,332,689 shares of Series E Preferred Stock, at a purchase price of $9.38 per share, and sold warrants to acquire Series E Preferred Stock, at a purchase price of $0.01 per underlying share of Series E Preferred Stock, to raise capital to finance our operations. The warrants have an exercise price of $14.07 per share. Each share of Series E Preferred Stock will convert into 2.0441 shares of common stock and each warrant to purchase shares of Series E Preferred Stock will represent a warrant to purchase such number of shares of common stock multiplied by 2.0441 upon completion of this offering. The following 5% stockholders and certain family members of our executive officers and directors purchased shares and warrants in that financing:

PURCHASER	NUMBER OF SHARES	SHARES UNDERLYING WARRANTS	AGGREGATE CONSIDERATION
Entities affiliated with Technology Crossover Ventures/(1)/	4,359,876	435,988	$40,899,997
Entities affiliated with Foundation Capital.....	319,829	31,983	3,000,316
Entities affiliated with Institutional Venture Partners....	319,829	31,983	3,000,316
Europ@web B.V.....	319,829	31,983	3,000,316
Muriel Randolph.....	5,330	533	50,001
Randolph Randolph.....	5,330	533	50,001

(1)Consists of: (i) TCV II, VOF; (ii) Technology Crossover Ventures II, C.V.; (iii) TCV II Strategic Partners, L.P.; (iv) TCV II (Q), L.P.; (v) Technology Crossover Ventures II, L.P.; (vi) TCV IV, L.P.; and (vii) TCV Franchise Fund, L.P. Of the shares acquired by TCV IV, L.P., 147,690 of such shares were subsequently transferred to TCV IV Strategic Partners, L.P. by TCV IV, L.P.

Europ@web B.V. was a holder of more than 5% of our stock. The shares purchased by Europ@web were transferred to Finanzas B.V., an affiliate of Europ@web. Muriel Randolph is the mother of Marc B. Randolph. The shares of Series E Preferred Stock held by Finanzas, B.V. and Muriel Randolph were converted into shares of Series E-1 Preferred Stock in connection with our subordinated promissory note and warrant financing. Other than the warrants to purchase Series E Preferred Stock held by Finanzas, B.V. and Muriel Randolph, all warrants to purchase shares of Series E Preferred Stock have been cancelled. Each share of Series E-1 Preferred Stock will convert into one share of common stock upon completion of this offering.

SERIES D PREFERRED STOCK. In June 1999 and October 1999, we sold an aggregate of 4,649,927 shares of Series D Preferred Stock, at a purchase price of $6.52 per share, to raise capital to finance our operations. Each share of Series D Preferred Stock will convert into 1.4209 shares of common stock upon completion of this offering. The following 5% stockholders purchased shares in that financing:

PURCHASER	NUMBER OF SHARES	AGGREGATE CONSIDERATION

Forum Holding Amsterdam B.V.	4,081,118	$26,608,889
Entities affiliated with Technology Crossover Ventures/(1)/	366,735	2,391,112
Entities affiliated with Foundation Capital	153,374	999,998

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(1)Consists of: (i) TCV II, VOF; (ii) Technology Crossover Ventures II, C.V.; (iii) TCV II Strategic Partners, L.P.; (iv) TCV II (Q), L.P.; and (v) Technology Crossover Ventures II, L.P.

The shares of Series D Preferred Stock acquired by Forum Holding Amsterdam B.V. have been transferred to Finanzas, B.V.

SERIES C PREFERRED STOCK. In February 1999 and June 1999, we sold an aggregate of 4,650,269 shares of Series C Preferred Stock, at a purchase price of $3.27 per share, to raise capital to finance our operations. Each share of Series C Preferred Stock will convert into 1.3207 shares of common stock upon completion of this offering. The following 5% stockholders, directors, executive officers and certain of their family members purchased shares in that financing:

PURCHASER	NUMBER OF SHARES	AGGREGATE CONSIDERATION
Entities affiliated with Foundation Capital	1,834,863	$6,000,002
Entities affiliated with Technology Crossover Ventures/(1)/	1,834,862	5,999,999
Entities affiliated with Institutional Venture Partners	611,621	2,000,001
Reed Hastings	234,557	767,001
Muriel Randolph	22,936	75,001
Hastings 1996 Irrevocable Trust	9,174	29,999
Wil Hastings	9,174	29,999
Joan Hastings	5,505	18,001

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(1)Consists of: (i) TCV II, VOF; (ii) Technology Crossover Ventures II, C.V.; (iii) TCV II Strategic Partners, L.P.; (iv) TCV II (Q), L.P.; and (v) Technology Crossover Ventures II, L.P.

Reed Hastings currently serves as our Chief Executive Officer, President and Chairman of the Board. Wil Hastings is the father and Joan Hastings is the mother of Mr. Hastings. Wil and Joan Hastings are the trustees of the Hastings 1996 Irrevocable Trust.

LETTER AGREEMENT WITH CERTAIN STOCKHOLDERS

In connection with our sale of Series C Preferred Stock in February 1999, we entered into a letter agreement with Technology Crossover Ventures, Institutional Venture Partners and Foundation Capital, and in connection with our sale of Series D Preferred Stock in June 1999, we entered into an amendment to that letter agreement to add Europ@web as a party. Under this agreement, as amended, we have agreed to require the managing underwriters in this offering to offer up to 10% of the shares in this offering to these Series C and Series D preferred stockholders, subject to compliance with applicable law.

COMMON STOCK SALES

Since December 31, 1998, we have issued an aggregate of 2,062,000 shares of our common stock to our executive officers and directors for an aggregate consideration of $241,100.

PRINCIPAL STOCKHOLDERS

The table below sets forth information regarding the beneficial ownership of our common stock as of February 28, 2002, by the following individuals or groups:

. each person or entity who is known by us to own beneficially more than 5% of our outstanding stock;

. each of the named executive officers;

. each of our directors; and

. all of our directors and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and generally includes voting or investment power with respect to the securities. Except as otherwise indicated, and subject to applicable community property laws, the persons

named in the table have sole voting and investment power with respect to all shares of common stock held by them. Shares of common stock subject to options or warrants that are currently exercisable or exercisable within 60 days are deemed to be outstanding and beneficially owned for the purpose of computing the percentage ownership of that person but are not treated as outstanding for the purpose of computing the percentage ownership of any other person. Because all options granted under our 1997 Stock Plan are exercisable upon grant for restricted stock, all of the shares of our common stock underlying options held by our executive officers and directors are deemed to be beneficially owned by such person. Unless otherwise indicated, the address for each stockholder listed in the following table is c/o Netflix, Inc., 970 University Avenue, Los Gatos, CA 95032.

Applicable percentage ownership in the following table is based on 45,129,402 shares of common stock outstanding as of February 28, 2002, pro forma to reflect the conversion of all outstanding shares of preferred stock into common stock upon the closing of this offering and the issuance of additional shares to certain studios immediately prior to the closing of this offering.

To the extent that any shares are issued upon exercise of options, warrants or other rights to acquire our capital stock that are presently outstanding or granted in the future or reserved for future issuance under our stock plans, there will be further dilution to new public investors.

NAME AND ADDRESS	NUMBER OF SHARES BENEFICIALLY OWNED	PERCENT OF SHARES OUTSTANDING BEFORE OFFERING	PERCENT OF SHARES OUTSTANDING AFTER OFFERING
Jay C. Hoag and entities affiliated with Technology Crossover Ventures(1) 528 Ramona Street Palo Alto, CA 94301	25,671,830	43.6%	
Reed Hastings(2)	9,452,794	20.1	
Michael N. Schuh and entities affiliated with Foundation Capital(3) 70 Willow Road, Suite 200 Menlo Park, CA 94025	7,915,062	15.9	
Entities affiliated with Institutional Venture Partners(4) 3000 Sand Hill Road Building 2, Suite 290	6,789,603	14.5	

Menlo Park, CA 94025		
Timothy M. Haley(5).....		
6,753,029	14.4	
c/o Redpoint Ventures 3000 Sand Hill Road Building 2, Suite 290 Menlo Park, CA 94025		
Finanzas B.V.(6).....		
6,184,065	13.7	
Locatellikade 1 Parnassustoren 1076 AZ Amsterdam The Netherlands		
Marc B. Randolph(7).....		
2,522,000	5.5	
Leslie J. Kilgore(8).....		
962,000	2.1	
W. Barry McCarthy, Jr.(9).....		
957,000	2.1	
Thomas R. Dillon(10).....		
946,000	2.1	
A. Robert Pisano(11).....		
200,000	*	
All directors and executive officers as a group (8 persons)(12).....		
52,857,715	75.4%	

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* Less than 1% of our outstanding shares of common stock.
(1) Consists of: (i) 1,550,166 shares and a warrant to purchase 1,307,371 shares held by Technology Crossover Ventures II, L.P.; (ii) 211,500 shares and a warrant to purchase 178,374 shares held by TCV II Strategic Partners, L.P.; (iii) 236,681 shares and a warrant to purchase 199,610 shares held by Technology Crossover Ventures II, C.V.; (iv) 1,191,790 shares and a warrant to purchase 1,005,125 shares held by TCV II (Q), L.P.; (v) 50,357 shares and a warrant to purchase 42,470 shares held by TCV II, V.O.F.; (vi) 8,096,134 shares and a warrant to purchase 10,413,867 shares held by TCV IV, L.P.; (vii) 301,893 shares and a warrant to purchase 388,319 shares held by TCV IV Strategic Partners, L.P.; and
(viii) 217,897 shares and a warrant to purchase 280,275 shares held by TCV Franchise Fund, L.P. Mr. Hoag is the Managing Member of: (a) Technology Crossover Management II, LLC, the General Partner of TCV II (Q), L.P., TCV II Strategic Partners, L.P. and Technology Crossover Ventures II, L.P. and the Investment General Partner of TCV II, V.O.F. and Technology Crossover Ventures II, C.V.; (b) Technology Crossover Management IV, LLC, the General Partner of TCV IV, L.P. and TCV IV Strategic Partners, L.P.; and
(c) TCVF Management, LLC the General Partner of TCV Franchise Fund, L.P. Mr. Hoag

disclaims beneficial ownership of the shares and warrants held by the affiliated entities of Technology Crossover Ventures, except to the extent of his pecuniary interest therein.
(2) Includes options to purchase an aggregate of 1,800,000 shares.

(3) Consists of: (i) 2,800,750 shares held by Foundation Capital II, L.P.; (ii) 329,498 shares held by Foundation Capital II Entrepreneurs Fund, LLC; (iii) 164,746 shares held by Foundation Capital II Principals, LLC; (iv) a warrant to purchase 4,500,065 shares held by Foundation Capital Leadership Fund, L.P.; and (v) a warrant to purchase 120,002 shares held by Foundation Capital Leadership Principals Fund, LLC. Mr. Schuh is a Member of (a) Foundation Capital Management Co. II, LLC, the Manager of Foundation Capital II Entrepreneurs Fund, LLC, the Manager of Foundation Capital II Principals Fund, LLC and the General Partner of Foundation Capital II, L.P. and (b) FC Leadership Management Co., LLC, the General Partner of Foundation Capital Leadership Fund, L.P. and the Manager of Foundation Capital Leadership Principals Fund, LLC. Mr. Schuh disclaims beneficial ownership of the shares and warrants held by the affiliated entities of Foundation Capital, except to the extent of his pecuniary interest therein.
(4) Consists of: (i) 5,003,292 shares and a warrant to purchase 1,639,759 shares held by Institutional Venture Partners VIII, L.P.; (ii) 62,614 shares and a warrant to purchase 30,907 shares held by IVM Investment Fund VIII, LLC; (iii) 36,574 shares held by IVP Founders Fund I, L.P.; and (iv) 16,458 shares held by IVM Investment Fund VIII-A, LLC. Institutional Venture Management VIII, LLC is the General Partner of Institutional Venture Partners VIII, L.P. and the Manager of IVM Investment Fund VIII, LLC and IVM Investment Fund VIII-A, LLC. Institutional Venture Management VI, L.P. is the General Partner of IVP Founders Fund I, L.P.
(5) Includes the shares and warrants listed in footnote (4) above, except for the 36,574 shares held by IVP Founders I, L.P. Mr. Haley is the Managing Director of Institutional Venture Management VIII, LLC, the General Partner of Institutional Venture Partners VIII, L.P. and the Manager of IVM Investment Fund VIII, LLC and IVM Investment Fund VIII-A, LLC. Mr. Haley disclaims beneficial ownership of the shares and warrants held by the affiliated entities of Institutional Venture Partners, except to the extent of his pecuniary interest therein.
(6) Includes a warrant to purchase 65,376 shares.
(7) Includes: (i) 65,000 shares held by Mr. Randolph in his capacity as trustee of the Marc & Lorraine Randolph 2000 Logan B. Randolph Trust; (ii) 65,000 shares held by Mr. Randolph in his capacity as trustee of the Marc & Lorraine Randolph 2000 Morgan B. Randolph Trust; (iii) 65,000 shares held by Mr. Randolph in his capacity as trustee of the Marc & Lorraine Randolph 2000 Hunter B. Randolph Trust; and (iv) options to purchase an aggregate of 500,000 shares. Mr. Randolph disclaims beneficial ownership of the shares of common stock held of record by each of Marc Randolph, Trustee of the Marc & Lorraine Randolph 2000 Logan B. Randolph Trust, Marc Randolph, Trustee of the Marc & Lorraine Randolph 2000 Hunter B. Randolph Trust and Marc Randolph, Trustee of the Marc & Lorraine Randolph 2000 Morgan B. Randolph Trust.
(8) Includes options to purchase an aggregate of 962,000 shares.
(9) Includes: (i) options to purchase an aggregate of 893,000 shares; (ii) a warrant to purchase 30,000 shares; and (iii) 20,000 shares held by W. Barry McCarthy, Jr., Trustee of the Peter

Dudley McCarthy Trust--2001 u/i dtd. December 31, 2001. Mr. McCarthy disclaims beneficial ownership of the 20,000 shares he holds as Trustee of the Peter Dudley McCarthy Trust--2001 u/i dtd. December 31, 2001 and 117,992 shares underlying options for which he has agreed to transfer investment power.
(10) Includes options to purchase an aggregate of 946,000 shares.
(11) Includes options to purchase an aggregate of 200,000 shares.
(12) Includes the shares, options and warrants listed in footnotes (1) through (3), (5) and (8) through (11) above.

DESCRIPTION OF CAPITAL STOCK

AUTHORIZED AND OUTSTANDING CAPITAL STOCK

Our preferred stock outstanding prior to this offering will automatically be converted into common stock upon the closing of this offering. We will file an amended certificate of incorporation to be effective upon the closing of this offering that creates a new class of preferred stock. No shares of the new preferred stock will be outstanding upon completion of this offering. Upon the completion of this offering, we will be authorized to issue 150,000,000 shares of common stock, $0.001 par value, and 10,000,000 shares of undesignated preferred stock, $0.001 par value. The following description of our capital stock is only a summary and is subject to and qualified in its entirety by our amended certificate of incorporation and bylaws, which are included as exhibits to the registration statement of which this prospectus forms a part, and by the applicable provisions of Delaware law.

COMMON STOCK

As of February 28, 2002, there were 45,129,402 shares of common stock outstanding which were held of record by approximately 159 stockholders, pro forma for conversion of all outstanding shares of convertible preferred stock upon completion of this offering into an aggregate of 38,621,521 shares of common stock, which will occur upon the closing of this offering.

Holders of common stock are entitled to one vote per share on all matters to be voted upon by the stockholders. Subject to preferences that may be applicable to any outstanding preferred stock, common stockholders are entitled to receive ratably such dividends, if any, as may be declared from time to time by the board of directors out of funds legally available for that purpose. In the event of a liquidation, dissolution or winding up of Netflix, the common stockholders are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of preferred stock, if any, then outstanding. Common stockholders have no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the common stock.

PREFERRED STOCK

The board of directors is authorized, without action by the stockholders, to designate and issue preferred stock in one or more series and to designate the powers, preferences and rights of each series, which may be greater than the rights of the common stock. It is not possible to state the actual effect of the issuance of any shares of preferred stock upon the rights of holders of the common stock until the board of directors determines the specific rights of the holders of such preferred stock. However, the effects might include, among other things:

. impairing dividend rights of the common stock;

. diluting the voting power of the common stock;

. impairing the liquidation rights of the common stock; and

. delaying or preventing a change in control of us without further action by the stockholders.

Upon the completion of this offering, no shares of preferred stock will be outstanding, and we have no present plans to issue any shares of preferred stock.

WARRANTS

At February 28, 2002, warrants to purchase 21,053,931 shares of our common stock were outstanding. These warrants generally expire five years from the date of issue and have an average weighted exercise price of $1.07 per share.

REGISTRATION RIGHTS

Following this offering, the holders of shares of common stock are entitled to the following rights with respect to registration of such shares under the Securities Act. These rights are provided under the terms of an agreement between us and the holders of our registrable securities. Beginning six months following the date of this prospectus, if holders of at least 50% of the then outstanding registrable securities request that an amount of registrable securities having a reasonably anticipated aggregate offering price to the public, before deduction of underwriter discounts and commissions, of at least $20,000,000 be registered, we may be required, on up to two occasions, to register their shares for public resale. Also, holders of registrable securities may require on four separate occasions, but no more than twice within any 12-month period, that we register their shares for public resale on, if available, Form S-3 or similar short-form registration if the value of the securities to be registered is at least $2,000,000. Depending on market conditions, however, we may defer such registration for up to 90 days. Furthermore, in the event we elect to register any of our shares of common stock for purposes of effecting any public offering, the holders of the registrable securities described above are entitled to include a portion of their shares of common stock in the registration, but we may reduce the number of shares proposed to be registered in view of market conditions. All expenses in connection with any registration, other than underwriting discounts and commissions, will be

borne by us. All registration rights will terminate five years following the consummation of this offering, or, with respect to each holder of registrable securities, at such time as the holder is entitled to sell all of its shares in any three month period under Rule 144 of the Securities Act.

ANTI-TAKEOVER PROVISIONS

Certain provisions of Delaware law and our certificate of incorporation and bylaws could make the following more difficult:

. the acquisition of Netflix by means of a tender offer;

. acquisition of control of Netflix by means of a proxy contest or otherwise; and

. the removal of our incumbent officers and directors.

These provisions, summarized below, are expected to discourage certain types of coercive takeover practices and inadequate takeover bids, and are designed to encourage persons seeking to acquire control of us to negotiate with our board of directors. We believe that the benefits of increased protection against an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging such proposals. Among other things, negotiation of such proposals could result in an improvement of their terms.

DELAWARE ANTI-TAKEOVER LAW. We are subject to Section 203 of the Delaware General Corporation Law, an anti-takeover law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years following the date the person became an interested stockholder, unless the "business combination" or the transaction in which the person became an interested stockholder is approved by our board of directors in a prescribed manner. Generally, a "business combination" includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. Generally, an "interested stockholder" is a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own, 15% or more of a corporation's voting stock. The existence of this provision may have an anti-takeover effect with respect to transactions not approved in advance by the board of directors, including discouraging attempts that might result in a premium over the market price for the shares of common stock held by stockholders.

ELECTION AND REMOVAL OF DIRECTORS. Our board of directors is divided into three classes. The directors in each class will serve for a three-year term, one class being elected each year by our stockholders. Directors may be removed only for cause and with the approval of the holders of two-thirds of our outstanding stock. The board of directors has the exclusive right to increase or decrease the size of the board and to fill vacancies on the

board. This system of electing directors may tend to discourage a third party from making a tender offer or otherwise attempting to obtain control of us, because it generally makes it more difficult for stockholders to replace a majority of the directors.

STOCKHOLDER MEETINGS. Under our bylaws, only the board of directors, the chairman of the board, the chief executive officer and the president may call special meetings of stockholders.

REQUIREMENTS FOR ADVANCE NOTIFICATION OF STOCKHOLDER NOMINATIONS AND PROPOSALS. Our bylaws contain advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board.

ELIMINATION OF STOCKHOLDER ACTION BY WRITTEN CONSENT. Our certificate of incorporation eliminates the right of stockholders to act by written consent without a meeting. This provision will make it more difficult for stockholders to take action opposed by the board of directors

NO CUMULATIVE VOTING. Our certificate of incorporation and bylaws do not provide for cumulative voting in the election of directors.

UNDESIGNATED PREFERRED STOCK. The authorization of undesignated preferred stock makes it possible for the board of directors without stockholder approval to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to obtain control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of Netflix.

AMENDMENT OF PROVISIONS IN THE CERTIFICATE OF INCORPORATION. The certificate of incorporation will generally require the affirmative vote of the holders of at least two-thirds of the outstanding voting stock in order to amend any provisions of the certificate of incorporation concerning:

. the required vote to amend the certificate of incorporation;

. management of the business by the board of directors;

. the authority of stockholders to act by written consent;

. calling of a special meeting of stockholders;

. procedure and content of stockholder proposals concerning business to be conducted at a meeting of stockholders;

. number of directors and structure of the board of directors;

. removal and appointment of directors;

. director nominations by stockholders;

. personal liability of directors to us and our stockholders; and

. indemnification of our directors, officers, employees and agents.

TRANSFER AGENT AND REGISTRAR

The transfer agent and registrar for our common stock is Equiserve Trust Company, N.A.

NASDAQ NATIONAL MARKET LISTING

We have applied for listing on the Nasdaq National Market under the symbol "NFLX."

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no market for our common stock, and there can be no assurance that a significant public market for the common stock will develop or be sustained after this offering. Future sales of substantial amounts of common stock, including shares issued upon exercise of outstanding options and warrants, in the public market following this offering could adversely affect market prices prevailing from time to time and could impair our ability to raise capital through sale of our equity securities. As described below, no shares currently outstanding will be available for sale immediately after this offering because of certain contractual restrictions on resale. Sales of substantial amounts of our common stock in the public market after the restrictions lapse could adversely affect the prevailing market price and our ability to raise equity capital in the future.

Upon completion of this offering, we will have outstanding shares of common stock based upon shares outstanding as of February 28, 2002, assuming no exercise of the underwriters' over-allotment option and no exercise of outstanding options or warrants after that date of this offering. Of these shares, shares together with the shares sold in this offering will be freely tradable without restriction under the Securities Act, except for any shares purchased by our "affiliates" as that term is defined in Rule 144 under the Securities Act. The remaining shares of common stock held by existing stockholders are "restricted shares" as that term is defined in Rule 144.
% of such restricted shares are subject to lock-up agreements providing that, with certain limited exceptions, the stockholder will not offer, sell, contract to sell or otherwise dispose of any common stock or any securities that are convertible into common stock for a period of 180 days after the date of this prospectus without the prior written consent of Merrill Lynch. As a result of these lock-up agreements, notwithstanding possible earlier eligibility for sale under the provisions of Rules 144, 144(k) or 701, none of these shares will be resellable until 181 days after the date of this prospectus. Beginning 181 days after the date of this prospectus, approximately restricted shares will be eligible for sale in the public market, all of which are

subject to volume limitations under Rule 144, except shares eligible for sale under Rule 144(k) and shares eligible for sale under Rule 701. An additional restricted shares will be eligible for sale subject to volume limitations, beginning . In addition, as of February 28, 2002, there were outstanding options to purchase 12,998,864 shares of common stock and warrants to purchase 21,053,931 shares of common stock.
% of the shares of common stock underlying such options and warrants are subject to lock-up agreements. Merrill Lynch may, in its sole discretion and at any time without notice, release all or any portion of the securities subject to lock-up agreements.

RULES 144 AND 701

In general, under Rule 144 as currently in effect, beginning 90 days after the date of this prospectus, a person who has beneficially owned Restricted Shares for at least one year including the holding period of any prior owner except an affiliate of Netflix would be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

. 1% of the number of shares of common stock then outstanding which will equal to approximately shares immediately after this offering; and

. the average weekly trading volume of the common stock during the four calendar weeks preceding the filing of a Form 144 with respect to such sale.

Sales under Rule 144 are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about us. Under Rule 144(k), a person who is not deemed to have been our affiliate at any time during the three months preceding a sale, and who has beneficially owned the shares proposed to be sold for at least two years including the holding period of any prior owner except an affiliate of Netflix, is entitled to sell such shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144.

Rule 701, as currently in effect, permits resales of shares in reliance upon Rule 144 but without compliance with certain restrictions. Any employee, officer, director or consultant who purchased shares under a written compensatory plan or contract may be entitled to rely on the resale provisions of Rule 701. Rule 701 permits affiliates to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. Rule 701 further provides that non-affiliates may sell such shares in reliance on Rule 144 without having to comply with the holding period, public information, volume limitation or notice provisions of Rule 144. All holders of Rule 701 shares are required to wait until 90 days after the date of this prospectus before selling such shares. However, in this offering % of Rule 701 shares are subject to lock-up agreements and will only become eligible for sale at the earlier of the expiration of the 180-day lock-up agreements or no sooner than 90 days after the offering upon obtaining the prior written consent of Merrill Lynch.

STOCK OPTIONS

Following the effectiveness of this offering, we will file a registration statement on Form S-8 registering shares of common stock subject to outstanding options and reserved for future issuance under our stock plans. As of February 28, 2002, options to purchase a total of 12,998,864 shares were outstanding. In addition, a total of 5,081,456 shares were reserved for future issuance under our 1997 Stock Plan, 2002 Stock Plan and 2002 Employee Stock Purchase Plan. Common stock issued upon exercise of outstanding vested options or issued under our 2002 Employee Stock Purchase Plan, other than common stock issued to affiliates are available for immediate resale in the open market.

REGISTRATION RIGHTS

Also beginning six months after the date of this prospectus, holders of restricted shares and holders of warrants to purchase shares of common stock will be entitled to certain demand registration rights for sale in the public market. Registration of such shares under the Securities Act would result in such shares becoming freely tradable without restriction under the Securities Act, except for shares purchased by affiliates, immediately upon the effectiveness of such registration.

UNDERWRITING

Merrill Lynch, Pierce, Fenner & Smith Incorporated, Thomas Weisel Partners LLC and U.S. Bancorp Piper Jaffray, Inc. are acting as representatives of each of the underwriters named below. Subject to the terms and conditions set forth in a purchase agreement among us and the underwriters, we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, the number of shares of common stock set forth opposite its name below.

UNDERWRITER	NUMBER OF SHARES
Merrill Lynch Pierce Fenner & Smith Incorporated	
Thomas Weisel Partners LLC	
U.S. Bancorp Piper Jaffray, Inc	
Total	

Subject to the terms and conditions set forth in the purchase agreement, the underwriters have agreed, severally and not jointly, to purchase all of the shares sold under the purchase agreement if any of these shares are purchased. If an underwriter defaults, the purchase agreement provides

that the purchase commitments of the nondefaulting underwriters may be increased or the purchase agreement may be terminated.

We have agreed to indemnify the underwriters against specified liabilities, including some liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the purchase agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

COMMISSIONS AND DISCOUNTS

The representatives have advised us that they propose initially to offer the shares to the public at the initial public offering price set forth on the cover page of this prospectus and to dealers at that price less a concession not in excess of $ per share. The underwriters may allow, and the dealers may reallow, a discount not in excess of $ per share to other dealers. After the initial public offering, the public offering price, concession and discount may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us. The information assumes either no exercise or full exercise by the underwriters of their over-allotment options.

	PER SHARE	WITHOUT OPTION	WITH OPTION
Public offering price	$	$	$
Underwriting discount	$	$	$
Proceeds, before expenses, to Netflix	$	$	$

The total expenses of the offering, not including the underwriting discount, are estimated at approximately $ and are payable by us.

OVER-ALLOTMENT OPTION

We have granted an option to the underwriters to purchase up to additional shares at the public offering price less the underwriting discount. The underwriters may exercise this option for 30 days from the date of this prospectus solely to cover any over-allotments. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the purchase

agreement, to purchase a number of additional shares proportionate to that underwriter's initial amount reflected in the above table.

RESERVED SHARES

At our request, the underwriters have reserved for sale, at the initial public offering price, up to % of the shares offered hereby to be sold to some of our directors, officers, employees, distributors, dealers, business associates and related persons. The number of shares of common stock available for sale to the general public will be reduced to the extent such persons purchase such reserved shares. Any reserved shares which are not orally confirmed for purchase within one day of the pricing of this offering will be offered by the underwriters to the general public on the same terms as the other shares offered in this prospectus.

In connection with the purchase of our Series C Preferred Stock, we entered into a letter agreement with Foundation Capital II, L.P., Technology Crossover Ventures II, L.P. and Institutional Venture Partners VIII, L.P., dated February 16, 1999, pursuant to which we agreed to require the managing underwriter or underwriters of our initial public offering to offer to each of the foregoing parties the right to purchase, in the aggregate, 10% of the total shares to be issued by us in this offering. In connection with the purchase of our Series D Preferred Stock, we amended the letter agreement to add Forum Holding Amsterdam B.V. as a party. At our request, the underwriters will offer % of the shares available for sale in this offering to these investors.

NO SALES OF SIMILAR SECURITIES

We and our executive officers and directors and certain existing stockholders have agreed, subject to limited exceptions, not to sell or transfer any common stock or securities convertible into, exchangeable for exercisable for, or repayable with common stock, for 180 days after the date of this prospectus without first obtaining the written consent of Merrill Lynch. Specifically, we and these other persons have agreed not to directly or indirectly:

. offer, pledge, sell or contract to sell any common stock;

. sell any option or contract to purchase any common stock;

. purchase any option or contract to sell any common stock;

. grant any option, right or warrant for the sale of any common stock;

. lend or otherwise dispose of or transfer any common stock;

. request or demand that we file a registration statement related to the common stock; or

. enter into any swap or other agreement that transfers, in whole or in part, the economic consequence of ownership of any common stock whether any such swap or transaction is to be settled by delivery of shares or other securities, in cash or otherwise.

QUOTATION ON THE NASDAQ NATIONAL MARKET LISTING

We have applied to list our common stock for quotation on the Nasdaq National Market under the symbol "NFLX."

Before this offering, there has been no public market for our common stock. The initial public offering price was determined through negotiations among us and the representatives. In addition to prevailing market conditions, the factors considered in determining the initial public offering price are:

. the valuation multiples of publicly traded companies that the representatives believe to be comparable to us;

. our financial information;

. the history of, and the prospects for, its past and present operations, and the prospects for, and timing of, our future revenues;

. an assessment of our management, its past and present operations, and the prospects for, and timing of, our future revenues;

. the present state of our development; and

. the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for the shares may not develop. It is also possible that after the offering the shares will not trade in the public market at or above the initial public offering price. The underwriters do not expect to sell more than five percent of the shares being offered in this offering to accounts over which they exercise discretionary authority.

PRICE STABILIZATION, SHORT POSITIONS AND PENALTY BIDS

Until the distribution of the shares is completed, Securities and Exchange Commission rules may limit underwriters and selling group members from bidding for and purchasing our common stock. However, the representatives may engage in transactions that stabilize the price of the common stock, such as bids or purchases to peg, fix or maintain that price.

The underwriters may purchase and sell the common stock in the open market. These transactions may include short sales, stabilizing transactions and purchases to cover positions created by short sales. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. "Covered" short sales are sales made in an amount not greater than the underwriters' option to purchase additional shares from the issuer

in the offering. The underwriters may close out any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option. "Naked" short sales are any sales in excess of such option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common shares in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of common shares made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Similar to other purchase transactions, the underwriters' purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of the common stock or preventing or retarding a decline in the market price of the common stock. As a result, the price of the common stock may be higher than the price that might otherwise exist in the open market.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the common stock. In addition, neither we nor any of the representatives make any representation that the representatives will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

LEGAL MATTERS

The validity of the common stock offered hereby will be passed upon for us by Wilson Sonsini Goodrich & Rosati, Professional Corporation, Palo Alto, California. Certain legal matters will be passed upon for the Underwriters by Cahill Gordon & Reindel, New York, New York. As of the date of this prospectus, WS Investment Company 99A, WS Investment Company 98A and WS Investments '97B, investment partnerships composed of certain current and former members of and persons associated with Wilson Sonsini Goodrich & Rosati, Professional Corporation, as well as certain individual attorneys of this firm, beneficially own an aggregate of 126,640 shares of our common stock.

EXPERTS

The financial statements of Netflix, Inc. as of December 31, 2000 and 2001 and for each of the years in the three-year period ended December 31, 2001 appearing in this prospectus and registration statement have been audited by KPMG LLP, independent auditors, as set forth in their report thereon, appearing elsewhere herein, and upon the authority of said firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the Securities and Exchange Commission a registration statement on Form S-1 with respect to the common stock offered by this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules which are part of the registration statement. For further information with respect to us and our common stock, see the registration statement and the exhibits and schedules thereto. Any document we file may be read and copied at the Commission's public reference rooms in Washington, D.C., New York, New York and Chicago, Illinois. Please call the Commission at 1-800-SEC-0330 for further information about the public reference rooms. Our filings with the Commission are also available to the public from the Commission's Web site at HTTP://WWW.SEC.GOV.

Upon completion of this offering, we will become subject to the information and reporting requirements of the Securities Exchange Act of 1934 and, accordingly, will file periodic reports, other reports, proxy statements and other information with the Commission. Such periodic reports, other reports, proxy statements and other information will be available for inspection and copying at the Commission's public reference rooms, and the Web site of the Commission referred to above.

NETFLIX, INC.

INDEX TO FINANCIAL STATEMENTS

INDEPENDENT AUDITORS' REPORT

THE BOARD OF DIRECTORS AND STOCKHOLDERS
NETFLIX, INC.

We have audited the accompanying balance sheets of Netflix, Inc. (formerly known as NetFlix.com, Inc.) as of December 31, 2000 and 2001, and the related statements of operations, stockholders' deficit, and cash flows for each of the years in the three-year period ended December 31, 2001. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Netflix, Inc. as of December 31, 2000 and 2001, and its results of operations and its cash flows for each of the years in the three-year period ended December 31, 2001, in conformity with accounting principles generally accepted in the United States of America.

/s/ KPMG LLP

Mountain View, California
February 27, 2002

BALANCE SHEETS
(IN THOUSANDS, EXCEPT SHARE DATA)

AS OF DECEMBER 31,		
	2000	2001
ASSETS		
Current assets:		
Cash and cash equivalents	$ 14,895	$ 16,131
Prepaid expenses	2,738	1,019
Prepaid revenue sharing expense	636	732
Other current assets	32	1,670
Total current assets	18,301	19,552
DVD library, net	16,909	3,633
Intangible assets, net	5,582	7,917
Property and equipment, net	9,959	8,205
Deposits	643	1,677
Other assets	1,094	646
Total assets	$ 52,488	$ 41,630
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	$ 7,690	$ 13,715
Accrued expenses	5,919	4,544
Deferred revenue	2,773	4,937
Current portion of capital lease obligations	1,282	1,345
Notes payable	2,292	1,667

Total current liabilities	19,956	26,208
Deferred rent	102	240
Capital lease obligations, less current portion	2,024	1,057
Note payable	1,843	--
Subordinated notes payable, net of unamortized discount of $10,851 at December 31, 2001	--	2,799
Total liabilities	23,925	30,304
Commitments and contingency (notes 4 and 5)		
Redeemable convertible preferred stock (note 6)	101,830	101,830
Stockholders' deficit (note 7):		
Convertible preferred stock, $0.001 par value; 8,500,000 shares authorized; 4,444,545 and 6,157,499 shares issued and outstanding at 2000 and 2001, respectively; aggregate liquidation preference of $2,222	4	6
Common stock, $0.001 par value; 100,000,000 shares authorized; 6,407,476 and 6,485,737 shares issued and outstanding in 2000 and 2001, respectively;	7	7
Additional paid-in capital	34,636	49,974
Deferred stock-based compensation	(9,266)	(3,585)
Accumulated deficit	(98,648)	(136,906)
Total stockholders' deficit	(73,267)	(90,504)
Total liabilities and stockholders' deficit	$ 52,488	$ 41,630

See accompanying notes to financial statements.

STATEMENTS OF OPERATIONS
(IN THOUSANDS, EXCEPT PER SHARE DATA)

YEAR ENDED DECEMBER 31,		
1999	2000	2001
Revenues:		
Subscription	$ 4,854	$ 35,894	$ 74,255
Sales	152	--	1,657
Total revenues	5,006	35,894	75,912
Cost of revenues:		
Subscription	4,217	24,861	49,088
Sales	156	--	819
Total cost of revenues	4,373	24,861	49,907
Gross profit	633	11,033	26,005
Operating expenses:		
Fulfillment*	2,153	8,267	10,267
Technology and development*	7,413	16,823	17,734
Marketing*	14,271	27,707	24,216
General and administrative*	2,085	6,990	4,658
Restructuring charges	--	--	671
Stock-based compensation*	4,742	8,803	5,326
Total operating expenses	30,664	68,590	62,872

Operating loss		
(30,031)	(57,557)	(36,867)
Other income (expense):		
Interest and other income		
924	1,645	461
Interest expense		
(738)	(1,451)	(1,852)
Net loss		
$(29,845)	$(57,363)	$(38,258)
Net loss per share--basic and diluted		
$ (5.60)	$ (9.71)	$ (6.34)
Weighted average shares--basic and diluted		
5,328	5,907	6,033
*Amortization of stock-based compensation not included in expense line-item:		
Fulfillment		
$ 604	$ 1,469	$ 705
Technology and development		
907	2,855	1,788
Marketing		
1,144	2,679	1,624
General and administrative		
2,087	1,800	1,209
$ 4,742	$ 8,803	$ 5,326

See accompanying notes to financial statements.

NETFLIX, INC.

STATEMENTS OF STOCKHOLDERS' DEFICIT
(IN THOUSANDS, EXCEPT SHARE DATA)

CONVERTIBLE

	PREFERRED STOCK		COMMON STOCK		ADDITIONAL	DEFERRED		TOTAL
	SHARES	AMOUNT	SHARES	AMOUNT	PAID-IN CAPITAL	STOCK-BASED COMPENSATION	ACCUMULATED DEFICIT	STOCKHOLDERS' DEFICIT
Balances as of January 1, 1999	4,444,545	$ 4	2,580,250	$ 3	$ 8,100	$ (4,711)	$ (11,440)	$ (8,044)
Exercise of options and repurchases of restricted stock	--	--	3,370,911	3	323	--	--	326
Issuance of common stock upon exercise of warrants	--	--	271,489	1	30	--	--	31
Warrants issued in connection with debt financing	--	--	--	--	762	--	--	762
Deferred stock-based compensation	--	--	--	--	6,872	(6,872)	--	--
Stock-based compensation expense	--	--	--	--	--	4,742	--	4,742
Net loss	--	--	--	--	--	--	(29,845)	(29,845)
Balances as of December 31, 1999	4,444,545	$ 4	6,222,650	$ 7	$16,087	$ (6,841)	$ (41,285)	$(32,028)
Exercise of options and issuance of restricted stock	--	--	243,009	--	422	--	--	422
Repurchase of restricted stock	--	--	(79,960)	--	(141)	--	--	(141)
Issuance of common stock for services rendered	--	--	21,777	--	306	--	--	306
Warrants issued in connection with operating lease	--	--	--	--	216	--	--	216
Warrants issued in connection with services rendered	--	--	--	--	285	--	--	285
Warrants issued in connection with debt financing	--	--	--	--	105	--	--	105
Subscribed Series F non-voting preferred stock	--	--	--	--	6,128	--	--	6,128
Deferred stock-based compensation	--	--	--	--	11,228	(11,228)	--	--
Stock-based compensation expense	--	--	--	--	--	8,803	--	8,803
Net loss	--	--	--	--	--	--	(57,363)	(57,363)

Balances as of December 31, 2000	4,444,545	$ 4	6,407,476	$ 7	$34,636	$ (9,266)	$ (98,648)	$(73,267)	
Exercise of options		--	--	90,137	--	125	--	--	125
Repurchases of restricted common stock		--	--	(16,876)	--	(12)	--	--	(12)
Issuance of common stock in exchange for services rendered		--	--	5,000	--	10	--	--	10
Warrants issued in connection with subordinated notes payable		--	--	--	--	10,884	--	--	10,884
Warrants issued in connection with capital lease obligation		--	--	--	--	172	--	--	172
Warrants issued in exchange for services rendered		--	--	--	--	18	--	--	18
Issued Series F non-voting preferred stock	1,712,954	2	--	--	4,279	--	--	4,281	
Subscribed Series F non-voting preferred stock		--	--	--	--	217	--	--	217
Deferred stock-based compensation (forfeitures) net		--	--	--	--	(355)	355	--	--
Stock-based compensation expense		--	--	--	--	--	5,326	--	5,326
Net loss		--	--	--	--	--	--	(38,258)	(38,258)
Balances as of December 31, 2001	6,157,499	$ 6	6,485,737	$ 7	$49,974	$ (3,585)	$(136,906)	$(90,504)	

See accompanying notes to financial statements.

NETFLIX, INC.

STATEMENTS OF CASH FLOWS
(IN THOUSANDS)

YEARS ENDED DECEMBER 31,			
	1999	2000	2001
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net loss	$(29,845)	$(57,363)	$(38,258)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:			
Depreciation of property and equipment	884	3,605	5,507
Amortization of DVD library	3,182	15,681	22,127
Amortization of intangible assets	--	546	2,163
Noncash charges for equity instruments granted to non-employees	--	598	28
Stock-based compensation expense	4,742	8,803	5,326
Loss on disposal of property and equipment	--	145	--
Noncash interest expense	398	497	1,017
Changes in operating assets and liabilities:			
Prepaid expenses and other current assets	(85)	(2,686)	(15)
Accounts payable	2,271	2,356	6,025
Accrued expenses	1,571	2,708	(1,375)
Deferred revenue	353	2,302	2,164
Deferred rent	--	102	138
Net cash (used in) provided by operating activities	(16,529)	(22,706)	4,847
CASH FLOWS FROM INVESTING ACTIVITIES:			

Purchases of short-term investments	(6,322)	--	--
Proceeds from sale of short-term investments	--	6,322	--
Purchases of property and equipment	(3,295)	(6,210)	(3,233)
Acquisitions of DVD library	(9,866)	(23,895)	(8,851)
Deposits and other assets	(259)	(1,189)	(586)
Net cash used in investing activities	(19,742)	(24,972)	(12,670)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from issuance of redeemable convertible preferred stock	45,498	50,011	--
Proceeds from issuance of common stock	357	422	125
Net proceeds from issuance of subordinated notes payable and detachable warrants	--	--	12,831
Repurchases of common stock	--	(141)	(12)
Proceeds from issuance of notes payable	5,000	--	--
Principal payments on notes payable and capital lease obligations	(1,447)	(1,917)	(3,885)
Net cash provided by financing activities	49,408	48,375	9,059
Net increase cash and cash equivalents	13,137	697	1,236
Cash and cash equivalents, beginning of year	1,061	14,198	14,895
Cash and cash equivalents, end of year	$ 14,198	$ 14,895	$ 16,131
SUPPLEMENTAL DISCLOSURE:			

```
    Cash paid for
interest..................................................... $    283
$    948  $    860

========  ========  ========
    Noncash investing and financing activities:
    Purchase of assets under capital lease
obligations.............................. $  1,026  $  3,000  $    520

========  ========  ========
    Discount on capital lease
obligation.......................................... $    762  $    105  $
172

========  ========  ========
    Warrants issued as a deposit on an operating
lease............................... $     --  $    216  $     --

========  ========  ========
    Exchange of Series F non-voting convertible preferred stock for intangible
asset... $     --  $  6,128  $  4,498

========  ========  ========
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See accompanying notes to financial statements

NETFLIX, INC.

NOTES TO FINANCIAL STATEMENTS
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

DESCRIPTION OF BUSINESS

Netflix, Inc. (the Company), was incorporated on August 29, 1997 (inception) and began operations on April 14, 1998. The Company provides an online entertainment subscription service providing subscribers access to a comprehensive library of filmed entertainment titles formatted on digital video disk (DVD). The standard subscription plan provides subscribers access to an unlimited number of titles for $19.95 per month with no due dates or late fees. The subscribers select titles at the Company's website at www.netflix.com.

CASH AND CASH EQUIVALENTS

The Company considers highly liquid instruments with original maturities of three months or less, at the date of purchase, to be cash equivalents. The Company's cash and cash equivalents are principally on deposit in short-term asset management accounts at three large financial institutions.

DVD LIBRARY

Historically, the Company purchased DVDs from studios and distributors. In 2000 and 2001, the Company completed a series of revenue sharing agreements with several studios which changed the business model for acquiring DVDs and satisfying subscribers' demand. These revenue sharing agreements enable the Company to obtain DVDs at a lower up front cost than under traditional buying arrangements. The Company shares a percentage of the actual net revenues generated by the use of each particular title with the studios over a fixed period of time, which is typically 12 months for each DVD title (hereinafter referred to as the "title term"). At the end of the title term, the Company has the option of either returning the DVD title to the studio or purchasing the title. Before the change in business model, the Company typically acquired fewer copies of a particular title upfront and utilized each copy acquired over a longer period of time. The implementation of these revenue sharing agreements improved the Company's ability to obtain larger quantities of newly released titles and satisfy subscriber demand for such titles over a shorter period of time.

In connection with the change in business model, on January 1, 2001, the Company revised the amortization policy for the cost of its DVD library from an accelerated method using a three year life to the same accelerated method of amortization over one year. The change in life has been accounted for as a change in accounting estimate and is accounted for on a prospective basis from January 1, 2001. Had the DVDs acquired prior to January 1, 2001 been amortized using the three year life, amortization expense for 2001 would have been $4.7 million lower than the amount recorded in the accompanying financial statements, which represents a $0.78 per share impact on loss per share in 2001.

Under certain revenue sharing agreements the Company remits an upfront payment to acquire titles from the studios. This payment has two elements. The first element is an initial fixed license fee that is capitalized and amortized in accordance with the Company's DVD library amortization policy. The second element is a prepayment of future revenue sharing obligations. The amount attributable to the second element is classified as prepaid revenue sharing expense and is applied against future revenue sharing obligations. A nominal amount is also capitalized upon acquisition of a particular title for the cost of the estimated number of DVDs the Company expects to purchase at the end of the title term. This cost is amortized with the cost of the initial license fee on an accelerated basis over one year.

Several studios permit the Company to sell used DVDs upon the expiration of the title term. For those DVDs that the Company estimates it will sell at the end of the title term, a salvage value of two-dollars per DVD is provided. For those DVDs that the Company does not expect to sell, no salvage value is provided. The

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

Company currently estimates that approximately 15% of DVDs acquired will be sold at the end of the title term. As of December 31, 2001, the aggregate salvage value provided was $578.

During 1999 and 2000, the Company's DVDs were amortized on an accelerated method (sum of the years digits method) over a period of three years with no salvage value.

DVD library and accumulated amortization as of December 31 are as follows:

	AS OF DECEMBER 31,	
	2000	2001
DVD library	$26,188	$35,039
Less accumulated amortization	9,279	31,406
DVD library, net	$16,909	$ 3,633

INTANGIBLE ASSETS

During 2000, in connection with revenue sharing agreements with three studios, the Company agreed to issue each studio an equity interest equal to 1.204% of its fully diluted equity securities outstanding in the form of Series F Non-Voting Convertible Preferred Stock ("Series F Preferred Stock"). In 2001, in connection with revenue sharing agreements with two additional studios, the Company agreed to issue each studio an equity interest of 1.204% of its fully diluted equity securities outstanding in the form of Series F Preferred Stock.

As of December 31, 2001, the aggregate equity interests of these five studios equaled 6.02% of the outstanding fully diluted equity interests. If, at any time prior to the effective date of an initial public offering, these interests represent less than 6.02% of the Company's outstanding fully diluted equity securities, then the Company is obligated to issue additional shares of Series F Preferred Stock for no additional consideration to maintain those studios' aggregate fully diluted equity interest at 6.02%. The Series F Preferred Stock automatically converts into common stock on a one-for-one basis just prior to the effective date of an initial public offering with at least $20 million in aggregate gross proceeds. Upon conversion, the Company's obligation to maintain the studios' equity interests at 6.02% expires.

The Company measures the original issuances and any subsequent adjustments using the deemed fair value of the securities at the issuance and any subsequent adjustment dates. The deemed

value is recorded as an intangible asset and is amortized to cost of subscription revenues ratably over the remaining term of the agreements which are either three or five years. Total gross intangible assets related to these agreements as of December 31, 2000 and 2001 was $6,128 and $10,210, respectively. Accumulated amortization as of December 31, 2000 and 2001 was $546 and $2,622, respectively.

During 2001, in connection with a strategic marketing alliance agreement, the Company issued 416,440 shares of Series F Preferred Stock. Under the agreement, the strategic partner has committed to provide, on a best-efforts basis, a stipulated number of impressions to a co-branded Web site and the Company's Web site over a period of 24 months. In addition, the Company is allowed to use the partner's trademark and logo in marketing the Company's subscription services. The Company recognized the deemed fair value of these instruments as an intangible asset with a corresponding credit to additional paid-in capital. The intangible asset is being amortized on a straight-line basis to marketing expense over the two year term of the strategic marketing alliance. The gross intangible asset and accumulated amortization related to this agreement as of December 31, 2001 was $416 and $87, respectively.

PROPERTY AND EQUIPMENT

Property and equipment are carried at cost less accumulated depreciation. Depreciation is calculated using the straight-line method over the shorter of the estimated useful lives of the respective assets, generally up to three years, or the lease term, if applicable.

The Company evaluates long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If such assets are considered to be impaired, the impairment to be recognized is measured as the difference between the carrying amount of the long-lived asset and its fair value. Fair value for impairment purposes is measured based on quoted market prices in active markets; where quoted prices in active markets are not available, fair value is estimated using undiscounted estimated cash flows over the remaining life of the respective asset.

CAPITALIZED SOFTWARE COSTS

The Company capitalizes costs related to developing or obtaining internal-use software. Capitalization of costs begins after the conceptual formulation stage has been completed. Capitalized software costs are included in internal-use software in property and equipment and amortized over the estimated useful life of the software, which ranges from one to two years.

REVENUE SHARING

Revenue sharing expense is recorded as DVD's subject to revenue sharing are shipped to subscribers.

REVENUE RECOGNITION

Subscription revenues are recognized ratably during each subscriber's monthly subscription period. Refunds to customers are recorded as a reduction of revenues. Revenues from sales of DVDs are recorded upon shipment. Prior to adopting a subscription model, revenues from individual DVD rentals were recorded upon shipment.

COST OF REVENUES

Cost of subscription revenues consists of revenue sharing costs, amortization of the DVD library, amortization of intangible assets related to equity instruments issued to studios and postage and packaging costs related to DVDs provided to paying subscribers. Cost of revenues for DVD sales includes the salvage value of used DVDs that have been sold.

SUBSCRIBER ACQUISITION AND ADVERTISING EXPENSES

The Company expenses subscriber acquisition and advertising costs as incurred. These amounts are included in marketing expenses in the accompanying financial statements. Subscriber acquisition and advertising expenses were approximately $3,913, $10,424, and $12,041 for the years ended December 31, 1999, 2000 and 2001, respectively.

STOCK-BASED COMPENSATION

The Company accounts for its stock-based employee compensation plans using the intrinsic-value method. Deferred stock-based compensation expense is recorded if, on the date of grant, the current market value

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of the underlying stock exceeds the exercise price. The Company amortizes deferred stock-based compensation using the graded vesting method which is prescribed by Financial Accounting Standards Board (FASB) Interpretation No. 28 ("FIN 28"). Deferred compensation resulting from repriced options is calculated pursuant to FASB Interpretation No. 44 and amortized using FIN 28. Options granted to nonemployees are considered compensatory and are accounted for at fair value pursuant to Statement of Financial Accounting Standards (SFAS) No.

123. The Company discloses the pro forma effect of using the fair value method of accounting for all employee stock-based compensation arrangements in accordance with SFAS No. 123.

INCOME TAXES

The Company accounts for income taxes using the asset and liability method. Deferred income taxes are recognized by applying enacted statutory tax rates applicable to future years to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. The measurement of deferred tax assets is reduced, if necessary, by a valuation allowance for any tax benefits for which future realization is uncertain.

COMPREHENSIVE LOSS

Net loss, as reported in the statements of operations, is the Company's only component of comprehensive loss during all periods presented.

NET LOSS PER SHARE

Basic net loss per share is computed using the weighted-average number of outstanding shares of common stock, excluding common stock subject to repurchase. Diluted net loss per share is computed using the weighted-average number of outstanding shares of common stock and, when dilutive, potential common stock from outstanding options and warrants to purchase common stock, using the treasury stock method, and convertible securities using the "if-converted" method. All potential common stock issuances have been excluded from the computations of diluted net loss per share for all periods presented because the effect would be antidilutive.

Diluted net loss per share does not include the effect of the following antidilutive common equivalent shares (rounded to nearest thousand):

	AS OF DECEMBER 31,		
	1999	2000	2001
Stock options	1,594,000	3,418,000	8,999,000
Warrants	93,000	708,000	21,054,000
Common stock subject to repurchase	1,069,000	486,000	419,000
Redeemable convertible preferred stock	14,984,000	20,317,000	28,994,000
Convertible preferred stock	4,445,000	4,445,000	6,157,000
Subscribed preferred stock	--	1,321,000	3,213,000
	22,185,000	30,695,000	68,836,000

FAIR VALUE OF FINANCIAL INSTRUMENTS

The fair value of the Company's cash, accounts payable and borrowings approximates their carrying values due to their short maturity or fixed-rate structure.

USE OF ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

SEGMENT REPORTING

The Company is organized in a single operating segment for purposes of making operating decisions and assessing performance. The chief operating decision maker evaluates performance, makes operating decisions and allocates resources based on financial data consistent with the presentation in the accompanying financial statements.

RECENTLY ISSUED ACCOUNTING STANDARDS

In July 2001, the FASB issued SFAS No. 141, BUSINESS COMBINATIONS, and SFAS No. 142, GOODWILL AND OTHER INTANGIBLE ASSETS. SFAS No. 141 addresses the accounting for and reporting of business combinations and requires that all business combinations be accounted for using the purchase method of accounting. SFAS No. 141 is effective for all business combinations initiated after June 30, 2001. The adoption of SFAS No. 141 did not have any effect on the Company's financial statements.

SFAS No. 142 addresses financial accounting and reporting for acquired goodwill and other intangible assets. SFAS No. 142 changes the accounting for goodwill from amortization method to an impairment-only method. The amortization of goodwill, including goodwill recorded in past business combinations, will cease upon adoption of SFAS No. 142. For goodwill acquired by June 30, 2001, SFAS No. 142 is effective for all fiscal years beginning after December 15, 2001. Goodwill and intangible assets acquired after June 30, 2001, will be subject to immediate adoption of SFAS No. 142. The adoption of SFAS No. 142 will not have any effect on the Company's financial statements.

In August 2001, the FASB issued SFAS No. 144, ACCOUNTING FOR THE IMPAIRMENT OR DISPOSAL OF LONG-LIVED ASSETS (SFAS No. 144). SFAS No. 144 addresses

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financial accounting and reporting for the impairment or disposal of long-lived assets. This statement requires that long-lived assets be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future net cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. SFAS No. 144 requires companies to separately report discontinued operations and extends that reporting to a component of an entity that either has been disposed of (by sale, abandonment, or in a distribution to owners) or is classified as held for sale. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell. The Company is required to adopt SFAS No. 144 on January 1, 2002. The provisions of SFAS No. 144 for assets held for sale or other disposal generally are required to be applied prospectively after the adoption date to newly initiated disposal activities. Management does not expect the adoption of SFAS No. 144 to have a material impact on the Company's financial statements.

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2. PROPERTY AND EQUIPMENT, NET

Property and equipment consisted of the following as of December 31, 2000 and 2001:

	AS OF DECEMBER 31,	
	2000	2001
Computer equipment	$ 8,644	$ 9,245
Internal-use software	3,500	5,285
Furniture and fixtures	1,608	2,033
Leasehold improvements	868	1,627
	14,620	18,190
Less accumulated depreciation	4,661	9,985
	$ 9,959	$ 8,205

Property and equipment includes approximately $5,101 and $5,500 of assets under capital leases as of December 31, 2000 and 2001, respectively. Accumulated depreciation of assets under these leases totaled $2,185 and $2,276 as of December 31, 2000 and 2001, respectively. Internal-use software includes approximately $1,595 and $2,795 of internally incurred capitalized software

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development costs as of December 31, 2000 and 2001, respectively. Accumulated amortization of capitalized software development costs totaled $1,080 and $1,835 as of December 31, 2000 and 2001, respectively.

3. ACCRUED EXPENSES

Accrued expenses consisted of the following as of December 31, 2000 and 2001:

	AS OF DECEMBER 31,	
	2000	2001
Accrued state sales and use tax	$2,663	$2,379
Employee benefits	1,918	1,476
Other	1,338	689
	$5,919	$4,544

4. DEBT AND RELATED WARRANTS

CAPITAL LEASE OBLIGATIONS

The Company has entered into capital leases for the acquisition of equipment. The Company has outstanding capitalized lease obligations under these arrangements of $3,306 and $2,402 as of December 31, 2000 and 2001, respectively. Such amounts are payable in monthly installments of principal and interest with effective interest rates ranging between 16.3% and 27.4% per annum.

NOTES PAYABLE

The Company has a note payable with an unpaid balance of $4,135 and $1,667 as of December 31, 2000 and 2001, respectively. The note payable is secured by the assets of the Company, accrues interest at 12% per annum and is payable in monthly installments of principal and interest through September 2002.

SUBORDINATED NOTES PAYABLE

In July 2001, the Company issued subordinated promissory notes and warrants to purchase 20,456,866 shares of its common stock at an exercise price of $1.00 per share for net proceeds of $12,831. The subordinated notes have an aggregate face value of $13,000 and stated interest rate of 10%. Approximately $10,884 of the proceeds was allocated to the warrants as additional paid-in capital and $1,947 was allocated to the subordinated notes payable. The resulting discount of $11,053 is being accreted to interest expense using an effective annual interest rate of 21%. The face value of the subordinated notes and all accrued interest are due and payable upon the earlier of July 2011 or the consummation of a qualified initial public offering. As of December 31, 2001, accrued unpaid interest of $650 is included in the carrying amount of the subordinated notes payable balance of $2,799 in the accompanying financial statements. Upon a change in control, as defined, the subordinated note holders are entitled to consideration equal to three times the face value of the notes plus accrued interest.

WARRANTS AND COMMON STOCK ISSUED WITH DEBT INSTRUMENTS

In February 1999, in connection with borrowings under a note payable, the Company issued to the lender 271,489 shares of common stock at $0.11 per share. The Company accounted for the fair value of the common stock of approximately $762 as an increase to additional paid-in capital with a corresponding provision to debt discount. The debt discount was accreted to interest expense over 24 months.

In May 2000, in connection with a capital lease, the Company issued a warrant that provided the lender the right to purchase 23,007 shares of common stock at $6.52 per share. The Company accounted for the fair value of the warrant of approximately $105 as an increase to additional paid-in capital with a corresponding provision to debt discount. The debt discount is being accreted to interest expense over the term of the related debt, which is 36 months.

In July 2001, in connection with borrowings under subordinated promissory notes, the Company issued to the note holders warrants to purchase 20,456,866 shares of common stock. The Company accounted for the fair value of the warrants of $10,884 as an increase to additional paid-in capital with a corresponding discount on subordinated notes payable.

In July 2001, in connection with a capital lease agreement, the Company granted warrants to purchase 255,000 shares of common stock at an exercise price of $1.00 per share. The fair value of approximately $172 was recorded as an increase to additional paid-in capital with a corresponding reduction to the capitalized lease obligation. The debt discount is being accreted to interest expense over the term of the lease agreement which is 45 months.

The fair values of warrants were estimated at the date of issuance of each warrant using the Black-Scholes valuation model with the following assumptions: the term of the warrant; risk-free rates between 4.92% to 6.37%; volatility of 80% for all periods; and a dividend yield of 0.0%.

WARRANTS, OPTIONS AND COMMON STOCK ISSUED IN EXCHANGE FOR CASH AND SERVICES RENDERED

In March 2000, in consideration for employee recruiting and placement services rendered, the Company issued 21,777 shares of common stock to a consultant. The Company recorded the deemed fair value of the common stock issued of $306 as marketing expense.

Also in March 2000, in consideration for marketing services rendered, the Company issued an option to a consultant to purchase 15,000 shares of common stock at $4.50 per share. The Company recorded the fair value of the option of approximately $195 as marketing expense.

In April 2000, in connection with the sale of Series E preferred stock, the Company sold warrants to purchase 533,003 shares of Series E preferred stock at a price of $0.01 per share. The warrants have an exercise price of $14.07 per share. The proceeds from the sale of these warrants were recorded as part of the issuance of Series E preferred stock in the accompanying statement of stockholders' deficit. In July 2001, in connection with a modification of the terms of the Series E preferred stock, certain Series E warrant holders agreed to the cancellation of warrants to purchase 500,487 of Series E preferred stock. The remaining warrants to purchase 32,516 shares are exercisable at $14.07 per share.

In November 2000, in connection with an operating lease, the Company issued a warrant that provided the lessor the right to purchase 60,000 shares of common stock at $2.00 per share. The Company also issued an option, in connection with the lease to a consultant to purchase 25,000 shares of common stock at $2.00 per share. The Company accounted for the fair value of the warrant of approximately $216 as an increase to additional paid-in capital with a corresponding increase to other assets. This asset is being amortized over the term of the related operating lease, which is five years. The Company recorded the fair value of the option of approximately $90 as general and administrative expense.

In July 2001, the Company issued a warrant to purchase 100,000 shares of Series F non-voting preferred stock at $9.38 per share to a Web portal company in connection with an integration and distribution agreement. The fair market value of the warrants of approximately $18 was recorded as sales and marketing expense and an increase to additional paid-in capital.

The Company calculated the fair value of the warrants and nonemployee stock options using the Black-Scholes valuation model with the following assumptions: the term of the warrant or option; risk-free rates between 5.83% to 6.37%; volatility of 80% for all periods; and dividend yield of 0.0%.

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5. COMMITMENTS

LEASE COMMITMENTS

The Company leases its primary facilities under noncancelable-operating leases. The Company also has capital leases with various expiration dates through October 1, 2004. Future minimum lease payments under noncancelable capital and operating leases as of December 31, 2001, are as follows:

YEAR ENDING DECEMBER 31,	CAPITAL LEASES	OPERATING LEASES
2002	$ 1,763	$ 2,473
2003	1,267	2,543
2004	176	2,484
2005	--	1,466
Thereafter	--	--
Total minimum payments	$ 3,206	$ 8,966
Less interest and unamortized discount	(804)	
Present value of net minimum lease payments	2,402	
Less current portion of capital lease obligations	(1,345)	
Capital lease obligations, noncurrent	$ 1,057	

Rent expense for the years ended December 31, 1999, 2000 and 2001 was $783, $1,533 and $2,450, respectively. Rent expense is computed using the straight-line method and the minimum operating lease payments required over the lease term.

OTHER COMMITMENTS

In 2001, the Company entered into two strategic marketing alliances for the primary purpose of generating new subscribers. The first alliance provides that the Company will pay a specified bounty in cash for each referred subscriber as well as an ongoing share of revenues for every new subscriber referral for the two year term of the agreement. In addition, after a minimum threshold of subscribers has been referred, the Company is obligated to issue additional shares of Series F Preferred Stock for every subscriber referred. Under the second alliance, the Company will pay a specified bounty for every new referred subscriber in excess of a specified minimum.

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In addition, the Company will share a portion of revenues for the term of the agreement for each referred subscriber. Through December 31, 2001, the Company had paid $415 under these agreements. Also, through December 31, 2001, no amounts of Series F Preferred Stock had been earned or issued under the first alliance.

6. REDEEMABLE CONVERTIBLE PREFERRED STOCK

The redeemable convertible preferred stock at December 31, 2000 consists of the following:

	PAR VALUE	NUMBER OF SHARES AUTHORIZED	NUMBER OF SHARES ISSUED AND OUTSTANDING	DIVIDENDS PER SHARE	REDEMPTION AND LIQUIDATION VALUE PER SHARE	TOTAL LIQUIDATION VALUE
Series B.....	$0.001	5,776,616	5,684,024	$0.0864	$1.08	$ 6,139
Series C.....	0.001	4,750,000	4,650,269	0.2616	3.27	15,205
Series D.....	0.001	4,650,000	4,649,927	0.5216	6.52	30,318
Series E.....	0.001	5,874,199	5,332,689	0.7500	9.38	50,021
		21,050,815	20,316,909			$101,683

The redeemable convertible preferred stock at December 31, 2001 consists of the following:

	NUMBER OF SHARES AUTHORIZED	NUMBER OF SHARES ISSUED AND OUTSTANDING	DIVIDENDS PER SHARE	REDEMPTION AND LIQUIDATION VALUE PER SHARE	TOTAL LIQUIDATION

	PAR VALUE	AUTHORIZED	OUTSTANDING	PER SHARE	PER SHARE VALUE	
Series B.....	$0.001	5,776,616	5,684,024	$0.0864	$1.08	$ 6,139
Series C.....	0.001	4,750,000	4,650,269	0.2616	3.27	15,205
Series D.....	0.001	4,650,000	4,649,927	0.5216	6.52	30,318
Series E.....	0.001	5,874,199	5,007,530	0.7500	9.38	46,971
Series E-1.....	0.001	5,874,199	325,159	0.7500	9.38	3,050
		26,925,014	20,316,909			$101,683

The rights, preferences and privileges of the preferred stockholders are as follows:

DIVIDENDS

The holders of redeemable convertible preferred stock are entitled to receive annual dividends per share at the rates stated above. Such dividends, which are in preference to any dividends on common stock, are payable whenever funds are legally available and when declared by the Board of Directors. The right of the holders of the redeemable convertible preferred stock to receive dividends is not cumulative. No dividends on redeemable convertible preferred stock have been declared from inception through December 31, 2001.

REDEMPTION

The holders of redeemable convertible preferred stock have the option to redeem their shares for cash during a 60-day period commencing June 12, 2004.

LIQUIDATION

After payment to holders of Series A, B, C, D, E and E-1 convertible preferred stock, each share of common stock and preferred stock is entitled to receive pro rata any remaining assets of the Company until such time as the holders of Series A, B, C, D, E and E-1 convertible preferred stock receive aggregate amounts totaling $1.50, $3.24, $9.81, $19.56, $28.14 and $28.14 per share, respectively. Thereafter, all remaining proceeds are to be allocated to the holders of common stock and Series F Preferred Stock on a pro rata basis.

CONVERSION

At December 31, 2000, each share of Series C, D and E redeemable convertible preferred stock was convertible into one share of common stock.

At December 31, 2001, each share of Series B and E-1 redeemable convertible preferred stock was convertible into one share of common stock.

In July 2001, the conversion rates for the Series C and D preferred stock were adjusted in accordance with the anti-dilution provisions as set forth in the Company's Certificate of Incorporation such that each share of the Series C and D preferred stock converts into 1.3207 and 1.4209 shares of common stock, respectively.

The original terms of the Series E preferred stock contained a special anti-dilution provision that guaranteed a value of $14.07 per share in the event of an initial public offering. The unrecorded measured value of this contingent beneficial conversion feature was $30,120. This conversion feature was cancelled in July 2001. At the same time the conversion rate for Series E preferred stock was modified to 1.4387 shares of common stock for each share of Series E preferred stock. In addition, in accordance with the antidilution right included in the Certificate of Incorporation, the conversion rate for Series E preferred stock was further changed, resulting in a conversion rate of 2.0441 shares of common stock for each share of Series E preferred stock. The cancellation of the beneficial conversion feature and the modification of the conversion rate of the Series E preferred stock had no financial accounting effect because the holders of these shares received no net benefit.

Conversion of each share of Series B, C and D preferred stock is automatic upon closing of a public offering of the Company's common stock for aggregate gross proceeds of at least $20 million. Conversion of each share of Series E and E-1 redeemable convertible preferred stock is automatic upon closing of a public offering of the Company's common stock for aggregate proceeds of at least $40 million and a minimum price per share of $5.00. Series B, C and D preferred stock may be automatically converted by an affirmative vote of 75% of the then outstanding shares of each respective series. Each share of Series E and E-1 redeemable convertible stock may be automatically converted by a vote of 75% of the then outstanding shares of Series E and E-1 (voting together as a single class on an if-converted basis).

VOTING RIGHTS

The holders of each share of redeemable convertible preferred stock are entitled to the number of votes equal to the number of shares of common stock on an if-converted-basis. The holders of Series E and E-1 redeemable convertible preferred stock do not have the right to vote with respect to such shares for the election of directors of the Company. The holders of Series B, C

and D, redeemable convertible preferred stock voting as separate classes are each entitled to elect one director of the Company's Board of Directors.

7. STOCKHOLDERS' EQUITY AND CONVERTIBLE PREFERRED STOCK

DIVIDENDS

The holders of Series A convertible preferred stock are entitled to receive annual dividends per share of $0.05. Such dividends, which are in preference to any dividends on common stock are payable whenever funds are legally available and when declared by the Board of Directors. The right of the holders of Series A convertible preferred stock to receive dividends is not cumulative. No dividends on convertible preferred stock have been declared from inception through December 31, 2001. Series F Non-Voting convertible preferred stock is not entitled to any preferred dividends.

LIQUIDATION

The liquidation value of one share of Series A convertible preferred stock is $0.50, resulting in a total liquidation value of $2,222. After payment to holders of Series A, B, C, D, E and E-1 convertible preferred stock, each share of common stock and preferred stock is entitled to receive pro rata any remaining assets of the Company until such time as the holders of Series A convertible preferred stock receive aggregate amounts totaling $1.50 per share, respectively. Thereafter, all remaining proceeds are to be allocated to the holders of common stock and Series F Preferred Stock on a pro rata basis.

CONVERSION

Each share of Series A convertible preferred stock is convertible, at the option of the holder, at any time, into one share of common stock. Series F Preferred Stock may not be converted into common stock until the earlier of (1) immediately prior to a change in control, or (2) such time as such shares have been sold or transferred to a third party not affiliated with the initial holders of Series F Preferred Stock. Conversion of each share of Series A convertible preferred stock and Series F Preferred Stock is automatic upon closing of a public offering of the Company's common stock for aggregate gross proceeds of at least $20 million. Each share of Series A convertible preferred stock shall be automatically converted by a vote of a majority of the then outstanding shares of Series A preferred stock.

VOTING RIGHTS

The holders of each share of Series A convertible preferred stock shall be entitled to the number of votes equal to the number of shares of common stock on an if-converted-basis. The holders of Series F Preferred Stock have no voting rights.

STOCK OPTION PLAN

As of December 31, 2001, the Company was authorized to issue up to 14,639,935 shares of common stock in connection with its 1997 stock option plan for directors, employees and consultants. The 1997 stock option plan provides for the issuance of stock purchase rights, incentive stock options or non-statutory stock options.

Stock purchase rights are subject to a restricted stock purchase agreement whereby the Company has the right to repurchase the stock at the original issue price upon the voluntary or involuntary termination of the purchaser's employment with the Company. The repurchase rights lapse at a rate determined by the stock plan administrator but at a minimum rate of 25% per year.

The exercise price for incentive stock options is at least 100% of the stock's deemed fair value on the date of grant for employees owning less than 10% of the voting power of all classes of stock, and at least 110% of the deemed fair value on the date of grant for employees owning more than 10% of the voting power of all classes of stock. For nonstatutory stock options, the exercise price is also at least 110% of the deemed fair value on the date of grant for service providers owning more than 10% of the voting power of all classes of stock and no less than 85% of the deemed fair value on the date of grant for service providers owning less than 10% of the voting power of all classes of stock.

Options generally expire in 10 years however, they may be limited to 5 years if the optionee owns stock representing more than 10% of the Company. Vesting periods are determined by the stock plan administrator and generally provide for shares to vest ratably over three or four years.

Generally, the Company's Board of Directors grants options at an exercise price of not less than the deemed fair value of the Company's common stock at the date of grant. In 2001, the Company offered its employees the right to exchange certain employee stock options. The exchange resulted in the cancellation of employee stock options to purchase 2.7 million shares of common stock with varying exercise prices in exchange for 2.7 million employee stock options with an exercise price of $1.00. The option exchange resulted in variable award accounting treatment for all of the exchanged options. Variable award accounting will continue until all options subject to variable accounting are exercised, cancelled or expired. However, additional

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non-cash compensation will be recorded only to the extent the intrinsic value of the repriced awards exceeds the original intrinsic value of the replaced stock options.

SFAS No. 123 requires the disclosure of net loss as if the Company had adopted the fair value method for its stock-based compensation arrangements for employees since the inception of the Company. Had compensation cost been determined consistent with SFAS No. 123, the Company's net loss and net loss per share would have been as follows:

	YEAR ENDED DECEMBER 31,		
	1999	2000	2001
Net loss:			
As reported	$(29,845)	$(57,363)	$(38,258)
Pro forma	(29,949)	(58,274)	(39,209)
Basic and diluted net loss per share:			
As reported	(5.60)	(9.71)	(6.34)
Pro forma	(5.62)	(9.87)	(6.50)

The fair value of each option was estimated on the date of grant using the minimum-value method with the following weighted-average assumptions: no dividend yield; volatility of 0%; risk-free interest rate of 5.40%, 6.24% and 4.14% for the years ended 1999, 2000 and 2001, respectively; and expected life of 3.5 years for all periods.

A summary of the activities related to the Company's options for the years ended December 31, 1999, 2000 and 2001 is as follows:

	OPTIONS OUTSTANDING	
SHARES AVAILABLE FOR GRANT	NUMBER OF SHARES	WEIGHTED-AVERAGE EXERCISE PRICE

Balances as of January 1, 1999.....	883,179	4,167,971	$0.084
Authorized.....	1,746,683	--	
Granted.....	(2,001,063)	2,001,063	1.213
Exercised.....	--	(3,971,361)	0.090
Canceled.....	603,834	(603,834)	0.450
Repurchased.....	600,450	--	
Balances as of December 31, 1999.....	1,833,083	1,593,839	1.347
Authorized.....	1,761,852	--	--
Granted.....	(2,548,397)	2,548,397	3.126
Exercised.....	--	(243,009)	1.743
Canceled.....	481,425	(481,425)	2.515
Repurchased.....	79,960	--	1.770
Balances as of December 31, 2000.....	1,607,923	3,417,802	2.481
Authorized.....	9,400,000	--	--
Granted.....	(10,372,978)	10,372,978	1.068
Exercised.....	--	(90,137)	1.382
Canceled.....	4,701,477	(4,701,477)	2.445
Repurchased.....	16,876	--	
Balances as of December 31, 2001.....	5,353,298	8,999,166	$0.994
Options exercisable as of December 31:			
1999.....		117,746	$0.421
2000.....		557,053	$1.250
2001.....		2,754,755	$0.979

The weighted-average fair value of options granted in fiscal 1999, 2000, and 2001 was $4.66, $8.55 and $0.14, respectively.

As of December 31, 2001, the range of exercise prices and weighted-average remaining contractual life of outstanding options were as follows:

OPTIONS OUTSTANDING				OPTIONS EXERCISABLE	
EXERCISE PRICES	NUMBER OF OPTIONS	WEIGHTED-AVERAGE REMAINING CONTRACTUAL LIFE (YEARS)	WEIGHTED-AVERAGE EXERCISE PRICES	NUMBER OF OPTIONS	WEIGHTED-AVERAGE EXERCISE PRICES

$0.055 to $0.110	167,137	6.22	$0.059	167,012	$0.059
$1.000	8,769,800	9.26	1.00	2,525,754	1.00
$2.000 to $2.250	47,229	8.55	2.00	46,989	2.00
$4.500	15,000	8.25	4.50	15,000	4.50
	8,999,166			2,754,755	

8. INCOME TAXES

Income tax expense differed from the amounts computed by applying the U.S. federal income tax rate of 34% to pretax loss as a result of the following:

YEAR ENDED DECEMBER 31,		
1999	2000	2001
Expected tax benefit at U.S. federal statutory rate of 34%	$(10,147)	$(19,503) $(13,307)
Current year net operating losses for which no tax benefit is recognized	7,800	16,574 11,507
Stock based compensation	1,496	2,957 1,864
Other	851	(28) (64)
Total income tax expense	$ --	$ -- $ --

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and liabilities as of December 31, 2000 and 2001, are presented below:

	AS OF DECEMBER 31,	
	2000	2001
Deferred tax assets:		
Net operating loss carryforward	$ 26,824	$ 32,626
Accruals and reserves	6,993	13,885
Other	1	20

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Gross deferred tax assets	33,818	46,531
Less valuation allowance	(33,818)	(46,531)
Net deferred tax assets	$ --	$ --

Management has established a valuation allowance for the portion of deferred tax assets for which realization is uncertain. The total valuation allowance for the years ended December 31, 2000 and 2001 increased $18,219 and $12,713, respectively.

As of December 31, 2001, the Company had net operating loss carry forwards for federal and California income tax purposes of approximately $83,699 and $56,260, respectively, to reduce future income subject to

income tax. The federal net operating loss carry forward will expire beginning in 2012 to 2021 and the California net operating loss carry forwards expire beginning in 2002 to 2011, if not utilized.

The Tax Reform Act of 1986, imposes restrictions on the utilization of net operating loss carryforwards and tax credit carryforwards in the event of an "ownership change," as defined by the Internal Revenue Code. The Company's ability to utilize its net operating loss carry forwards is subject to restrictions pursuant to these provisions.

9. EMPLOYEE BENEFIT PLAN

The Company maintains a 401(k) savings plan covering substantially all of its employees. Eligible employees may contribute through payroll deductions. The Company matches employee contributions at the discretion of the Company's Board of Directors. In the years ended December 31, 1999, 2000 and 2001, the Company has matched a total of $0, $0 and $304, respectively.

10. SUBSEQUENT EVENTS

In February 2002, the Company adopted the 2002 Stock Plan. The 2002 Stock Plan provides for the grant of incentive stock options to employees and for the grant of nonstatutory stock options and stock purchase rights to employees, directors and consultants. The Company reserved a total of 2,000,000 shares of common stock for issuance under the 2002 Stock Plan. Any remaining

shares reserved but not yet issued under the 1997 plan as of the effective date of an initial public offering will be added to the total reserved shares under the 2002 Stock Plan.

In February 2002, the Company adopted the 2002 Employee Stock Purchase Plan. The Company reserved a total of 1,750,000 shares of common stock for issuance under the 2002 Employee Stock Purchase Plan.

[INSIDE BACK COVER]

Through and including , 2002 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters with respect to their unsold allotments or subscriptions.

SHARES

[LOGO] NETFLIX.COM, INC.

COMMON STOCK

PROSPECTUS

MERRILL LYNCH & CO.

THOMAS WEISEL PARTNERS LLC

U.S. BANCORP PIPER JAFFRAY

, 2002

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable by Netflix in connection with the sale and distribution of common stock being registered. All amounts are estimates except the SEC registration fee and the NASD filing fee.

SEC registration fee	$
NASD filing fee	
Nasdaq National Market listing fee	
Blue Sky fees and expenses	
Printing and engraving costs	
Legal fees and expenses	
Accounting fees and expenses	
Transfer Agent and Registrar fees	
Insurance Premiums	
Miscellaneous expenses	
Total	$

ITEM 14. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 145 ("Section 145") of the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended (the "General Corporation Law") provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation) by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was illegal.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against such person and incurred by such person in any such capacity, arising out of such person's status as such, whether or not the corporation would otherwise have the power to indemnify such person against such liability under Section 145.

Registrant's Amended and Restated Certificate of Incorporation and Bylaws provide that Registrant will indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer or employee of Registrant or any predecessor of Registrant, or serves or served at any other corporation, partnership, joint venture, trust or other enterprise as a director, officer, employee or agent at the request of Registrant or any predecessor of Registrant.

Registrant's Bylaws provide for mandatory indemnification to the fullest extent permitted by General Corporation Law against all expense, liability and loss including attorney's fees, judgments, fines, ERISA excise

taxes or penalties and amounts paid in settlements, provided that Registrant shall not be required to indemnify unless the proceeding in which indemnification is sought was authorized in advance by our board of directors.

Registrant's directors and officers are covered by insurance maintained by Registrant against specified liabilities for actions taken in their capacities as such, including liabilities under the Securities Act of 1933, as amended. In addition, the Registrant has entered into contracts with its directors and officers providing indemnification of such directors and officers by the Registrant to the fullest extent permitted by law, subject to certain limited exceptions.

The Purchase Agreement (Exhibit 1.1 hereto) provides for indemnification by the Underwriters of Registrant and its officers and directors, and by Registrant of the underwriters, for certain liabilities arising under the Securities Act or otherwise in connection with this offering.

ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES

The following is a summary of Registrant's transactions within the last three years, involving sales of Registrant's securities that were not registered under the Securities Act:

(a) On June 22, 1999 and October 31, 1999, Registrant issued and sold an aggregate of 4,649,927 shares of Series D preferred stock to a total of 10 private investors for $6.52 per share, or an aggregate of $30,317,524. The foregoing purchase and sale was exempt from registration under the Securities Act pursuant to Section 4(2) thereof on the basis that the transaction did not involve a public offering.

(b) On April 13 and April 17, 2000, Registrant issued and sold (i) an aggregate of 5,332,689 shares of Series E non-voting preferred stock at a price per share of $9.38, and (ii) warrants to purchase up to an aggregate of 533,003 shares of Series E non-voting preferred stock each with an exercise price of $14.07 per share, at a price per warrant share of $0.01, to a total of 16 private investors for an aggregate of $50,025,619. The foregoing purchases and sales were exempt from

registration under the Securities Act pursuant to Section 4(2) thereof on the basis that the transactions did not involve a public offering.

(c) On May 19, 2000, Registrant issued and sold a warrant to purchase 23,007 shares of common stock to a private investor at an exercise price of $6.52 per share, in connection with a lease agreement. The foregoing purchase and sale was exempt from registration under the Securities Act pursuant to Section 4(2) thereof on the basis that the transaction did not involve a public offering.

(d) On October 26, 2000, Registrant issued 436,393 shares of Series F non-voting preferred stock to a movie studio in connection with a revenue sharing agreement. The foregoing was exempt from registration under the Securities Act pursuant to Section 4(2) thereof on the basis that the transaction did not involve a public offering.

(e) On October 31, 2000, Registrant issued a warrant to purchase 60,000 shares of common stock to a private investor at an exercise price of $2.00 per share, in connection with a real estate lease. The foregoing was exempt from registration under the Securities Act pursuant to Section 4(2) thereof on the basis that the transaction did not involve a public offering.

(f) On February 22, 2001, Registrant issued an aggregate of 860,121 shares of Series F non-voting preferred stock to certain movie studios, in connection with certain revenue share agreements. The foregoing was exempt from registration under the Securities Act pursuant to Section 4(2) thereof on the basis that the transaction did not involve a public offering.

(g) On April 2, 2001, Registrant issued 436,393 shares of Series F non-voting preferred stock to a movie studio, in connection with a revenue share agreement. The foregoing was exempt from registration under the Securities Act pursuant to Section 4(2) thereof on the basis that the transaction did not involve a public offering.

(h) On June 1, 2001, Registrant issued and sold a warrant to purchase 255,000 shares of common stock to a private investor at an exercise price of $1.00 per share, in connection with an equipment lease agreement. The foregoing purchase and sale was exempt from registration under the Securities Act pursuant to Section 4(2) thereof on the basis that the transaction did not involve a public offering.

(i) On June 5, 2001, Registrant issued and sold a warrant to purchase 100,000 shares of Series F Preferred Stock to a private investor at an exercise price of $9.38 per share, in connection with an integration and distribution agreement. The foregoing purchase and sale was exempt from registration under the Securities Act pursuant to Section 4(2) thereof on the basis that the transaction did not involve a public offering.

(j) On July 10, 2001, Registrant issued and sold (i) an aggregate of $13 million of subordinated promissory notes, and (ii) warrants to purchase an aggregate of 20,456,866 shares of common stock each with an exercise price of $1.00 per share, at a price per warrant share of $0.01, to a total of 23 private investors for an aggregate of $13,020,456.88. The foregoing purchases and sales were exempt from registration under the Securities Act pursuant to Section 4(2) thereof on the basis that the transactions did not involve a public offering.

(k) On August 21, 2001, Registrant issued 416,440 shares of Series F non-voting preferred stock to a consumer electronics retailer, in connection with a strategic marketing agreement. The foregoing was exempt from registration under the Securities Act pursuant to Section 4(2) thereof on the basis that the transaction did not involve a public offering.

(l) On March , 2002, Registrant issued 423,415 shares of Series F non-voting preferred stock to a movie studio in connection with a revenue sharing agreement. The foregoing was exempt from registration under the Securities Act pursuant to Section 4(2) thereof on the basis that the transaction did not involve a public offering

(m) On , 2002, Registrant issued an aggregate of shares of Series F non-voting preferred stock to certain movie studios holding Series F non-voting preferred stock of Registrant pursuant to certain anti-dilution provisions for the benefit of such studios. The foregoing were exempt from registration under the Securities Act pursuant to Section 4(2) thereof on the basis that the transaction did not involve a public offering.

(n) As of , Registrant has issued and sold an aggregate of shares of common stock upon exercise of options issued to certain employees and consultants under Registrant's amended and restated 1997 Stock Plan for an aggregate consideration of $. The foregoing purchases and sales were exempt from registration under the Securities Act pursuant to Rule 701 of the Securities Act.

Except as indicated above, none of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering, and Registrant believes that each transaction was exempt from the registration requirements of the Securities Act by virtue of Section 4(2) thereof, Regulation D promulgated thereunder or Rule 701 pursuant to compensatory benefit plans and contracts relating to compensation as provided under such Rule 701. The recipients in such transactions represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were affixed to the share certificates and instruments issued in such transactions. All recipients either received adequate information about Registrant or had access, through their relationships with Registrant, to such information.

ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(A) EXHIBITS

EXHIBIT NUMBER	DESCRIPTION
1.1*	Form of Purchase Agreement.
3.1*	Amended and Restated Certificate of Incorporation of Registrant.
3.2	Proposed Amended and Restated Certificate of Incorporation of Registrant.
3.3	Amended and Restated Bylaws of Registrant.
3.4*	Proposed Amended and Restated Bylaws of Registrant.
4.1*	Form of Registrant's Common Stock Certificate.
5.1	Form of Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation.
10.1*	Form of Indemnification Agreement between Registrant and each of its directors and officers.
10.2	2002 Employee Stock Purchase Plan.
10.3	Amended and Restated 1997 Stock Plan.
10.4	2002 Stock Plan.
10.5	Amended and Restated Stockholders' Rights Agreement dated July 10, 2001.
10.6	Amended and Restated Agreement Concerning the Right to Participate dated June 22, 1999.
10.7	Office Lease dated October 27, 2000 between Registrant and BR3 Partners.
10.8	Lease Agreement dated August 11, 1999 between Registrant and Lincoln-Recp Old Oakland Opco, LLC; First Amendment to Lease Agreement dated December 3, 1999; Second Amendment to Lease Agreement dated January 4, 2000; Third Amendment to Lease Agreement dated June 12, 2001 between Registrant and Joseph Sully.
10.9	Offer letter dated April 19, 1999 with W. Barry McCarthy, Jr., Chief Financial Officer of Registrant.
10.10	Offer letter dated March 25, 1999 with Tom Dillon, Vice President of Operations of Registrant.
10.11	Offer letter dated March 13, 2000 with Leslie J. Kilgore, Vice President of Marketing of Registrant.

10.12* Letter Agreement dated May 1, 2000 between Registrant and Columbia TriStar Home Entertainment, Inc.

10.13* Revenue Sharing Output License Terms between Registrant and Warner Home Video.

23.1 Consent of KPMG LLP.

23.2 Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (contained in Exhibit 5.1).

24.1 Power of Attorney (See page II-6).

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* To be filed by amendment.

(B) FINANCIAL STATEMENT SCHEDULES

Schedules have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

ITEM 17. UNDERTAKINGS

The undersigned Registrant hereby undertakes to provide to the Underwriters at the closing specified in the Purchase Agreement certificates in such denominations and registered in such names as required by the Underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of Registrant pursuant to the provisions referenced in Item 14 of this Registration Statement or otherwise, Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by Registrant of expenses incurred or paid by a director, officer, or controlling person of Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered hereunder, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act, Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Los Gatos, State of California, on the 6th day of March, 2002.

NETFLIX, INC.

By: /S/ REED HASTINGS
Reed Hastings
CHIEF EXECUTIVE OFFICER

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints, jointly and severally, Reed Hastings and W. Barry McCarthy, Jr., and each of them acting individually, as his attorney-in-fact, each with full power of substitution, for him in any and all capacities, to sign any and all amendments (including, without limitation, post-effective Amendments and any amendments or abbreviated registration statements increasing the amount of securities for which registration is being sought) to this Registration Statement, with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in order to effectuate the same as fully to all intents and purposes as he or she might or could do if personally present, hereby ratifying and confirming all that such attorneys-in-fact and agents, or any of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

SIGNATURE	TITLE	DATE
/S/ REED HASTINGS *Reed Hastings*	*President, Chief Executive Officer and Director (principal executive officer)*	*March 6, 2002*
/S/ W. BARRY MCCARTHY, JR. *W. Barry McCarthy, Jr.*	*Chief Financial Officer (principal financial and accounting officer)*	*March 6, 2002*
/S/ TIMOTHY M. HALEY *Timothy M. Haley*	*Director*	*March 6, 2002*
/S/ JAY C. HOAG *Jay C. Hoag*	*Director*	*March 6, 2002*
/S/ A. ROBERT PISANO *A. Robert Pisano*	*Director*	*March 6, 2002*
/S/ MICHAEL N. SCHUH *Michael N. Schuh*	*Director*	*March 6, 2002*

EXHIBIT INDEX

EXHIBIT NUMBER	DESCRIPTION
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10.10 Offer letter dated March 25, 1999 with Tom Dillon, Vice President of Operations of Registrant.

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Entertainment, Inc.

10.13* Revenue Sharing Output License Terms between Registrant and Warner Home Video.

23.1 Consent of KPMG LLP.

23.2 Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (contained in Exhibit 5.1).

24.1 Power of Attorney (See page II-6).

* To be filed by amendment.

Exhibit 3.2

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION
OF
NETFLIX, INC.
a Delaware corporation

Netflix, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "General Corporation Law") hereby certifies as follows:

1. That this corporation was originally incorporated on August 29, 1997 under the name Kibble, Inc., pursuant to the General Corporation Law.

2. Pursuant to Sections 242 and 228 of the General Corporation Law of the State of Delaware, the amendments and restatement herein set forth have been duly approved by the Board of Directors and stockholders of NetFlix.com, Inc.

3. Pursuant to Section 245 of the General Corporation Law, this Amended and Restated Certificate of Incorporation (this "Certificate") restates and integrates and further amends the provisions of the Amended and Restated Certificate of Incorporation of this corporation.

4. The text of the Amended and Restated Certificate of Incorporation is hereby amended and restated in its entirety as follows:

ARTICLE I

The name of this corporation is Netflix, Inc. (the "corporation").

ARTICLE II

The address of the registered office of the corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

The nature of the business or purposes to be conducted by the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware, as the same exists or may hereafter be amended.

ARTICLE IV

The corporation is authorized to issue two classes of stock, to be designated, respectively, "Common Stock" and "Preferred Stock". The total number of shares which the corporation shall have authority to issue is 160,000,000 consisting of 150,000,000 shares of Common Stock, par value $0.001 per share, and 10,000,000 shares of Preferred Stock, par value $0.001 per share.

The Board of Directors of the corporation (the "Board") is authorized, subject to any limitations prescribed by law, to provide for the issuance of shares of Preferred Stock in series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences, and rights of the shares of each such series and any qualifications, limitations or restrictions thereof.

Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the corporation for their vote; provided, however, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any certificate of designation of Preferred Stock relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Certificate of Incorporation (including any certificate of designation of Preferred Stock relating to any series of Preferred Stock).

ARTICLE V

The following provisions are inserted for the management of the business and the conduct of the affairs of the corporation, and for further definition, limitation and regulation of the powers of the corporation and of its directors and stockholders:

A. The business and affairs of the corporation shall be managed by or under the direction of the Board. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation or the Bylaws of the corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the corporation.

B. The directors of the corporation need not be elected by written ballot unless the Bylaws so provide.

C. Any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of stockholders of the corporation and may not be effected by any consent in writing by such stockholders.

D. Special meetings of stockholders of the corporation may be called only by the Chairman of the Board, the Chief Executive Officer, the President or by the Board acting pursuant to a

resolution adopted by a majority of the Whole Board, and any power of stockholders to call a special meeting is specifically denied. Only such business shall be considered at a special meeting of stockholders as shall have been stated in the notice for such meeting. For purposes of this Certificate of Incorporation, the term "Whole Board" shall mean the total number of authorized directors of the corporation whether or not there exist any vacancies in previously authorized directorships.

ARTICLE VI

A. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board pursuant to a resolution duly adopted by a majority of the Board. The directors, other than those who may be elected by the holders of any series of Preferred Stock under specified circumstances, shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, one class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 2003, another class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 2004, and another class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 2005, with each class to hold office until its successor is duly elected and qualified. At each succeeding annual meeting of stockholders, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election.

B. Subject to the rights of the holders of any series of Preferred Stock then outstanding and unless the Board otherwise determines, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause shall, unless otherwise provided by law or by resolution of the Board, be filled only by a majority vote of the directors then in office, whether or not less than a quorum, and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been chosen expires. No reduction in the authorized number of directors shall have the effect of removing any director before such director's term of office expires.

C. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the corporation shall be given in the manner provided in the Bylaws of the corporation.

D. Subject to the rights of the holders of any series of Preferred Stock then outstanding, unless otherwise restricted by statue, by the Certificate of Incorporation or the Bylaws of the corporation, any director, or all of the directors, may be removed from the Board, but only for cause and only by the affirmative vote of the holders of at least 66 2/3% of the voting power of all of the then outstanding shares of capital stock of the corporation then entitled to vote at the election of directors, voting together as a single class.

ARTICLE VI

The Board is expressly empowered to adopt, amend or repeal any of the Bylaws of the Corporation. Any adoption, amendment or repeal of the Bylaws of the corporation by the Board shall require the approval of a majority of the Whole Board. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least 66 2/3% of the voting power of the then outstanding shares of voting stock entitled to vote generally in the election of

directors, voting together as a single class, shall be required to adopt, amend or repeal all or any portion of Article II, Section 3.2, Section 3.3, Section 3.4, Section 3.15, Article VI or Article IX of the Bylaws of the corporation.

ARTICLE VII

A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the General Corporation Law of Delaware, or (d) for any transaction from which the director derived an improper personal benefit. If the General Corporation Law of Delaware is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of Delaware as so amended.

The corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, she, his or her testator or intestate is or was a director, officer, employee or agent of the corporation (or any predecessor thereof), or serves or served at any other corporation, partnership, joint venture, trust or other enterprise as a director, officer, employee or agent at the request of the corporation (or any predecessor).

Any amendment, repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of the corporation existing at the time of such amendment, repeal or modification.

ARTICLE VIII

The corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights

conferred upon stockholders are granted subject to this reservation; provided, however, that, notwithstanding any other provision of this Certificate of Incorporation, or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any vote of the holders of any class or series of the stock of this corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least 66 2/3% of the voting power of the then outstanding shares of voting stock entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend or repeal this Article IX, Article V, Article VI, Article VII or Article VIII.

IN WITNESS WHEREOF, Netflix, Inc. has caused this Amended and Restated Certificate of Incorporation to be executed by its President and Chief Executive Officer this _____, 2002.

NETFLIX, INC.

_____

Reed Hastings President and Chief Executive Officer

Exhibit 3.3

AMENDED AND RESTATED

BYLAWS

OF

KIBBLE, INC.

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(continued)

BYLAWS

OF

KIBBLE, INC.

ARTICLE I

CORPORATE OFFICES

1.1 REGISTERED OFFICE

The registered office of the corporation shall be in the City of Wilmington, County of New Castle, State of Delaware. The name of the registered agent of the corporation at such location is The Corporation Trust Company.

1.2 OTHER OFFICES

The board of directors may at any time establish other offices at any place or places where the corporation is qualified to do business.

ARTICLE II

MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the board of directors. In the absence of any such designation, stockholders' meetings shall be held at the registered office of the corporation.

2.2 ANNUAL MEETING

The annual meeting of stockholders shall be held each year on a date and at a time designated by the board of directors. In the absence of such designation, the annual meeting of stockholders shall be held on the 31st day of July at 9:00 A.M. However, if such day falls on a legal holiday, then the meeting shall be held at the same time and place on the next succeeding full business day. At the meeting, directors shall be elected and any other proper business may be transacted.

2.3 SPECIAL MEETING

A special meeting of the stockholders may be called at any time by the board of directors, or by the chairman of the board, or by the president, or by one or more stockholders holding shares in the aggregate entitled to cast not more stockholders holding shares in the aggregate entitled to cast not less than ten percent (10%) of the votes at that meeting.

If a special meeting is called by any person or persons other than the board of directors or the president or the chairman of the board, then the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the chairman of the board, the president, any vice president or the secretary of the corporation. The officer receiving the request shall cause notice to be promptly given to the stockholders entitled to vote, in accordance with the provisions of Sections 2.4 and 2.5 of these bylaws, that a meeting will be held at the time requested by the person or persons calling the meeting, so long as that time is not less than thirty-five (35) nor more than sixty (60) days after the receipt of the request. If the notice is not given within twenty
(20) days after receipt of the request, then the person or persons requesting the meeting may give the notice. Nothing contained in this paragraph of this
Section 2.3 shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the board of directors may be held.

2.4 NOTICE OF STOCKHOLDERS' MEETINGS

All notices of meetings with stockholders shall be in writing and shall be sent or otherwise given in accordance with Section 2.5 of these bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.5 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE

Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.6 QUORUM

The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the

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certificate of incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.7 ADJOURNED MEETING; NOTICE

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

2.8 VOTING

The stockholders entitled to vote at any meeting of stock-holders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to the provisions of Sections 217 and 218 of the General Corporation Law of Delaware (relating to voting rights of fiduciaries, pledgors and joint owners of stock and to voting trusts and other voting agreements).

Except as provided in the last paragraph of this Section 2.8, or as may be otherwise provided in the certificate of incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

2.9 WAIVER OF NOTICE

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice unless so required by the certificate of incorporation or these bylaws.

2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at any annual or special meeting of stockholders of a corporation, or any action that may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. If the action which is consented to is such as would have required the filing of a certificate under any section of the General Corporation Law of Delaware if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written notice and written consent have been given as provided in Section 228 of the General Corporation Law of Delaware.

2.11 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING; GIVING-CONSENTS

In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less

than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action.

If the board of directors does not so fix a record date:

(i) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(ii) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the board of directors is necessary, shall be the day on which the first written consent is expressed.

(iii) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

2.12 PROXIES

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by a written proxy, signed by the stockholder and filed with the secretary of the corporation, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the stockholder or the stockholder's attorney-in-fact. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(c) of the General Corporation Law of Delaware.

2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE

The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be

produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

ARTICLE III

DIRECTORS

3.1 POWERS

Subject to the provisions of the General Corporation Law of Delaware and any limitations in the certificate of incorporation or these bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors.

3.2 NUMBER OF DIRECTORS

The number of directors of the corporation shall be not less than two (2) nor more than six (6). The exact number of directors shall be four (4). This number may be changed by a duly adopted amendment to the certificate of incorporation or by an amendment to this bylaw adopted by the vote or written consent of the holders of a majority of the stock issued and outstanding and entitled to vote or by resolution of a majority of the board of directors.

No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS

Except as provided in Section 3.4 of these bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws, wherein other qualifications for directors may be prescribed. Each director, including a director elected to fill a vacancy, shall hold office until his successor is elected and qualified or until his earlier resignation or removal.

Elections of directors need not be by written ballot.

3.4 RESIGNATION AND VACANCIES

Any director may resign at any time upon written notice to the corporation. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become

effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Unless otherwise provided in the certificate of incorporation or these bylaws:

(i) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(ii) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the

directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten (10) percent of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the General Corporation Law of Delaware as far as applicable.

3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE

The board of directors of the corporation may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors, or any committee, by means of conference telephone or similar

communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.6 FIRST MEETINGS

The first meeting of each newly elected board of directors shall be held at such time and place as shall be fixed by the vote of the stockholders at the annual meeting and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the stockholders to fix the time or place of such first meeting of the newly elected board of directors, or in the event such meeting is not held at the time and place so fixed by the stockholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the board of directors, or as shall be specified in a written waiver signed by all of the directors.

3.7 REGULAR MEETINGS

Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board.

3.8 SPECIAL MEETINGS; NOTICE

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board, the president, the secretary or any two (2) directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail or telegram, charges prepaid, addressed to each director at that director's address as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally or by telephone or by telegram, it shall be delivered personally or by telephone or to the telegraph company at least forty-eight (48) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the corporation.

3.9 QUORUM

At all meetings of the board of directors, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum is not present at any meeting of the board of directors, then the directors present

thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.10 WAIVER OF NOTICE

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or

special meeting of the directors, or members of a committee of directors, need be specified in any written waiver of notice unless so required by the certificate of incorporation or these bylaws.

3.11 ADJOURNED MEETING; NOTICE

If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.12 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the board or committee.

3.13 FEES AND COMPENSATION OF DIRECTORS

Unless otherwise restricted by the certificate of incorporation or these bylaws, the board of directors shall have the authority to fix the compensation of directors.

3.14 APPROVAL OF LOANS TO OFFICERS

The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the

corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing contained in this section shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

3.15 REMOVAL OF DIRECTORS

Unless otherwise restricted by statute, by the certificate of incorporation or by these bylaws, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

ARTICLE IV

COMMITTEES

4.1 COMMITTEES OF DIRECTORS

The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, with each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) amend the certificate of incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the board of directors as provided in Section 151(a) of the General Corporation Law of Delaware, fix any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation), (ii) adopt an agreement of merger or consolidation under Sections 251 or 252 of the General Corporation Law of Delaware, (iii) recommend to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, (iv) recommend to the stockholders a dissolution of the

corporation or a revocation of a dissolution, or (v) amend the bylaws of the corporation; and, unless the board resolution establishing the committee, the bylaws or the certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to Section 253 of the General Corporation Law of Delaware.

4.2 COMMITTEE MINUTES

Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

4.3 MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Article III of these bylaws, Section 3.5 (place of meetings and meetings by telephone), Section 3.7 (regular meetings),
Section 3.8 (special meetings and notice), Section 3.9 (quorum), Section 3.10 (waiver of notice), Section 3.11 (adjournment and notice of adjournment), and
Section 3.12 (action without a meeting), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members; provided, however, that the time of regular meetings of committees may also be called by resolution of the board of directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

ARTICLE V

OFFICERS

5.1 OFFICERS

The officers of the corporation shall be a president, one or more vice presidents, a secretary, and a treasurer. The corporation may also have, at the discretion of the board of directors, a chairman of the board, one or more assistant vice presidents, assistant secretaries, assistant treasurers, and any such other officers as may be appointed in accordance with the provisions of
Section 5.3 of these bylaws. Any number of offices may be held by the same person.

5.2 ELECTION OF OFFICERS

The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 or 5.5 of these bylaws, shall be chosen by the board of directors, subject to the rights, if any, of an officer under any contract of employment.

5.3 SUBORDINATE OFFICERS

The board of directors may appoint, or empower the president to appoint, such other officers and agents as the business of the corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

5.4 REMOVAL AND RESIGNATION OF OFFICERS

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the board of directors at any regular or special meeting of the board or, except in the case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

5.5 VACANCIES IN OFFICES

Any vacancy occurring in any office of the corporation shall be filled by the board of directors.

5.6 CHAIRMAN OF THE BOARD

The chairman of the board, if such an officer be elected, shall, if present, preside at meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be assigned to him by the board of directors or as may be prescribed by these bylaws. If there is no president, then the chairman of the board shall also be the chief executive officer of the corporation and shall have the powers and duties prescribed in
Section 5.7 of these bylaws.

5.7 PRESIDENT

Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board, if there be such an officer, the president shall be the chief executive officer of the corporation and shall, subject to the control of the board of directors, have general supervision, direction, and control of the business and the officers of the corporation. He shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board, at all meetings of the board of directors. He shall have the general powers and duties

of management usually vested in the office of president of a corporation and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws.

5.8 VICE PRESIDENT

In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such

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other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors, these bylaws, the president or the chairman of the board.

5.9 SECRETARY

The secretary shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the board of directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the board of directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors required to be given by law or by these bylaws. He shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by these bylaws.

5.10 TREASURER

The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The treasurer shall deposit all money and other valuables in the name and to the credit of the corporation with such depositaries as may be designated by the board of directors. He shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all of his transactions as treasurer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

5.11 ASSISTANT SECRETARY

The assistant secretary, or, if there is more than one, the assistant secretaries in the order determined by the stockholders or board of directors
(or if there be no such determination, then in the order of their election)
shall, in the absence of the secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors or the stockholders may from time to time prescribe.

5.12 ASSISTANT TREASURER

The assistant treasurer, or, if there is more than one, the assistant treasurers, in the order determined by the stockholders or board of directors (or if there be no such determination, then in the order of their election), shall, in the absence of the treasurer or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the treasurer and shall perform such other duties and have such other powers as the board of directors or the stockholders may from time to time prescribe.

5.13 AUTHORITY AND DUTIES OF OFFICERS

In addition to the foregoing authority and duties, all officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors or the stockholders.

ARTICLE VI

INDEMNITY

6.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS

The corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, indemnify each of its directors and officers against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 6.1, a "director" or

"officer" of the corporation includes any person (i) who is or was a director or officer of the corporation, (ii) who is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was a director or officer of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

6.2 INDEMNIFICATION OF OTHERS

The corporation shall have the power, to the extent and in the manner permitted by the General Corporation Law of Delaware, to indemnify each of its employees and agents (other than directors and officers) against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 6.2, an "employee" or "agent" of the corporation (other than a director or officer) includes any person (i) who is or was an employee or agent of the corporation, (ii) who is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was an employee or agent of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

6.3 INSURANCE

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of the General Corporation Law of Delaware.

ARTICLE VII

RECORDS AND REPORTS

7.1 MAINTENANCE AND INSPECTION OF RECORDS

The corporation shall, either at its principal executive office or at such place or places as designated by the board of directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to

inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent

to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Delaware or at its principal place of business.

The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

7.2 INSPECTION BY DIRECTORS

Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

7.3 ANNUAL STATEMENT TO STOCKHOLDERS

The board of directors shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the corporation.

7.4 REPRESENTATION OF SHARES OF OTHER CORPORATIONS

The chairman of the board, the president, any vice president, the treasurer, the secretary or assistant secretary of this corporation, or any other person authorized by the board of directors or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this

corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

ARTICLE VIII

GENERAL MATTERS

8.1 CHECKS

From time to time, the board of directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

8.2 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

The board of directors, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

8.3 STOCK CERTIFICATES; PARTLY PAID SHARES

The shares of a corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by the chairman or vice-chairman of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, upon the books and records of the

corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

8.4 SPECIAL DESIGNATION ON CERTIFICATES

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

8.5 LOST CERTIFICATES

Except as provided in this Section 8.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

8.6 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

8.7 DIVIDENDS

The directors of the corporation, subject to any restrictions contained in the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock pursuant to the

General Corporation Law of Delaware. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock.

The directors of the corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation, and meeting contingencies.

8.8 FISCAL YEAR

The fiscal year of the corporation shall be fixed by resolution of the board of directors and may be changed by the board of directors.

8.9 SEAL

This corporation may have a corporate seal, which may be adopted or altered at the pleasure of the Board of Directors, and may use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

8.10 TRANSFER OF STOCK

Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

8.11 STOCK TRANSFER AGREEMENTS

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the General Corporation Law of Delaware.

8.12 REGISTERED STOCKHOLDERS

The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, shall be entitled to

hold liable for calls and assessments the person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE IX

AMENDMENTS

The original or other bylaws of the corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.

ARTICLE X

DISSOLUTION

If it should be deemed advisable in the judgment of the board of directors of the corporation that the corporation should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, shall cause notice to be mailed to each stockholder entitled to vote thereon of the adoption of the resolution and of a meeting of stockholders to take action upon the resolution.

At the meeting a vote shall be taken for and against the proposed dissolution. If a majority of the outstanding stock of the corporation entitled to vote thereon votes for the proposed dissolution, then a certificate stating that the dissolution has been authorized in accordance with the provisions of
Section 275 of the General Corporation Law of Delaware and setting forth the names and residences of the directors and officers shall be executed, acknowledged, and filed and shall become effective in accordance with Section 103 of the General Corporation Law of Delaware. Upon such certificate's becoming effective in accordance with Section 103 of the General Corporation Law of Delaware, the corporation shall be dissolved.

Whenever all the stockholders entitled to vote on a dissolution consent in writing, either in person or by duly authorized attorney, to a dissolution, no meeting of directors or stockholders shall be necessary. The consent shall be filed and shall become effective in accordance with Section 103 of the General Corporation Law of Delaware. Upon such consent's becoming effective in accordance with Section 103 of the General Corporation Law of Delaware, the corporation shall be dissolved. If the consent is signed by an attorney, then the original power of attorney or a photocopy thereof shall be attached to and filed with the consent. The consent filed with the Secretary of State shall have attached to it the affidavit of the secretary or some other

officer of the corporation stating that the consent has been signed by or on behalf of all the stockholders entitled to vote on a dissolution; in addition, there shall be attached to the consent a certification by the secretary or some other

officer of the corporation setting forth the names and residences of the directors and officers of the corporation.

ARTICLE XI

CUSTODIAN

11.1 APPOINTMENT OF A CUSTODIAN IN CERTAIN CASES

The Court of Chancery, upon application of any stockholder, may appoint one or more persons to be custodians and, if the corporation is insolvent, to be receivers, of and for the corporation when:

(i) at any meeting held for the election of directors the stockholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or

(ii) the business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division; or

(iii) the corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

11.2 DUTIES OF CUSTODIAN

The custodian shall have all the powers and title of a receiver appointed under Section 291 of the General Corporation Law of Delaware, but the authority of the custodian shall be to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the Court of Chancery otherwise orders and except in cases arising under Sections 226(a)(3) or 352(a)(2) of the General Corporation Law of Delaware.

EXHIBIT 5.1

[WILSON SONSINI GOODRICH & ROSATI LETTERHEAD]

, 2002

Netflix, Inc.
970 University Avenue
Los Gatos, California 95032

RE: REGISTRATION STATEMENT ON FORM S-1

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-1 filed by you with the Securities and Exchange Commission ("SEC") on , 2002 (as such may be further amended or supplemented, the "Registration Statement"), in connection with the registration under the Securities Act of 1933, as amended, of up to shares of your Common Stock (the "Shares"). The Shares include an over-allotment option granted to the underwriters of the offering to purchase shares. We understand that the Shares are to be sold to the underwriters of the offering for resale to the public as described in the Registration Statement. As your legal counsel, we have examined the proceedings taken, and are familiar with the proceedings proposed to be taken, by you in connection with the sale and issuance of the Shares.

It is our opinion that, upon completion of the proceedings being taken or contemplated by us, as your counsel, to be taken prior to the issuance of the Shares, including the proceedings being taken in order to permit such transaction to be carried out in accordance with applicable state securities laws, the Shares, when issued and sold in the manner described in the Registration Statement and in accordance with the resolutions adopted by the Board of Directors of the Company, will be legally and validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an exhibit to the Registration Statement and further consent to the use of our name wherever appearing in the Registration Statement, including the prospectus constituting a part thereof, and any amendments thereto.

Very truly yours,

Exhibit 10.2

NETFLIX, INC.

2002 EMPLOYEE STOCK PURCHASE PLAN

Adopted February 27, 2002

The following constitutes the provisions of the 2002 Employee Stock Purchase Plan of Netflix, Inc.

1. Purpose. The purpose of the Plan is to provide Employees with an opportunity to purchase Common Stock through accumulated payroll deductions. It is the intention of the Company to have the Plan qualify as an "Employee Stock Purchase Plan" under Section 423 of the Code. The provisions of the Plan, accordingly, shall be construed so as to extend and limit Plan participation in a manner that is consistent with the requirements of that section of the Code.

2. Definitions.

(a) "Administrator" means the Board or any committee thereof designated by the Board in accordance with Section 14.

(b) "Board" means the Board of Directors of the Company.

(c) "Change of Control" means the occurrence of any of the following events:

(i) Any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities; or

(ii) The consummation of the sale or disposition by the Company of all or substantially all of the Company's assets; or

(iii) The consummation of a merger or consolidation of the Company, with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company, or such surviving entity or its parent outstanding immediately after such merger or consolidation.

(iv) A change in the composition of the Board, as a result of which fewer than a majority of the Directors are Incumbent Directors. "Incumbent Directors" means Directors who either (A) are Directors as of the effective date of the Plan (pursuant to Section 23), or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of those Directors whose election or nomination was not in connection with any transaction described in subsections (i), (ii) or (iii) or in connection with an actual or threatened proxy contest relating to the election of Directors.

(d) "Code" means the Internal Revenue Code of 1986, as amended. Any

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reference to a section of the Code herein shall be a reference to any successor or amended section of the Code.

(e) "Common Stock" means the common stock of the Company.

(f) "Company" means Netflix, Inc., a Delaware corporation.

(g) "Compensation" shall mean all salary, wages (including amounts elected to be deferred by the employee, that would otherwise have been paid, under a cash or deferred arrangement established by the Company), overtime pay, commissions, bonuses and any other remuneration paid directly to the employee, but excluding profit sharing, the cost of employee benefits paid for by the Company, education or tuition reimbursements, imputed income arising under any Company group insurance or benefit program, traveling expenses, business and moving expense reimbursements, income recognized in connection with stock options, contributions made by the Company under any employee benefit plan, and similar items of compensation.

(h) "Designated Subsidiary" means any Subsidiary that has been designated by the Administrator from time to time in its sole discretion as eligible to participate in the Plan.

(i) "Director" means a member of the Board.

(j) "Employee" means any individual who is a common law employee of an Employer and is customarily employed for at least twenty (20) hours per week and more than five (5) months in any calendar year by the Employer. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the Employer. Where the period of leave exceeds ninety (90) days and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship shall be deemed to have terminated on the 91st day of such leave.

(k) "Employer" means any one or all of the Company and its **Designated Subsidiaries.**

(l) "Enrollment Date" means the first Trading Day of each Offering **Period.**

(m) "Exchange Act" means the Securities Exchange Act of 1934, as amended, including the rules and regulations promulgated thereunder.

(n) "Exercise Date" means the first Trading Day on or after May 1/st/ and November 1/st/ of each year. The first Exercise Date under the Plan shall be November 1, 2002.

(o) "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for the Common Stock (or the closing bid, if no sales were reported) as quoted on such exchange or

system on the date of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable, or;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean of the closing bid and asked prices for the Common Stock on the date of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable, or;

(iii) In the absence of an established market for the Common Stock, its Fair Market Value shall be determined in good faith by the Administrator, or;

(iv) For purposes of the Enrollment Date of the first Offering Period under the Plan, the Fair Market Value shall be the initial price to the public as set forth in the final prospectus deemed to be included within the registration statement on Form S-1 filed with the Securities and Exchange Commission for the initial public offering of the Common Stock (the "Registration Statement").

(p) "Offering Periods" means the periods of approximately twenty-four
(24) months during which an option granted pursuant to the Plan may be exercised, commencing on the first Trading Day on or after May 1st and November 1st of each year and terminating on the first Trading Day on or after the May 1st and November 1st Offering Period commencement date approximately twenty-four
(24) months later; provided, however, that the first Offering Period under the Plan shall commence with the first Trading Day on or after the date on which the Securities and Exchange Commission declares the Company's Registration Statement effective and ending on the first Trading Day on or after the earlier of (i) May 1, 2004 or (ii) twenty-seven (27) months from the beginning of the first Offering Period; and provided, further, that the second Offering Period under the Plan shall commence on November 1, 2002. The duration and timing of Offering Periods may be changed pursuant to Section 4 of this Plan.

(q) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(r) "Plan" means this 2002 Employee Stock Purchase Plan.

(s) "Purchase Period" means the approximately six (6) month period commencing on one Exercise Date and ending with the next Exercise Date, except that the first Purchase Period of any Offering Period shall commence on the Enrollment Date and end with the next Exercise Date.

(t) "Purchase Price" means an amount equal to eighty-five percent (85%) of the Fair Market Value of a share of Common Stock on the Enrollment Date or on the Exercise Date, whichever is lower; provided however, that the Purchase Price may be adjusted by the Administrator pursuant to Section 20.

(u) "Subsidiary" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code.

(v) "Trading Day" means a day on which the U.S. national stock exchanges and the Nasdaq System are open for trading.

3. Eligibility.

(a) First Offering Period. Any individual who is an Employee immediately prior to the first Offering Period under the Plan shall be automatically enrolled in the first Offering Period.

(b) Subsequent Offering Periods. Any individual who is an Employee as of the Enrollment Date of any future Offering Period shall be eligible to participate in such Offering Period, subject to the requirements of Section 5.

(c) Limitations. Any provisions of the Plan to the contrary notwithstanding, no Employee shall be granted an option under the Plan (i) to the extent that, immediately after the grant, such Employee (or any other person whose stock would be attributed to such Employee pursuant to Section 424(d) of the Code) would own capital stock of the Company or any Parent or Subsidiary of the Company and/or hold outstanding options to purchase such stock possessing five percent (5%) or more of the total combined voting power or value of all classes of the capital stock of the Company or of any Parent or Subsidiary of the Company, or (ii) to the extent that his or her rights to purchase stock under all employee stock purchase plans (as defined in Section 423 of the Code) of the Company or any Parent or Subsidiary of the Company accrues at a rate which exceeds twenty-five thousand dollars ($25,000) worth of stock (determined at the Fair Market Value of the stock at the time such option is granted) for each calendar year in which such option is outstanding at any time.

4. Offering Periods. The Plan shall be implemented by consecutive, overlapping Offering Periods with a new Offering Period commencing on the first Trading Day on or after May 1st and November 1st of each year, or on such other date as the Administrator shall determine, and continuing thereafter until terminated in accordance with Section 20; provided, however, that the first Offering Period under the Plan shall commence with the first Trading Day on or after the date on which the Securities and Exchange Commission declares the Company's Registration Statement effective and ending on the first Trading Day on or after the earlier of (i) May 1, 2004 or (ii) twenty-seven (27) months from the beginning of the first Offering Period; and provided, further, that the second Offering Period under the Plan shall commence on November 1, 2002. The Administrator shall have the power to change the duration of Offering Periods (including the commencement dates thereof) with respect to future offerings and create new Offering Periods without stockholder approval.

5. Participation.

(a) First Offering Period. An Employee who has become a participant in the first Offering Period under the Plan pursuant to Section 3 shall be entitled to continue his or her participation in such Offering Period only if he or she submits to the Company's payroll office (or its designee) a

properly completed subscription agreement authorizing payroll deductions in the form provided by the Administrator for such purpose (i) no earlier than the effective date of the filing of the Company's Registration Statement on Form S-8 with respect to the shares of Common Stock issuable under the Plan (the "Effective Date") and (ii) no later than five (5) business days from the Effective Date (the "Enrollment Window"). A participant's failure to submit the subscription

agreement during the Enrollment Window pursuant to this Section 5(a) shall result in the automatic termination of his or her participation in the first Offering Period under the Plan.

(b) Subsequent Offering Periods. An Employee who is eligible to participate in the Plan pursuant to Section 3(b) may become a participant by (i) submitting to the Company's payroll office (or its designee), on or before a date prescribed by the Administrator prior to an applicable Enrollment Date, a properly completed subscription agreement authorizing payroll deductions in the form provided by the Administrator for such purpose, or (ii) following an electronic or other enrollment procedure prescribed by the Administrator.

6. Payroll Deductions.

(a) At the time a participant enrolls in the Plan pursuant to Section 5, he or she shall elect to have payroll deductions made on each payday during the Offering Period in an amount not exceeding 15% of the Compensation which he or she receives on each such payday.

(b) Payroll deductions authorized by a participant shall commence on the first payday following the Enrollment Date and shall end on the last payday in the Offering Period to which such authorization is applicable, unless sooner terminated by the participant as provided in Section 10; provided, however, that for the first Offering Period under the Plan, payroll deductions shall commence on the first payday on or following the end of the Enrollment Window.

(c) All payroll deductions made for a participant shall be credited to his or her account under the Plan and shall be withheld in whole percentages only. A participant may not make any additional payments into such account.

(d) A participant may discontinue his or her participation in the Plan as provided in Section 10, or may change the rate of his or her payroll deductions during the Offering Period by (i) properly completing and submitting to the Company's payroll office (or its designee), on or before a date prescribed by the Administrator prior to an applicable Exercise Date, a new subscription agreement authorizing the change in payroll deduction rate in the form provided by the Administrator for such purpose, or (ii) following an electronic or other procedure prescribed by the Administrator; provided, however, that a participant may only make two payroll deduction changes during each Purchase Period. If a participant has not followed such procedures to change the rate of payroll deductions, the rate of his or her payroll deductions shall continue at the last properly elected rate throughout the Offering Period and future Offering Periods (unless terminated as provided in Section 10). The Administrator may, in its sole discretion, limit the

nature and/or number of payroll deduction rate changes that may be made by participants during any Offering Period. Any change in payroll deduction rate made pursuant to this Section 6(d) shall be effective as of the first full payroll period following five (5) business days after the date on which the change is made by the participant (unless the Company, in its sole discretion, elects to process a given change in payroll deduction rate more quickly).

(e)Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 3(c), a participant's payroll deductions may be decreased to zero percent (0%) at any time during a Purchase Period. Payroll deductions shall recommence at the rate originally elected by the participant effective as of the beginning of the first Purchase Period

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which is scheduled to end in the following calendar year, unless terminated by the participant as provided in Section 10.

(f) At the time the option is exercised, in whole or in part, or at the time some or all of the Company's Common Stock issued under the Plan is disposed of, the participant must make adequate provision for the Company's federal, state, or other tax withholding obligations, if any, which arise upon the exercise of the option or the disposition of the Common Stock. At any time, the Company may, but shall not be obligated to, withhold from the participant's compensation the amount necessary for the Company to meet applicable withholding obligations, including any withholding required to make available to the Company any tax deductions or benefits attributable to the sale or early disposition of Common Stock by the Employee.

7. Grant of Option. On the Enrollment Date of each Offering Period, each Employee participating in such Offering Period shall be granted an option to purchase on each Exercise Date during such Offering Period (at the applicable Purchase Price) up to a number of shares of Common Stock determined by dividing such participant's payroll deductions accumulated prior to such Exercise Date and retained in the participant's account as of the Exercise Date by the applicable Purchase Price; provided that in no event shall a participant be permitted to purchase during each Purchase Period more than 12,500 shares of Common Stock (subject to any adjustment pursuant to Section 19), and provided further that such purchase shall be subject to the limitations set forth in Sections 3(c) and 13. The Employee may accept the grant of such option by submitting a properly completed subscription agreement in accordance with the requirements of Section 5. The Administrator may, for future Offering Periods, increase or decrease, in its absolute discretion, the maximum number of shares of Common Stock that a participant may purchase during each Purchase Period of such Offering Period. Exercise of the option shall occur as provided in Section 8, unless the participant has withdrawn pursuant to Section 10. The option shall expire on the last day of the Offering Period.

8. Exercise of Option.

(a) Unless a participant withdraws from the Plan as provided in Section 10, his or her option for the purchase of shares of Common Stock shall be exercised

automatically on the Exercise Date, and the maximum number of full shares subject to option shall be purchased for such participant at the applicable Purchase Price with the accumulated payroll deductions in his or her account. No fractional shares of Common Stock shall be purchased; any payroll deductions accumulated in a participant's account which are not sufficient to purchase a full share shall be retained in the participant's account for the subsequent Purchase Period or Offering Period, subject to earlier withdrawal by the participant as provided in Section 10. Any other monies left over in a participant's account after the Exercise Date shall be returned to the participant. During a participant's lifetime, a participant's option to purchase shares hereunder is exercisable only by him or her.

(b) Notwithstanding any contrary Plan provision, if the Administrator determines that, on a given Exercise Date, the number of shares of Common Stock with respect to which options are to be exercised may exceed (i) the number of shares of Common Stock that were available for sale under the Plan on the Enrollment Date of the applicable Offering Period, or (ii) the number of shares of Common Stock available for sale under the Plan on such Exercise Date, the Administrator

may in its sole discretion (x) provide that the Company shall make a pro rata allocation of the shares of Common Stock available for purchase on such Enrollment Date or Exercise Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all participants exercising options to purchase Common Stock on such Exercise Date, and continue all Offering Periods then in effect, or (y) provide that the Company shall make a pro rata allocation of the shares of Common Stock available for purchase on such Enrollment Date or Exercise Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all participants exercising options to purchase Common Stock on such Exercise Date, and terminate any or all Offering Periods then in effect pursuant to Section 20. The Company may make pro rata allocation of the shares of Common Stock available on the Enrollment Date of any applicable Offering Period pursuant to the preceding sentence, notwithstanding any authorization of additional shares of Common Stock for issuance under the Plan by the Company's shareholders subsequent to such Enrollment Date.

9. Delivery. As soon as administratively practicable after each Exercise Date on which a purchase of shares of Common Stock occurs, the Company shall arrange the delivery to each participant, as appropriate, the shares purchased upon exercise of his or her option in a form determined by the Administrator (in its sole discretion). No participant shall have any voting, dividend, or other shareholder rights with respect to shares of Common Stock subject to any option granted under the Plan until such shares have been purchased and delivered to the participant as provided in this Section 9.

10. Withdrawal.

(a) Under procedures established by the Administrator, a participant may withdraw all but not less than all the payroll deductions credited to his or her account and not yet used to exercise his or her option under the Plan at any time by (i) submitting to the Company's payroll office (or its designee) a written notice of withdrawal in the form prescribed by the Administrator for such purpose, or (ii) following an electronic or other withdrawal procedure prescribed by the Administrator. All of the participant's payroll deductions credited to his or her account shall be paid to such participant as promptly as practicable after the effective date of his or her withdrawal and such participant's option for the Offering Period shall be automatically terminated, and no further payroll deductions for the purchase of shares shall be made for such Offering Period. If a participant withdraws from an Offering Period, payroll deductions shall not resume at the beginning of the succeeding Offering Period unless the participant re-enrolls in the Plan in accordance with the provisions of Section 5.

(b) A participant's withdrawal from an Offering Period shall not have any effect upon his or her eligibility to participate in any similar plan which may hereafter be adopted by the Company or in succeeding Offering Periods which commence after the termination of the Offering Period from which the participant withdraws.

11. Termination of Employment. Upon a participant's ceasing to be an Employee, for any reason, he or she shall be deemed to have elected to withdraw from the Plan and the payroll deductions credited to such participant's account during the Offering Period but not yet used to purchase shares of Common Stock under the Plan shall be returned to such participant or, in the case of his or her death, to the person or persons entitled thereto under Section 15, and such participant's

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option shall be automatically terminated. The preceding sentence notwithstanding, a participant who receives payment in lieu of notice of termination of employment shall be treated as continuing to be an Employee for the participant's customary number of hours per week of employment during the period in which the participant is subject to such payment in lieu of notice.

12. Interest. No interest shall accrue on the payroll deductions of a participant in the Plan.

13. Stock.

(a) Subject to adjustment upon changes in capitalization of the Company as provided in Section 19, the maximum number of shares of Common Stock which shall be made available for sale under the Plan shall be 1,750,000 shares plus an annual increase to be added on the first day of the Company's fiscal year beginning in fiscal year 2003, equal to the lesser of (i) 1,000,000 shares, (ii) two percent (2%) of the outstanding shares on such date or (iii) an amount determined by the Board.

(b) Shares of Common Stock to be delivered to a participant under the Plan shall be registered in the name of the participant or in the name of the participant and his or her spouse.

14. Administration. The Board or a committee of members of the Board who shall be appointed from time to time by, and shall serve at the pleasure of, the Board, shall administer the Plan. The Administrator shall have full and exclusive discretionary authority to construe, interpret and apply the terms of the Plan, to determine eligibility and to adjudicate all disputed claims filed under the Plan. The Administrator, in its sole discretion and on such terms and conditions as it may provide, may delegate to one or more individuals all or any part of its authority and powers under the Plan. Every finding, decision and determination made by the Administrator (or its designee) shall, to the full extent permitted by law, be final and binding upon all parties.

15. Designation of Beneficiary.

(a) A participant may designate a beneficiary who is to receive any shares of Common Stock and cash, if any, from the participant's account under the Plan in the event of such participant's death subsequent to an Exercise Date on which the option is exercised but prior to delivery to such participant of such shares and cash. In addition, a participant may designate a beneficiary who is to receive any cash from the participant's account under the Plan in the event of such participant's death prior to exercise of the option. If a participant is married and the designated beneficiary is not the spouse, spousal consent shall be required for such designation to be effective.

(b) Such designation of beneficiary may be changed by the participant at any time. In the event of the death of a participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such participant's death, the Company shall deliver such shares and/or cash to the executor or administrator of the estate of the participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such shares and/or cash to the spouse or to any one or more dependents or relatives of the participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

(c) All beneficiary designations under this Section 15 shall be made in such form and manner as the Administrator may prescribe from time to time.

16. Transferability. Neither payroll deductions credited to a participant's account nor any rights with regard to the exercise of an option or to receive shares of Common Stock under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in Section 15) by the participant. Any such attempt at assignment, transfer, pledge or other disposition shall be without effect, except that the Company may treat such act as an election to withdraw from an Offering Period in accordance with Section 10.

17. Use of Funds. All payroll deductions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions. Until shares of Common Stock are issued under the Plan (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer

agent of the Company), a participant shall only have the rights of an unsecured creditor with respect to such shares.

18. Reports. Individual accounts shall be maintained for each participant in the Plan. Statements of account shall be given to participating Employees at least annually, which statements shall set forth the amounts of payroll deductions, the Purchase Price, the number of shares of Common Stock purchased and the remaining cash balance, if any.

19. Adjustments, Dissolution, Liquidation or Change of Control.

(a) Adjustments. In the event that any dividend or other distribution (whether in the form of cash, Common Stock, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Common Stock or other securities of the Company, or other change in the corporate structure of the Company affecting the Common Stock such that an adjustment is determined by the Administrator (in its sole discretion) to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Administrator shall, in such manner as it may deem equitable, adjust the number and class of Common Stock which may be delivered under the Plan, the Purchase Price per share and the number of shares of Common Stock covered by each option under the Plan which has not yet been exercised, and the numerical limits of Sections 7 and 13.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Offering Period then in progress shall be shortened by setting a new Exercise Date (the "New Exercise Date"), and shall terminate immediately prior to the consummation of such proposed dissolution or liquidation, unless provided otherwise by the Board. The New Exercise Date shall be before the date of the Company's proposed dissolution or liquidation. The Board shall notify each participant in writing, at least ten
(10) business days prior to the New Exercise Date, that the Exercise Date for the participant's option has been changed to the New Exercise Date and that the participant's option shall be exercised automatically on the New Exercise Date, unless prior to such date the participant has withdrawn from the Offering Period as provided in Section 10.

(c) Change of Control. In the event of a Change of Control, each outstanding option shall be assumed or an equivalent option substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. In the event that the successor corporation refuses to assume or substitute for the option, any Purchase Periods then in progress shall be shortened by setting a new Exercise Date (the "New Exercise Date") and any Offering Periods then in progress shall end on the New Exercise Date. The New Exercise Date shall be before the date of the Company's proposed Change of Control. The Administrator shall notify each participant in writing, at least ten (10) business days prior to the New Exercise Date, that the Exercise Date for the participant's option has been changed to the New Exercise Date and that the participant's option shall be exercised automatically on the New Exercise Date, unless prior to such date the

participant has withdrawn from the Offering Period as provided in Section 10.

20. Amendment or Termination.

(a) The Administrator may at any time and for any reason terminate or amend the Plan. Except as provided in Section 19, no such termination can affect options previously granted under the Plan, provided that an Offering Period may be terminated by the Administrator on any Exercise Date if the Administrator determines that the termination of the Plan is in the best interests of the Company and its stockholders. Except as provided in Section 19 and this Section 20, no amendment may make any change in any option theretofore granted which adversely affects the rights of any participant. To the extent necessary to comply with Section 423 of the Code (or any successor rule or provision or any other applicable law, regulation or stock exchange rule), the Company shall obtain stockholder approval in such a manner and to such a degree as required.

(b) Without stockholder consent and without regard to whether any participant rights may be considered to have been "adversely affected," the Administrator shall be entitled to change the Offering Periods, limit the frequency and/or number of changes in the amount withheld during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a participant in order to adjust for delays or mistakes in the Company's processing of properly completed withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each participant properly correspond with amounts withheld from the participant's Compensation, and establish such other limitations or procedures as the Administrator determines in its sole discretion advisable which are consistent with the Plan.

(c) In the event the Administrator determines that the ongoing operation of the Plan may result in unfavorable financial accounting consequences, the Board may, in its discretion and, to the extent necessary or desirable, modify or amend the Plan to reduce or eliminate such accounting consequence including, but not limited to:

(i) altering the Purchase Price for any Offering Period including an Offering Period underway at the time of the change in Purchase Price;

(ii) shortening any Offering Period so that Offering Period ends on a new Exercise Date, including an Offering Period underway at the time of the Board action; and

(iii) allocating shares.

Such modifications or amendments shall not require stockholder approval or the consent of any Plan participants.

21. Notices. All notices or other communications by a participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

22. Conditions Upon Issuance of Shares. Shares of Common Stock shall not be issued with respect to an option under the Plan unless the exercise of such option and the issuance and delivery of such shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the Securities Act of 1933, as amended, including the rules and regulations promulgated thereunder, the Exchange Act and the requirements of any stock exchange upon which the shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

As a condition to the exercise of an option, the Company may require the person exercising such option to represent and warrant at the time of any such exercise that the shares are being purchased only for investment and without any present intention to sell or distribute such shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned applicable provisions of law.

23. Term of Plan. The Plan shall become effective upon the earlier to occur of its adoption by the Board or its approval by the stockholders of the Company. It shall continue in effect until terminated under Section 20.

24. Automatic Transfer to Low Price Offering Period. To the extent permitted by any applicable laws, regulations, or stock exchange rules if the Fair Market Value of the Common Stock on any Exercise Date in an Offering Period is lower than the Fair Market Value of the Common Stock on the Enrollment Date of such Offering Period, then all participants in such Offering Period shall be automatically withdrawn from such Offering Period immediately after the exercise of their option on such Exercise Date and automatically re-enrolled in the immediately following Offering Period.

SAMPLE SUBSCRIPTION AGREEMENT

NETFLIX, INC.

2002 EMPLOYEE STOCK PURCHASE PLAN

SUBSCRIPTION AGREEMENT

_____ Original Application Offering Date:_____ _____ Change in Payroll Deduction Rate

_____ Change of Beneficiary(ies)

1. _____ hereby elects to participate in the Netflix, Inc. 2002 Employee Stock Purchase Plan (the "Plan") and subscribes to purchase shares of the Company's Common Stock in accordance with this Subscription Agreement and the Plan.

2. I hereby authorize payroll deductions from each paycheck in the amount of ____% of my Compensation on each payday (from 0 to 15%) during the Offering Period in accordance with the Plan. (Please note that no fractional percentages are permitted.)

3. I understand that said payroll deductions shall be accumulated for the purchase of shares of Common Stock at the applicable Purchase Price determined in accordance with the Plan. I understand that if I do not withdraw from an Offering Period, any accumulated payroll deductions will be used to automatically exercise my option.

4. I have received a copy of the complete Plan. I understand that my participation in the Plan is in all respects subject to the terms of the Plan. I understand that my ability to exercise the option under this Subscription Agreement is subject to shareholder approval of the Plan.

5. Shares of Common Stock purchased for me under the Plan should be issued in the name(s) of Employee or Employee and Spouse only.

6. I understand that if I dispose of any shares received by me pursuant to the Plan within 2 years after the Offering Date (the first day of the Offering Period during which I purchased such shares) or one year after the Exercise Date, I will be treated for federal income tax purposes as having received ordinary income at the time of such disposition in an amount equal to the excess of the fair market value of the shares at the time such shares were purchased by me over the price which I paid for the shares. I hereby agree to notify the Company in writing within 30 days after the date of any disposition of my shares and I will make adequate provision for Federal, state or other tax withholding obligations, if any, which arise upon the disposition of the Common Stock. The Company may, but will not be obligated to, withhold from my compensation the amount necessary to meet any applicable withholding obligation including any withholding necessary to make available to the Company any tax deductions or

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benefits attributable to sale or early disposition of Common Stock by me. If I dispose of such shares at any time after the expiration of the 2-year and 1-year holding periods, I understand that I will be treated for federal income tax purposes as having received income only at the time of such disposition, and that such income will be taxed as ordinary income only to the extent of an amount equal to the lesser of (1) the excess of the fair market value of the shares at the time of such disposition over the purchase price which I paid for the shares, or (2) 15% of the fair market value of the shares on the first day of the Offering Period. The remainder of the gain, if any, recognized on such disposition will be taxed as capital gain.

7. I hereby agree to be bound by the terms of the Plan. The effectiveness of this Subscription Agreement is dependent upon my eligibility to participate in the Plan.

8. In the event of my death, I hereby designate the following as my beneficiary(ies) to receive all payments and/or shares due me under the Plan:

NAME: (Please print)_____

(First) (Middle) (Last)

_____ _____
Relationship

_____ _____
Percentage Benefit (Address)

NAME: (Please print)_____

(First) (Middle) (Last)

_____ _____
Relationship

_____ _____
Percentage Benefit (Address)

Employee's Social Security Number: _____

Employee's Address: _____

_____

_____

I UNDERSTAND THAT THIS SUBSCRIPTION AGREEMENT SHALL REMAIN IN EFFECT THROUGHOUT SUCCESSIVE OFFERING PERIODS UNLESS TERMINATED BY ME.

Dated:_____

_____
Signature of Employee

_____
Spouse's Signature (If beneficiary other than spouse)

SAMPLE WITHDRAWAL NOTICE

NETFLIX, INC.

2002 EMPLOYEE STOCK PURCHASE PLAN

NOTICE OF WITHDRAWAL

The undersigned participant in the Offering Period of the Netflix, Inc. 2002 Employee Stock Purchase Plan which began on _____, _____ (the "Offering Date") hereby notifies the Company that he or she hereby withdraws from the Offering Period. He or she hereby directs the Company to pay to the undersigned as promptly as practicable all the payroll deductions credited to his or her account with respect to such Offering Period. The undersigned understands and agrees that his or her option for such Offering Period will be automatically terminated. The undersigned understands further that no further payroll deductions will be made for the purchase of shares in the current Offering Period and the undersigned shall be eligible to participate in succeeding Offering Periods only by delivering to the Company a new Subscription Agreement.

Name and Address of Participant:

_____

_____

_____

Signature:

_____

Date:_____

EXHIBIT 10.3

NETFLIX.COM, INC.

1997 STOCK PLAN

Adopted December 17, 1997

Amended and Restated Effective as of October 17, 2001

1. Purposes of the Plan. The purposes of this Stock Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees, Directors and Consultants and to promote the success of the Company's business. Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant. Stock Purchase Rights may also be granted under the Plan.

2. Definitions. As used herein, the following definitions shall apply:

(a) "Administrator" means the Board or any of its Committees as shall be administering the Plan in accordance with Section 4 hereof.

(b) "Applicable Laws" means the requirements relating to the administration of stock option plans under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any other country or jurisdiction where Options or Stock Purchase Rights are granted under the Plan.

(c) "Board" means the Board of Directors of the Company.

(d) "Code" means the Internal Revenue Code of 1986, as amended.

(e) "Committee" means a committee of Directors appointed by the Board in accordance with Section 4 hereof.

(f) "Common Stock" means the Common Stock of the Company.

(g) "Company" means NetFlix, Inc., a Delaware corporation.

(h) "Consultant" means any person who is engaged by the Company or any Parent or Subsidiary to render consulting or advisory services to such entity.

(i) "Director" means a member of the Board of Directors of the **Company.**

(j) "Disability" means total and permanent disability as defined in Section 22(e)(3) of the Code.

(k) "Employee" means any person, including Officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. A Service Provider shall not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor. For purposes of Incentive Stock Options, no such leave may exceed ninety days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If

reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, on the 181st day of such leave any Incentive Stock Option held by the Optionee shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient to constitute "employment" by the Company.

(l) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(m) "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system for the last market trading day prior to the time of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the high bid and low asked prices for the Common Stock on the last market trading day prior to the day of determination; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Administrator.

(n) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code.

(o) "Nonstatutory Stock Option" means an Option not intended to qualify as an Incentive Stock Option.

(p) "Officer" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(q) "Option" means a stock option granted pursuant to the Plan.

(r) "Option Agreement" means a written or electronic agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(s) "Option Exchange Program" means a program whereby outstanding Options are exchanged for Options with a lower exercise price.

(t) "Optioned Stock" means the Common Stock subject to an Option or a **Stock Purchase Right.**

(u) "Optionee" means the holder of an outstanding Option or Stock Purchase Right granted under the Plan.

(v) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(w) "Plan" means this 1997 Stock Plan.

(x) "Restricted Stock" means shares of Common Stock acquired pursuant to a grant of a Stock Purchase Right under Section 11 below.

(y) "Section 16(b) " means Section 16(b) of the Securities Exchange Act of 1934, as amended.

(z) "Service Provider" means an Employee, Director or Consultant.

(aa) "Share" means a share of the Common Stock, as adjusted in accordance with Section 12 below.

(bb) "Stock Purchase Right" means a right to purchase Common Stock pursuant to Section 11 below.

(cc) "Subsidiary" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Stock Subject to the Plan. Subject to the provisions of Section 12 of the Plan, the maximum aggregate number of Shares which may be subject to option and sold under the Plan is 14,639,935 Shares. The Shares may be authorized but unissued, or reacquired Common Stock.

If an Option or Stock Purchase Right expires or becomes unexercisable without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated). However, Shares that have actually been issued under the Plan, upon exercise of either an Option or Stock Purchase Right, shall not be returned to the Plan and shall not become available for future distribution under the Plan, except that if Shares of Restricted Stock are repurchased by the Company at their original purchase price, such Shares shall become available for future grant under the Plan.

4. Administration of the Plan.

(a) Administrator. The Plan shall be administered by the Board or a Committee appointed by the Board, which Committee shall be constituted to comply with Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan and, in the case of a

Committee, the specific duties delegated by the Board to such Committee, and subject to the approval of any relevant authorities, the Administrator shall have the authority in its discretion:

(i) to determine the Fair Market Value;

(ii) to select the Service Providers to whom Options and Stock Purchase Rights may from time to time be granted hereunder;

(iii) to determine the number of Shares to be covered by each such award granted hereunder;

(iv) to approve forms of agreement for use under the Plan;

(v) to determine the terms and conditions, of any Option or Stock Purchase Right granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options or Stock Purchase Rights may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or Stock Purchase Right or the Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vi) to determine whether and under what circumstances an Option may be settled in cash under subsection 9(e) instead of Common Stock;

(vii) to reduce the exercise price of any Option to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option has declined since the date the Option was granted;

(viii) to initiate an Option Exchange Program;

(ix) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;

(x) to allow Optionees to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option or Stock Purchase Right that number of Shares having a Fair Market Value equal to the amount required to be withheld. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All elections by Optionees to have Shares withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable; and

(xi) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan.

(c) Effect of Administrator's Decision. All decisions, determinations and interpretations of the Administrator shall be final and binding on all Optionees.

5. Eligibility.

(a) Nonstatutory Stock Options and Stock Purchase Rights may be granted to Service Providers. Incentive Stock Options may be granted only to Employees.

(b) Each Option shall be designated in the Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Optionee during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds $100,000, such Options shall be treated as Nonstatutory Stock Options. For purposes of this
Section 5(b), Incentive Stock Options shall be taken into account in the order in which they were granted. The Fair Market Value of the Shares shall be determined as of the time the Option with respect to such Shares is granted.

(c) Neither the Plan nor any Option or Stock Purchase Right shall confer upon any Optionee any right with respect to continuing the Optionee's relationship as a Service Provider with the Company, nor shall it interfere in any way with his or her right or the Company's right to terminate such relationship at any time, with or without cause.

6. Term of Plan. The Plan shall become effective upon its adoption by the Board. It shall continue in effect for a term of ten (10) years unless sooner terminated under Section 14 of the Plan.

7. Term of Option. The term of each Option shall be stated in the Option Agreement; provided, however, that the term shall be no more than ten (10) years from the date of grant thereof. In the case of an Incentive Stock Option granted to an Optionee who, at the time the Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Option Agreement.

8. Option Exercise Price and Consideration.

(a) The per share exercise price for the Shares to be issued upon exercise of an Option shall be such price as is determined by the Administrator, but shall be subject to the following:

(i) In the case of an Incentive Stock Option

(1) granted to an Employee who, at the time of grant of such Option, owns stock representing more than ten percent (10%) of the voting power of all classes of

stock of the Company or any Parent or Subsidiary, the exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(2) granted to any other Employee, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option

(1) granted to a Service Provider who, at the time of grant of such Option, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(2) granted to any other Service Provider, the per Share exercise price shall be no less than 85% of the Fair Market Value per Share on the date of grant.

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price other than as required above pursuant to a merger or other corporate transaction.

(b) The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant). Such consideration may consist of (1) cash,
(2) check, (3) promissory note, (4) other Shares which (x) in the case of Shares acquired upon exercise of an Option, have been owned by the Optionee for more than six months on the date of surrender, and (y) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which such Option shall be exercised, (5) consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan, or (6) any combination of the foregoing methods of payment. In making its determination as to the type of consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company.

9. Exercise of Option.

(a) Procedure for Exercise; Rights as a Shareholder. Any Option granted hereunder shall be exercisable according to the terms hereof at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement. Except in the case of Options granted to Officers, Directors and Consultants, Options shall become exercisable at a rate of no less than 20% per year over five (5) years from the date the Options are granted. Unless the Administrator provides otherwise, vesting of Options granted hereunder shall be tolled during any unpaid leave of absence.

An Option may not be exercised for a fraction of a Share. An Option shall be deemed exercised when the Company receives: (i) written or electronic notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the

Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of an Option shall

be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Shares, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 12 of the Plan.

Exercise of an Option in any manner shall result in a decrease in the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Termination of Relationship as a Service Provider. If an Optionee ceases to be a Service Provider, such Optionee may exercise his or her Option within such period of time as is specified in the Option Agreement (of at least thirty (30) days) to the extent that the Option is vested on the date of termination (but in no event later than the expiration of the term of the Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for three (3) months following the Optionee's termination. If, on the date of termination, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified by the Administrator, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(c) Disability of Optionee. If an Optionee ceases to be a Service Provider as a result of the Optionee's Disability, the Optionee may exercise his or her Option within such period of time as is specified in the Option Agreement (of at least six (6) months) to the extent the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following the Optionee's termination. If, on the date of termination, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee. If an Optionee dies while a Service Provider, the Option may be exercised within such period of time as is specified in the Option Agreement (of at least six (6) months) to the extent that the Option is vested on the date of death (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement) by the Optionee's estate or by a

person who acquires the right to exercise the Option by bequest or inheritance. In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following the Optionee's termination. If, at the time of death, the Optionee is not vested as to the entire Option, the Shares covered by the unvested portion of the Option shall immediately revert to the Plan. If the Option is not so exercised within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(e) Buyout Provisions. The Administrator may at any time offer to buy out for a payment in cash or Shares, an Option previously granted, based on such terms and conditions as the Administrator shall establish and communicate to the Optionee at the time that such offer is made.

10. Limited Transferability of Options and Stock Purchase Rights. Unless determined otherwise by the Administrator, Options and Stock Purchase Rights may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee.

11. Stock Purchase Rights.

(a) Rights to Purchase. Stock Purchase Rights may be issued either alone, in addition to, or in tandem with other awards granted under the Plan and/or cash awards made outside of the Plan. After the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing or electronically of the terms, conditions and restrictions related to the offer, including the number of Shares that such person shall be entitled to purchase, the price to be paid, and the time within which such person must accept such offer. The terms of the offer shall comply in all respects with Section 260.140.42 of Title 10 of the California Code of Regulations. The offer shall be accepted by execution of a Restricted Stock purchase agreement in the form determined by the Administrator.

(b) Repurchase Option. Unless the Administrator determines otherwise, the Restricted Stock purchase agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's service with the Company for any reason (including death or disability). The purchase price for Shares repurchased pursuant to the Restricted Stock purchase agreement shall be the original price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Company. The repurchase option shall lapse at such rate as the Administrator may determine. Except with respect to Shares purchased by Officers, Directors and Consultants, the repurchase option shall in no case lapse at a rate of less than 20% per year over five (5) years from the date of purchase.

(c) Other Provisions. The Restricted Stock purchase agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion.

(d) Rights as a Shareholder. Once the Stock Purchase Right is exercised, the purchaser shall have rights equivalent to those of a shareholder and shall be a shareholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment shall be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 12 of the Plan.

12. Adjustments Upon Changes in Capitalization, Merger or Asset Sale.

(a) Changes in Capitalization. Subject to any required action by the shareholders of the Company, the number of shares of Common Stock covered by each outstanding Option or Stock Purchase Right, and the number of shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options or Stock Purchase Rights have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option or Stock Purchase Right, as well as the price per share of Common Stock covered by each such outstanding Option or Stock Purchase Right, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company. The conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of Common Stock subject to an Option or Stock Purchase Right.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator shall notify each Optionee as soon as practicable prior to the effective date of such proposed transaction. The Administrator in its discretion may provide for an Optionee to have the right to exercise his or her Option or Stock Purchase Right until fifteen (15) days prior to such transaction as to all of the Optioned Stock covered thereby, including Shares as to which the Option or Stock Purchase Right would not otherwise be exercisable. In addition, the Administrator may provide that any Company repurchase option applicable to any Shares purchased upon exercise of an Option or Stock Purchase Right shall lapse as to all such Shares, provided the proposed dissolution or liquidation takes place at the time and in the manner contemplated. To the extent it has not been previously exercised, an Option or Stock Purchase Right will terminate immediately prior to the consummation of such proposed action.

(c) Merger or Asset Sale. In the event of a merger of the Company with or into another corporation, or the sale of substantially all of the assets of the Company (a "Merger"), each outstanding Option and Stock Purchase Right shall be assumed or an equivalent option or right substituted by the successor corporation or a Parent or Subsidiary of the successor corporation (the "Successor Corporation").

Following such assumption or substitution in connection with a Merger, if the Optionee's status as an Employee or employee of the Successor Corporation, as applicable, is terminated by the Successor Corporation as a result of an Involuntary Termination (as defined below) other than for Cause (as defined below) within twelve months following a Merger, the Optionee shall vest in and have the right to exercise that portion of Optionee's Option or Stock Purchase Right, if any, that would have vested within one year after the date of Optionee's termination. Thereafter, the Option or Stock Purchase Right shall remain exercisable in accordance with Sections 10(b) through (d) above.

For purposes of this section, any of the following events shall constitute an "Involuntary Termination": (i) a significant reduction of the Employee's duties, authority or responsibilities, relative to the Employee's duties, authority or responsibilities as in effect immediately prior to the Merger, or the assignment to Employee of such reduced duties, authority or responsibilities; (ii) a substantial reduction of the facilities and perquisites (including office space and location) available to the Employee immediately prior to the Merger; (iii) a reduction in the base salary of the Employee as in effect immediately prior to the Merger; (iv) a material reduction in the kind or level of employee benefits, including bonuses, to which the Employee was entitled immediately prior to the Merger with the result that the Employee's overall benefits package is significantly reduced; (v) the relocation of the Employee to a facility or a location more than fifty (50) miles from the Employee's then present location, without the Employee's express written consent; (vi) any purported termination of the Employee by the Successor Corporation which is not effected for Disability or for Cause, or any purported termination for which the grounds relied upon are not valid; (vii) or any act or set of facts or circumstances which would, under California case law or statute constitute a constructive termination of the Employee.

For purposes of this section, "Cause" shall mean (i) any act of personal dishonesty taken by the Employee in connection with his responsibilities as an employee and intended to result in substantial personal enrichment of the Employee, (ii) the conviction of a felony, (iii) a willful act by the Employee which constitutes gross misconduct and which is injurious to the Successor Corporation, and (iv) following delivery to the Employee of a written demand for performance from the Successor Corporation which describes the basis for the Successor Corporation's belief that the Employee has not substantially performed his duties, continued violations by the Employee of the Employee's obligations to the Successor which are demonstrably willful and deliberate on the Employee's part.

In the event that the Successor Corporation refuses to assume or substitute for the Option or Stock Purchase Right, the Optionee shall fully vest in and have the right to exercise the Option or Stock Purchase Right as to all of the Optioned Stock, including Shares as to which Optionee would not otherwise be vested or exercisable. If an Option or Stock Purchase Right becomes fully vested and exercisable in lieu of assumption or substitution in connection with a Merger, the Administrator shall notify the Optionee in writing that the Option or Stock Purchase Right shall be fully vested and exercisable for a period of fifteen (15) days from the date of such notice, and the Option or Stock Purchase Right shall terminate upon the expiration of such

period. For the purposes of this paragraph, the Option or Stock Purchase Right shall be considered assumed if, following the Merger, the option or right confers the right to purchase or receive, for each Share of Optioned Stock subject to the Option or Stock Purchase Right immediately prior to the Merger, the consideration (whether stock, cash, or other securities or property) received in the Merger by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the Merger is not solely common stock of the Successor Corporation or its Parent, the Administrator may, with the consent of the Successor Corporation, provide for the consideration to be received upon the exercise of the Option or Stock Purchase Right, for each Share of Optioned Stock subject to the Option or Stock Purchase

Right, to be solely common stock of the Successor Corporation or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the Merger.

13. Time of Granting Options and Stock Purchase Rights. The date of grant of an Option or Stock Purchase Right shall, for all purposes, be the date on which the Administrator makes the determination granting such Option or Stock Purchase Right, or such other date as is determined by the Administrator. Notice of the determination shall be given to each Service Provider to whom an Option or Stock Purchase Right is so granted within a reasonable time after the date of such grant.

14. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Board may at any time amend, alter, suspend or terminate the Plan.

(b) Shareholder Approval. The Board shall obtain shareholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws.

(c) Effect of Amendment or Termination. No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Options granted under the Plan prior to the date of such termination.

15. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option unless the exercise of such Option and the issuance and delivery of such Shares shall comply with Applicable Laws and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Option, the Administrator may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

16. Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

17. Reservation of Shares. The Company, during the term of this Plan, shall at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

18. Shareholder Approval. The Plan shall be subject to approval by the shareholders of the Company within twelve (12) months after the date the Plan is adopted. Such shareholder approval shall be obtained in the degree and manner required under Applicable Laws.

19. Information to Optionees and Purchasers. The Company shall provide to each Optionee and to each individual who acquires Shares pursuant to the Plan, not less frequently than annually during the period such Optionee or purchaser has one or more Options or Stock Purchase Rights outstanding, and, in the case of an individual who acquires Shares pursuant to the Plan, during the period such individual owns such Shares, copies of annual financial statements. The Company shall not be required to provide such statements to key employees whose duties in connection with the Company assure their access to equivalent information.

Exhibit 10.4
NETFLIX, INC.

2002 STOCK PLAN

Adopted February 27, 2002

1. Purposes of the Plan. The purposes of this 2002 Stock Plan are:

. to attract and retain the best available personnel for positions of substantial responsibility,

. to provide additional incentive to Employees, Directors and Consultants, and

. to promote the success of the Company's business.

Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant. Stock Purchase Rights may also be granted under the Plan.

2. Definitions. As used herein, the following definitions shall apply:

(a) "Administrator" means the Board or any of its Committees as shall be administering the Plan, in accordance with Section 4.

(b) "Applicable Laws" means the requirements relating to the administration of stock option plans under U. S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where Options or Stock Purchase Rights are, or will be, granted under the Plan.

(c) "Board" means the Board of Directors of the Company.

(d) "Change in Control" means the occurrence of any of the following events:

(i) Any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities; or

(ii) The consummation of the sale or disposition by the Company of all or substantially all of the Company's assets;

(iii) A change in the composition of the Board occurring within a two-year period, as a result of which fewer than a majority of the directors are Incumbent Directors. "Incumbent Directors" means directors who either (A) are Directors as of the effective date of the Plan, or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least

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a majority of the Incumbent Directors at the time of such election or nomination (but will not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors to the Company); or

(iv) The consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company

outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

(e) "Code" means the Internal Revenue Code of 1986, as amended. Any

reference to a section of the Code herein shall be a reference to any successor or amended section of the Code.

(f) "Committee" means a committee appointed by the Board in accordance with Section 4 of the Plan.

(g) "Common Stock" means the common stock of the Company.

(h) "Company" means Netflix, Inc., a Delaware corporation.

(i) "Consultant" means any natural person, including an advisor, engaged by the Company or a Parent or Subsidiary to render services to such entity.

(j) "Director" means a member of the Board.

(k) "Disability" means total and permanent disability as defined in Section 22(e)(3) of the Code.

(l) "Employee" means any person, including officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient to constitute "employment" by the Company.

(m) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(n) "Exercise Price" means the price at which a Share may be purchased by an Optionee pursuant to the exercise of an Option or Stock Purchase Right.

(o) "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system

on the day of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share shall be the mean between the high bid and low asked prices for the Common Stock on the day of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value shall be determined in good faith by the Administrator.

(p) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(q) "Nonstatutory Stock Option" means an Option not intended to qualify as an Incentive Stock Option.

(r) "Notice of Grant" means a written or electronic notice evidencing certain terms and conditions of an individual Option or Stock Purchase Right grant. The Notice of Grant is part of the Option Agreement.

(s) "Option" means a stock option granted pursuant to the Plan.

(t) "Option Agreement" means an agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(u) "Option Exchange Program" means a program whereby outstanding Options are surrendered in exchange for Options with a lower Exercise Price.

(v) "Optioned Stock" means the Common Stock subject to an Option or **Stock Purchase Right.**

(w) "Optionee" means the holder of an outstanding Option or Stock Purchase Right granted under the Plan.

(x) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(y) "Plan" means this 2002 Stock Plan.

(z) "Registration Date" means the effective date of the first registration statement which is filed by the Company and declared effective pursuant to Section 12(g) of the Exchange Act, with respect to any class of the Company's securities.

(aa) "Restricted Stock" means Shares acquired pursuant to a grant of **Stock Purchase Rights under Section 12 of the Plan.**

(bb) "Restricted Stock Purchase Agreement" means a written agreement between the Company and the Optionee evidencing the terms and restrictions applying to stock purchased under a Stock Purchase Right. The Restricted Stock Purchase Agreement is subject to the terms and conditions of the Plan and the Notice of Grant.

(cc) "Rule 16b-3" means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

(dd) "Section 16(b)" means Section 16(b) of the Exchange Act.

(ee) "Service Provider" means an Employee, Director or Consultant.

(ff) "Share" means a share of the Common Stock, as adjusted in accordance with Section 14.

(gg) "Stock Purchase Right" means the right to purchase Common Stock pursuant to Section 12, as evidenced by a Notice of Grant.

(hh) "Subsidiary" means a "subsidiary corporation", whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Stock Subject to the Plan. The maximum aggregate number of Shares that may be optioned and sold under the Plan consists of (a) the 2,000,000 Shares initially reserved for issuance under the Plan, (b) any Shares which have been reserved but not issued under the Company's 1997 Stock Plan (the "1997 Plan"), as of the Registration Date, and (c) an annual increase to be added on the first day of the Company's fiscal year beginning in fiscal year 2003, equal to the lesser of (i) 3,000,000 shares, (ii) 5% of the outstanding shares on such date or (iii) an amount determined by the Board. The Shares may be authorized, but unissued, or reacquired Common Stock.

If an Option or Stock Purchase Right expires or becomes unexercisable without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated); provided, however, that Shares that have actually been issued under the Plan, whether upon exercise of an Option or Right, shall not be returned to the Plan and shall not become available for future distribution under the Plan, except that if unvested Shares are repurchased by the Company at their original purchase price or, if less than their original purchase price, their fair market value, such Shares shall become available for future grant under the Plan.

4. Administration of the Plan.

(a) Procedure.

(i) Multiple Administrative Bodies. Different Committees with respect to different groups of Service Providers may administer the Plan.

(ii) Section 162(m). To the extent that the Administrator determines it to be desirable to qualify Options granted hereunder as "performance-based compensation" within the

meaning of Section 162(m) of the Code, the Plan shall be administered by a Committee of two or more "outside directors" within the meaning of Section 162(m) of the Code.

(iii) Rule 16b-3. To the extent desirable to qualify transactions hereunder as exempt under Rule 16b-3, the transactions contemplated hereunder shall be structured to satisfy the requirements for exemption under Rule 16b-3.

(iv) Other Administration. Other than as provided above, the Plan shall be administered by (A) the Board or (B) a Committee, which committee shall be constituted to satisfy Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

(i) to determine the Fair Market Value;

(ii) to select the Service Providers to whom Options and Stock Purchase Rights may be granted hereunder;

(iii) to determine the number of Shares to be covered by each Option and Stock Purchase Right granted hereunder;

(iv) to approve forms of agreement for use under the Plan;

(v) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Option or Stock Purchase Right granted hereunder. Such terms and conditions include, but are not limited to, the Exercise Price, the time or times when Options or Stock Purchase Rights may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or Stock Purchase Right or the Shares relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vi) to reduce the exercise price of any Option or Stock Purchase Right to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option or Stock Purchase Right shall have declined since the date the Option or Stock Purchase Right was granted;

(vii) to institute an Option Exchange Program;

(viii) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan;

(ix) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of satisfying applicable foreign laws;

(x) to modify or amend each Option or Stock Purchase Right (subject to Section 16(c) of the Plan), including the discretionary authority to extend the post-termination exercisability period of Options longer than is otherwise provided for in the Plan;

(xi) to allow Optionees to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option or Stock Purchase Right that number of Shares having a Fair Market Value equal to the minimum amount required to be withheld. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All elections by an Optionee to have Shares withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable;

(xii) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Option or Stock Purchase Right previously granted by the Administrator;

(xiii) to make all other determinations deemed necessary or advisable for administering the Plan.

(c) Effect of Administrator's Decision. The Administrator's decisions, determinations and interpretations shall be final and binding on all persons and shall be given the maximum deference permitted by law.

5. Eligibility. Nonstatutory Stock Options and Stock Purchase Rights may be granted to Service Providers. Incentive Stock Options may be granted only to Employees.

6. Limitations.

(a) Each Option shall be designated in the Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Optionee during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds $100,000, such Options shall be treated as Nonstatutory Stock Options. For purposes of this
Section 6(a), Incentive Stock Options shall be taken into account in the order in which they were granted. The Fair Market Value of the Shares shall be determined as of the time the Option with respect to such Shares is granted.

(b) Neither the Plan nor any Option or Stock Purchase Right shall confer upon an Optionee any right with respect to continuing the Optionee's relationship as a Service Provider with the

Company, nor shall they interfere in any way with the Optionee's right or the Company's right to terminate such relationship at any time, with or without cause.

(c) The following limitations shall apply to grants of Options:

(i) No Service Provider shall be granted, in any fiscal year of the Company, Options to purchase more than 1,500,000 Shares.

(ii) In connection with his or her initial service as an Employee, a Service Provider may be granted Options to purchase up to an additional 500,000 Shares, which shall not count against the limit set forth in subsection
(i) above.

(iii) The foregoing limitations shall be adjusted proportionately in connection with any change described in Section 14(a).

(iv) If an Option is cancelled in the same fiscal year of the Company in which it was granted (other than in connection with a transaction described in Section 14), the cancelled Option will be counted against the limits set forth in subsections (i) and (ii) above. For this purpose, if the Exercise Price of an Option is reduced, the transaction will be treated as a cancellation of the Option and the grant of a new Option.

7. Term of Plan. Subject to Section 20, the Plan shall become effective upon its adoption by the Board. It shall continue in effect for a term of ten
(10) years unless terminated earlier under Section 16.

8. Term of Option. The term of each Option shall be stated in the Option Agreement. In the case of an Incentive Stock Option, the term shall be ten (10) years from the date of grant or such shorter term as may be provided in the Option Agreement. Moreover, in the case of an Incentive Stock Option granted to an Optionee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Option Agreement.

9. Option Exercise Price and Consideration.

(a) Exercise Price. The Exercise Price for the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator, s ubject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the Exercise Price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(B) granted to any Employee other than an Employee described in paragraph (A) immediately above, the Exercise Price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option, the Exercise Price shall be determined by the Administrator. In the case of a Nonstatutory Stock Option intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code, the Exercise Price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(iii) Notwithstanding the foregoing, Options may be granted with an Exercise Price of less than 100% of the Fair Market Value per Share on the date of grant pursuant to a merger or other corporate transaction.

(b) Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions that must be satisfied before the Option may be exercised.

(c) Form of Consideration. The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. In the case of an Incentive Stock Option, the Administrator shall determine the acceptable form of consideration at the time of grant. Such consideration may consist entirely of:

(i) cash;

(ii) check;

(iii) promissory note;

(iv) other Shares which, in the case of Shares acquired from the Company, (A) have been owned by the Optionee for more than six (6) months on the date of surrender, and (B) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised;

(v) consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan;

(vi) a reduction in the amount of any Company liability to the Optionee, including any liability attributable to the Optionee's participation in any Company-sponsored deferred compensation program or arrangement;

(vii) any combination of the foregoing methods of payment; or

(viii) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

10. Exercise of Option.

(a) Procedure for Exercise; Rights as a Stockholder. Any Option granted hereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement. An Option may not be exercised for a fraction of a Share.

An Option shall be deemed exercised when the Company receives: (i) written or electronic notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of

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an Option shall be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 14.

Exercising an Option in any manner shall decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Termination of Relationship as a Service Provider. If an Optionee ceases to be a Service Provider, other than upon the Optionee's death or Disability, the Optionee may exercise his or her Option within such period of time as is specified in the Option Agreement to the extent that the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for three (3) months following the Optionee's termination. If, on the date of termination, the Optionee is not vested as to his or her

entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified by the Administrator, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(c) Disability of Optionee. If an Optionee ceases to be a Service Provider as a result of the Optionee's Disability, the Optionee may exercise his or her Option within such period of time as is specified in the Option Agreement to the extent the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following the Optionee's termination. If, on the date of termination, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee. If an Optionee dies while a Service Provider, the Option may be exercised following the Optionee's death within such period of time as is specified in the Option Agreement to the extent that the Option is vested on the date of death (but in no event may the option be exercised later than the expiration of the term of such Option as set forth in the Option Agreement), by the Optionee's designated beneficiary, provided such beneficiary has been designated prior to Optionee's death in a form acceptable to the Administrator. If no such beneficiary has been designated by the Optionee, then such Option may be exercised by the personal representative of the Optionee's estate or by the person(s) to whom the Option is transferred pursuant to the Optionee's will or in accordance with the laws of descent and distribution. In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following Optionee's death. If, at the time of death, Optionee is not vested as to his or her entire

Option, the Shares covered by the unvested portion of the Option shall immediately revert to the Plan. If the Option is not so exercised within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

11. Leaves of Absence. Unless the Administrator provides otherwise, vesting of Options and Stock Purchase Rights granted hereunder shall be suspended during any unpaid leave of absence. A Service Provider shall not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, or any Subsidiary. For purposes of Incentive Stock Options, no such leave may exceed ninety days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then three (3) months following the 91st day of such leave any Incentive Stock Option held by the Optionee shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

12. Stock Purchase Rights.

(a) Rights to Purchase. Stock Purchase Rights may be issued either alone, in addition to, or in tandem with other awards granted under the Plan and/or cash awards made outside of the Plan. After the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing or electronically, by means of a Notice of Grant, of the terms, conditions and restrictions related to the offer, including the number of Shares that the offeree shall be entitled to purchase, the price to be paid, and the time within which the offeree must accept such offer. The offer shall be accepted by execution of a Restricted Stock Purchase Agreement in the form determined by the Administrator.

(b) Repurchase Option. Unless the Administrator determines otherwise, the Restricted Stock Purchase Agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's service with the Company for any reason (including death or Disability). The purchase price for Shares repurchased pursuant to the Restricted Stock Purchase Agreement shall be the original price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Company. The repurchase option shall lapse at a rate determined by the Administrator.

(c) Other Provisions. The Restricted Stock Purchase Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion.

(d) Rights as a Stockholder. Once the Stock Purchase Right is exercised, the purchaser shall have the rights equivalent to those of a stockholder, and shall be a stockholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 14 of the Plan.

13. Transferability of Options and Stock Purchase Rights. Unless determined otherwise by the Administrator, an Option or Stock Purchase Right may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent

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or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee. If the Administrator makes an Option or Stock Purchase Right transferable, such Option or Stock Purchase Right shall contain such additional terms and conditions as the Administrator deems appropriate.

14. Adjustments, Dissolution or Liquidation or Change in Control.

(a) Adjustments. In the event that any dividend or other distribution (whether in the form of cash,

Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, or other change in the corporate structure of the Company affecting the Shares such that an adjustment is determined by the Administrator (in its sole discretion) to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Administrator shall, in such manner as it may deem equitable, adjust the number and class of Shares which may be delivered under the Plan, the number, class, and price of Shares covered by each outstanding Option and Stock Purchase Right, and the numerical Share limits of Sections 3 and 6.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator shall notify each Optionee as soon as practicable prior to the effective date of such proposed transaction. To the extent it has not been previously exercised, an Option or Stock Purchase Right will terminate immediately prior to the consummation of such proposed action.

(c) Change in Control. In the event of a Change in Control, each outstanding Option and Stock Purchase Right shall be assumed or an equivalent option or right substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. In the event that the successor corporation refuses to assume or substitute for the Option or Stock Purchase Right, the Optionee shall fully vest in and have the right to exercise the Option or Stock Purchase Right as to all of the Optioned Stock, including Shares as to which it would not otherwise be vested or exercisable. If an Option or Stock Purchase Right becomes fully vested and exercisable in lieu of assumption or substitution in the event of a Change in Control, the Administrator shall notify the Optionee in writing or electronically that the Option or Stock Purchase Right shall be fully vested and exercisable (subject to the consummation of the Change of Control) for a period of fifteen (15) days from the date of such notice, and the Option or Stock Purchase Right shall terminate upon the expiration of such period.

For the purposes of this subsection (c), the Option or Stock Purchase Right shall be considered assumed if, following the Change in Control, the option or right confers the right to purchase or receive, for each Share of Optioned Stock subject to the Option or Stock Purchase Right immediately prior to the Change in Control, the consideration (whether stock, cash, or other securities or property) received in the Change in Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the Change in Control is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the

Option or Stock Purchase Right, for each Share of Optioned Stock subject to the Option or Stock Purchase Right, to be solely common stock of the successor corporation or its Parent equal in fair

market value to the per share consideration received by holders of Common Stock in the Change in Control.

15. Date of Grant. The date of grant of an Option or Stock Purchase Right shall be, for all purposes, the date on which the Administrator makes the determination granting such Option or Stock Purchase Right, or such other later date as is determined by the Administrator. Notice of the determination shall be provided to each Optionee within a reasonable time after the date of such grant.

16. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Administrator may at any time amend, alter, suspend or terminate the Plan.

(b) Stockholder Approval. The Company shall obtain stockholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws.

(c) Effect of Amendment or Termination. No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Options granted under the Plan prior to the date of such termination.

17. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option or Stock Purchase Right unless the exercise of such Option or Stock Purchase Right and the issuance and delivery of such Shares shall comply with Applicable Laws and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Option or Stock Purchase Right, the Company may require the person exercising such Option or Stock Purchase Right to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

18. Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

19. Reservation of Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

20. Stockholder Approval. The Plan shall be subject to approval by the stockholders of the Company within twelve (12) months after the date the Plan is adopted. Such stockholder approval shall be obtained in the manner and to the degree required under Applicable Laws.

21. Withholding. The Company's obligation to deliver Shares pursuant to any Options or Stock Purchase Rights granted under the Plan shall be subject to the satisfaction of all applicable Federal, state and local income and employment tax withholding requirements.

Exhibit 10.5

NETFLIX.COM, INC.

AMENDED AND RESTATED STOCKHOLDERS' RIGHTS AGREEMENT

THIS AMENDED AND RESTATED STOCKHOLDERS' RIGHTS AGREEMENT (this "Agreement") is made as of July 10, 2001 by and among NetFlix.com, Inc., a Delaware corporation (the "Company"), Reed Hastings and Marc Randolph (such individuals collectively, the "Founders" and each a "Founder"), the holders of the Company's Series A Preferred Stock (the "Series A Preferred"), the holders of the Company's Series B Preferred Stock (the "Series B Preferred"), the holders of the Company's Series C Preferred Stock (the "Series C Preferred"), the holders of the Company's Series D Preferred Stock (the "Series D Preferred"), the holders of the Company's Series E Preferred Stock (the "Series E Preferred"), the holders of the Company's Series F Non-Voting Preferred Stock ("Series F Preferred"), and the purchasers of warrants to purchase common stock of the Company (the "Warrants") pursuant to the Note and Warrant Purchase Agreement dated as of July 10, 2001 by and among the Company and certain stockholders of the Company (the "Purchase Agreement"). The holders of the Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred and Series F Preferred shall be referred to hereinafter individually as an "Existing Holder" and collectively as the "Existing Holders." The purchasers of the Warrants shall be referred to hereinafter individually as a "Purchaser" and collectively as the "Purchasers."

RECITALS

A. The Company has granted the Existing Holders registration and certain other rights under the Amended and Restated Stockholders' Rights Agreement dated as of February 22, 2001 (the "Prior Agreement").

B. As a condition of entering into the Purchase Agreement, the Purchasers have requested that the Company extend to them registration and certain other rights with respect to the Warrants as set forth below, and the Existing Holders are willing to amend the rights given to them pursuant

to the Prior Agreement by replacing such rights in their entirety with the rights set forth in this Agreement.

C. Following the date hereof, the Company may enter into one or more revenue sharing agreements for the license of DVDs to the Company and other strategic business relationships, pursuant to which the Company may issue equity securities of the Company to the other parties (the "Strategic Parties") to such agreements and/or relationships.

D. Upon the determination of the Board of Directors of the Company, such Strategic Parties may be added as parties to this Agreement for purposes of receiving registration and certain other rights with respect to such equity securities.

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties, covenants and conditions set forth in this Agreement, the parties mutually agree as follows:

1. General

(a) Amendment of Prior Agreement. Certain of the undersigned parties, who constitute the requisite parties necessary to amend the Prior Agreement, hereby agree that effective upon the date hereof, the Prior Agreement is null and void and superseded in all respects by the rights and obligations set forth in this Agreement, and any application of the rights of participation (including any notice requirements) set forth in Section 17 of the Prior Agreement as to the issuance of the Warrants under the Purchase Agreement(s) is hereby waived.

(b) Certain Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

"Commission" shall mean the Securities and Exchange Commission or any successor agency.

"Common Stock" shall mean the Common Stock of the Company.

"Family Member" shall have the meaning ascribed to it in Section 15 hereof.

"Form S-3" means Form S-3 under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the Commission which permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the Commission.

"Holder" shall mean any person owning of record Registrable Securities or any transferee of Registrable Securities who, pursuant to Section 15 below, is entitled to registration rights hereunder.

"Preferred Holder" shall mean any Holder owning of record shares of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred or Series E-1 Preferred.

"Restricted Securities" shall have the meaning ascribed to it in Section 3 hereof.

"Registrable Securities" shall mean (i) shares of the Common Stock issued or issuable upon the conversion of the Shares, including Shares issuable or issued upon exercise of the Warrants; and (ii) Common Stock issued as (or issuable upon conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, securities described in clause (i) above. Notwithstanding the foregoing, Registrable Securities shall not include any securities sold by a person to the public either pursuant to a registration statement or Rule 144 or sold in a private transaction in which the transferor's rights under this Agreement are not assigned.

The terms "register," "registered" and "registration" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

"Registration Expenses" shall mean all reasonable out-of-pocket expenses incurred by the Company in complying with Sections 5, 6 and 9 hereof, including, without limitation, the legal fees of one special counsel to the Holders, and all registration, qualification and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company, blue sky fees and expenses, accounting fees of the Company, and the expense of any special audits incident to or required by any such registration.

"Sale of the Company" shall mean when the Company shall sell, convey or otherwise dispose of all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation) or effect any other transaction or series of related transactions in which more than fifty (50%) of the voting power of the Company is disposed of.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Selling Expenses" shall mean all underwriting discounts, selling commissions and stock transfer taxes applicable to the securities registered by the Holders as well as fees and expenses of any special counsel in addition to the one special counsel included in Registration Expenses, if any, to the Holders.

"Shares" shall mean shares of the Company's Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred and Series F Preferred, shares of the Company's Series E-1 Preferred Stock ("Series E-1 Preferred") issuable upon conversion of the Series E Preferred, shares of Common Stock issuable upon exercise of the Warrants and shares of capital stock of the Company issued or issuable to Strategic Parties.

2. Restrictions on Transferability. The Restricted Securities shall not be transferable except upon the conditions specified in this Agreement, which conditions are intended, among other things, to ensure compliance with the provisions of the Securities Act and other provisions, contained herein. Each Holder of Restricted Securities will cause any proposed transferee of the Restricted Securities held by such Holder to agree in writing to take and hold such Restricted Securities subject to the provisions and upon the conditions specified in this Agreement and to be bound by this Agreement in the same manner as the transferring Holder. Without limiting the foregoing, a condition to any valid transfer of any Restricted Securities shall be the addition of the transferee to this Agreement and the execution by such transferee of a signature page hereto.

3. Restrictive Legend. Each certificate representing (i) Shares or (ii) Registrable Securities (any such securities listed in the preceding subsections
(i) or (ii), "Restricted Securities"), shall (unless otherwise permitted by the provisions of Section 4 below) be stamped or otherwise imprinted with a legend in the following form (in addition to any legend required under applicable state securities laws or the Purchase Agreement):

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THESE SHARES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER THE SECURITIES ACT. COPIES OF THE AGREEMENTS COVERING THE PURCHASE OF THESE SHARES AND RESTRICTING THEIR TRANSFER MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE CORPORATION AT THE PRINCIPAL EXECUTIVE OFFICES OF THE CORPORATION.

4. Notice of Proposed Transfers. The Holder of each certificate representing Restricted Securities by acceptance thereof agrees to comply in all respects with the provisions of this Section 4. Prior to any proposed transfer of any Restricted Securities, unless there is in effect a registration statement under the Securities Act covering the proposed transfer, the Holder thereof shall give written notice to the Company of such Holder's intention to effect such transfer. Each such notice shall describe the manner and circumstances of the proposed transfer in sufficient detail, and shall, if the Company so requests, be accompanied (except in transactions in compliance with Rule 144) by an unqualified written opinion of legal counsel who shall be reasonably satisfactory to the Company, addressed to the Company and reasonably satisfactory in form and substance to the Company's counsel, to the effect that the proposed transfer of the Restricted Securities may be effected without registration under the Securities Act, provided, however, that no opinion need be obtained with respect to a transfer to (A) a partner or member, active or retired, of a Holder of Restricted Securities, (B) the estate of any such partner, (C) an "affiliate" of a Holder of Restricted Securities as that term is defined in Rule 405 promulgated by the Commission under the Securities Act (an "Affiliate"), or (D) the spouse, children, grandchildren or spouse of such children or grandchildren of any Holder or to trusts for the benefit of any Holder or such persons, if the transferee agrees to be subject to the terms hereof. Notwithstanding the foregoing,

any transferee receiving shares that (A) have been registered under the Securities Act or (B) are resaleable under Rule 144 shall not be required to agree in writing to be subject to the terms of this
Section 4. Each certificate evidencing the Restricted Securities transferred as above provided shall bear the appropriate restrictive legend set forth in 3 above, except that such certificate shall not bear such restrictive legend if in the opinion of counsel for the Company such legend is not required in order to establish compliance with any provisions of the Securities Act.

5. Requested Registration.

(a) Request for Registration. If at any time beginning the earlier of
(i) June 12, 2004 or (ii) six (6) months after the effective date of the first firm commitment underwritten public offering of equity securities of the Company to the general public (an "IPO"), the Company shall receive from any Holder or group of Holders holding more than fifty percent (50%) of the Registrable Securities then outstanding (any such holder, or group of holders, the "Initiating Holders") a written request that the Company affect any registration, qualification or compliance with respect to Registrable Securities having a reasonably anticipated aggregate offering price to the

public, before deduction of underwriter discounts and commissions, of at least $20,000,000, the Company will:

(x) within ten (10) days of receipt thereof, give written notice of the proposed registration, qualification or compliance to all other Holders who are not Initiating Holders; and

(y) as soon as practicable and in any event within sixty (60) days of the receipt of such request, use its reasonable efforts to affect such registration, qualification or compliance (including, without limitation, the execution of an undertaking to file post-effective amendments, appropriate qualification under applicable blue sky or other state securities laws and appropriate compliance with applicable regulations issued under the Securities Act and any other governmental requirements or regulations) as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any Holder(s) joining in such request as are specified in a written request received by the Company within thirty (30) days after the date of such written notice from the Company;

Provided, however, that the Company shall not be obligated to take any action to affect any such registration, qualification or compliance pursuant to this Section 5:

(A) In any particular jurisdiction in which the Company would be required to execute a general consent to service of process in affecting such registration, qualification or compliance unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(B) After the Company has effected two (2) such registrations pursuant to this Section 5(a), such registrations have been declared or ordered effective and the securities offered pursuant to such registrations have been sold; or

(C) During the period starting with the date sixty (60) days prior to the Company's estimated date of filing of, and ending on the date three (3) months immediately following the effective date of, any registration statement pertaining to securities of the Company (other than a registration statement relating to the sale of the Company's securities in connection with a Rule 145 transaction, an employee benefit plan or the IPO), provided that the Company is actively employing in good faith all reasonable efforts to cause such registration statement to become effective;

Subject to the foregoing clauses (A) through (C), the Company shall file a registration statement covering the Registrable Securities so requested to be registered as soon as practicable after receipt of the request or requests of the Initiating Holders. If, however, the Company shall furnish to the Initiating Holders a certificate signed by the Chief Executive Officer or President of the Company stating that, in the good faith judgment of the Board of Directors of the Company (the "Board of Directors"), it would be seriously detrimental to the Company and its stockholders for such registration statement to be filed and it is therefore advisable to defer the filing of such

registration statement, the Company shall have the right to defer such filing for a period of not more than ninety (90) days after receipt of the request of the Initiating Holders, provided, however, that the Company may not utilize this right more than once in any twelve (12) month period.

(b) Underwriting. If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to
Section 5(a) and the Company shall include such information in the written notice referred to in Section 5(a)(x). The right of any Holder to registration pursuant to Section 5 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent requested and to the extent provided herein.

The Company shall (together with all Holders proposing to distribute their securities through such underwriting) enter into an underwriting agreement in customary form with the managing underwriter which managing underwriter shall be selected by the Company. Upon the request of such underwriter, the Company agrees to provide all necessary cooperation in connection with such underwriting including participation in meetings, due diligence sessions, road shows, the preparation of prospectuses and similar documents, and the preparation and delivery of customary certificates or documents. Notwithstanding any other provision of this Section 5, if the managing underwriter advises the Initiating Holders in writing that marketing factors require

a limitation of the number of shares to be underwritten, then, subject to the provisions of Section 5(a), the Company shall so advise all Holders and the number of shares of Registrable Securities that may be included in the registration and underwriting shall be allocated among all Holders requesting inclusion in the following priority: (i) the Common Stock (other than shares as to which any person holds contractual rights to inclusion) held by all persons other than the Holders shall first be excluded from such registration and underwriting to the extent required; and (ii) if a limitation of the number of shares to be included in such registration and underwriting is still required, such limitation shall be allocated among the Holders (including the Initiating Holders), in proportion, as nearly as practicable, to the respective amounts of securities contractually entitled to inclusion (determined without regard to any requirement of a request to be included in such registration) in such registration held by all such Holders at the time of filing the registration statement. No Registrable Securities excluded from the underwriting by reason of the managing underwriter's marketing limitation shall be included in such registration.

If any Holder proposing to participate in an underwriting pursuant to this Section 5(b) disapproves of the terms of such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company, the managing underwriter and the Initiating Holders. The Registrable Securities and/or other securities so withdrawn shall also be withdrawn from registration; provided, however, that if by the withdrawal of such Registrable Securities a greater number of Registrable Securities held by other Holders may be included in such registration (up to the maximum of any limitation imposed by the underwriters), then the Company shall offer to all Holders who have included Registrable Securities in the registration the right to include additional Registrable Securities in the same proportion used in determining the underwriter limitation in this Section 5(b). If the registration does not become effective due to the withdrawal of Registrable Securities, then either (1) the Holders requesting registration shall reimburse the Company for expenses incurred in

complying with the request or (2) the aborted registration shall be treated as affected for purposes of Section 5(a)(B) and Section 9.

6. Company Registration.

(a) Notice of Registration. If the Company shall determine to register any of its securities, either for its own account or the account of a security holder or holders exercising their respective demand registration rights, other than (i) a registration relating to employee benefit plans or, (ii) a registration relating solely to a Commission Rule 145 transaction, the Company will:

(i) promptly give to each Holder written notice thereof; and

(ii) include in such registration (and any related qualification under blue sky laws or other compliance), and in any underwriting involved therein, all the Registrable Securities specified in a written request or requests, made within thirty (30) days after receipt of such written notice from the Company, by any Holder, except as set forth in Section 6(b) below.

(b) Underwriting. If the registration of which the Company gives notice is for a registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the written notice given pursuant to Section 6(a)(i). In such event the right of any Holder to registration pursuant to Section 6 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company and other holders distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company. Notwithstanding any other provision of this Section 6, if the managing underwriter advises the Company in writing that marketing factors require a limitation of the number of shares to be underwritten, then the managing underwriter may limit the number of Registrable Securities to be included in the registration and underwriting by reducing the number of Registrable Securities included on behalf of the Holders, on a pro-rata basis (or in such other proportions as shall mutually be agreed upon by such Holders), based on the total number of Registrable Securities entitled to registration held by each Holder, but in no event shall the amount of securities of the Holders included in the offering be reduced below ten percent (10%) of the total amount of securities included in such offering, unless such offering is the initial public offering of the Company, in which case the securities of the Holders can be excluded in their entirety; provided, however, that any such limitation or "cutback" shall be first applied to all shares proposed to be sold in such offering other than for the account of the Company which are not Registrable Securities. The Company shall advise all Holders of Registrable Securities which would otherwise be registered and underwritten pursuant hereto of any such limitations. If any Holder disapproves of the terms of any such underwriting, he may elect to withdraw therefrom by written notice to the Company and the underwriter. Any Registrable Securities excluded or withdrawn from such underwriting shall not be included in such registration.

7. Expenses of Registration. All Registration Expenses incurred in connection with any registration, qualification or compliance pursuant to Sections 5, 6 and 9 shall be borne by the

Company. All Selling Expenses relating to securities registered by the Holders shall be borne by the Holders of such securities pro rata on the basis of the number of shares so registered.

8. Registration Procedures. In the case of each registration, qualification or compliance effected by the Company pursuant to this Agreement, the Company will keep each Holder advised in writing as to the initiation of each registration, qualification and compliance and as to the completion thereof. At its expense the Company will:

(a) Prepare and file with the Commission a registration statement with respect to such securities and use its reasonable efforts to cause such registration statement to become and remain effective for at least one hundred twenty (120) days or until the distribution described in the registration statement has been completed; provided, however, that such one hundred twenty (120) day period shall be extended for a period of time equal to the period the Holder refrains

from selling any securities included in such registration at the request of an underwriter of Common Stock (or other securities) of the Company;

(b) Prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement;

(c) Furnish to the Holders participating in such registration and to the underwriters of the securities being registered such reasonable number of copies of the registration statement, preliminary prospectus, final prospectus and such other documents as such underwriters may reasonably request in order to facilitate the public offering of such securities;

(d) Use its reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders; provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering; provided that each Holder participating in such underwriting shall also enter into and perform its obligations under such underwriting agreement;

(f) Notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event known to the Company as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(g) Cause such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed; and

(h) Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration.

(i) Use its best efforts to furnish, at the request of any Holder requesting registration of Registrable Securities pursuant to this Agreement, on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a registration pursuant to this Agreement, if such securities are being sold through underwriters, or, if such securities are not

being sold through underwriters, on the date that the registration statement with respect to such securities becomes effective, (i) an opinion, dated such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and the Holders requesting registration of Registrable Securities and (ii) a letter dated such date, from the independent certified public accountants of the Company, 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 to the Holders requesting registration of Registrable Securities.

9. Registration on Form S-3. In addition to the rights set forth in Section 5, if the Holders request in writing that the Company file a registration statement on Form S-3 (or any successor form thereto) for a public offering of shares of Registrable Securities the reasonably anticipated aggregate price to the public of which is at least two million dollars ($2,000,000), and the Company is a registrant entitled to use Form S-3 to register securities for such an offering, the Company shall use its reasonable efforts to cause such shares to be registered for the offering on such form (or any successor thereto). The Company will promptly give written notice of the request for the proposed registration to all other Holders and include all Registrable Securities of any Holder or Holders joining in such request as are specified in a written request received by the Company within thirty (30) days after the date of such written notice from the Company. The substantive provisions of Section 5(b) shall be applicable to each registration initiated under this Section 9. Notwithstanding Section 5(a)(B), the Holders shall be entitled to four (4) registrations on Form S-3, but not more than two (2) in any twelve month period.

10. Termination of Registration Rights. Except as provided elsewhere in this Agreement, the registration rights granted pursuant to this Agreement shall terminate (i) as to all Holders on the fifth anniversary of the closing of the IPO and (ii) as to any Holder, at such time as such Holder is able to sell all of its Registrable Securities under Rule 144 in a three (3) month period or such Holder is able to sell all Registrable Securities held by it pursuant to Rule 144(k) promulgated under the Securities Act.

11. Indemnification.

(a) The Company will indemnify each Holder, each of its officers, directors, partners and members and such Holder's legal counsel and independent accountants, and each person

controlling such Holder within the meaning of Section 15 of the Securities Act, with respect to which registration, qualification or compliance has been affected pursuant to this Agreement, and each underwriter, if any, and each person who controls any underwriter within the meaning of Section 15 of the Securities Act, against all expenses, claims, losses, damages and liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, offering circular or other document, or any

amendment or supplement thereto, incident to any such registration, qualification or compliance affected pursuant to this Agreement, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, not misleading, or any violation by the Company of any rule or regulation promulgated under the Securities Act applicable to the Company and relating to action or inaction required of the Company in connection with any such registration, qualification or compliance, and will reimburse each such Holder, each of its officers, directors, partners and members and such Holder's legal counsel and independent accountants, and each person controlling such Holder, each such underwriter and each person who controls any such underwriter, for any legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, provided that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based on any untrue statement or omission or alleged untrue statement or omission contained in any registration statement, prospectus, offering circular or other document or any amendment or supplement thereto, incident to any registration, qualification or compliance affected pursuant to this Agreement, made in reliance upon and in conformity with written information furnished to the Company by an instrument duly executed by such Holder or underwriter and stated to be specifically for use therein.

(b) Each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification or compliance is being effected, severally indemnify the Company, each of its directors and officers and its legal counsel and independent accountants, each underwriter, if any, of the Company's securities covered by such a registration statement, each person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act, and each other such Holder, each of its officers and directors and each person controlling such Holder within the meaning of Section 15 of the Securities Act, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any such registration statement, prospectus, offering circular or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Company, such Holders, such directors, officers, legal counsel, independent accountants, underwriters or control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by an instrument duly executed by such Holder and stated to be specifically for use therein; provided, however, that the obligations of any such Holder

hereunder shall be limited to an amount equal to the gross proceeds before expenses and commissions to such Holder of Registrable Securities sold as contemplated herein.

(c) Each party entitled to indemnification under this Section 11 (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not be unreasonably withheld), and the Indemnified Party may participate in such defense at such party's expense; provided, however, that the Indemnified Party (together with all other Indemnified Parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the Indemnifying Party, if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential differing interests between such Indemnified Party and any other party represented by such counsel in such proceeding; and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Agreement, except to the extent, but only to the extent, that the Indemnifying Party's ability to defend against such claim or litigation is impaired as a result of such failure to give notice. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

(d) If the indemnification provided for in paragraphs (a) and (b) of this Section 11 is unavailable or insufficient to hold harmless an Indemnified Party thereunder, then each Indemnifying Party thereunder shall contribute to the account paid or payable by such Indemnified Party as a result of the losses, claims, damages, costs, expenses, liabilities or actions referred to in paragraphs (a) and (b) of this Section 11 in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other in connection with statements or omissions which resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Indemnifying Party or the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statements or omission. The parties hereto agree that it would not be just and equitable if contributions pursuant to this paragraph (d) of Section 11 were to be determined by pro rata or per capita allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the first sentence of this paragraph (d) of Section 11. The amount paid by an Indemnified Party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this paragraph (d) of Section 11 shall be deemed to include any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any action or claim which is the subject of this paragraph (d) of

Section 11. Promptly after receipt by an Indemnified Party of notice of the commencement of any action against such party in respect of which a claim for contribution may be made against an Indemnifying Party under this paragraph (d) of Section 11, such Indemnified Party shall notify the Indemnifying Party in writing of the commencement thereof if the notice specified in paragraph (c) of this Section 11 has not been given with respect to such action; provided that the omission so to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability which it may have to any Indemnified Party otherwise under this paragraph (d) of Section 11, except to the extent that the Indemnifying Party is actually prejudiced by such failure to give notice. The parties hereto agree with each other and shall agree with the underwriters of the Common Stock of the Company pursuant to the terms hereof, if requested by such underwriters, that (a) the underwriters' portion of such contribution shall not exceed the underwriting discount, commission and other compensation and (b) except for the Company, the amount of such contribution shall not exceed an amount equal to the proceeds received by such Indemnifying Party from the sale of securities in the offering to which the losses, claims, damages or liabilities of the indemnified parties relate. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

12. Lock-up Agreement. In consideration for the Company agreeing to its obligations under this Agreement each Holder of Registrable Securities and each transferee pursuant to Section 15 hereof agrees, in connection with the first registration of the Company's securities, upon request of the underwriters managing such underwritten offering of the Company's securities, not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any Registrable Securities or other securities of the Company (other than those included in the registration and securities acquired in open market transactions on or after the effective date of such registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time from the effective date of such registration as the Company or the underwriters may specify, which period shall not exceed one hundred eighty (180) days following the effective date of the IPO; provided, however that (i) all directors, officers and 1% stockholders of the Company agree to the same lockup and (ii) such agreement shall provide that any discretionary waiver or termination of the restrictions of such agreements by the Company or representatives of the underwriters shall apply to all persons subject to such agreements pro rata based on the number of shares subject to such agreements. Each Holder agrees that the Company may instruct its transfer agent to place stop transfer notations in its records to enforce the provisions of this Section 12.

13. Information by Holder. The Holder or Holders of Registrable Securities included in any registration shall furnish to the Company such information regarding such Holder or Holders and the distribution proposed by such Holder or Holders as the Company may request in writing and as shall be required in connection with any registration, qualification or compliance referred to in this Agreement.

14. Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the Commission which may at any time permit the sale of the Restricted Securities to the public without registration, after such time as a public market exists for the Common Stock of the Company, the Company agrees to:

(a) Use its reasonable efforts to make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act, at all times after the effective date of the IPO;

(b) Use its reasonable efforts to then file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Securities Exchange Act of 1934, as amended (at any time after it has become subject to such reporting requirements); and

(c) Furnish to Holders of Registrable Securities forthwith upon request, a written statement by the Company as to its compliance with the reporting requirements of Rule 144 (at any time after ninety (90) days after the effective date of the IPO, and of the Securities Act and the Securities Exchange Act of 1934, as amended, (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents of the Company as a Holder of Registrable Securities may reasonably request in availing itself of any rule or regulation of the Commission allowing such Holder to sell any such securities without registration.

15. Transfer of Registration Rights. The right to cause the Company to register securities granted hereunder may be assigned to a transferee or assignee who is an affiliate (as that term is defined in Rule 405 promulgated by the Commission under the Securities Act), or who acquires at least two hundred thousand (200,000) shares of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred, Series E-1 Preferred, Series F Preferred, or the Common Stock issued upon conversion thereof (adjusted for stock splits, reverse stock splits or similar events after the date hereof), or Warrants to purchase at least two hundred thousand (200,000) shares of Common Stock (adjusted for stock splits, reverse stock splits or similar events after the date hereof), provided that the Company is given written notice of such assignment prior to such assignment. In addition, rights to cause the Company to register securities may be freely assigned (a) to any constituent partner or retired partner of a Holder, where such Holder is a partnership, to any member or retired member of a Holder, where such Holder is a limited liability company,
(b) to any officer, director or principal shareholder thereof, where such Holder is a corporation or
(c) to the spouse, children, grandchildren or spouse of such children or grandchildren of any Holder or to trusts for the benefit of any Holder or such persons where the Holder is a natural person (each person or entity in this subsection (c), a "Family Member").

16. Information Rights. The Company hereby covenants and agrees as follows:

(a) Annual Financial Information. The Company will furnish to each Holder who holds at least ten percent (10%) of the number of originally issued shares of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred, Series E-1 Preferred or Series F Preferred (adjusted for stock splits, reverse stock splits or similar events after the date

hereof), as the case may be, as soon as practicable after the end of each fiscal year, and in any event within ninety (90) days thereafter, an income statement for such fiscal year, a balance sheet of the Company and statement of stockholder's equity as of the end of such year, and a statement of cash flows for such year, such year-end financial reports to be in reasonable detail, prepared in accordance

with generally accepted accounting principles ("GAAP"), and audited and certified by an independent public accounting firm of nationally recognized standing selected by the Company, and the Company's annual financial plan for the upcoming fiscal year to be in reasonable detail and broken down on a monthly basis.

(b) Monthly Financial Information. Upon written request, the Company will deliver to each Holder who holds at least ten percent (10%) of the number of originally issued shares of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred, Series E-1 Preferred or Series F Preferred (adjusted for stock splits, reverse stock splits or similar events after the date hereof), as the case may be, as soon as practicable after the end of each month, and in any event within thirty (30) days thereafter, an unaudited income statement and schedule as to the sources and applications of funds and balance sheet and comparison to prior year results and budget for and as of the end of such month.

(c) Assignment of Rights to Financial Information. The rights to receive information pursuant to this Section 16 may be assigned or otherwise conveyed to any transferee of Shares.

(d) Termination of Information Rights. The information rights set forth in this Section 16 shall expire upon the earlier of (i) the IPO or (ii) the date of a Sale of the Company.

17. Right to Maintain.

(a) In the event the Company desires to sell and issue any shares of, or securities convertible into or exchangeable or exercisable for any shares of, any class of its capital stock ("New Securities"), then the Company shall first notify each Preferred Holder of the material terms of the proposed sale and shall permit each such Preferred Holder to acquire, at the time of consummation of such proposed issuance and sale and on such terms as are specified in the Company's notice pursuant hereto, a certain number of the New Securities (such right, the "Right to Maintain"). Each Preferred Holder shall have thirty (30) days after the date of such notice to elect by notice to the Company to purchase up to the number of such New Securities available to them pursuant to Section 17(b) below.

(b) The number of New Securities that each Preferred Holder may acquire hereunder shall be determined by calculating such number as would result in such Preferred Holder maintaining its voting rights in the Company following such proposed issuance of New Securities, on an as-converted, outstanding percentage basis, at the level held by it immediately prior to such issuance of New Securities after giving effect to the anti-dilution protections, if any, set forth in

the Company's Certificate of Incorporation. In addition, each Preferred Holder shall have a right of over-allotment such that if any Preferred Holder fails to exercise its rights hereunder to purchase the maximum number of New Securities which it is entitled to purchase pursuant to the preceding sentence, the other Preferred Holders may purchase on a proportional basis (determined with respect to the number of shares which the Preferred Holders are entitled to purchase pursuant to the preceding sentence) such shortfall number of New Securities by notice to the Company within the thirty (30) day period after the date of the Company notice pursuant to Section 17(a) above.

(c) Notwithstanding anything in this Section 17, New Securities shall not be deemed to include (and no Right to Maintain shall apply to the issuance of) any securities issued or issuable (i) to employees, consultants or directors of the Company pursuant to any employee benefit plan; (ii) to banks, building developers or equipment lessors in connection with commercial credit arrangements, equipment financings or similar transactions provided such issuances are for other than primarily equity financing purposes and are approved by the Board of Directors; (iii) in connection with any stock split, dividend or distribution in respect of the Company's capital stock; (iv) in the IPO; (v) upon conversion of the Shares; (vi) in connection with a Sale of the Company, a business combination, a strategic partnership, a joint venture or a similar transaction, approved and designated as such by the Board of Directors; or (vii) to movie studios or other movie or DVD distributors, provided such issuances are for other than primarily equity financing purposes and are approved by the Board of Directors.

(d) The Right to Maintain for all Preferred Holders shall terminate and be of no further force or effect upon the earlier of and with respect to (i) the date of the IPO or (ii) the date of a Sale of the Company.

18. Co-Sale Rights. The sale or transfer of any Shares or Common Stock by either Founder to a purchaser other than any Family Member, shall be subject to the Co-Sale Rights set forth in this Section 18 with respect to such sale or transfer. The Co-Sale Rights shall not apply to the sale or transfer of Shares or Common Stock by either of the Founders up to an aggregate of ten percent (10%) of the aggregate holdings of such Founder immediately following the closing of the transactions contemplated by the Purchase Agreement.

(a) Rights Granted. In the event that any Founder proposes to sell or otherwise transfer (a "Selling Founder") any Shares or Common Stock ("Founder Shares") to a purchaser other than any Family Member (a "Proposed Founder Sale"), the Selling Founder shall deliver to each Preferred Holder a written notice (a "Founder Co-Sale Notice") stating: (i) his bona fide intention to sell such Founder Shares; (ii) the name of each proposed buyer of such Founder Shares (each a "Proposed Founder Buyer"); (iii) the number of Founder Shares to be transferred to each Proposed Founder Buyer; and (iv) the bona fide cash price or other consideration for which he proposes to transfer the Founder Shares. Each Preferred Holder shall have the right, exercisable upon written notice to the Selling Founder within twenty (20) days after receipt of a Founder Co-

Sale Notice, to participate in the Proposed Founder Sale pursuant to the specified terms and conditions of such Proposed Founder Sale in the manner described below.

(b) Participation. Each Preferred Holder may sell all or any part of that number of Shares (including Common Stock issuable upon conversion thereof), equal to the product obtained by multiplying (i) the number of Founder Shares specified in the Founder Co-Sale Notice by (ii) a fraction, the numerator of which is the number of shares of Registrable Securities held by such Preferred Holder immediately prior to the Proposed Founder Sale, and the denominator of which is the total number of shares of Common Stock (including shares of Common Stock issuable upon conversion of shares of Preferred Stock and upon exercise of any option to purchase Common Stock) owned by the Selling Founder, and all of the Preferred Holders in the aggregate on the date of the Founder Co-Sale Notice.

(c) Delivery. Each Preferred Holder shall effect its participation in the Proposed Founder Sale, if any, by delivering to the Selling Founder for transfer to the Proposed Founder Buyer(s) one or more certificates, properly endorsed for transfer, which represent the number of Shares (including shares of Common Stock issuable upon conversion thereof) that such Preferred Holder elects to sell pursuant to this Section 18.

(d) Price; Payment. The consideration for the Shares transferred to the Selling Founder pursuant to this Section 18 shall be equal to the per share price specified in the Founder Co-Sale Notice or such higher price as the Selling Founder may be paid for such shares. The Selling Founder shall, no later than five (5) days after the closing of the Proposed Founder Sale, remit to each participating Preferred Holder the consideration described in the preceding sentence for the Shares transferred pursuant to this Section 18.

(e) Termination. The Co-Sale Rights set forth in this Section 18 shall terminate and be of no further force or effect immediately upon the closing of an IPO which results in aggregate gross proceeds to the Company equal to or in excess of $20,000,000, prior to deduction of underwriting commissions and offering expenses.

(f) If, from time to time during the term of this Agreement, there is any consolidation or merger immediately following which stockholders of the Company hold more than 50% of the voting equity securities of the surviving corporation, then, in such event, any and all new, substituted or additional securities to which any Founder is entitled by reason of his or her ownership of the Founder Shares shall be immediately subject to the provisions of this Agreement and be included in the term "Founder Shares" for all purposes of this Agreement with the same force and effect as the Founder Shares presently subject to this Agreement and with respect to which such securities were distributed.

(g) In the event a Founder sells any Founder Shares in contravention of the Co-Sale Rights of a Preferred Holder under this Agreement (a "Prohibited Transfer"), such Preferred Holder, in addition to such other remedies as may be available at law, in equity or hereunder, shall have the put option provided in

Section 18(h) below, and such Founder shall be bound by the applicable provisions of such put option.

(h) In the event of a Prohibited Transfer, such Preferred Holder shall have the right to sell to the Founder who effected the Prohibited Transfer, and, if such right is exercised, the Founder shall have the obligation to purchase from such Preferred Holder, a number of Shares (including Common Stock issuable upon conversion thereof) equal to the number of Shares (including Common Stock issuable upon conversion thereof) such Preferred Holder would have been entitled to transfer to the purchaser in the Prohibited Transfer pursuant to the terms hereof. Such sale shall be made on the following terms and conditions:

(i) The price per share at which the Shares (including Common Stock issuable upon conversion thereof) are to be sold to the Founder shall be equal to the price per share paid by the purchaser to the Founder in the Prohibited Transfer.

(ii) Within twenty (20) days after the later of the dates on which the Preferred Holder (i) received notice from the Founder of the Prohibited Transfer or (ii) otherwise became aware of the Prohibited Transfer, the Preferred Holder shall, if exercising the put option created hereby, deliver to Founder the certificate(s), properly endorsed for transfer, which represent the Shares (including shares of Common Stock issuable upon conversion thereof) to be sold.

(iii) The Founder shall, within ten (10) days of its receipt of the certificate(s) for the Shares to be sold by a Preferred Holder pursuant to this Section 18(h), pay the aggregate purchase price therefor by certified check or bank draft or by wire transfer made payable to the order of such Preferred Holder.

(iv) NOTWITHSTANDING THE FOREGOING, ANY ATTEMPT TO TRANSFER SHARES OF THE COMPANY IN VIOLATION OF SECTION 18 HEREOF SHALL BE DEEMED NULL AND VOID AND THE COMPANY AGREES IT WILL NOT EFFECT SUCH A TRANSFER NOR WILL IT TREAT ANY ALLEGED TRANSFEREE AS THE HOLDER OF SUCH SHARES WITHOUT THE WRITTEN CONSENT OF A MAJORITY IN INTEREST OF THE PREFERRED HOLDERS. THE COMPANY AND THE FOUNDERS AGREE THAT ANY AND ALL CERTIFICATES REPRESENTING ANY FOUNDER SHARES HELD FROM TIME TO TIME DURING THE TERM OF THIS AGREEMENT SHALL BEAR A LEGEND REFERRING TO THE RESTRICTIONS IMPOSED BY THIS AGREEMENT.

(v) Each Founder agrees that the Company may instruct its transfer agent to impose transfer restrictions on the Founder Shares represented by certificates bearing the legend referred to in Section 18(h)(iv) to enforce the provisions of this Agreement. The legend shall be removed upon termination of the Co-Sale Rights herein.

19. Governing Law. This Agreement and the legal relations between the parties arising hereunder shall be governed by and interpreted in accordance with the laws of the State of

California. The parties hereto agree to submit to the exclusive jurisdiction and venue of the United States District Court for the Northern District of California with respect to the breach or interpretation of this Agreement or the enforcement of any and all rights, duties, liabilities, obligations, powers, and other relations between the parties arising under this Agreement.

20. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties regarding rights to registration. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

21. Notices, etc. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed effectively given upon delivery to the party to be notified in person or by courier service, by facsimile upon proper confirmation of receipt, or five (5) days after deposit with the United States mail, by registered or certified mail, postage prepaid, addressed (a) if to a Holder, to such holder's address or addresses set forth below or at such other address as such holder shall have furnished to the Company in writing, (b) if to any other holder of any Registrable Securities, to such address as such holder shall have furnished the Company in writing, or, until any

such holder so furnishes an address to the Company, then to the address of the last holder of such securities who has so furnished an address to the Company, or (c) if to the Company, to its address set forth below, to the attention of the Corporate Secretary, or at such other address as the Company shall have furnished to the Holders.

22. Counterparts. This Agreement may be executed in any number of counterparts, each of which may be executed by less than all of the parties hereto, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one and the same instrument.

23. Amendment. Any provision of this Agreement may be amended, waived or modified only upon the written consent of each of the following (i) the Company; and (ii) the holders of 50% or more of the Registrable Securities. Any amendment or waiver effected in accordance with this Section 23 shall be binding upon each Holder, the Founders and the Company; provided, however, that with respect to the amendment of any provision hereunder that solely affects the rights of a specific class of stockholders, only the consent of the Company and the holders of not less than a majority of the then outstanding shares of such class or group, as the case may be, shall be required to amend such provision. Any Holder may waive any of his or her rights or the Company's obligations hereunder without obtaining the consent of any other person. Notwithstanding anything in this Agreement to the contrary, Strategic Parties may be added as parties to this Agreement upon the approval of the Board of Directors of the Company, including the approval of a majority of the directors elected by the holders of the Company's Series B Preferred, Series C Preferred and Series D Preferred, and without the approval of the other parties hereto in connection with the purchase by such Strategic Parties of equity securities of the

Company, and each such addition will be evidenced by Strategic Parties' execution of a signature page hereto.

24. Successors and Assigns. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

25. Severability. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party.

26. Aggregation of Stock. All shares of Registrable Securities held or acquired by affiliated entities or affiliated persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Stockholders' Rights Agreement as of the date set forth above.

"COMPANY" "FOUNDERS"

NETFLIX.COM, INC.
a Delaware Corporation

By: /s/ W. Barry McCarthy, Jr.
Name: W. Barry McCarthy, Jr.
Title: CFO

/s/ Reed Hastings

Reed Hastings

/s/ Marc Randolph

Marc Randolph

"EXISTING HOLDERS"

STEPHEN J. KAHN and KAREN B. HENKEN,
tees KAHN/HENKEN T/A dtd 8/29/95

By: /s/ Stephen J. Kahn
Name: Stephen J. Kahn
Title: Trustee

/s/ Muriel Randolph

Muriel Randolph

Steven J. Rosston and Louisa R.H. La Farge, Community Property

By: /s/ Stephen J. Rosston

Name: Stephen J. Rosston

Title: _____

WS Investment Company 97B

By: /s/ [ILLEGIBLE]

Name: _____

/s/ Randolph B. Randolph

Randolph B. Randolph

/s/ Richard Schell

Richard Schell

Title: _____

[Signature Page to Amended and Restated Stockholders' Rights Agreement]

WS Investment Company 98A

By: /s/ [ILLEGIBLE]

_____

Name:

Title:

Christopher McLeod and Jessica Abbe

Don Shalvey

John Mark Box, Trustee of the MARKBOX
LIVING TRUST U/A dated December 5, 1995, as amended

By:

Name:

/s/ Joe Wagner

Joe Wagner

Title:

/s/ Noah Salzman

Noah Salzman

Poonam Dayal Peter C. Gotcher

Atma Daya

/s/ Joan Hastings

Joan Hastings

/s/ Wil Hastings

Wil Hastings

/s/ Joan and Wil Hastings

Joan and Wil Hastings

Hastings 1996 Irrevocable Trust

By: /s/ Joan Hastings

Name: Joan Hastings
Title: Trustee

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Foundation Capital II, L.P.

By: Foundation Capital Management II, LLC Its: Manager

By: /s/ [ILLEGIBLE]

Name:
Title:

Foundation Capital II Entrepreneurs Fund, LLC

By: Foundation Capital Management II, LLC Its: Manager

By: /s/ [ILLEGIBLE]

Name:
Title:

Foundation Capital II Principals Fund, LLC

By: Foundation Capital Management II, LLC Its: Manager

By: /s/ [ILLEGIBLE]

Name:
Title:

TCV II, V.O.F.
a Netherlands Antilles General Partnership

By: Technology Crossover Management II, L.L.C. Its: Investment General Partner

By: /s/ Carla S. Newell

Name: Carla S. Newell
Title: Attorney-In-Fact

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Technology Crossover Ventures II, L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/ Carla S. Newell

Name: Carla S. Newell
Title: Attorney-In-Fact

TCV II (Q), L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/ Carla S. Newell

Name: Carla S. Newell
Title: Attorney-In-Fact

TCV II Strategic Partners, L.P.
a Delaware Limited Partnership

By: Technology Crossover Management II, L.L.C. Its: General Partner

By: /s/ Carla S. Newell

Name: Carla S. Newell
Title: Attorney-In-Fact

Technology Crossover Ventures II, L.P.
a Netherlands Antilles General Partnership

By: Technology Crossover Management II, L.L.C. Its: Investment General Partner

By: /s/ Carla S. Newell

Name: Carla S. Newell
Title: Attorney-In-Fact

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TCV IV Strategic Partners, L.P.
TCV IV, L.P.
a Delaware Limited Partnership
By: Technology Crossover Management IV, L.L.C., Its: General Partner

By: /s/ Carla S. Newell
Name: Carla S. Newell
Title: Attorney in Fact

TCV Franchise Fund, L.P.
a Delaware Limited Partnership
By: TCVF Management, L.L.C.
Its: General Partner

By: /s/ Carla S. Newell
Name: Carla S. Newell
Title: Attorney in Fact

Institutional Venture Partners VIII, L.P.

By: Institutional Venture Management VIII, LLC Its: General Partner

By: /s/ Illegible
Name:
Title: Managing Director

IVM Investment Fund VIII, LLC

By: Institutional Venture Management VIII, LLC Its: General Partner

By: /s/ Illegible
Name:
Title: Managing Director

IVM Investment Fund VIII-A, LLC

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By: Institutional Venture Management VIII, LLC Its: Manager

By: /s/ Illegible

Name:
Title:

IVP Founders Fund I, L.P.

By: Institutional Venture Management VII, L.P. Its: General Partner

By: /s/ Illegible

Name:
Title:

/s/ Robert Sanchez

Robert D. Sanchez

WS Investment Company 99A

By: /s/ Robert Sanchez

Name: Robert Sanchez
Title: Partner

Comdisco, Inc.

By: ---------- Name:
Title:

Anantha Srirama

Finanzas B.V.

By: /s/ Maria C. van der Sluijs Plantz

Name: Maria C. van der Sluijs Plantz
Title: Managing Director

Larry Marcus

[Signature Page to Amended and Restated Stockholders' Rights Agreement]

Warner Home Video

By: /s/ Illegible

Name:
Title:

Universal Studios Home Video, Inc.

By: /s/ [ILLEGIBLE]

Name: [ILLEGIBLE]
Title: Sr. V.P. Bus. Affairs

Twentieth Century Fox Home Entertainment, Inc.

By: /s/ Illegible

Name:
Title:

DreamWorks L.L.C.

By: /s/ Anthony E. Hull

Name: Anthony E. Hull
Title: Authorized Signatory

CPE Holdings, Inc.

By:
Name:
Title:

[Signature Page to Amended and Restated Stockholders' Rights Agreement]

EXHIBIT 10.6

NETFLIX.COM, INC.

June 22, 1999

**TO CERTAIN INVESTORS IN THE
SERIES C PREFERRED STOCK AND SERIES D PREFERRED STOCK OF
NETFLIX.COM, INC.**

Re: Amended and Restated Agreement Concerning the Right to Participate in Initial Public Offering

Ladies and Gentlemen:

In connection with the purchase of Series C Preferred Stock of NetFlix.com, Inc. (the "Company") by Foundation Capital II, L.P., Technology Crossover Ventures II, L.P., Institutional Venture Partners VIII, L.P. and certain of their affiliates (the "Original IPO Holders"), the Company and the Original IPO Holders entered into a letter agreement dated February 16, 1999 (the "Original Letter Agreement"), pursuant to which the Company agreed to take certain actions on behalf of the Original IPO Holders in connection with the initial public offering of the Company's Common Stock (the "IPO"). In consideration of the Company's closing of its Series D Preferred Stock financing and the rights granted pursuant to this letter agreement (this "New Letter Agreement"), the Original IPO Holders hereby waive any and all rights and obligations arising under the Original Letter Agreement and agree that the Original Letter Agreement shall be null and void and of no further force or effect.

This New Letter Agreement sets forth the agreement by and among the Company, the Original IPO Holders and Forum Holding Amsterdam B.V. (together with the Original IPO Holders, the "IPO Holders") that, subject to and in consideration of the purchase of shares of Series C Preferred Stock and Series D Preferred Stock of the Company by the IPO Holders, in connection with the IPO, the Company shall require the managing underwriter or underwriters of such IPO to offer to each IPO Holder the right to purchase their Pro-Rata Share (as defined below) of that number of shares of capital stock to be sold in the IPO equal to ten percent (10%) of the total number of primary shares issued by the Company in the IPO (the "IPO Shares"). For purposes of this New Letter Agreement, "Pro-Rata Share" shall mean that fraction, the numerator of which is

equal to the total number of shares of Series C Preferred Stock and/or Series D Preferred Stock (determined on an as-converted basis) held by such IPO Holder and the denominator of which is the total number of shares of Series C Preferred Stock and Series D Preferred Stock (determined on an as-converted basis) held by all IPO Holders. To the extent that one or more of the IPO Holders does not offer to purchase its full Pro-Rata Share of the IPO Shares, the Company shall require the managing underwriter or underwriters to offer any remaining IPO Shares to the participating IPO Holders based on each such holder's Pro-Rata Share. Notwithstanding the foregoing, all action taken pursuant to this New Letter Agreement shall be made in accordance with all federal and state securities laws, including Rule 134 of the Securities Act of 1933, as amended, and in no event shall the Company be required to take any action pursuant to this New Letter Agreement that would be in violation of applicable law or rules or regulations promulgated thereunder. Further, the Company shall in no event be liable to the

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IPO Holders to the extent it is prohibited from taking action pursuant to this New Letter Agreement because such action would be in violation of applicable law or such rules or regulations thereunder.

Very truly yours,

NETFLIX.COM, INC.

By: /s/ Reed Hastings

Title: CEO

Accepted and Agreed on June 22, 1999:

Foundation Capital II, L.P.
a Delaware Limited Partnership
By: Foundation Capital Management II, LLC, Its: General Partner

By: /s/ Theodore R. Meyer

Name: Theodore R. Meyer
Title: Chief Financial Officer

Technology Crossover Ventures II, L.P.
a Delaware Limited Partnership
By: Technology Crossover Management II, L.L.C., Its: General Partner

By: /s/ Robert C. Bensky

Name: Robert C. Bensky
Title: Chief Financial Officer

Institutional Venture Partners VIII, L.P.
a Delaware Limited Partnership
By: Institutional Venture Management VIII, LLC Its: General Partner

By: /s/ Timothy M. Haley

Name: Timothy M. Haley
Title: Manager

Forum Holding Amsterdam B.V.

By: /s/ Maria C. Van der Sluijs Plantz

Name: Maria C. Van der Sluijs Plantz
Title: Managing Director

Exhibit 10.7

OFFICE LEASE

BR3 Partners,

as "Landlord"

and

NetFix.Com,

as "Tenant"

OFFICE LEASE

SUMMARY OF BASIC LEASE TERMS

SECTION (LEASE REFERENCE)	TERMS	
A. (Introduction)	Lease Reference Date:	October 27, 2000
B. (Introduction)	Landlord:	BR3 Partners
C. (Introduction)	Tenant:	NetFlix.com
D. (Section 1.21)	Premises:	That area consisting of approximately 25,070 rentable square feet, the address of which is 980 University Avenue, Building "B", within the Building as shown on Exhibit B.
E. (Section 1.22)	Project:	The land and improvements shown Exhibit A consisting of one (1) building(s) the aggregate area of which is approximately 66,400 rentable square feet.
F. (Section 1.7)	Building	The building in which the Premises are located known as 980 University Avenue, Los Gatos, CA containing approximately 66,400 rentable square feet.
G. (Section 1.30)	Tenant's Share:	37.76%
H.	Tenant's Allocated	66 parking stalls, 41 of which shall be

(Section 4.6)	Parking Stalls:	unreserved and non-exclusive, the remaining 25 shall be assigned stalls as shown as the crosshatched stalls on Exhibit "I".
I. (Section 1.28)	Scheduled Commencement Date:	November 1, 2000.
J. (Section 1.18)	Lease Term:	Sixty (60) calendar months (plus the partial month following the Commencement Date if such date is not the first day of the month) subject to early expiration as set forth in Section 4.9.
K. (Section 3.1)	Based Monthly Rent:	Nov. 1, 2000 - Oct. 31, 2001 $ 125,350.00 Nov. 1, 2001 - Oct. 31, 2002 $ 130,364.00 Nov. 1, 2002 - Oct. 31, 2003 $ 135,579.00 Nov. 1, 2003 - Oct. 31, 2004 $ 141,002.00 Nov. 1, 2004 - Oct. 31, 2005 $ 146,642.08
L. (Section 3.3)	Prepaid Rent:	$125,350.00
M. (Sections 3.5 and 36)	Security Deposit:	$500,000.00 - cash (Section 3.5) $500,000.00 - Letter of Credit (Section 3.6)
N. (Section 4.1)	Premitted Use:	Offices
O.	Permitted Tenant's	

(Section 5.2)	Alterations Limit:	$5,000.00
P.	Direct Expenses:	See Article 8
(Section 8.1)		
Q.	Tenant's Liability Insurance Minimum:	$2,000,000.00
(Section 9.1)		
R.	Landlord's Address:	985 University Avenue Suite 12 Los Gatos, CA 95032
(Section 1.3)		
S.	Tenant's Address:	970 University Avenue Los Gatos, CA 95032
(Section 1.3)		
T.	Retained Real Estate Brokers:	Colliers Parrish
(Section 15.13)		
U.	Lease:	This Office Lease includes the Basic Lease Terms, the following exhibits and addenda:
Summary of the Lease, and the (Section 1.17)		
Exhibit A (site plan of the Project),		
Exhibit B (diagram of Premises shown as cross-hatched),		
Exhibit C (Work Letter), Exhibit D (Memorandum of Commencement Date),		
Exhibit E (form of Subordination Agreement),		
Exhibit F (Rules and		
Exhibit G (Landlord Services),		

Regulations), Exhibit H
(Acknowledgement of

Early Expiration), and Exhibit I
(Parking).

The foregoing Summary is hereby incorporated into and made a part of this Lease. Each reference in this Lease to any term of the Summary shall mean the respective information set forth above and shall be construed to incorporate all of the terms provided under the particular paragraph pertaining to such information. In the event of any conflict between the Summary and the Lease, the Summary shall control.

LANDLORD:	*TENANT:*
By: /s/ [ILLEGIBLE]	*By: /s/ W. Barry McCarthy, Jr.*
Title: Managing Partner	*Title: CFO*
By:_____	
By:_____	
Title:_____	
Title:_____	
Dated: 10/31/00	*Dated: October 31, 2000*

OFFICE LEASE

This Office Lease ("Lease") is dated, for reference purposes only, as of the Lease Reference Date specified in Section A of the Summary of Basic Lease Terms ("Summary"), and is made by and between the party identified as Landlord in Section B of the Summary and the party identified as Tenant in Section C of
----
the Summary.

ARTICLE 1

DEFINITIONS

1.1 General. Any initially capitalized term that is given a special meaning by this Article 1, the Summary, or by any other provision of this Lease (including the exhibits attached hereto) shall have such meaning when used in this Lease or any addendum or amendment hereto unless otherwise clearly indicated by the context.

1.2 Additional Rent. The term "Additional Rent" is defined in Section 3.2.

1.3 Address for Notices. The term "Address for Notices" shall mean the addresses set forth in Sections R and S of the Summary; provided, however, that after the Commencement Date, Tenant's Address for Notices shall be the address of the Premises.

1.4 Agents. The term "Agents" shall mean the following: (i) with respect to Landlord or Tenant, the agents, employees, contractors and invitees of such party, and (ii) in addition with respect to Tenant, Tenant's subtenants and their respective agents, employees, contractors and invitees.

1.5 Agreed Interest Rate. The term "Agreed Interest Rate" shall mean that interest rate determined as of the time it is to be applied that is equal to the lesser of (i) the higher of five percent (5%) in excess of the discount rate established by the Federal Reserve Bank of San Francisco as it may be adjusted from time to time, or ten percent (10%) per annum, or (ii) the maximum interest rate permitted by Law.

1.6 Base Monthly Rent. The term "Base Monthly Rent" shall mean the fixed monthly rent payable by Tenant pursuant to Section 3.1 which is specified in
Section K of the Summary.

1.7 Building. The term "Building" shall mean the building in which the Premises are located which Building is identified in Section F of the Summary, the rentable area of which is referred to herein as the "Building Rentable Area."

1.8 Commencement Date. The term "Commencement Date" is the date the Lease Term commences, which term is defined in Section 2.2.

1.9 Common Area. The term "Common Area" shall mean all areas and facilities within the Project that are not designated by Landlord for the exclusive use of Tenant or any other lessee or other occupant of the Project, including, without limitation, the parking areas, access and perimeter roads, pedestrian sidewalks, landscaped areas, trash enclosures, recreation areas and the like.

1.10 Direct Expenses. The term "Direct Expenses" is defined in Section 8.2.

1.11 Consumer Price Index. The term "Consumer Price Index" shall refer to the Consumer Price Index, All Urban Consumers, subgroup "All Items", for the San Francisco-Oakland-San Jose

metropolitan area (base year 1982-84 equals 100), which is presently being published monthly by the United States Department of Labor, Bureau of Labor Statistics. However, if this Consumer Price Index is changed so that the base year is altered from that used as of the commencement of the Lease Term, the Consumer Price Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics to obtain the same results that would have been obtained had the base year not been changed. If no conversion factor is available, or if the Consumer Price Index is otherwise changed, revised or discontinued for any reason, there shall be substituted in lieu thereof, and the term "Consumer Price Index" shall thereafter refer to, the most nearly comparable official price index of the United States government in order to obtain substantially the same result as would have been obtained had the original Consumer Price Index not been discontinued, revised or changed, which alternative index shall be selected by Landlord in its reasonable judgment.

1.12 Effective Date. The term "Effective Date" shall mean the date the last signatory to this Lease whose execution is required to make it binding on the parties hereto shall have executed this Lease.

1.13 Event of Tenant's Default. The term "Event of Tenant's Default" is defined in Section 13.1

1.14 Hazardous Materials. The terms "Hazardous Materials" and "Hazardous Materials Laws" are defined in Section 7.2E.

1.15 Insured and Uninsured Peril. The terms "Insured Peril" and "Uninsured Peril" are defined in Section 11.2E.

1.16 Law(s). The term "Law(s)" shall mean any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order or other requirement of any municipal, county, state, federal or other governmental agency or authority having jurisdiction over the parties to this Lease or the Premises, or both, in effect either at the Effective Date or any time during the Lease Term.

1.17 Lease. The term "Lease" shall mean the Summary and all elements of this Lease identified in Section U of the Summary, all of which are attached hereto and incorporated herein by this reference.

1.18 Lease Term. The term "Lease Term" shall mean the term of this Lease. which shall commence on the Commencement Date and, unless sooner expiring or terminated pursuant to this Lease, shall continue for the period specified in
Section J of the Summary.

1.19 Lender. The term "Lender" shall mean any beneficiary, mortgagee, secured party, ground or underlying lessor, or other holder of any Security Instrument now or hereafter affecting the Project or any portion thereof.

l.20 Permitted Use. The term "Permitted Use" shall mean the use specified in Section N of the Summary, and no other use shall be permitted.

1.21 Premises. The term "Premises" shall mean that space described in Section D of the Summary that is within the Building.

1.22 Project. The term "Project" shall mean that real property and the improvements thereon which are specified in Section E of the Summary, the aggregate rentable area of which is referred to herein as the "Project Rentable Area."

1.23 Private Restrictions. The term "Private Restrictions" shall mean all recorded covenants, conditions and restrictions, private agreements, reciprocal easement agreements, and any other recorded instruments affecting the use of the Premises and/or the Project which exist as of the Effective Date or which are recorded after the Effective Date.

1.24 Real Property Taxes. The term "Real Property Taxes" is defined in Section 8.3.

1.25 Rent. The term "Rent" or "rent" shall mean, collectively, Base

Monthly Rent, Additional Rent and all other payments of money payable to Landlord under this Lease, whether or not such payments are specifically denominated as rent hereunder.

l.26 Rentable Area. The term "Rentable Area" as used in this Lease shall mean, with respect to the Premises, the rentable square feet set forth in
Section D of the Summary, and, with respect to the Project, the rentable square feet set forth in Section E of the Summary (subject to reformulation pursuant to Section 1.32 below). Landlord and Tenant agree that (i) each has had an opportunity to determine to its satisfaction the actual area of the Project, the Building and the Premises, (ii) all measurements of area contained in this Lease are conclusively agreed to be correct and binding upon the parties, even if a subsequent measurement of any one of these areas determines that it is more or less than the amount of area reflected in this Lease, and (iii) any such subsequent determination that the area is more or less than shown in this Lease shall not result in a change in any way of the computations of rent, improvement allowances, or other matters described in this Lease where area is a factor.

1.27 Rules and Regulations. The term "Rules and Regulations" shall mean the rules and regulations attached hereto as Exhibit G and any amendments or supplements thereto and any additional rules and regulations, all as may be adopted and promulgated by Landlord from time to time.

1.28 Scheduled Commencement Date. The term "Scheduled Commencement Date" shall mean the date specified in Section 1 of the Summary.

1.29 Security Instrument. The term "Security Instrument" shall mean any ground or underlying lease, mortgage or deed of trust which now or hereafter affects the Project (or any portion thereof), and any renewal, modification, consolidation, replacement or extension thereof.

1.30 Summary. The term "Summary shall mean the Summary of Basic Lease Terms executed by Landlord and Tenant that is part of this Lease.

1.31 Tenant's Alterations. The term "Tenant's Alterations" shall mean all improvements, additions, alterations and fixtures installed in the Premises by or for the benefit of Tenant following the Commencement Date which are not Trade Fixtures.

1.32 Tenant's Share. The term "Tenant's Share" shall mean the percentage obtained by dividing Tenant's Rentable Area by the Project Rentable Area, which, as of the Effective Date, is the percentage identified in Section G of the Summary. In the event Landlord constructs other buildings on the Project, Landlord may, in Landlord's sole discretion, reformulate Tenant's Share, as to any or all of the items which comprise Direct Expenses, to reflect the rentable square footage of the Premises as a percentage of all rentable square footage of the Project. In the event Tenant's Share is reformulated in accordance with this
Section 1.32, Landlord shall promptly provide Tenant notice of such reformulation, together with a written statement showing in reasonable detail the manner in which Tenant's Share was reformulated and a List of all items of Direct Expenses which will be accounted for using the reformulated percentage. Any items of Direct Expenses to which the reformulated share is not applied shall be accounted for using the original Tenant's Share set forth in Section G of the Summary.

1.33 Trade Fixtures. The term "Trade Fixtures" shell mean (i) Tenant's inventory, furniture, signs, business equipment and other personal property, and (ii) anything affixed to the Premises by Tenant at its expense for purposes of trade (except replacement of similar work or material originally installed by Landlord) which can be removed without material injury to the Premises unless such thing has, by the manner in which it is affixed, become an integral part of the Premises.

ARTICLE 2

DEMISE, CONSTRUCTION, AND ACCEPTANCE

2.1 Demise of Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Lease Term upon the terms and conditions of this Lease, the Premises for Tenant's own use in the conduct of Tenant's business together with (i) the non-exclusive right to use the number of Tenant's Allocated Parking Stalls within the Common Area (subject to the limitations set forth in Section 4.6), and (ii) the non-exclusive right to use the Common Area for ingress to and egress from the Premises. Landlord reserves the use of the exterior walls, the roof and the area beneath and above the Premises, together with the right to install, maintain, use and replace ducts, wires, conduits and pipes leading through the Premises in locations which will not materially interfere with Tenant's use of the Premises.

2.2 Commencement Date. If Landlord is not obligated to construct improvements to the Premises prior to the Commencement Date pursuant to Section 2.3, then, on the Scheduled Commencement Date. Landlord shall deliver possession of the Premises to Tenant and the Lease

Term shall commence on such date (and such date shall be referred to herein as the "Commencement Date"), subject to
Section 2.4. If Landlord is required to construct improvements to the Premises prior to the Commencement Date pursuant to Section 2.3, then the Scheduled Commencement Date shall be only an estimate of the actual Commencement Date, and the Lease Term shall begin on the first to occur of the following, which, subject to acceleration under the Work Letter attached hereto as Exhibit C, shall be the "Commencement Date": (i) the date Landlord offers to deliver possession of the Premises to Tenant following substantial completion of all improvements to be constructed by Landlord pursuant to Section 2.3 except for punchlist items which do not prevent Tenant from using the Premises for the Permitted Use, or (ii) the date Tenant enters into occupancy of the Premises. Tenant shall accept possession and enter into good faith occupancy of the entire Premises and commence the operation of its business therein within thirty (30) days after the Commencement Date. Promptly following the delivery of possession of the Premises by Landlord to Tenant, Landlord and Tenant shall together execute a Memorandum of Commencement Date in the form attached as Exhibit D, appropriately completed (but the failure to execute such Memorandum of Commencement Date shall not affect the Commencement Date or Tenant's obligations hereunder).

2.3 Construction of Improvements. Landlord shall construct certain improvements that shall constitute or become part of the Premises if required by, and then in accordance with, the terms of the Work Letter attached hereto as Exhibit C (and, if Exhibit C is left blank, then Landlord shall not be obligated to construct any improvement to the Premises). Except as specifically provided in Exhibit C attached hereto, Landlord shall have no obligation whatsoever to in any way alter or improve the Premises. Tenant acknowledges that it has had an opportunity to conduct, and has conducted, such inspections of the Premises as it deems necessary to evaluate its condition. Except as otherwise specifically provided herein, Tenant agrees to accept possession of the Premises in its then existing condition "as-is", including all patent and latent defects. Tenant's taking possession of any part of the Premises shall be deemed to be an acceptance by Tenant of any work of improvement done by Landlord in such part as complete and in accordance with the terms of this Lease, subject to Landlord's obligations, if any, under Exhibit C attached hereto.

2.4 Delay in Delivery of Possession. If for any reason Landlord cannot deliver possession of the Premises to Tenant on or before the Scheduled Commencement Date, Landlord shall not be subject to any liability therefor, and such failure shall not affect the validity of this Lease or the obligations of Tenant hereunder, but, in such case, Tenant shall not be obligated to pay Base Monthly Rent or Tenant's Share of Direct Expenses until the Commencement Date has occurred; provided, however, if Landlord cannot deliver possession of the Premises to Tenant on or before the date ("Outside Commencement Date") that is one hundred eighty (180) days following the Scheduled Commencement Date, Tenant shall have the right, as its sole and exclusive remedy, to terminate this Lease by providing Landlord with written notice thereof within five (5) days following the Outside Commencement Date (provided, however, in the event that Landlord's failure to deliver possession of the Premises to Tenant on or before the Outside Commencement Date is attributable, in whole or in part, to any action or inaction by Tenant or Tenant's Agents

(including, without limitation, any Tenant Delay described in the Work Letter attached hereto as Exhibit C) or by reason of any causes beyond the reasonable control of Landlord ("Force Majeure Delay"), the Outside Commencement Date shall be extended for the period of delay attributable to the action or inaction by Tenant or Tenant's Agents in question and/or the Force Majeure Delay in question, as applicable). In the event Tenant provides Landlord with written notice of termination within such five (5) day period, this Lease shall terminate upon such notice and Landlord shall promptly return to Tenant any deposits made by Tenant to Landlord under this Lease. In the event Tenant fails to provide Landlord with written notice of termination within such five (5) day period, this Lease shall continue in full force and effect.

2.5 Early Occupancy. If Tenant enters or permits its Agents to enter the Premises prior to the Commencement Date with the written permission of Landlord, it shall do so upon all of the terms of this Lease (including its obligations regarding indemnity and insurance) except those regarding the obligation to pay rent, which shall commence on the Commencement Date.

2.6 Relocation. Intentionally deleted.

2.7 No Roof Rights. In no event shall Tenant have any rights whatsoever to use all or any portion of the roof of the Building without prior written approval from Landlord, which shall not be unreasonably withheld.

ARTICLE 3

RENT

3.1 Base Monthly Rent. Commencing on the Commencement Date and continuing throughout the Lease Term, Tenant shall pay to Landlord the Base Monthly Rent set forth in Section K of the Summary.

3.2 Additional Rent. Commencing on the Commencement Date and continuing throughout the Lease Term, Tenant shall pay the following as additional rent (the "Additional Rent"): (i) any late charges or interest due Landlord pursuant to Section 3.4; (ii) Tenant's Share of Direct Expenses as provided in Section 8.1; (iii) Landlord's share of any Transfer Consideration received by Tenant upon certain assignments and sublettings as required by Section 14.1; (iv) any legal fees and costs due Landlord pursuant to Section 15.9; and (v) any other sums or charges payable by Tenant pursuant to this Lease.

3.3 Payment of Rent. Concurrently with Tenant's execution of this Lease, Tenant shall pay to Landlord the amount set forth in Section L of the Summary as prepayment of rent for credit against the first installment(s) of Base Monthly Rent. All rent required to be paid in monthly installments shall be paid in advance on the first day of each calendar month during the Lease Term. If
Section K of the Summary provides that the Base Monthly Rent is to be increased during the Lease Term and if the date of such increase does not fall on the first day of a calendar month,

such increase shall become effective on the first day of the next calendar month. All rent shall be paid in lawful money of the United States, without any abatement, deduction or offset whatsoever (except as specifically provided in Sections 11.4 and 12.3), and without any prior demand therefor. Rent shall be paid to Landlord at its address set forth in Section R the Summary, or at such other place as Landlord may designate from time to time. Tenant's obligation to pay Base Monthly Rent and Tenant's Share of Direct Expenses shall be prorated at the commencement and expiration of the Lease Term.

3.4 Late Charge and Interest. Tenant acknowledges that late payment by Tenant to Landlord of Rent under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is extremely difficult or impracticable to determine. Such costs include, but are not limited to, processing and accounting charges, late charges that may be imposed on Landlord by the terms of any Security Instrument, and late charges and penalties that may be imposed due to late payment of Real Property Taxes. Therefore, if any installment of Base Monthly Rent or any payment of Additional Rent or other rent due from Tenant is not received by Landlord in good funds by the applicable due date, Tenant shall pay to Landlord an additional sum equal to ten percent (10%) of the amount overdue as a late charge. The parties acknowledge that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. In no event shall this provision for a late charge be deemed to grant to Tenant a grace period or extension of time within which to pay any rent or prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay any rent due under this Lease in a timely fashion, including any right to terminate this Lease pursuant to Section 13.2C. If any rent remains delinquent for a period in excess of thirty (30) days then, in addition to such late charge, Tenant shall pay to Landlord interest on any rent that is not paid when due at the Agreed Interest Rate following the date such amount became due until paid.

3.5 Security Deposit. Concurrently with its execution of this Lease, Tenant shall deposit with Landlord the amount of cash set forth in Section M of the Summary as partial security for the performance by Tenant of its obligations under this Lease, and not as prepayment of rent (the "Security Deposit"). Landlord may from time to time apply such portion of the Security Deposit as is necessary for the following purposes: (i) to remedy any default by Tenant in the payment of rent; (ii) to repair damage to the Premises caused by Tenant (iii) to clean the Premises upon the expiration or sooner termination of the Lease; and/or (iv) to remedy any other default of Tenant to the extent permitted by Law, including, without limitation, on account of damages owing to Landlord under Section 13.2, and, in this regard, Tenant hereby waives any restriction on the uses to which the Security Deposit may be put contained in California Civil Code Section 1950.7. In the event the Security Deposit or any portion thereof is so used, Tenant agrees to pay to Landlord promptly upon demand an amount in cash sufficient to restore the Security Deposit to the full original amount. Landlord shall not be deemed a trustee of the Security Deposit, may use the Security Deposit in business, and shall not be required to segregate it from its general accounts. Tenant shall not be entitled to any interest on the Security Deposit. If Landlord transfers the Premises during the Lease Term, Landlord may pay the Security Deposit to any transferee of Landlord's interest in conformity with the provisions of California Civil Code Section 1950.7 and/or any successor statute, in which event the transferring Landlord will be released from all liability for the return of the Security Deposit. If Tenant performs every

provision of this Lease to be performed by Tenant, the unused portion of the Security Deposit shall be returned to Tenant (or the last assignee of Tenant's interest under this Lease) within fifteen (15) days following the expiration or sooner termination of this Lease and the surrender of the Premises by Tenant to Landlord in accordance with the terms of this Lease. If this Lease is terminated following an Event of Tenant's Default, the unpaid portion of the Security Deposit, if any, shall be returned to Tenant two (2) weeks after final determination of all damages due Landlord, and, in this respect, the provisions of California Civil Code Section 1950.7 are hereby waived by Tenant.

3.6 Additional Security - Letter of Credit. As additional security for the performance of every provision of this Lease to be performed by Tenant, Tenant shall deposit with a Landlord concurrently with Tenant's execution and delivery of this Lease an unconditional, irrevocable sight draft letter of credit in the principal amount of $500,000.00 (as modified, amended and/or replaced, "Letter of Credit"), in form and content acceptable to Landlord (including, without limitation, a provision that any termination or cancellation thereof not be effective until at least ten (10) days after delivery of written notice to Landlord of such termination or cancellation) and drawn on a commercial lender acceptable to Landlord, having a term equal to (or being automatically renewable to) November 30, 2005, subject to the second paragraph of this Section 3.6 below. Upon any Event of Default, without waiver of any rights that Landlord may have under this Lease or at law or in equity as a result of an Event of Default, Landlord shall have the right to draw upon the Letter of Credit, in whole or in part, either prior to, concurrently with or after Landlord's application of all or any portion of the Security Deposit. If all or any portion of the Letter of Credit is drawn upon by Landlord hereunder, Tenant shall, within ten (10) days after written demand therefore, restore the Letter of Credit to its original amount (or if drawn upon in full, deliver to Landlord a replacement Letter of Credit), and Tenant's failure to do so shall constitute an Event of Default under this Lease. In addition, the failure at any time by Tenant to keep the Letter of Credit in full force and effect as required

hereunder shall constitute an Event of Default under this Lease. In addition, the failure at any time by Tenant to keep the Letter of Credit in full force and effect as required hereunder shall constitute an Event of Default under this Lease.

In the event that the Letter of Credit has an expiration date that is prior to November 30, 2005, and does not provide for automatic renewals through and including November 30, 2005, then, no later than thirty (30) days prior to each scheduled expiration date of the Letter of Credit, Tenant shall cause the Letter of Credit to be either extended for a period of at least one (1) year or replaced to the satisfaction of Landlord, such that the Letter of Credit shall remain in full force and effect and drawable by Landlord through and including November 30, 2005. If Landlord has not received any such extension or replacement on or before the date that is thirty (30) days prior to the then- scheduled expiration date of the Letter of Credit, Landlord shall be entitled to draw down on the Letter of Credit in full, and the funds so drawn by Landlord shall be added to the Security Deposit then-held by Landlord under this Lease and shall thereafter be held by Landlord

as part of such Security Deposit, subject to and in accordance with the terms and conditions of this Section 3.5 above.

ARTICLE 4

USE OF PREMISES

4.1 Limitation on Use. Tenant shall use the Premises solely for the Permitted Use specified in Section N of the Summary and for no other purpose whatsoever without the prior written consent of Landlord, which consent may be withheld and/or conditioned by Landlord in its sole and absolute discretion. Tenant shall not do anything in or about the Premises which will (i) cause structural injury to the Building, or (ii) cause damage to any part of the Building except to the extent reasonably necessary for the installation of Tenant's Trade Fixtures and Tenant's Alterations, and then only in a manner which has been first approved by Landlord in writing. Tenant shall not operate any equipment within the Premises which will (i) materially damage the Building or the Common Area, (ii) overload existing electrical systems or other mechanical equipment servicing the Building, (iii) impair the efficient operation of the sprinkler system or the heating ventilating or air conditioning ("HVAC") equipment within or servicing the Building, or (iv) damage, overload or corrode the sanitary sewer system. Tenant shall not attach, hang or suspend anything from the ceiling, roof, walls or columns of the Building or set any load on the floor in excess of the load limits for which such items are designed nor operate hard wheel forklifts within the Premises. Any dust, fumes, or waste products generated by Tenant's use of the Premises shall be contained and disposed so that they do not (i) create an unreasonable fire or health hazard,
(ii) damage the Premises, or (iii) result in the violation of any Laws. Tenant shall not change the exterior of the Building or install any equipment or antennas on or make any penetrations of the exterior or roof of the Building. Tenant shall not commit any waste in or about the Premises, and Tenant shall keep the Premises in a neat, clean, attractive and orderly condition, free of any nuisances. If Landlord designates a standard window covering for use throughout the Building, Tenant shall use this standard window covering to cover all windows in the Premises. Tenant shall not conduct on any portion of the Premises or the Project any sale of any kind, including, without limitation, any public or private auction, fire sale, going-out-of-business sale, distress sale or other liquidation sale.

4.2 Compliance with Regulations. Tenant shall not use the Premises in any manner which violates any Laws or Private Restrictions which affect the Premises. Tenant shall abide by and promptly observe and comply with all Laws and Private Restrictions. Tenant shall not use the Premises in any manner which will cause a cancellation of any insurance policy covering the Premises, the Building, Tenant's Alterations or any improvements installed by Landlord at its expense or which poses an unreasonable risk of damage or injury to the Premises. Tenant shall not sell, or permit to be kept, used, or sold in or about the Premises any article which may be prohibited by the standard form of fire insurance policy. Tenant shall comply with all reasonable requirements of any insurance company, insurance underwriter or Board of Fire Underwriters which are necessary to maintain the insurance coverage carried by either Landlord or Tenant pursuant to this Lease.

4.3 Outside Areas. No materials, supplies, tanks or containers, equipment, finished products or semi-finished products, raw materials, inoperable vehicles or articles of any nature shall be stored upon or permitted to remain outside of the Premises.

4.4 Signs. Tenant shall not place on any portion of the Premises any sign, placard, lettering in or on windows, banner, displays or other advertising or communicative material which is visible from the exterior of the Building without the prior written approval of Landlord. All such approved signs shall strictly conform to all Laws, Private Restrictions, and any sign criteria established by Landlord for the Building from time to time, and shall be installed at the expense of Tenant. Tenant shall maintain such signs in good condition and repair, and, upon the expiration or sooner termination of this Lease, remove the same and repair any damage caused thereby, all at its sole cost and expense and to the reasonable satisfaction of Landlord.

4.5 No Light, Air or View Easement. Any diminution or shutting off of light, air or view by any structure which may be erected on the Project or any lands adjacent to the Project shall in no way affect this Lease or impose any liability on Landlord.

4.6 Parking. Tenant is allocated and shall have the non-exclusive right to use the non-exclusive parking spaces located within the Project from time to time, for its use and the use of Tenant's Agents, in common with other tenants of the Project, up to, but not exceeding, the lesser of (i) the number of allocated parking spaces set forth in Section H of the Summary, or (ii) the Tenant's Share of the non-exclusive parking spaces available for use within the Project from time to time (which as of the Effective Date is the percentage set forth in Section G of the Summary), the location of which parking spaces may be designated from time to time by Landlord. Tenant shall not at any time use more parking spaces than the number so allocated to Tenant or park its vehicles or the vehicles of others in any portion of the Project not designated by Landlord as a non-exclusive parking area. Tenant shall not have the exclusive right to use any specific parking space. If Landlord grants to any other tenant the exclusive right to use any particular parking space(s), Tenant shall not use such spaces. Tenant shall not park or store vehicles at the Project for more that (24) hours without the Landlord's written consent in Landlord's sole and absolute discretion. Such unauthorized vehicles may be towed at Tenant's expense. Landlord reserves the right, after having given Tenant reasonable notice, to have any vehicles owned by Tenant or Tenant's Agents utilizing parking spaces in excess of the parking spaces allowed for Tenant's use to be towed away at Tenant's cost. All trucks and delivery vehicles shall be (i) parked in such areas as Landlord may designate from time to time, (ii) loaded and unloaded in a manner which does not interfere with the businesses of other occupants of the Project, and (iii) permitted to remain on the Project only so long as is reasonably necessary to complete loading and unloading. In the event Landlord elects or is required by any Law to limit or control parking in the Project, whether by validation of parking tickets or any other method of assessment, Tenant agrees to participate in such validation or assessment program under such rules and regulations as are from time to time established by Landlord.

4.7 Rules and Regulations. Landlord may from time to time promulgate such Rules and Regulations applicable to the Project and/or the Building as Landlord may, in its sole discretion, deem necessary or appropriate for the care and orderly management of the Project and the safety

of its tenants and invitees. Such Rules and Regulations shall be binding upon Tenant upon delivery of a copy thereof to Tenant, and Tenant agrees to abide by such Rules and Regulations. If there is a conflict

between the Rules and Regulations and any of the provisions of this Lease, the provisions of this Lease shall prevail. Landlord shall not be responsible for the violation by any other tenant of the Project of any such Rules and Regulations.

4.8 Telecommunications. The use of the Premises by Tenant for the Permitted Use specified in Section N of the Summary shall not include using the Premises to provide telecommunications services (including, without limitation, Internet connections) to third parties, it being intended that Tenant's telecommunications activities within the Premises be strictly limited to such activities as are incidental to general office use.

4.9 Early Expiration of Lease Term. Tenant acknowledges that Landlord has granted to UltraCard an option to lease the Premises commencing on November 1, 2003. Notwithstanding any provision contained in this Lease to the contrary, in the event that UltraCard exercises such option, Landlord shall have the right to cause this Lease to expire on October 31, 2003 ("Early Expiration Date"), by providing Tenant written notice ("Early Expiration Notice") of such early expiration no later than five (5) months prior to the Early Expiration Date. In the event Landlord provides Tenant with the Early Expiration Notice, any and all provisions of this Lease regarding expiration of the Lease, vacation and delivery of the Premises shall apply, including, but not limited to Sections 15.2 and 15.3; provided, however, the expiration date for the Lease Term shall be the Early Expiration Date. Within ten (10) days of delivery of the Early Expiration Notice Tenant shall execute and deliver to Landlord an acknowledgement of the Early Expiration Date in the form attached hereto as Exhibit H ("Early Expiration Acknowledgement"). In the event Tenant fails to timely deliver the Early Expiration Acknowledgement, Tenant shall be in material default of this Lease and Landlord shall be permitted any and all remedies set forth in Section 13 of this Lease.

/s/ McCarthy — *Tenant's Initials*

/s/ [ILLEGIBLE] — *Landlord's Initials*

ARTICLE 5

TRADE FIXTURES AND ALTERATIONS

5.1 Trade Fixtures. Throughout the Lease Term, Tenant may provide and install, and shall maintain in good condition, any Trade Fixtures required in the conduct of its business in the

Premises; provided, however, if the installation of any Trade Fixtures will necessitate the making of any Tenant's Alterations, then Tenant shall not be permitted to make such installation unless and until the applicable Tenant's Alterations have been approved by Landlord pursuant to Section 5.2. All Trade Fixtures shall remain Tenant's property.

5.2 Tenant's Alterations. Construction by Tenant of Tenant's Alterations shall be governed by the following:

A. Tenant shall not construct any Tenant's Alterations or otherwise alter the Premises without Landlord's prior written approval, which approval may be withheld and/or conditioned by Landlord in its sole and absolute discretion. Tenant shall be entitled, without Landord's prior approval, to make Tenant's Alterations (i) which do not affect the structural or exterior pans or water tight character of the Building, (ii) do not affect the HVAC, electrical, plumbing or life safety systems of the Building, and (iii) the reasonably estimated cost of which, plus the original cost of any part of the Premises removed or materially altered in connection with such Tenant's Alterations, together do not exceed the Permitted Tenant Alterations Limit specified in Section O of the Summary per work of improvement (and, for purposes thereof, all work performed or commenced within a six (6) month period shall he considered a single work of improvement). In the event Landlord's approval for any Tenant's Alterations is required, Tenant shall not construct the Tenant's Alterations until Landlord has approved in writing the plans and specifications therefor, and such Tenant's Alterations shall be constructed substantially in compliance with such approved plans and specifications by a licensed contractor first approved by Landlord. All Tenant's Alterations constructed by Tenant shall be constructed by a reputable licensed contractor (approved in writing by Landlord) in accordance with all Laws using new materials of good quality.

B. Tenant shall not commence construction of any Tenant's Alterations until (i) all required governmental approvals and permits have been obtained, (ii) all requirements regarding insurance imposed by this Lease have been satisfied, (iii) Tenant has given Landlord at least five (5) day's prior written notice of its intention to commence such construction, and (iv) if requested by Landlord, Tenant has obtained contingent liability and broad form builders, risk insurance in an amount reasonably satisfactory to Landlord if there are any perils relating to the proposed construction not covered by insurance carried pursuant to Article 9.

C. All Tenant's Alterations shall remain the property of Tenant during the Lease Term but shall not be altered or removed from the Premises. At the expiration or sooner termination of the Lease Term, all Tenant's Alterations shall be surrendered to Landlord as part of the realty and shall then become Landlord's property, and Landlord shall have no obligation to reimburse Tenant for all or any portion of the value or cost thereof; provided, however, Landlord expressly reserves the right to require Tenant to remove any Tenant's Alterations. prior to the expiration or sooner termination of the Lease Term by providing Tenant with written notice thereof prior to or upon such expiration or sooner termination.

5.3 Alterations Required by Law. Tenant shall, at its sole cost and expense, make any alteration, addition or change of any sort to the Premises, the Building and the Project, that is required by any Law because of (i) Tenant's particular use or change of use of the Premises; (ii) Tenant's

application for any permit or governmental approval; (iii) Tenant's construction or installation of any Tenant's Alterations or Trade Fixtures; or (iv) an Event of Tenant's Default. Any such alterations, additions or changes shall be made by Tenant in accordance with and subject to the provisions of Section 5.3. Any other alteration, addition, or change required by Law which is not the responsibility of Tenant pursuant to the foregoing shall be made by Landlord (subject to Landlord's right to reimbursement from Tenant specified in Section 5.4).

5.4 Amortization of Certain Capital Improvements. Tenant shall pay as Additional Rent in the event Landlord reasonably elects or is required to make any of the following kinds of capital improvements to the Project and the cost thereof is not reimbursable as a Direct Expense or is not the responsibility of Tenant pursuant to Section 5.3: (i) capital improvements required to be constructed in order to comply with any Laws (excluding any Hazardous Materials Laws) not in effect or applicable to the Project as of the Effective Date; (ii) modification of existing or construction of additional capital improvements or building service equipment for the purpose of reducing the consumption of utility services or Direct Expenses; (iii) replacement of capital improvements or building service equipment existing as of the Effective Date when required because of normal wear and tear; and (iv) restoration of any part of the Project that has been damaged by any peril to the extent the cost thereof is not covered by insurance proceeds actually recovered by Landlord up to a maximum amount per occurrence of ten percent (10%) of the then replacement cost of the Project. The amount of Additional Rent Tenant is to pay with respect to each such capital improvement shall be determined as follows:

A. All costs paid by Landlord to construct such improvements (including financing costs) shall be amortized over the useful life of such improvement (as reasonably determined by Landlord in accordance with generally accepted

accounting principles) with interest on the unamortized balance at the then prevailing market rate Landlord would pay if it borrowed funds to construct such improvements from an institutional lender, and Landlord shall inform Tenant of the monthly amortization payment required to so amortize such costs, and shall also provide Tenant with the information upon which such determination is made; and

B. As Additional Rent, Tenant shall pay at the same time the Base Monthly Rent is due an amount equal to Tenant's Share of such monthly amortization payment for each month after such improvements are completed until the first to occur of (i) the expiration of the Lease Term (as it may be extended), or (ii) the end of the term over which such costs were amortized.

5.5 Mechanic's Liens. Tenant shall keep the Project free from any liens and shall pay when due all bills arising out of any work performed, materials furnished, or obligations incurred by or at the direction of Tenant or Tenant's Agents relating to the Project. If Tenant fails to cause the release of record of any lien(s) filed against the Project (or any portion thereof) or its leasehold interest therein by payment or posting of a proper bond within ten
(10) days from the date of the lien filing(s), then Landlord may, at Tenant's expense, cause such

lien(s) to be released by any means Landlord deems proper, including, but not limited to, payment of or defense against the claim giving rise to the lien(s). All sums disbursed, deposited or incurred by Landlord in connection with the release of the lien(s) shall be due and payable by Tenant to Landlord on demand by Landlord, together with interest at the Agreed Interest Rate from the date of demand until paid by Tenant.

5.6 Taxes on Tenant's Property. Tenant shall pay before delinquency any and all taxes, assessments, license fees and public charges levied, assessed or imposed against Tenant or Tenant's estate in this Lease or the property of Tenant situated within the Premises which become due during the Lease Term, including, without limitation, Tenant's Alterations and Trade Futures. If any tax or other charge is assessed by any governments agency because of the execution of this Lease, such tax shall be paid by Tenant. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments.

ARTICLE 6

REPAIR AND MAINTENANCE

6.1 Tenant's Obligation to Maintain. By taking possession of the Premises, Tenant shall be deemed to have accepted the Premises as being in good, sanitary order, condition and repair. Tenant shall, at Tenant's sole cost and expense, keep the Premises and every part thereof in good condition and repair, damage thereto from causes beyond the control of Tenant and ordinary wear and tear excepted. Tenant shall upon the expiration or sooner termination of this Lease hereof surrender the Premises in the condition described in Section 15.2. Except as specifically provided in an addendum, if any, to this Lease, Landlord shall have no obligation whatsoever to alter, remodel, improve, decorate or paint the Premises or any part thereof and the parties hereto affirm that Landlord has made no representations to Tenant respecting the condition of the Premises or the Building except as expressly herein set forth.

6.2 Landlord's Obligation to Maintain. Landlord shall repair and maintain, in reasonably good condition, except as provided in Sections 11.2 and 12.3, the following: (i) the structural components of the Building, (ii) the Common Area of the Building, and (iii) the electrical, life safety, plumbing, sewage and HVAC systems serving the Building, installed or furnished by Landlord except to the extent such items exclusively serve the Premises. It is an express condition precedent to all Landlord's obligations to repair and maintain that Tenant shall have first notified Landlord in writing of the need for such repairs and maintenance. The cost of such maintenance, repair and services shall be included as part of Direct Expenses unless such maintenance, repairs or services are necessitated, in whole or in part, by the act, neglect, fault or omission of Tenant or Tenant's Agents, or such services are to be a separate charge to Tenant as described on Exhibit F, in which case Tenant shall pay to Landlord the cost of such maintenance, repairs and services within ten (10) days following Landlord's written demand therefor. Tenant hereby waives all rights provided for by the provisions of Sections 1941 and 1942 of the California Civil Code and any present or future Laws regarding Tenant's right to make repairs at the expense of Landlord and/or to terminate this Lease because of the condition of the Premises.

6.3 Control of Common Area. Landlord shall at all times have exclusive control of the Common

Area. Landlord shall have the right, exercisable in its sole and absolute discretion and without the same constituting an actual or constructive eviction and without entitling Tenant to any abatement of rent, to:
(i) close any part of the Common Area to whatever extent required in the opinion of Landlord's counsel to prevent a dedication thereof or the accrual of any prescriptive rights therein; (ii) temporarily close the Common Area to perform maintenance or for any other reason deemed sufficient by Landlord; (iii) change the shape, size, location and extent of the Common Area; (iv) eliminate from or add to the Project any land or improvement, including multi-deck parking structures; (v) make changes to the Common Area, including, without limitation, changes in the location of driveways, entrances, passageways, doors and doorways, elevators, stairs, restrooms, exits, parking spaces, parking areas, sidewalks or the direction of the flow of traffic and the site of the Common Area; (vi) remove unauthorized persons from the Project; and/or (vii) change the name or address of the Building or Project. Tenant shall keep the Common Area clear of all obstructions created or permitted by Tenant. If, in the opinion of Landlord, unauthorized persons are using any of the Common Area by reason of the presence of Tenant in the Building, Tenant, upon demand of Landlord, shall restrain such unauthorized use by appropriate proceedings. In exercising any such rights regarding the Common Area, (i) Landlord shall make a reasonable effort to minimize any disruption to Tenant's business, and (ii) Landlord shall not exercise its rights to control the Common Area in a manner that would materially interfere with Tenant's use of the Premises without first obtaining Tenant's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 7

WASTE DISPOSAL AND UTILITIES

7.1 Waste Disposal. Tenant shall store its waste either inside the Premises or within outside trash enclosures provided by Landlord

7.2 Hazardous Materials. Landlord and Tenant agree as follows with respect to the existence or use of Hazardous Materials in, on or about the Project;

A. Except as otherwise permitted pursuant to Section 7.2C below, any handling, transportation, storage, treatment, disposal or use of Hazardous Materials by Tenant and Tenant's Agents after the Effective Date in or about the Project is strictly prohibited. Tenant shall indemnify, defend upon demand with counse1 reasonably acceptable to Landlord and hold harmless Landlord from and against any liabilities, losses, claims, damages, lost profits, consequential damages, interest, penalties, fines, monetary sanctions, attorneys' fees, experts' fees, court costs, remediation costs, investigation costs, and other expenses which result from or arise in any manner whatsoever out of the use, storage, treatment, transportation, release, or disposal of any Hazardous Materials on or about the Project caused or permitted by Tenant or Tenant's Agents.

B. If the presence of Hazardous Materials in, on or about the Project caused or permitted by Tenant or Tenant's Agents results in contamination or deterioration of water or soil resulting in a level of contamination greater than the levels established as acceptable by any governmental agency having jurisdiction over such contamination, then Tenant shall promptly take any and all action necessary to investigate and remediate such contamination if required by Law or as a condition to the issuance or continuing effectiveness of any governmental approval which relates to the use of the Project or any part thereof. Tenant shall further be solely responsible for, and shall defend indemnify and hold Landlord and its Agents harmless from and against, all claims, costs and liabilities, including, without limitation, attorneys' fees and costs, arising out of or in connection with any investigation and remediation required hereunder to return the Project to its condition existing prior to the appearance of such Hazardous Materials.

C. Tenant shall give written notice to Landlord as soon as reasonably practicable of (i) any communication received from any governmental authority concerning Hazardous Materials which relates to the Project, and (ii) any contamination of the Project by Hazardous Materials which constitutes a violation of any Hazardous Materials Laws. Tenant may use small quantities of household chemicals such as adhesives, lubricants and cleaning fluids in order to conduct its business at the Premises and such other Hazardous Materials as are reasonably necessary for the operation of Tenant's business of which Landlord receives notice prior to such Hazardous Materials being brought onto the Premises and which Landlord consents in writing may be brought onto the Premises. At any time during the Lease Term, Tenant shall within five (5) days after written request therefor received from Landlord, disclose in writing all Hazardous Materials that are being used by Tenant in, on or about the Project, the nature of such use, and the manner of storage and disposal.

D. Landlord may cause testing wells to be installed on the Project, and may cause the ground water to be tested to detect the presence of Hazardous Materials by the use of such tests as are then customarily used for such purposes. If Tenant so requests, Landlord shall supply Tenant with copies of such test results. The cost of such tests and of the installation, maintenance, repair and replacement of such wells shall be paid by Tenant if such tests disclose the existence of facts which give rise to liability of Tenant pursuant to its indemnity given in Section 7.2A and/or Section 7.2B.

E. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ii) deemed as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S C. 9601 et seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Material Law(s)" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality

Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Materials.

F. The obligations of Landlord and Tenant under this Section 7.2 shall survive the expiration or earlier termination of the Lease Term. The rights and obligations of Landlord and Tenant with respect to issues relating to Hazardous Materials are exclusively established by this Section 7.2. In the event of any inconsistency between any other part of this Lease and this Section 7.2, the terms of this Section 7.2 shall control.

7.3 Utilities and Services. Tenant shall be solely responsible for procuring and contracting directly for all water, gas, electricity, sewer service, waste pick-up, janitorial service, telephone and other telecommunications services and all other utilities and services necessary for Tenant's use and occupancy of the Premises, and Landlord shall have no responsibility whatsoever to procure or provide any such utilities or services. Tenant shall pay, prior to delinquency, directly to the appropriate supplier thereof, all charges (including taxes) for all such utilities and services; provided, however, if any such utilities or services are not separately metered, then Landlord, at its election, may (a) periodically charge Tenant, as Additional Rent, a sum equal to Landlord's reasonable estimate of the cost of such utilities or services, or (b) install a separate meter (at Tenant's expense) to measure such utilities or services and periodically charge Tenant, as Additional Rent, a sum equal to the cost of Tenant's use of such utilities or services as measured by such separate meter. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall rent be abated by reason of, any failure or interruption of any such utilities or services. No such failure or interruption shall be deemed an eviction, actual or constructive, of Tenant or entitle Tenant to terminate this Lease or withhold Rent due hereunder.

7.4 Intentionally Deleted.

7.5 Compliance with Regulations. Tenant shall comply with all rules, regulations and requirements promulgated by national, state or local governmental agencies or utility suppliers concerning the use of utility services, including, without limitation, any rationing, limitation or other control, together with all rules, regulations and requirements promulgated by Landlord from time to time to conserve utilities and/or reduce utilities costs. Tenant shall not be entitled to terminate this Lease nor to any abatement in rent by reason of such compliance.

7.6 Window Treatments. Landlord reserves the right, exercisable in its sole and absolute discretion, to install and/or apply any treatments to the interior and/or exterior surfaces of any windows of the Premises as Landlord may from time to time desire.

ARTICLE 8

DIRECT EXPENSES

8.1 Tenant's Obligation to Reimburse. As Additional Rent, Tenant shall pay Tenant's Share (specified in Section G of the Summary) of the amount of Direct Expenses paid or incurred in any calender year. The following provision shall apply to the foregoing obligation of Tenant:

A. Payment shall be made by whichever of the following methods is from time to time designated by Landlord, and Landlord reserves the right to change the method of payment at any time in its sole and absolute discretion. After each calendar year during the Lease Term, Landlord may invoice Tenant for Tenant's Share of the Direct Expenses for such calendar year, and Tenant shall pay such amounts so invoiced within five (5) days after receipt of such notice. Alternatively, (i) Landlord shall deliver to Tenant Landlord's reasonable estimate of the Direct Expenses it anticipates will be paid or incurred for the calendar year in question; (ii) during such calendar year, Tenant shall pay such Tenant's Share of the estimated Direct Expenses in advance in equal monthly installments due with each installment of Base Monthly Rent; and (iii) within one hundred twenty (120) days after the end of such calendar year (or as soon thereafter as is reasonably practical), Landlord shall

furnish to Tenant a statement in reasonable detail of the actual Direct Expenses for the just ending calendar year. If Tenant's estimated payments are less than Tenant's Share of actual Direct Expenses as shown by the applicable statement. Tenant shall pay the difference to Landlord within fifteen (15) days after delivery of such statement. If Tenant shall have overpaid Tenants Share of actual Direct Expenses, then Landlord shall credit such over payment toward Tenants next installment payment of Tenant's Share of estimated Direct Expenses. When the final determination is made of Tenant's Share of actual Direct Expenses for the calendar year in which this Lease expires or sooner terminates, Tenant shall, even though this Lease has terminated, pay the difference to Landlord within fifteen (15) days after delivery of the final statement. Conversely, any overpayment by Tenant shall be rebated by Landlord to Tenant concurrently with the delivery of such final statement.

B. Within sixty (60) days after the date of Tenant's receipt of Landlord's statement of actual Direct Expenses for any calender year, Tenant may give Landlord written notice of its intent to review records, invoices and receipts relating to the actual Direct Expenses for such calender year. Tenant shall provide Landlord with at least ten (10) days prior written notice of the date upon which it intends to review such records, invoices and receipts. The review shall be performed during normal business hours at Landlord's principal place of business or such other location as may be designated by Landlord, and shall be performed at Tenant's sole cost and expense. Promptly following Tenant's review of such records, invoices and receipts, Tenant shall provide Landlord with a copy of the results of such review and Tenant's conclusions regarding any overstatement or understatement by Landlord of actual Direct Expenses for such calendar year. If Landlord disputes Tenant's conclusions regarding any such overstatement or understatement, Landlord shall select a certified public accountant (which accountant may be Landlord's accountant) ("Auditor") to review the accuracy of Tenant's determination. During such Auditor's review, Tenant shall continue to pay, without abatement or offset, all Base Monthly Rent and Additional Rent (as calculated by Landlord) payable by Tenant under this Lease. Tenant shall be responsible for the cost and expense of such audit unless (a) the Auditor finds greater than an overall five (5%) discrepancy resulting in overpayment by Tenant, and (b) there is not a commercially reasonable justification for Landlord's determinations. The Auditor's decision shall be final and binding on the parties. In the event Tenant fails to object in writing to

Landlord's determination of actual Direct Expenses within sixty (60) days following delivery of Landlord's statement, Landlord's determination of actual Direct Expenses for the applicable calendar year shall be conclusive and binding on Tenant and any future claims to the contrary shall be barred.

8.2 Direct Expenses Defined. The term "Direct Expenses" shall be determined as if the Project were one hundred percent (100%) occupied and shall mean the following:

A. All costs and expenses paid or incurred by Landlord in doing the following (including payments to independent contractors providing services related to the performance of the following): (i) maintaining, cleaning, repairing and resurfacing the roof (including repair of leaks) and the exterior surfaces (including painting) of all buildings located on the Project and maintaining and repairing the structural components of the Building; (ii) maintenance of the liability, fire, property damage and any other insurance covering the Project carried by Landlord pursuant to Section 9.2 or otherwise
(including the prepayment of premiums for coverage of up to one year); (iii) maintaining, repairing, operating and replacing when necessary HVAC equipment, utility facilities and other building service equipment; (iv) providing utilities to the Project (including lighting, trash removal and water for landscaping irrigation); (v) complying with all applicable Laws and Private Restrictions; (vi) operating, maintaining, repairing, cleaning, painting, restriping and resurfacing the Common Area; (vii) replacement or installation of lighting fixtures, directional or other signs and signals, irrigation systems, trees, shrubs, ground cover and other plant materials, and all landscaping in the Common Area; (viii) providing the utilities and services described on Exhibit E other than those which are described therein as being separately chargeable to Tenant; and (ix) providing security, if any;

B. The following costs: (i) Real Property Taxes as defined in
Section 8.3; (ii) the amount of any deductible paid by Landlord under any insurance maintained by Landlord; (iii) the cost to repair damage caused by an Uninsured Peril up to a maximum amount in any twelve (12) month period equal to four percent (4%) of the replacement cost of the Project; and (iv) that portion of all compensation (including benefits and premiums for workers' compensation and other insurance) paid to or on behalf of employees of Landlord but only to the extent they are involved in the performance of the work described by Sections 8.2A or 8.2D that is fairly allocable to the Project;

C. Fees for management services rendered by either Landlord or a third party manager engaged by Landlord (which may be a party affiliated with Landlord); and

D. All additional costs and expenses incurred by Landlord with respect to the operation, protection, maintenance, repair and replacement of the Project which would be considered a current expense (and not a capital expenditure but subject to Tenant's obligations under Section 5.4) pursuant to generally accepted accounting principles; provided, however, that Direct Expenses shall not include any of the following: (i) debt payments on any loans affecting the Project; (ii) depreciation of any buildings or any major systems of building service equipment within the Project; (iii) leasing commissions; and

(iv) the cost of tenant improvements installed for the exclusive use of other tenants of the Project.

8.3 Real Property Taxes. The term "Real Property Taxes" shall mean all taxes, assessments, levies, and other charges of any kind or nature whatsoever, general and special, foreseen end unforeseen (including all installments of principal and interest required to pay any existing or future general or special assessments for public improvements, services or benefits, and any increases resulting from reassessments resulting from a change in ownership, new construction, or any other cause), now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against, or with respect to the value, occupancy or use of all or any portion of the Project (as now constructed or as may at any time hereafter be constructed, altered or otherwise changed) or Landlord's interest therein, the fixtures, equipment and other property of Landlord, real or personal, that are an integral part of and located on the Project, the gross receipts, income, or rentals from the Project, or the use of parking areas, public utilities, or energy within the Project, or Landlord's business of leasing the Project. If at any time during the Lease Term the method of taxation or assessment of the Project prevailing as of the Effective Date shall be altered so that in lieu of or in addition to any Real Property Taxes described above there shall be levied, assessed or imposed (whether by reason of a change in the method of taxation or assessment, creation of a new tax or charge, or any other cause) an alternate or additional tax or charge (i) on the value, use or occupancy of the Project or Landlord's interest therein, or (ii) on or measured by the gross receipts, income or rentals from the Project, on Landlord's business of leasing the Project, or computed in any manner with respect to the operation of the Project, then any such tax or charge, however designated, shall be included within the meaning of the term "Real Property Taxes" for purposes of this Lease. If any Real Property Tax is based upon property or rents unrelated to the Project, then only that part of such Real Property Taxes that is fairly allocable to the Project shall be included within the meaning of the term "Real Property Taxes". Notwithstanding the foregoing the term "Real Property Taxes" shall not include estate, inheritance, transfer, gift or franchise taxes of Landlord or the federal or state net income tax imposed on Landlord's income from all sources. "Real Property Taxes" shall also include any costs and expenses incurred by Landlord in connection with appealing and/or contesting any Real Property Taxes.

ARTICLE 9

INSURANCE

9.1 Tenant's Insurance. Tenant shall maintain insurance complying with all of the following:

A. Tenant shall procure, pay for and keep in full force and effect the following:

(1) Commercial general liability insurance, including property damage, against liability for personal injury, bodily injury, death and damage to property occurring in or about, or resulting from an occurrence in or about, the Premises with combined single limit coverage of not less

than the amount of Tenant's Liability Insurance Minimum specified in Section Q of the Summary, which insurance shall contain a "contractual liability" endorsement insuring Tenant's performance of Tenant's obligation to indemnify Landlord contained in Section 10.3;

(2) Fire and property damage insurance in so-called "all risk" form insuring Tenant's Trade Fixtures and Tenant's Alterations for the full actual replacement cost thereof; and

(3) Such other insurance that from time to time is either (i) required by any Lender, or (ii) reasonably required by Landlord and customarily carried by tenants of similar property in similar businesses in the vicinity of the Project.

B. Each policy of insurance required to he carried by Tenant pursuant to this Section 9.1: (i) shall name Landlord and such other parties in interest as Landlord reasonably designates as additional insured; (ii) shall be primary insurance which provides that the insurer shall be liable for the full amount of the loss up to and including the total amount of liability set forth in the declarations without the right of contribution from any other insurance coverage of Landlord; (iii) shall be in a form satisfactory to Landlord; (iv) shall be carried with companies reasonably acceptable to Landlord and having a rating of A+, AAA or better in "Best's Insurance Guide;" (v) shall provide that such policy shall not be subject to cancellation, lapse or change except after at least thirty (30) days prior written notice to Landlord so long as such provision of thirty (30) days notice is reasonably obtainable, but in any event not less than ten (10) days prior written notice; (vi) shall not have a "deductible" in excess of such amount as is approved by Landlord; (vii) shall contain a cross liability endorsement; (viii) shall contain a "severability" clause; and (ix) shall be in such form and include such endorsements as may be required by any Lender or insurance advisor of Landlord. If Tenant has in full force and effect a blanket policy of liability insurance with the same coverage for the Premises as described above, as well as other coverage of other premises and properties of Tenant, or in which Tenant has some interest, such blanket insurance shall satisfy the requirements of this Section 9.1 provided such blanket insurance shall have a Landlord's protective liability endorsement attached thereto in a form acceptable to Landlord.

C. A copy of each paid-up policy evidencing the insurance required to be carried by Tenant pursuant to this Section 9.1 (appropriately authenticated by the insurer) or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required by this Section 9.1, and containing the provisions specified herein, shall be delivered to Landlord prior to the time Tenant or any of its Agents enters the Premises and upon renewal of such policies, but not less than five (5) days prior to the expiration of the term of such coverage. Landlord may, at any time, and from time to time, inspect and/or copy any and all insurance policies required to be procured by Tenant pursuant to this Section 9.1. If any Lender or insurance advisor reasonably determines at any time that the amount of coverage required for any policy of insurance Tenant is to obtain pursuant to this Section 9.1 is not adequate, then Tenant shall increase such coverage for such insurance to such amount as such Lender or insurance advisor reasonably deems adequate.

9.2 Landlord's Insurance:

A. Landlord shall maintain a policy or policies of fire and property damage insurance in so-called "all risk" form insuring Landlord (and such others as Landlord may designate) against loss of rents for a period of not less than twelve (12) months and from physical damage to the Project with coverage of not less than the full replacement cost thereof. Landlord may so insure the Project separately, or may insure the Project with other property owned by Landlord which Landlord elects to insure together under the same policy or policies. Such fire and property damage insurance (i) may be endorsed to cover loss caused by such additional perils against which Landlord may elect to insure, including, without limitation, earthquake and/or flood, and to provide such additional coverage as Landlord reasonably requires, and (ii) shall contain reasonable "deductibles" which, in the case of earthquake and flood insurance, may be up to fifteen percent (15%) of the replacement value of the property insured or such higher amount as is then commercially reasonable. Landlord shall not be required to cause such insurance to cover any Trade Fixtures or Tenants Alterations.

B. Landlord may, at its election, maintain (i) a policy or policies of commercial general liability insurance insuring Landlord (and such others as are designated by Landlord) against liability for personal injury, bodily injury, death and damage to property occurring or resulting from an occurrence in, on or about the Project, with combined single limit coverage in such amount as Landlord from time to time determines is reasonably necessary for its protection, and/or (ii) such other forms of insurance as Landlord may desire to maintain with respect to the Project.

9.3 Tenant's Obligation to Reimburse. The cost of all insurance maintained by Landlord with respect to the Project shall be included as part of Direct Expenses, except that if Landlord's insurance rates for the Project are increased at any time during the Lease Term as a result of the nature of Tenant's use of the Premises, Tenant shall reimburse Landlord for the full amount of such increase within fifteen (15) days following receipt of a bill from Landlord therefor.

9.4 Release and Waiver of Subrogation. Landlord and Tenant each hereby waives all rights of recovery against the other and the other's Agents on account of loss and damage occasioned to the property of such waiving party to the extent only that such loss or damage is required to be insured against under any "all risk" property insurance policies required by this Article 9; provided, however, that (i) the foregoing waiver shall not apply to the extent of Tenant's obligations to pay deductibles under any such policies and this Lease, and (ii) if any loss is due to the act, omission or negligence or willful misconduct of Tenant or its agents, employees, contractors, guests or invitees, Tenant's liability insurance shall be primary and shall cover all losses and damages prior to any other insurance hereunder. By this waiver it is the intent of the parties that neither Landlord nor Tenant shall be liable to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage insured against under any "all-risk" property insurance policies required by this Article 9, even though such loss or damage might be occasioned by the negligence of such party or its Agents. The provisions of this Section 9.4 shall not limit the indemnification, hold harmless and/or defense provisions elsewhere contained in this Lease.

ARTICLE 10

LIMITATION ON LANDLORD'S LIABILITY AND INDEMNITY

10.1 Limitation on Landlord's Liability. Landlord shall not be liable to Tenant, nor shall Tenant be entitled to terminate this Lease or to any abatement of rent (except as expressly provided otherwise herein), for any injury to Tenant or Tenant's Agents, damage to the property of Tenant or Tenant's Agents, or loss to Tenants business resulting from any cause, including, without limitation, any of the following: (i) failure, interruption or installation of any HVAC or other utility system or service; (ii) failure to furnish or delay in furnishing any utilities or services when such failure or delay is caused by fire or other peril, the elements, labor disturbances of any character, or any other accidents or any other conditions; (iii) limitation, curtailment, rationing or restriction on the use of water or electricity, gas or any other form of energy or any services or utility serving the Project; (iv) vandalism or forcible entry by unauthorized persons or the criminal act of any person: or (v) penetration of water into or onto any portion of the Premises or the Building through roof leaks or otherwise. Notwithstanding the foregoing but subject to Section 9.4 end Section 10.2, Landlord shall be liable for any such injury, damage or loss which is caused solely by Landlord's willful misconduct or gross negligence of which Landlord has actual notice and a reasonable opportunity to cure but which it fails to so cure; provided, however, notwithstanding anything contained in this Lease to the contrary, in no event shall Landlord be liable to Tenant for lost profits, consequential damages and/or incidental damages of any kind or nature.

10.2 Limitation on Tenant's Recourse. If Landlord is a corporation, trust, partnership, limited liability company, joint venture, unincorporated association or other form of business entity: (i) the obligations of Landlord shall not constitute personal obligations of the officers, directors, trustees, partners, joint venturers, members, managers, owners, stockholders, or other principals or representatives of such business entity, and (ii) Tenant shall not have recourse to the assets of such of officers, directors, trustees, partners, joint venturers, members, managers, owners, stockholders, principals or representatives except to the extent of their interest in the Project. Tenant hereby waives and releases the officers, directors, trustees, partners, joint venturers, members, managers, owners, stockholders, principals or representative from personal liability for the obligations of Landlord under this Lease, and Tenant shall have recourse only to the interest of Landlord in the Project for the satisfaction of the obligations of Landlord hereunder and shall not have recourse to any other assets of Landlord for the satisfaction of such obligations.

10.3 Indemnification of Landlord. To the fullest extent permitted by law, Tenant shall hold harmless, indemnify and defend Landlord, and its Agents, with competent counsel reasonably satisfactory to Landlord (and Landlord agrees to accept counsel that any insurer requires be used), from all liability, penalties, losses, damages, costs, expenses, causes of action, claims and/or judgments arising by reason of any death, bodily injury, personal injury or property damage resulting from (i) any cause or causes whatsoever (other than solely by the willful misconduct or gross negligence of Landlord of which Landlord has had notice and a reasonable time to cure, but which Landlord has failed to cure) occurring in or about or resulting from an occurrence in or about the Premises during the Lease Term, (ii) the negligence or willful misconduct of Tenant or its Agents, wherever the same may occur, or (iii) an Event of Tenant's

Default. The provisions of this Section 10.3 shall survive the expiration or sooner termination of this Lease.

ARTICLE 11

DAMAGES TO PREMISES

11.1 Landlord's Duty to Restore. If the Premises are damaged by any peril after the Effective Date, Landlord shall restore the Premises unless the Lease is terminated by Landlord pursuant to Section 11.2 or by Tenant pursuant to
Section 11.3. All insurance proceeds available from the fire and property damage insurance carried by Landlord pursuant to Section 9.2 shall be paid to and become the property of Landlord. If this Lease is terminated pursuant to either
Section 11.2 or Section 11.3, then all insurance proceeds available from insurance carried by Tenant which covers loss to property that is Landlord's property or would become Landlord's property on expiration or termination of this Lease shall be paid to and become the property of Landlord. If this Lease is not so terminated then upon receipt of the insurance proceeds (if the loss is covered by insurance) and the issuance of all necessary governmental permits, Landlord shall commence and diligently prosecute to completion the restoration of the Premises, to the extent then allowed by Law, to substantially the same condition in which the Premises were immediately prior to such damage. Landlord's obligation to restore shall be limited to the Premises and interior improvements constructed by Landlord as they existed as of the Commencement Date, excluding any Tenant's Alterations, Trade Fixtures and/or personal property constructed or installed by Tenant in the Premises. Tenant shall forthwith replace or fully repair all Tenant's Alterations end Trade Fixtures installed by Tenant and existing at the time of such damage or destruction, and all insurance proceeds received by Tenant from the insurance carried by it pursuant to Section 9.1A(2) shall be used for such purpose.

11.2 Landlord's Right to Terminate. Landlord shall have the right to terminate this Lease in the event any of the following occurs, which right may be exercised by delivery to Tenant of a written notice of election to terminate within forty-five (45) days after the date of such damage:

A. The Project is damaged by an Insured Peril to such an extent that the estimated cost to restore exceeds ten percent (10%) of the then actual replacement cost thereof, or the Building in which the Premises is located is damaged to such an extent that the estimated cost to restore exceeds twenty-five percent (25%) of the then actual replacement cost thereof;

B. Either the Project or the Building is damaged by an Uninsured Peril to such an event that the estimated cost to restore exceeds two percent (2%) of the then actual replacement cost of the Building;

C. The Premises are damaged by any peril within twelve (12) months of the last day of the Lease Term to such an extent that the estimated cost to restore equals or exceeds an amount equal to six (6) times the Base Monthly Rent then due; or

D. Either the Project or the Building is damaged by any peril and, because of the Laws then in force, (i) cannot be restored at reasonable cost to substantially the same condition in which it was prior to such damage, or (ii) cannot be used for the same use being made thereof before such damage if restored as required by this Article.

E. As used herein, the following terms shall have the following meanings: (i) the term "Insured Peril" shall mean a peril actually insured against for which the insurance proceeds actually received by Landlord (and which are not required to be paid to any Lender) are sufficient (except for any "deductible" amount specified by such insurance) to restore the Project under then existing Laws to the condition existing immediately prior to the damage; and (ii) the term "Uninsured Peril" shall mean any peril which is not an Insured Peril. Notwithstanding the foregoing, if the "deductible" for earthquake or flood

insurance exceeds two percent (2%) of the replacement cost of the improvements insured, such peril shall, at Landlord's election, be deemed an "Uninsured Peril" for purposes of this Lease.

11.3 Tenant's Right to Terminate. If the Premises are damaged by any peril and Landlord does not elect to terminate this Lease or is not entitled to terminate this Lease pursuant to Section 11.2, then as soon as reasonably practicable, Landlord shall furnish Tenant with the written opinion of landlord's architect or construction consultant as to when the restoration work required of Landlord may be completed. Tenant shall have the right to terminate this Lease in the event any of the following occurs, which right may be exercised only by delivery to Landlord of a written notice of election to terminate within seven (7) days after Tenant receives from Landlord the estimate of the time needed to complete such restoration.

A. The Premises are damaged by any peril and, in the reasonable opinion of Landlord's architect or construction consultant, the restoration of the Premises cannot be substantially completed within two hundred seventy (270) days after the date of such damage; or

B. The Premises are damaged by any peril within twelve (12) months of the last day of the Lease Term and, in the reasonable opinion of Landlord's architect or construction consultant, the restoration of the Premises cannot be substantially completed within ninety (90) days after the date of such damage and such damage renders unusable more than thirty percent (30%) of the Premises.

11.4 Abatement of Rent. In the event of damage to the Premises which does not result in the termination of this Lease, the Base Monthly Rent and Tenant's Share of Direct Expenses shall be temporarily abated during the period of restoration in proportion to the degree to which Tenant's use of the Premises is impaired by such damage, but in no event shall such abatement exceed the rental interruption insurance proceeds actually received by Landlord. Tenant shall not be entitled to any compensation or damages from Landlord for loss of Tenant's business or property or for any inconvenience or annoyance caused by such damage or restoration. Tenant hereby waives

the provisions of California Civil Code Sections 1932(2) and 1933(4) and the provisions of any similar law hereinafter enacted.

ARTICLE 12

CONDEMNATION

12.1 Total Taking, Premises. If title to the Premises or so much thereof is taken for any public or quasi-public use under any statute or by right of eminent domain so that reconstruction of the Premises will not result in the Premises being reasonably suitable for Tenant's continued occupancy for the uses and purposes permitted by this Lease, this Lease shall terminate as of the date possession of the Premises or part thereof is so taken.

12.2 Partial Taking, Project. If title to ten percent (10%) of more of the Project is taken for any public or quasi-public use under any statute or by right of eminent domain, Landlord shall have the right to terminate this Lease as of the date possession of such portion of the Project is so taken by providing Tenant with written notice thereof no less than sixty (60) days prior to possession being so taken.

12.3 Partial Taking, Premises. If any part of the Premises is taken for any public or quasi-public use under any statute or by right of eminent domain and the remaining part is reasonably suitable for Tenant's continued occupancy for the uses permitted by this Lease, this Lease shall, as to the part so taken, terminate as of the date possession of such part of the Premises is taken and Base Monthly Rent shall be reduced in the same proportion that the floor area of the portion of the Premises so taken (less any addition thereto by reason of any reconstruction) bears to the original floor area of the Premises, as reasonably determined by Landlord. Landlord shall, at its own cost and expense, make all necessary repairs and alterations to the Premises so as to make the portion of the Premises not taken a complete architectural unit. Such work shall not, however, exceed the scope of the work done by Landlord in originally constructing the Premises. If severance damages from the condemning authority are not available to Landlord in sufficient amounts to permit such restoration, Landlord may terminate this Lease upon written notice to Tenant. Base Monthly Rent due and payable hereunder shall be temporarily abated during such restoration period in proportion to the degree to which there is substantial interference with Tenant's use of the Premises, as reasonably determined by Landlord. Each party hereby waives the provisions of Sections 1265.130 of the California Code of Civil Procedure and any present or future law allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Building or the Premises.

12.4 No Apportionment of Award. No award for any partial or total taking shall be apportioned, it being agreed and understood that Landlord shall be entitled to the entire award for any partial or entire taking. Tenant assigns to Landlord its interest in any award which may be made in such taking or condemnation, together with any and all rights of Tenant arising in or to the same or any part thereof. Nothing contained herein shall be deemed to give Landlord any interest in or require Tenant to assign to Landlord any separate award made to Tenant for the taking of Tenant's Trade Fixtures, for the interruption of Tenant's business or its moving costs, or for the loss of goodwill.

12.5 Temporary Taking. No temporary taking of the Premises (which for purposes hereof shall mean a taking of all or any part of the Premises for one hundred eighty (180) days or less) shall terminate this Lease or give Tenant any right to abatement or reduction in Rent. Any award made to Tenant by reason of such temporary taking shall belong entirely to Tenant and Landlord shall not be entitled to share therein. Each party agrees to execute and deliver to the other all instruments that may be required to effectuate the provisions of this Section 12.5.

12.6 Sale Under Threat of Condemnation. A sale made in good faith to any authority having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed a taking under the power of eminent domain for all purposes of this Article 12.

ARTICLE 13

DEFAULT AND REMEDIES

13.1 Events of Tenant's Default. Tenant shall be in default of its obligations under this Lease if any of the following events occurs (an "Event of Tenant's Default"):

A. Tenant shall have failed to pay any Rent when due, and such failure is not cured within three (3) days after delivery of written notice from Landlord or Landlord's counsel specifying such failure to pay; or

B. Tenant shall have failed to perform any term, covenant, or condition of this Lease except those requiring the payment of Rent, and Tenant shall have failed to cure such breach within thirty (30) days after written notice from

Landlord specifying the nature of such breach where such breach could reasonably be cured within said thirty (30) day period, or if such breach could not be reasonably cured within said thirty (30) day period, Tenant shall have failed to commence such cure within said thirty (30) day period and thereafter continue with due diligence to prosecute such cure to completion within such time period as is reasonably needed but not to exceed ninety (90) days from the date of Landlord's notice; or

C. Tenant shall have sublet the Premises or assigned its interest in the Lease in violation of the provisions contained in Article 14; or

D. Tenant shall have abandoned the Premises or left the Premises substantially vacant; or

E. The occurrence of the following: (i) the making by Tenant of any general arrangements or assignments for the benefit of creditors: (ii) Tenant becomes a "debtor" as defined in 11 U.S.C.

Section 101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment execution or other judicical seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this Section 13.lE is contrary to any applicable Law, such provision shall be of no force or effect;

F Tenant shall have failed to deliver documents required of it pursuant to Section 4.9, SectIon 15.4 or Section 15.6 within the time periods specified therein; or

G. Chronic delinquency by Tenant in the payment of any Rent. For purposes of this Lease, "Chronic delinquency" shall mean failure by Tenant to pay within five (5) days of the due date any Rent for any three (3) months (consecutive or non-consecutive) during any twelve (12) month period during the Lease Term. This section shall in no way limit, nor be construed as a waiver of the rights and remedies of Landlord provided hereunder or by law in the event of even one (1) instance of delinquency in the payment of Rent by Tenant. In the event of chronic delinquency, at Landlord's option, Landlord shall have the right, in addition to all other rights under this Lease and at law, to require that all Rent be paid by Tenant on a quarterly basis, in advance. In addition, the occurrence of a chronic delinquency shall automatically void any options granted to Tenant under this Lease.

13.2 Landlord's Remedies. If an Event of Tenant's Default occurs, Landlord shall have the following remedies, in addition to all other rights and remedies provided by any Law or otherwise provided in this Lease, to which Landlord may resort to cumulatively or in the alternative:

A. Landlord may keep this Lease in effect and enforce by an action at law or in equity all of its rights and remedies under this Lease, including (i) the right to recover the rent and other sums as they become due by appropriate legal action, (ii) the right to make payments required of Tenant or perform Tenant's obligations and be reimbursed by Tenant for the cost thereof with interest at the Agreed Interest Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant, and (iii) the remedies of injunctive relief and specific performance to compel Tenant to perform its obligations under this Lease. Notwithstanding anything contained in this Lease, in the event of a breach of an obligation by Tenant which results in a condition which poses an imminent danger to safety of persons or damage to property, an unsightly condition visible from the exterior of the Building, or a threat to insurance coverage, then if Tenant does not cure such breach within three (3) days after delivery to it of written notice from Landlord identifying the breach, Landlord may cure the breach of Tenant and be reimbursed by Tenant for the cost thereof with interest at the Agreed Interest Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant.

B. Landlord may enter the Premises and re-lease them to third parties for Tenant's account for any period, whether shorter or longer than the remaining Lease Term. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in releasing the Premises, including,

without limitation, brokers' commissions, expenses of altering and preparing the Premises required by the releasing. Tenant shall pay to Landlord the rent and other sums due under this Lease on the date the rent is due, less the rent and other sums Landlord received from any releasing. No act by Landlord allowed by this subparagraph shall terminate this Lease unless Landlord notices Tenant in writing that Landlord elects to terminate this Lease. Notwithstanding any releasing without termination, Landlord may later elect to terminate this Lease because of the default by Tenant.

C. Landlord may terminate this Lease by giving Tenant written notice of termination, in which event this Lease shall terminate on the date set forth for termination in such notice. Any termination under this Section 13.2C shall not relieve Tenant from its obligation to pay sums then due Landlord or from any claim against Tenant for damages or rent previously accrued or then accruing. In no event shall any one or more of the following actions by Landlord, in the absence of a written election by Landlord to terminate this Lease, constitute a termination of this Lease: (i) appointment of a receiver or keeper in order to protect Landlord's interest hereunder; (ii) consent to any subletting of the Premises or assignment of this Lease by Tenant, whether pursuant to the provisions hereof or otherwise; or (iii) any other action by Landlord or Landlord's Agents intended to mitigate the adverse effects of any breach of this Lease by Tenant, including, without limitation, any action taken to maintain and preserve the Premises or any action taken to relet the Premises or any portions thereof to the event such action do not affect a termination of Tenant's right to possession of the Premises.

D. In the event Tenant breaches this Lease and abandons the Premises, this Lease shall not terminate unless Landlord gives Tenant written notice of its election to so terminate this Lease. No act by or on behalf of Landlord intended to mitigate the adverse effect of such breach, including those described by
Section 13.2C, shall constitute a termination of Tenant's right to possession unless Landlord gives Tenant written notice of termination. Should Landlord not terminate this Lease by giving Tenant written notice, Landlord may enforce all its rights and remedies under this Lease and/or any Laws, including, without limitation, the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). Tenant acknowledges and agrees that the express standards and conditions set forth in Article 14 below relating to assignments of this Lease and sublettings of the Premises are reasonable at the time this Lease is executed by Tenant.

E. In the event Landlord terminates this Lease, Landlord shall be entitled, at Landlord's election, to damages in an amount as set forth in California Civil Code Section 1951.2 as in effect on the Effective Date. For purposes of computing damages pursuant to California Civil Code Section 1951.2,
(i) an interest rate equal to the Agreed Interest Rate shall be used where permitted, and (iii) the term "rent" includes Base Monthly Rent and Additional Rent. Such damages shall include, without limitation:

(1) The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided, computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%); and

(2) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom, including the following: (i) expenses for cleaning, repairing or restoring the Premises; (ii) expenses for altering, remodeling or otherwise improving the Premises for the purpose of reletting, including installation of leasehold improvements (whether such installation be funded by a reduction of rent, direct payment or allowance to a new tenant, or otherwise); (iii) broker's fees, advertising costs and other expenses of reletting the Premises; (iv) costs of carrying the Premises, such as taxes, insurance premiums, utilities and security precautions; (v) expenses in retaking possession of the Premises; and (vi) attorney's fees and court costs incurred by Landlord in retaking possession of the Premises and in releasing the Premises or otherwise incurred as a result of Tenant's default.

F. Nothing in this Section 13.2 shall limit Landlords's right to indemnification from Tenant as provided in Section 7.2 and Section 10.3. Any notice given by Landlord in order to satisfy the requirements of Section 13.1A or 13.lB above shall also satisfy the notice requirements of California Code of Civil Procedure Section 1161 regarding unlawful detainer proceedings.

13.3 Waiver. One party's consent to or approval of any act by the other party requiring the first party's consent or approval shall not be deemed to waive or render unnecessary the first party's consent to or approval of any subsequent similar act by the other party. The receipt by Landlord of any rent or payment with or without knowledge of the breach of any other provision hereof shall not be deemed a waiver of any such breach unless such waiver is in writing and signed by Landlord. No delay or omission in the exercise of any right or remedy accruing to either party upon any breach by the other party under this Lease shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by either party of any breach of any provision of this Lease shall not be deemed to be a waiver of any subsequent breach of the same or of any other provisions herein contained.

13.4 Limitation On Exercise of Rights. At any time that an Event of Tenants Default has occurred and remains uncured, (i) it shall not be unreasonable for Landlord to deny or withhold any consent or approval requested of it by Tenant which Landlord would otherwise be obligated to give, and (ii) Tenant may not exercise any option to extend, right to terminate this Lease, or other right granted to it by this Lease which would otherwise be available to it.

13.5 Waiver by Tenant of Certain Remedies. Tenant waives the provisions of Sections 1932(l), 1941 and 1942 of the California Civil Code and any similar or successor law regarding Tenant's right to terminate this Lease or to make repairs and deduct the expenses of such repairs from the rent due under this Lease. Tenant hereby waives any right of redemption or relief from forfeiture under the laws of the State of California, or under any other present or future law, including, without limitation, the provisions of Sections 1174 and 1179 of the California Code of Civil Procedure.

13.6 Landlord's Default. Landlord shall not be deemed to be in default in the performance of any obligation required to be performed by it hereunder unless and until it has failed to perform such obligation within thirty (30) days after receipt of written notice from Tenant to Landlord (and any Lender who have provided Tenant with notice) specifying the nature of such default; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for its performance, then Landlord shall not be deemed to be in default if is shall commence such performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. Tenant expressly waives any right to terminate this Lease or to claim a constructive eviction by reason of any default by Landlord hereunder.

13.7 Limitation of Actions Against Landlord. Any claim, demand or right of any kind by Tenant which is based upon or arises in connection with this Lease shall be barred unless Tenant commences an action thereon within six (6) months after the date that the act, omission, event or default upon which the claim, demand or right in question arises, has occurred.

ARTICLE 14

ASSIGNMENT AND SUBLETTING

14.1 Transfer By Tenant. The following provisions shall apply to any assignment, subletting or other transfer by Tenant or any subtenant or assignee or other successor in interest of the original Tenant (collectively referred to in this Section 14.1 as "Tenant"):

A. Tenant shall not do any of the following (collectively referred to herein as a "Transfer"), whether voluntarily, involuntarily or by operation of law, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed (subject to Section 14.lB and
Section 14.lC below): (i) sublet all or any part of the Premises or allow it to be sublet, occupied or used by any person or entity other than Tenant; or (ii) assign its interest in this Lease. In no event shall Tenant mortgage or encumber the Lease (or otherwise use the Lease as a security device) in any manner, or materially amend or modify an assignment, sublease or other transfer that has been previously approved by Landlord. Tenant shall reimburse Landlord for all reasonable costs and attorneys' fees incurred by Landlord in connection with the evaluation, processing and/or documentation of any requested Transfer, plus an amount equal to 5% of the Base Monthly Rent as a fee for Landlord's review whether or not Landlord's consent is granted. Landlord's reasonable costs shall include the cost of any review or investigation performed by Landlord or consultant acting on Landlord's behalf of (i) Hazardous Materials (as defined in Section 7.2E of this Lease) used, stored, released, or disposed of by the potential subtenant or assignee, and/or (ii) violations of Hazardous Materials Law (as defined in Section 7.2E of this lease) by Tenant or the proposed subtenant or assignee. Any Transfer so approved by Landlord shall not be effective until Tenant has delivered to Landlord an executed counterpart of the document evidencing the Transfer which (i) is in a form reasonably approved by Landlord, (ii) contains the same terms and conditions as stated in Tenant's notice given to Landlord pursuant to Section 14.lB, and (iii) in the case of an assignment of the Lease, contains the agreement of the proposed transferee to assume all obligations of Tenant under this Lease arising after the

effective date of such Transfer and to remain jointly and severally liable therefor with Tenant. Any attempted Transfer without Landlord's consent shall constitute an Event of Tenant's Default and shall be voidable at Landlord's option. Landlord's consent to any one Transfer shall not constitute a waiver of the provisions of this Section 14.1 as to any subsequent Transfer or a consent to any subsequent Transfer. No Transfer, even with the consent of Landlord, shall relieve Tenant of its personal and primary obligation to pay the rent and to perform all of the other obligations to be performed by Tenant hereunder. The acceptance of rent by Landlord from any perform shall not be deemed to be a waiver by Landlord of any provision of this Lease nor to be a consent to any Transfer.

B. At least thirty (30) days before a proposed Transfer is to become effective, Tenant shall give Landlord written notice of the proposed terms of such Transfer and request Landlord's approval, which notice shall include the following: (i) the name and legal composition of the proposed transferee; (ii) a current financial statement of the transferee, financial statements of the transferee covering the preceding three (3) years if the same exist, and (if available) an audited financial statement of the transferee for a period ending not more than one year prior to the proposed effective date of the Transfer, all of which statements are prepared in accordance with generally accepted accounting principles; (iii) the nature of the proposed transferee's business to be carried out in the Premises; (iv) all consideration to be given on account of the Transfer; (v) a current financial statement of Tenant; and
(vi) an accurately filled out response to Landlord's then-standard Hazardous Materials Questionnaire, if any. Tenant shall provide to Landlord such other information as may be reasonably requested by Landlord within seven (7) days after Landlord's receipt of such notice from Tenant. Landlord shall respond in writing to Tenant's request for Landlord's consent to a Transfer within the later of (i) fifteen (15) business days of receipt of such request together with the required accompanying documentation, or (ii) seven (7) days after Landlord's receipt of all information which Landlord reasonably requests within seven (7) days after it receives Tenant's first notice regarding the Transfer in question. If Landlord fails to respond in writing within said period, Landlord will be deemed to have withheld its consent to such Transfer, provided that if Tenant specifically requests from Landlord, within five (5) days following the expiration of said period a statement of reasons for withholding consent, Landlord shall have thirty (30) days following such request within which to provide Tenant with a written statement of its reasonable objections to the Transfer in question (and, if Landlord fails to provide such statement to Tenant within such thirty (30) day, then Landlord shall be deemed to have consented to the Transfer in question). Tenant shall immediately notify Landlord of any material modification to the proposed terms of such Transfer.

Tenant agrees, by way of example and without limitation, that its shall not be unreasonable for Landlord to withhold its consent to a proposed Transfer if any of the following situations exist or may exist:

(1) Landlord determines that the proposed assignee's or sublessee's use of the Premises conflicts with Article 4 above, presents an unacceptable risk, as determined by Landlord, under Section 7.2 above, or conflicts with any other provision under this Lease;

(2) Landlord determines that the proposed assignee or sublessee is not financially responsible as Tenant as of the date of Tenant's request for consent or as of the effective date of such proposed assignment or subletting;

(3) Landlord determines that the proposed assignee or sublessee lacks sufficient business reputation or experience to conduct on the Premises a business of a type and quality equal to that conducted by Tenant;

(4) Landlord determines that the proposed assignment or subletting would breach a covenant, condition or restriction in some other lease, financing agreement or other agreement relating to the Project, the Building, the Premises or this Lease;

(5) An Event of Tenant's Default (or any act or omission which, with the giving of notice or the passage of time, or both, would constitute an Event of Tenant's Default) has occurred and is continuing at the time of Tenant's request for Landlord's consent, or as of the effective date of such assignment or subletting;

(6) With respect to a proposed assignment, the consideration to be paid by the proposed assignee for such assignment is less than the fair market value thereof (as reasonably determined by Landlord), and, with respect to a proposed subletting, the rent to be paid by the proposed sublessee under the sublease is less than the fair market rental value of the Premises or the applicable portion thereof (as reasonably determined by Landlord);

(7) The proposed assignment or subletting would require alterations, additions or changes to the Premises not otherwise approved by Landlord pursuant to Section 5.2; or

(8) The proposed assignee's or sublessee's use of the Premises would place additional burdens on the Project and/or its operation, including, without limitation, the Common Area and the utilities.

C. Notwithstanding anything contained in this Article 14 to the contrary, in the event that Tenant seeks to make any Transfer, Landlord shall have the right to terminate this Lease or, in the case of a sublease of less than all of the Premises, terminate this Lease as to that part of the Premises proposed to be so sublet, either (i) on the condition that the proposed transferee immediately enter into a direct lease of the Premises with Landlord (or, in the case of a partial sublease, a lease for the portion proposed to be so sublet) on the same terms and conditions contained in Tenant's notice, or
(ii) so that Landlord is thereafter free to lease the Premises (or, in the case of a partial sublease, the portion proposed to be so sublet) to whomever (including, without limitation, the proposed transferee) it pleases on whatever terms are acceptable to Landlord. In the event Landlord elects to so terminate this Lease, then (i) if such termination is conditioned upon the execution of a lease between Landlord and the proposed transferee, Tenant's obligations under this Lease shall not be terminated until such transferee executes a new lease with Landlord, enters into

possession and commences the payment of rent, and
(ii) if Landlord elects simply to terminate this Lease (or, in the case of a partial sublease, terminate this Lease as to the portion to be so sublet), the Lease shall so terminate in its entirety (or as to the space to be so sublet) fifteen (15) days after Landlord has notified Tenant in writing of such election. Upon such termination, Tenant shall be released from any further obligation under this Lease if it is terminated in its entirety (or shall be released from any further obligation under the Lease with respect to the space proposed to be sublet in the case of a proposed partial sublease), except that the foregoing release shall not apply to, and Tenant shall not be released from,
(i) any obligations under this Lease accruing prior to such termination, (ii) any obligations under Section 15.2 below relating to the surrender of the Premises or such space proposed to be sublet, as applicable, and (iii) any obligations which, by their terms, are to survive the expiration or sooner termination of this Lease. In the case of a partial termination of the Lease, the Base Monthly Rent and Tenant's Share shall be reduced to an amount which bears the same relationship to the original amount thereof as the area of that part of the Premises which remains subject to the Lease bears to the original area of the Premises, all as reasonably determined by Landlord. Upon Landlord's request, Tenant shall execute a separate termination agreement evidencing any termination of this Lease pursuant to this Section 14.1C.

D. If Landlord consents to a Transfer proposed by Tenant, Tenant may enter into such Transfer, and if Tenant does so, the following shall apply:

(1) Tenant shall not be released of its liability for the performance of all of its obligations under this Lease.

(2) If Tenant assigns its interest in this Lease, then Tenant shall pay to Landlord one hundred percent (100%) of all Transfer Consideration (as defined in Section 14.1D(5)) received by Tenant over and

above (i) the assignee's agreement to assume the obligations of Tenant under this Lease, and (ii) all Permitted Transfer Costs related to such assignment. In the case of assignment, the amount of Transfer Consideration owed to Landlord shall be paid to Landlord on the same basis, whether periodic or in lump sum, that such Transfer Consideration is paid to Tenant by the assignee.

(3) If Tenant sublets any part of the Premises, then with respect to the space so subleased, Tenant shall pay to Landlord one hundred percent (100%) of the positive difference, if any, between
(i) all Transfer Consideration paid by the subtenant to Tenant, less
(ii) the sum of all Base Monthly Rent and Tenant's Share of Direct Expenses allocable to the space sublet and all Permitted Transfer Costs related to such sublease. Such amount shall be paid to Landlord on the same basis, whether periodic or in lump sum, that such Transfer Consideration is paid to Tenant by its subtenant. In calculating Landlord's share of any periodic payments, all Permitted Transfer Costs shall be first recovered by Tenant.

(4) Tenant's obligations under this Section 14.1D shall survive any Transfer, and Tenant's failure to perform its obligations hereunder shall be an Event of Tenant's Default. At the time Tenant makes any payment to Landlord required by this Section 14.1D, Tenant shall deliver to Landlord an itemized statement of the method by which the amount to which Landlord is entitled was calculated, certified by Tenant as true and correct. Landlord shall have the right at reasonable intervals to inspect Tenant's books and records relating to the payments due hereunder. Upon request therefor, Tenant shall deliver to Landlord copies of all bills, invoices or other documents upon which its calculations are based. Landlord may condition its approval of any Transfer upon obtaining a certification from both Tenant and the proposed transferee of all Transfer Consideration and other amounts that are to be paid to Tenant in connection with such Transfer.

(5) As used in this Section 14.1D, the term "Transfer Consideration" shall mean: any consideration of any kind received, or to be received, by Tenant as a result of the Transfer, if such sums are related to Tenant's interest in this Lease or in the Premises, including payments from or on behalf of the transferee (in excess of the book value thereof) for Tenant's assets, fixtures, leasehold improvements, inventory, accounts, goodwill, equipment, furniture, and general intangibles. As used in this Section 14.1D, the term "Permitted Transfer Costs" shall mean (i) all reasonable leasing commissions paid to third parties not affiliated with Tenant in order to obtain the Transfer in question, and (ii) all reasonable attorney's fees incurred by Tenant with respect to negotiating the Transfer in question.

E. The sale of all or substantially all of Tenant's assets (other than bulk sales in the ordinary course of business), any dissolution of Tenant, or, if Tenant is a corporation, an unincorporated association, a partnership or a limited liability company, the transfer, assignment and/or hypothecation of any stock or other interest in such corporation, association, partnership or limited liability company in the aggregate in excess of twenty-five percent (25%) during the Term (except for publicly traded shares of stock constituting a transfer of twenty-five percent (25%) or more in the aggregate, so long as no change in the controlling interests of Tenant occurs as a result thereof) shall be deemed an assignment within the meaning and provisions of this Article 14. As used in the Section 14.1E, the term "Tenant" shall mean Tenant and/or any person or entity that owns, directly or indirectly, in whole or in part, Tenant (e.g., a parent corporation of Tenant).

14.2 Transfer By Landlord. Landlord and its successors in interest shall have the right to transfer their interest in this Lease, the Building and the Project at any time and to any person or entity. In the event of any such transfer, the Landlord originally named herein (and, in the case of any subsequent transfer, the transferor) from the date of such transfer, shall be automatically relieved, without any further act by any person or entity, of all liability for the performance of the obligations of the Landlord hereunder which may accrue after the date of such transfer. After the date of any such transfer, term "Landlord" as used herein shall mean the applicable transferee of such interest in the Premises.

ARTICLE 15

GENERAL PROVISIONS

15.1 Landlord's Right to Enter. Landlord and its Agents may enter the Premises at any reasonable time after giving reasonable prior written or verbal notice to Tenant (except in the case of any emergency or regularly scheduled services, in which case no prior notice shall be required) for the purpose of: (i) inspecting the same; (ii) posting notices of non-responsibility; (iii) supplying any service to be provided by Landlord to Tenant; (iv) showing the Premises to prospective purchasers, Lenders or tenants; (v) making necessary alterations, additions or repairs; (vi) performing Tenant's obligations when Tenant has failed to do so after written notice from Landlord; (vii) placing upon the Premises ordinary "for lease" signs or "for sale" signs; and (viii) responding to an emergency. Landlord shall have the right to use any and all means Landlord may deem necessary and proper to enter the Premises in an emergency. Any entry into the Premises obtained by Landlord in accordance with this Section 15.1 shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises. Tenant hereby waives any claims for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby.

15.2 Surrender of the Premises. Upon the expiration or sooner termination of this Lease, Tenant shall vacate and surrender the Premises to Landlord in the same condition as existed on the Commencement Date, except for
(i) reasonable wear and tear, (ii) damage caused by any casualty not caused by Tenant or Tenant's Agents or condemnation, and (iii) contamination by Hazardous Materials for which tenant is not responsible pursuant to Section 7.2A or
Section 7.2B. In this regard, normal wear and tear shall be construed to mean wear and tear caused to the Premises by the natural aging process which occurs in spite of prudent application of the best standards for maintenance, repair and janitorial practices, and does not include items of neglected or deferred maintenance. In any event, Tenant shall cause the following to be done prior to the expiration or the sooner termination of this Lease: (i) all interior walls shall be painted or cleaned so that they appear freshly painted; (ii) all non-carpeted floor coverings shall be cleaned and waxed; (iii) all carpets shall be cleaned and shampooed; (iv) all broken, marred, stained or nonconforming acoustical ceiling tiles shall be replaced; and (v) all windows shall be washed. If Landlord so requests, Tenant shall, prior to the expiration or sooner termination of this Lease, (i) remove any Tenant's Alterations which Tenant is required to remove pursuant to Section 5.2 and repair all damage caused by such removal, and (ii) return the Premises or any part thereof to its original configuration existing as of the time the Premises were delivered to Tenant. If the Premises are not so surrendered upon the expiration or sooner termination of this Lease, Tenant shall be liable to Landlord for all costs incurred by Landlord in returning the Premises to the required condition, plus interest on all costs incurred at the Agreed Interest Rate. Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, any claims made by any succeeding tenant or losses to Landlord due to lose opportunities to lease to succeeding tenants.

15.3 Holding Over. This Lease shall terminate without further notice at the expiration of the Lease Term. Any holding over by Tenant after expiration of the Lease Term shall not constitute a renewal or extension of this Lease or give Tenant any rights in or to the Premises except as expressly provided in this Lease. Any holding over after such expiration with

the written consent of Landlord shall be construed to be a tenancy from month to month on the same terms and conditions herein specified insofar as applicable except that Base Monthly Rent shall be increased to an amount equal to two hundred percent (200%) of the full unabated Base Monthly Rent payable during the last full calendar month of the Lease Term.

15.4 Subordination. The following provisions shall govern the relationship of this Lease to any Security Instrument:

A. The Lease is subject and subordinate to all Security Instruments existing as of the Effective Date. However, if any Lender so requires, this Lease shall become prior and superior to any such Security Instrument.

B. At LandLord's election, this Lease shall become subject and subordinate to any Security Instrument created after the Effective Date. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed so long as Tenant is not in default and performs all of its obligations under this Lease, unless this Lease is otherwise terminated pursuant to its terms.

C. Tenant shall upon request execute and acknowledge any document or instrument reasonably required by any Lender to make this Lease either prior or subordinate to a Security Instrument, which may include such other matters as the Lender customarily requires in connection with such agreements, including provisions that the Lender not be liable for (i) the return of any security deposit unless the Lender receives it from Landlord, (ii) any defaults on the part of Landlord occurring prior to the time the Lender takes possession of the Project in connection with the enforcement of its Security Instrument, and/or (iii) completion of any improvements to the Premises or the Project agreed to or undertaken by Landlord. Tenant's failure to execute any such document or instrument within ten (10) days after written demand therefor shall constitute an Event of Tenant's Default. Tenant approves as reasonable the form of subordination agreement attached to this Lease as Exhibit E; provided, however, the attachment of such form as an exhibit to this Lease

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shall in no way limit the form of document or instrument that Landlord may request Tenant to execute and acknowledge pursuant to this Section 15.4C.

15.5 Mortgage Protection and Attornment. In the event of any default on the part of the Landlord, Tenant will use reasonable efforts to give notice by registered mail to any Lender whose name has been provided to Tenant and shall offer such Lender a reasonable opportunity to cure the default, including time to obtain possession of the Premises by power of sale or judicial foreclosure or other appropriate legal proceedings, if such should prove necessary to effect a cure. Tenant shall attorn to any purchaser of the Premises at any foreclosure sale or private sale conducted pursuant to any Security Instrument encumbering the Premises, or to any grantee or transferee designated in any deed given in lieu of foreclosure.

15.6 Estoppel Certificates and Financial Statements. At all times during the Lease Term, Tenant agrees, following any request by Landlord, to execute and deliver to Landlord within (10) days following delivery of such request an estoppel certificate: (i) certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect, (ii) stating the date to which the Rent and other charges are paid in advance, if any, (iii) acknowledging that there are not any uncured defaults on the part of any party hereunder or, if there are uncured defaults, specifying the nature of such defaults, and (iv) certifying such other information about the status of the Lease and the Premises as may be required by Landlord. A failure to deliver an estoppel certificate within ten (10) days after delivery of a request therefor shall be a conclusive admission that, as of the date of the request for such statement: (i) this Lease is unmodified except as may be represented by Landlord in said request and is in full force and effect, (ii) there are no uncured defaults in Landlord's performance, (iii) no rent has been paid more than thirty (30) days in advance, and (iv) the information regarding the status of this Lease, as represented by Landlord in said request, is true and correct. At any time during the Lease Term Tenant shall, upon ten (10) days' prior written notice from landlord, provide Tenant's most recent financial statement and financial statements covering the twenty-four (24) month period prior to the date of such most recent financial statement to any existing Lender or to any potential Lender or buyer of the Premises. Such statements shall be prepared in accordance with generally accepted accounting principles and shall be certified by Tenant's chief financial officer as true and correct in all material respects or, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant.

15.7 Landlord's Consent. Wherever Landlord's approval or consent is required under this Lease before any action may be taken by Tenant, such approval or consent may be withheld or conditioned in Landlord's sole and absolute discretion unless a different standard is specifically provided for with respect to the required approval or consent in question.

15.8 Notices. Any notice required or desired to be given regarding this Lease shall be in writing and may be given by personal delivery, by facsimile telecopy, by courier service, or by mail. A notice shall be deemed to have been given (i) on the third business day after mailing if such notice was deposited in the United States mail, certified or registered, postage prepaid, addressed to the party to be served at its Address for Notices specified in
Section R or Section S of the Summary (as applicable), (ii) when delivered if given by personal delivery, and (iii) in all other cases when actually received at the party's Address for Notices. Either party may change its address by giving notice of the same in accordance with this Section 15.8, provided however, that any address to which notices may be sent must be a California address.

15.9 Attorneys' Fees. In the event either Landlord or Tenant shall bring any action or legal proceeding or any appeal therefrom, for an alleged breach of any provision of this Lease, to recover rent, to terminate this Lease or otherwise to enforce, protect or establish any term or covenant of this Lease, the prevailing party shall be entitled to recover as a part of such action or proceeding, or in a separate action brought for that purpose, reasonable attorneys' fees, court costs, and experts' fees as may be fixed by the court.

15.10 Authority. If Tenant is a corporation (or partnership or limited liability company), each individual executing this Lease on behalf of Tenant represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of such corporation in accordance with the by-laws of such corporation (or partnership in accordance with the partnership agreement of such partnership or limited liability company in accordance with the operating agreement of such limited liability company) and that this Lease is binding upon such corporation (or partnership or limited liability company) in accordance with its terms. Each of the persons executing this Lease on behalf of a corporation, partnership or limited liability company does hereby covenant and warrant that the party for whom it is executing this Lease is a duly authorized and existing corporation, partnership or limited liability company, that such entity is qualified to do business in California, and that such entity has full right and authority to enter into this Lease.

15.11 Miscellaneous. Should any provision of this Lease prove to be invalid or illegal, such invalidity or illegality shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor. The captions used in this Lease are for convenience only and shall not to be considered in the construction or interpretation of any provision hereof. Any executed copy of this Lease shall be deemed an original for all purposes. This Lease shall, subject to the provisions regarding assignment, apply to and bind the respective heirs, successors, executors,

administrators and assigns of Landlord and Tenant. "Party" shall mean Landlord or Tenant, as the context implies. If Tenant consists of more than one person or entity, then all persons or entities so comprising Tenant shall be jointly and severally liable hereunder. This Lease shall be construed and enforced in accordance with the laws of the State of California. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either Landlord or Tenant. When the context of this Lease requires, the neuter gender includes the masculine, the feminine, a partnership or corporation or joint venture, and the singular includes the plural. The terms "shall", "will" and "agree" are mandatory. The term "may" is permissive. When a party is required to do something by this Lease, it shall do so at its sole cost and expense without right of reimbursement from the other party unless a provision of this Lease expressly requires reimbursement. Landlord and Tenant agree that (i) the gross leasable area of the Premises includes any atriums, depressed loading docks, covered entrances or egresses, and covered loading areas, (ii) each has had an opportunity to determine to its satisfaction the actual area of the Project and the Premises, (iii) all measurements of area contained in this Lease are conclusively agreed to be correct and binding upon the parties, even if a subsequent measurement of any one of these areas determines that it is more or less than the amount of area reflected in this Lease, determination that the area is more or less than shown in this Lease shall not result in a change in any of the computations of rent, improvement allowances, or other matters described in this Lease where area is a factor. Where a party hereto is obligated not to perform any act, such party is also obligated to restrain any others within its

control from performing said act, including the Agents of such party. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of the provisions of this Lease.

15.12 Termination by Exercise Right. If this Lease is terminated pursuant to its terms by the proper exercise of a right to terminate

specifically granted to Landlord or Tenant by this Lease, then this Lease shall terminate thirty (30) days after the date the right to terminate is properly exercised (unless another date is specified in that part of the Lease creating the right, in which event the date so specified for termination shall prevail), the rent and all other charges due hereunder shall be prorated as of the date of termination, and neither Landlord nor Tenant shall have any further rights or obligations under this Lease except for those that have accrued prior to the date of termination or those obligations which this Lease specifically provides are to survive the expiration or sooner termination of this Lease. This Section 15.12 does not apply to a termination of this Lease by Landlord as a result of an Event of Tenant's Default.

15.13 Brokerage Commissions. Each party hereto (i) represents and warrants to the other that it has not had any dealings with any real estate brokers, leasing agents or salesmen, or incurred any obligations for the payment of real estate brokerage commissions or finder's fees which would be earned or due and payable by reason of the execution of this Lease, other than to the Retained Real Estate Brokers described in Section T of the Summary (and then only to the extent set forth in such separate agreement), and (ii) agrees to indemnify, defend, and hold harmless the other party from any claim for any such commission or fees which allegedly result from the actions of the indemnifying party. Landlord shall be responsible for the payment of any commission owed to the Retained Real Estate Brokers if, and only to the extent, there is a separate written commission agreement between Landlord and the Retained Real Estate Brokers for the payment of a commission as a result of the execution of this Lease by Tenant. The indemnity, defense and hold harmless obligations under this
Section 15.13 shall survive the expiration or sooner termination of this Lease.

15.14 Force Majeure. Any prevention, delay or stoppage due to strikes, lock-outs, inclement weather, labor disputes, inability to obtain labor, materials, fuels or reasonable substitutes therefor, governmental restrictions, regulations, controls, action or inaction, civil commotion, fire or other acts of God, and other causes beyond the reasonable control of the party obligated to perform (except financial inability) shall excuse the performance, for a period equal to the period of any said prevention, delay or stoppage, of any obligation hereunder except the obligation of Tenant to pay rent or any other sums due hereunder.

15.15 Entire Agreement. This Lease constitutes the entire agreement between the parties, and there are no binding agreements or representations between the parties except as expressed herein. Tenant acknowledges that neither Landlord nor Landlord's Agents has made any legally binding representation or warranty as to any matter except those expressly set forth herein, including any warranty as to (i) whether the Premises may be used for Tenant's intended use under existing Laws, (ii) the suitability of the Premises or the Project for the conduct of Tenant's business, or (iii) the condition of any improvements. There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all

previous negotiations, arrangements, brochures, agreements and understandings, if any, between Landlord and Tenant or displayed by Landlord to Tenant with respect to the subject matter of this Lease. This instrument shall not be legally binding until it is executed by both Landlord and Tenant. No subsequent change or addition to this Lease shall be binding unless in writing and signed by Landlord and Tenant.

16.16 JURY TRIAL WAIVER. LANDLORD AND TENANT EACH ACKNOWLEDGES THAT IT IS AWARE OF AND HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO TRIAL BY JURY, AND EACH PARTY DOES HEREBY EXPRESSLY AND KNOWINGLY WAIVE AND RELEASE ALL SUCH RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER (AND/OR AGAINST ITS OFFICERS, DIRECTORS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS, OR SUBSIDIARY OR AFFILIATED ENTITIES) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

LANDLORD'S INITIALS: /s/ [ILLEGIBLE] *TENANT'S INITIALS: /s/ McCarthy*

ARTICLE 16

WARRANTS

16. Warrants. Concurrently herewith, Tenant grants to Landlord, or its assigns, warrants to purchase up to sixty thousand (60,000) shares of common stock ("Warrants") of Tenant pursuant to the terms of that certain Stock Warrant Agreement ("Stock Warrant Agreement"), in the form attached hereto as Exhibit J. As a condition precedent to the effectiveness if this Lease, concurrently with the execution of this Lease, Tenant shall deliver to Landlord two (2) fully executed originals of the Stock Warrant Agreement and a corporate resolution of Tenant authorizing the grant and issuance to Landlord of the Warrants.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease with the intent to be legally bound thereby, to be effective as of the Effective Date.

LANDLORD:

BR3 PARTNERS

By: /s/ James C. Rees

James C. Rees
---
typed or printed name

Its: Managing Partner

Dated: 10/31/00

TENANT:

Netflix.Com
a Delaware Corporation

By: /s/ W. Barry McCarthy, Jr.

Barry McCarthy
---
typed or printed name

Title: CFO

By: _____

_____

typed or printed name

Title:_____

Dated: _____

EXHIBIT A
PROJECT SITE PLAN

[To be attached]

[SITE PLAN]

EXHIBIT B
DIAGRAM OF PREMISES

[To be attached with Premises shown as cross-hatched]

[DIAGRAM]

EXHIBIT C

WORK LETTER
(As-Is)

[INTENTIONALLY LEFT BLANK]

Tenant to accept Premises in its "As-Is" condition; no Tenant Improvements of any kind being provided by Landlord.

EXHIBIT D

MEMORANDUM OF COMMENCEMENT DATE

(As-Is)

Landlord: _____

Tenant: _____

Project: _____

Premises: _____

In connection with that certain Office Lease dated _____, the undersigned hereby certify as follows:

1. That the undersigned Tenant occupies the above-described Premises consisting of approximately _____ rentable square feet.

2. That the Lease Term commenced (and the Commencement Date occurred) on _____, and, unless sooner terminated pursuant to the terms of said Office Lease, shall expire on _____.

3. That Tenants obligation to pay Base Monthly Rent in the amount of $_____ commenced [or will commence] on _____.

4. That a security deposit of $_____ has been paid by Tenant to Landlord.

5. That the Premises has been accepted by Tenant in good and sanitary order, condition and repair in its present "as-is" condition.

LANDLORD	TENANT
_____	_____
_____	_____
By:_____	By:_____
Name:_____	Name:_____
Its:_____	Its:_____

EXHIBIT E

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT is entered into as of the _____ day of _____, ____, by and between _____, a _____ (the "Beneficiary"), _____, a _____ (the "Tenant") and _____, a _____ (the "Landlord").

W I T N E S S E T H

A. Tenant has entered into a certain lease dated _____, _____ (the "Lease") with Landlord covering certain spaces (the "Premises") located in and upon the real property described in Schedule 1 attached hereto (the "Property");

B. Beneficiary is the holder of a mortgage loan (the "Loan") to Landlord in the amount of _____ Dollars ($_____) which is secured by a _____ (the "Deed of Trust") covering the Property;

C. The parties hereto desire expressly to confirm the subordination of the Lease to the lien of the Deed of Trust, it being a requirement by Beneficiary that the lien and charge of the Deed of Trust be unconditionally and at all times prior and superior to the leasehold interests and estates created by the Lease; and

D. Tenant has requested that Beneficiary agree not to disturb Tenant's possessory rights in the Premises in the event Beneficiary should foreclose the Deed of Trust, provided that Tenant is not in default under the Lease and provided that Tenant attorns to Beneficiary or the purchaser at any foreclosure or Trustee's sale of the Property.

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

1. Notwithstanding anything to the contrary set forth in the Lease, the Lease and the leasehold estate created thereby and all of Tenant's rights thereunder shall be and shall at all times remain subject, subordinate to the Deed of Trust and the lien thereof and all rights of Beneficiary thereunder and to any and a11 renewals, modifications, consolidations, replacements and extensions thereof.

2. Tenant hereby declares, agrees and acknowledges that:

A. Beneficiary would not have agreed to recognize the Lease without this Agreement; and

B. Beneficiary, in making disbursements pursuant to the agreements evidencing and securing the Loan, is under no obligation or duty to oversee or direct the application of the proceeds of such disbursements and such proceeds may be used by Landlord for purposes other than improvement of the Premises.

3. In the event of foreclosure of the Deed of Trust, or upon a sale of the Property pursuant to the Trustee's power of sale contained therein, or upon a transfer of the Property by deed in lieu of foreclosure, then so long as Tenant is not in default under any of the terms, covenants, or conditions of the Lease, the Lease shall continue in full force and effect as a direct lease between the succeeding owner of the Property and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease for the balance of the term of the Lease. Tenant hereby agrees to attorn to and accept any such successor owner as landlord under the Lease, and to be bound by and perform all of the obligations imposed by the Lease and Beneficiary or any such successor owner of the Property will not disturb the possession of Tenant, and will be bound by all of the obligations imposed by the Lease upon the landlord thereunder; provided, however, that the Beneficiary, or any purchaser at a trustee's or sheriff's sale or any successor owner of the Property shall not be:

A. liable for any act or omission of a prior landlord (including Landlord); or

B. subject to any offsets or defenses which the Tenant might have against any prior landlord (including Landlord); or

c. bound by any rent or additional rent which the Tenant might have paid in advance to any prior landlord (including Landlord) for a period in excess of one month; or

D. bound by any agreement or modification of the Lease made without the written consent of the Beneficiary; or

E. liable or responsible for or with respect to the retention, application and/or return to Tenant of any security deposit paid to any prior lessor (including Landlord), whether or not still held by

such prior lessor, unless and until Beneficiary or such other purchaser has actually received for its own account as 1essor the full amount of such security deposit; or

F. bound by or liable under any representations, warranties, covenants or indemnities made to Tenant by any prior landlord (including Landlord) regarding Hazardous Materials (as defined in the Lease); or

G. obligated to construct the building in which the Premises are located or any improvements for Tenant's use.

4. Upon the written request of Beneficiary at the time of a foreclosure, Trustee's sale or deed in lieu thereof or at any time thereafter, the parties agree to execute a lease of the Premises upon the same terms and conditions as the Lease between Landlord and Tenant, which lease shall cover any unexpired term of the Lease existing prior to such foreclosure, Trustee's sale or conveyance in lieu of foreclosure.

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5. Tenant agrees to give to Beneficiary, by registered mail, a copy of any notice or statement served upon Landlord. Tenant agrees not to exercise any rights of termination available by virtue of a default unless (i) Landlord shall have failed to cure such default, and (ii) following expiration of the applicable period under the Lease for cure Landlord of such default, Tenant shall have furnished to Beneficiary notice of Landlord's failure to cure such default, and afforded Beneficiary an additional thirty (30) days following receipt of such notice within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary if within such thirty (30) days Beneficiary has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings if necessary to effect such cure), in which event such right, if any, as Tenant might otherwise have to terminate the Lease shall not be exercised while such remedies are being so diligently pursued.

6. Landlord, as landlord under the lease and trustor under the Deed of Trust, agrees for itself and its heirs, successors, and assigns, that: (i) this Agreement does not constitute a waiver by Beneficiary of any of its rights under the Deed of Trust or in any way release Landlord from its obligation to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Deed of Trust; and (ii) the provisions of the Deed of Trust remain in full force and effect and must be complied with by Landlord, if Beneficiary so requires.

7. Tenant acknowledges that it has notice that the Lease and the rent and all other sums due thereunder have been assigned or are to be assigned to Beneficiary as security for the Loan secured by the Deed of Trust. In the event the Beneficiary notifies Tenant of a default under the Deed of Trust and demands that Tenant pay its rent and all other sums due under the Lease to the Beneficiary Tenant agrees that it will honor such demand and pay its rent and all other sums due under the Lease to the Beneficiary or as otherwise required pursuant to such notice.

8. All notices hereunder shall be deemed to have been duly given if mailed by United States registered or certified mail with return receipt requested, postage prepaid, to Beneficiary at the following address (or at such other address as shall be given in writing by Beneficiary to the Tenant) and shall be deemed complete upon any such mailing:

_____
_____
_____
_____

Attention:_____

with a copy
to: _____
_____
_____

9. This agreement supersedes any inconsistent provisions of the Lease.

10. This Agreement shall inure to the benefit of the parties hereto, their successors and permitted assigns; provided, however, that in the event of the assignment or transfer of the interest of Beneficiary, all obligations and liabilities of Beneficiary under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Beneficiary's interest is assigned or transferred.

11. Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the pirates have executed this Agreement on the date and year first set forth above.

"Beneficiary"

_____
a_____

By: _____
Printed
Name: _____

Title: _____

"Landlord"

_____
a_____

By: _____
Printed
Name: _____

Title: _____

"Tenant"

_____
a_____

By: _____

Printed
Name: _____

Title: _____

EXHIBIT G

RULES & REGULATIONS

1. No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed, or printed or affixed on or to any part of the outside or inside of the Building without the written consent of landlord first had and obtained and Landlord shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of Tenant.

All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of Tenant by a person approved of by Landlord.

Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises; provided, however, that Landlord may furnish end install a Building standard window covering at all exterior windows. Tenant shall not without prior written consent of Landlord cause or otherwise sunscreen any window.

2. The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by any of the tenants or used by them for any purpose other than for ingress and egress from their respective Premises.

3. Tenant shall not alter any lock or install any new or additional locks or any bolts on any doors or windows of the Premises.

4. Tenant shall not allow any chairs with wheels or casters to be used without a carpet protector or chairmat. Failure to follow this requirement which results in carpet damage will result in Tenant being charged for replacement of the carpet.

5. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by Tenant who, or whose employees or invitees shall have caused it,

6. Tenant ahall not overload the floor of the Premises or in any way deface the Premises or any part thereof.

7. No furniture, freight or equipment of any kind shall be brought in the Building without the prior notice to Landlord and all moving of the same into or out of the Building shall he done in such manner as Landlord shall designate. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the times and manner of moving the same in and out of the Building. Safes or other heavy objects shall, if considered necessary by Landlord, stand on supports of such thickness as is necessary by properly distribute the weight. Landlord would not be responsible for loss of or damage to any such safe or property from any cause and all damage done to the Building by movmg or maintaining any such safe or other property shall be repaired at the expense of Tenant.

8. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason or noise, odors and/or vibrations, or interfere in any way with other tenants or those having business therein, nor shall any animals or birds be brought in or kept in or about the Premises or the Building.

9. No cooking, except by microwave oven, shall be done or permitted by any Tenant on the Premises, nor shall the Premises be used for the storage of merchandise, for washing clothes, for lodging, or for any improper, objectionable or immoral purposes.

10. Tenant shall not use or keep in the Premises of the Building any kerosene, gasoline, or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord.

11. Landlord will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of Landlord. The locations of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of landlord.

12. On Saturdays, Sundays, and legal holidays, and on other days between the hours of 6:00 PM and 8:00 AM the following day, access to the Building, or to the halls, corridors, elevators or stairways in the Building, or to the Premises may be refused unless the person seeking excess is known to the person or employee of the Building in charge and has a pass or is properly identified. Landlord shall in no case be liable for damages for any error with regard to admission to or exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserve the right to prevent access to the Building during the continuance of the same by closing of the doors or otherwise, for the safety of the tenants and protection of property in the Building and the Building.

13. Landlord reserves the right to exclude or expel from tbe Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Building.

14. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises wthout the written consent of the Landlord.

15. Landlord shall have the right, exercisable without notice and without liability to Tenant, to change the name end street address of the Building of which the Premises are a part.

16. Tenant shall not disturb, solicit, or canvass any occupant of the Building and shall cooperate to prevent the same.

17. Without the written consent of Landlord, Tenant shall not use the name of the Building in connection with or in promoting or advertising the business of Tenant except as Tenant's address.

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18. Landlord shall have the right to control and operate the public portions of the Building, and the public facilities, and heating and air conditioning, as well as facilities furnished for the common use of the tenants, in such manner as it deems best for the benefit of the tenants generally.

19. All entrance doors in the Premises shall be left locked when the Premises are not in use, and all doors opening to public corridors shall be kept closed except for normal ingress and egress from the Premises.

20. Landlord shall clean the Premises as provided in the Lease, and except with the written consent of Landlord, no person or persons other than those approved by Landlord will be permitted to enter the Building for such purposes. Tenant shall not cause unnecessary labor by reason of Tenant's carelessness and indifference in the preservation of good order and cleanliness. All cardboard boxes must be "broken down", and all styrofoam chips must be bagged or otherwise contained so as not to constitute a nuisance. Landlord shall have no responsibility whatsoever for the theft of or damage to any property of Tenant or its employees resulting from any acts or omissions of janitorial personnel, and Tenant hereby waives any and all claims against Landlord therefor.

21. Landlord reserves the right to amend or supplement the foregoing Rules and Regulations and to adopt and promulgate additional rules and regulations applicable to the Project, the Building and/or the Premises.

22. Neither Landlord nor Landlord's Agents or any other person or entity shall be responsible to Tenant or to any other person for the violation of these or other Rules and regulations by any other tenant or other person. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition precedent, waivable only by Landlord, to Tenant's occupancy of the Premises.

23. Tenant shall be solely responsible for procuring and contracting directly for all water, gas, electricity, sewer service, waste pick-up, janitorial service, telephone and other telecommunications services and all other utilities and services necessary for Tenant's use and occupancy of the Premises, and landlord shall have no responsibility whatsoever to procure or provide any such utilities or services. Tenant shall pay, prior to delinquency, directly to the

appropriate supplier thereof, all charges (including taxes) for all such utilities and services; provided, however, if any such utilities or services are not separately metered, then Landlord, at its election, may (a) periodically charge Tenant, as Additional Rent, a sum equal to Landlord's reasonable estimate of the cost of such utilities or services, or (b) install a separate meter (at Tenant's expense) to measure such utilities or services and periodically charge Tenant, as Additional Rent, a sum equal to the cost of Tenant's use of such utilities or services as measured by such separate meter. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall rent be abated by reason of, any failure or interruption of any such utilities or services. No such failure or interruption shall be deemed an eviction, actual or constructive, of Tenant or entitle Tenant to terminate this Lease or withhold Rent due hereunder.

EXHIBIT H
ACKNOWLEDGEMENT OF EARLY EXPIRATION

The undersigned, NetFlix.com, as tenant ("Tenant"), pursuant to that certain Office Lease ("Lease") dated _____, with BR3 Partners, as landlord ("Landlord"), hereby acknowledges receipt of written notice from Landlord that Landlord is exercising its right to cause the Lease to expire early, on October 31, 2003, pursuant to the terms of Section 4.9 of the Lease. Tenant shall vacate the Premises (as such term is defined in the Lease) on or before October 31, 2003, pursuant to the applicable provisions of the Lease. In the event that Tenant has not vacated the Premises by said date, Tenant acknowledges that it is required to pay, and it shall pay, holdover rent to Landlord at the rate of two hundred percent (200%) of the then Base Monthly Rent (as such term is defined in the Lease) pursuant to Section 15.3 of the Lease.

Date: _____

Netflix.com

By: _____
Name: _____
Its: _____

EXHIBIT I
PARKING

[To be attached with Parking shown as cross-hatched]

[MAP OF PARKING LOT]

University avenue

EXHIBIT J
STOCK WARRANT AGREEMENT

[see attached]

Exhibit 10.8

Lease Agreement
(NNN R&D)
Basic Lease Information

Lease Date:	August 11, 1999
Landlord:	LINCOLN-RECP OLD OAKLAND OPCO, LLC, a Delaware limited liability company
Landlord's Address:	c/o Legacy Partners Commercial, Inc. 101 Lincoln Centre Drive, Fourth Floor Foster City, California 94404-1167
Tenant:	NetFlix.com, a Delaware corporation
Tenant's Address:	Before Commencement Date: 750 University Avenue Los Gatos, California 95032-7606 Attention: Barry McCarthy After Commencement Date: 750 University Avenue Los Gatos, California 95032-7607 Attention: Barry McCarthy
Premises:	Approximately 31,830 rentable square feet as shown on Exhibit A ---
Premises Address:	2219 Old Oakland Road San Jose, California 95131-1402
Building:	Approximately 55,976 rentable square feet
Lot (Building's tax parcel):	APN 237-01-044
Park::	Approximately 138,366 rentable square feet
Term:	November 1, 1999 ("Commencement Date"), through October 31, 2004 ("Expiration Date")
Base Rent ((P)3):	Thirty Six Thousand Six Hundred Five and 00/100

	Dollars (36,605.00)	
Adjustment to Base Rent:	November 1, 2000	$38,196.00
	November 1, 2001	$39,788.00
	November 1, 2002	$41,379.00
	November 1, 2003	$42,971.00
Security Deposit ((P)4):	Two Hundred Nineteen Thousand Six Hundred Thirty and 00/100 Dollars ($219,630.00), subject to the adjustments set forth in Section 4 of the Lease.	

*Tenant's Share of Operating Expenses ((P)6.1): 56.86% of the Building, 23% of the Park *Tenant's Share of Tax Expenses ((P)6.2): 23% of the Park *Tenant's Share of Common Area Utility Costs ((P)7): 56.86% of the Building, 23% of the Park *Tenant's Share of Utility Expenses ((P)17): 23% of the Building *The amount of Tenant's Share of the expenses as referenced above shall be subject to modification as set forth in this Lease.

Permitted Uses ((P)9):	Fulfillment and distribution center of DVD rental including general office and administration, marketing, R&D, storage, distribution and light manufacturing, but only to extent permitted by the City of San Jose and all agencies and governmental authorities having jurisdiction thereof.
Unreserved Parking Spaces:	One hundred twenty-seven (127) non-exclusive and non-designated spaces
Broker ((P)38):	Cornish & Carey Commercial Tenant Grubb & Ellis for Landlord

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Exhibits:	Exhibit A -	Premises, Building, Lot and/or Park
	Exhibit B -	Tenant Improvements
	Exhibit C -	Rules and Regulations
	Exhibit D -	Covenants, Conditions and Restrictions (Intentionally omitted)
	Exhibit E -	Hazardous Materials Disclosure Certificate - Example
	Exhibit F -	Change of Commencement Date - Example
	Exhibit G -	Tenant's Initial Hazardous Materials Disclosure Certificate
	Exhibit H -	Sign Criteria (Intentionally omitted)
	Exhibit I -	Subordination, Non-Disturbance and Attornment Agreement

Table of Contents

LEASE AGREEMENT

Date: This Lease is made and entered into as of the Lease Date set forth on Page 1. The Basic Lease Information set forth on Page 1 and this Lease are and shall be construed as a single instrument.

1. Premises

Landlord hereby leases the Premises to Tenant upon the terms and conditions contained herein. Landlord hereby grants to Tenant a license for the right to use, on a non-exclusive basis, parking areas and ancillary facilities located within the Common Areas of the Park, subject to the terms of this Lease. Landlord and Tenant hereby agree that for purposes of this Lease, as of the Lease

Date, the rentable square footage area of the Premises, the Building, the Lot and the Park shall be deemed to be the number of rentable square feet as set forth in the Basic Lease Information on Page 1. Tenant hereby acknowledges that the rentable square footage of the Premises may include a proportionate share of certain areas used in common by all occupants of the Building and/or the Park (for example an electrical room or telephone room). Tenant further agrees that the number of rentable square feet of the Building, the Lot and the Park may subsequently change after the Lease Date commensurate with any modifications to any of the foregoing by Landlord, and Tenant's Share shall accordingly change.

2. Adjustment of Commencement Date; Condition of the Premises

2.1 If Landlord cannot deliver possession of the Premises on the Commencement Date, Landlord shall not be subject to any liability nor shall the validity of the Lease be affected; provided, the Lease Term and the obligation to pay Rent shall commence on the date possession is tendered in the condition required under this Lease (including the substantial completion of the Tenant Improvements), with all governmental permits required for such improvements, and the Base Rent Adjustment dates and the Expiration Date shall be extended commensurately. In the event the Commencement Date and/or the Expiration Date of this Lease is other than the Commencement Date and/or Expiration Date specified in the Basic Lease Information, as the case may be, Landlord and Tenant shall execute a written amendment to this Lease, substantially in the form of Exhibit F hereto, wherein the parties shall specify the actual commencement date,

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expiration date and the date on which Tenant is to commence paying Rent. The word "Term" whenever used herein refers to the initial term of this Lease and any extension thereof. By taking possession of the Premises, Tenant shall be deemed to have accepted the Premises in good condition and state of repair. Tenant hereby acknowledges and agrees that neither Landlord nor Landlord's agents or representatives has made any representations or warranties as to the suitability. safety or fitness of the Premises for the conduct of Tenant's business, Tenant's intended use of the Premises or for any other purpose. Landlord shall deliver possession of the Premises with the roof, HVAC system, electrical, plumbing and lighting in good working condition, all carpets cleaned, walls and ceiling in good repair "like new". Landlord shall repair, at its sole cost and expense, after receipt of Tenant's written notice thereof, which notice must be delivered to Landlord within the first ninety (90) days of the term of this Lease, any (i) defects in the Premises, and (ii) any mechanical and electrical systems serving the Premises which are not in good working order to the extent Tenant has not caused such systems to not be in good working order. If Tenant fails to timely deliver to Landlord any such written notice of the aforementioned defects or deficiencies within said 90-day period, Landlord shall have no obligation to perform any such work thereafter, except as specifically provided in this Lease.

Notwithstanding the foregoing to the contrary, (A) in the event that for reasons other than the occurrence of a Force Majeure Delay (as hereinafter defined) or a Tenant Delay (as hereinafter defined) the substantial completion of the Tenant Improvements ("T.I. Completion") has not occurred by the date which is one hundred twenty (120) days after the date the Lease is fully executed ("Termination Date"), Tenant may elect to terminate the Lease. Termination of the Lease by Tenant as provided for herein shall be the sole and exclusive remedy of Tenant for Landlord's failure to deliver the Premises. Tenant shall exercise the right to terminate provided

for herein by giving Landlord written notice of its intent to so terminate ("Termination Notice"). The Termination Notice shall be given, if at all, on or before the date which is five (5) days after the Termination Date. Termination of the Lease shall he effective sixty (GO) days after Landlord's receipt of the Termination Notice. In the event that Tenant gives the Termination Notice, and in the further event that during such sixty (60) day period, the TI Completion Date occurs, the Tenant shall not be entitled to terminate the Lease as provided for herein. For purposes of this paragraph the term "Force Majeure Delay" shall mean any actual delay beyond the reasonable control of Landlord in completion of the Tenant Improvements which is not a Tenant Delay and which is caused by, without limitation, any one or more of the following: (a) wars; (b) fire; (c) earthquake, flood or other natural disaster, (d) unusual and unforeseeable delay not within the reasonable control of Landlord: (e) casualties; (f) other acts of God; or (g) governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or

authorizations), or injunction, permit appeal or court order requiring cessation of construction taking place in the Premises.

The Term "Tenant Delay" shall mean any delay in completion of the Tenant Improvements resulting from any or all of the following: (i) Tenant's failure to timely perform any of its obligations under the Lease, including any failure to complete on or before the date due thereof, any actual item which is Tenant's responsibility to complete or perform; (ii) Tenant's delay in approving plans, specifications, drawings, and any other documents setting forth and/or describing the Tenant Improvements, including, without limitation, the Final Drawings, beyond those periods of time permitted by the terms of the Lease;
(iii) Tenant's changes to Landlord and Tenant approved plans, specifications, drawings or any other documents describing and/or depicting the Tenant Improvements; (iv) Tenant's request for materials, finishes, or installations which are not readily available or which are incompatible with Landlord's standard materials, finishes or installations for the Premises; (v) Tenant's use or occupancy of the Premises during the construction of the Tenant Improvements or any act or failure to act by Tenant in connection with its use or occupancy of the Premises during the construction of the Tenant Improvements. Upon termination of the Lease by Tenant pursuant to the terms of this paragraph, Landlord shall promptly return all prepaid Rent to Tenant.

2.2 In the event Landlord permits Tenant to occupy the Premises prior to the Commencement Date, such occupancy shall be at Tenant's sole risk and subject to all the provisions of this Lease, including, but not limited to, the requirement to pay Rent and the Security Deposit, and to obtain the insurance required pursuant to this Lease and to deliver insurance certificates as required herein. Landlord shall permit Tenant to enter the Premises following full execution of this Lease, prior to the Commencement Date, for the purpose of installing its furniture, equipment, data, telecommunications and cabling systems and trade fixtures. Such use of the Premises shall be subject to all of the provisions the Lease, except the obligation to pay any Rent thereunder. In addition to the foregoing, Landlord shall have the right to impose such additional conditions on Tenant's early entry as Landlord shall deem appropriate. Landlord shall not allow any other

tenant to occupy the portion of the Building adjacent to the Premises until the demising wall is installed.

3. Rent

On the date that Tenant executes this Lease, Tenant shall deliver to Landlord the original executed Lease, the Base Rent (which shall be applied against the Rent payable for the first month Tenant is required to pay Base Rent), the Security Deposit, and all insurance certificates evidencing the insurance required to be obtained by Tenant under Section 12 of this Lease. Tenant agrees to pay Landlord, without prior notice or demand, or abatement, offset, deduction or claim, the Base Rent specified in the Basic Lease Information, payable in advance at Landlord's address specified in the Basic Lease Information on the Commencement Date and thereafter on the first (1st) day of each month throughout the balance of the Term of the Lease. In addition to the Base Rent set forth in the Basic Lease Information, Tenant shall pay Landlord in advance on the Commencement Date and thereafter on the first (1st) day of each month throughout the balance of the Term of this Lease, as Additional Rent, Tenant's Share of Operating Expenses, Tax Expenses, Common Area Utility Costs, and Utility Expenses. Tenant shall also pay to Landlord as Additional Rent hereunder, immediately on Landlord's demand therefor, any and all costs and expenses incurred by Landlord to enforce the provisions of this Lease, including, but not limited to, costs associated with the delivery of notices, delivery and recordation of notice(s) of default, attorneys' fees, expert fees, court costs and filing fees (collectively, the "Enforcement Expenses"). The term "Rent" whenever used herein refers to the aggregate of all these amounts. If Landlord permits Tenant to occupy the Premises without requiring Tenant to pay rental payments for a period of time, the waiver of the requirement to pay rental payments shall only apply to waiver of the Base Rent and Tenant shall otherwise perform all other obligations of Tenant required hereunder. The Rent for any fractional part of a calendar month at the commencement or termination of the Lease term shall be a prorated amount of the Rent for a full calendar month based upon a thirty (30) day month. The prorated Rent shall be paid on the Commencement Date and the first day of the calendar month in which the date of termination occurs, as the case may be.

4. Security Deposit

Upon Tenant's execution of this Lease, Tenant shall deliver to Landlord, as a Security Deposit for the performance by Tenant of its obligations under this Lease, the amount specified in the Basic Lease Information. If Tenant is in default, Landlord may, but without obligation to do so, use the Security Deposit, or any portion thereof, to cure the default or to compensate Landlord for all damages sustained by Landlord resulting from Tenant's default, including, but not limited to the Enforcement Expenses. Tenant shall, immediately on demand, pay to Landlord a sum equal to the portion of the Security Deposit so applied or used so as to replenish the amount of the Security Deposit held to increase such deposit to the amount initially deposited with Landlord. As soon as practicable after the termination of this Lease, Landlord shall return the Security Deposit to Tenant, less such amounts as are reasonably necessary, as determined solely by Landlord, to remedy Tenant's default(s) hereunder or to

otherwise restore the Premises to a clean and safe condition, reasonable wear and tear excepted. If the cost to restore the Premises exceeds the amount of the Security Deposit, Tenant shall promptly deliver to Landlord any and all of such excess sums as reasonably determined by Landlord. Landlord shall not be required to keep the Security Deposit separate from other funds, and, unless otherwise required by law, Tenant shall not be entitled to interest on the Security Deposit. In no event or circumstance shall Tenant have the right to any use of the Security Deposit and, specifically, Tenant may not use the Security Deposit as a credit or to otherwise offset any payments required hereunder, including, but not limited to, Rent or any portion thereof. Notwithstanding the foregoing, on the third anniversary of the Commencement Date of the Lease, or following Tenant's public offering of its stock and subsequent achievement of a net worth of at least Forty Million Dollars ($40,000,000.00) and such net worth is then sustained for three consecutive financial quarters and substantiated by financial reports provided by Tenant to Landlord, which ever event occurs sooner, and, so long as Tenant has not been in material default of the Lease beyond any applicable cure period, the Security Deposit shall be reduced to Forty Two Thousand Nine Hundred Seventy-One and OO/lOO Dollars ($42,971.00). In the event that the Security Deposit is reduced, as set forth herein, Landlord and Tenant shall execute an Amendment to the Lease signifying such reduction in the Security Deposit and the excess amount of Security Deposit held by Landlord shall be immediately returned to Tenant.

5. TENANT IMPROVEMENTS

Tenant hereby accepts the Premises as suitable for Tenant's intended use and as being in good operating order, condition and repair, "AS IS", except as specified in Exhibit B attached hereto or elsewhere expressed in this Lease. Landlord or Tenant, as the case may be, shall install and construct the Tenant Improvements (as such term is defined in Exhibit B hereto) in accordance with the terms, conditions, criteria and provisions set forth in Exhibit B. Landlord and Tenant hereby agree to and shall be bound by the terms, conditions and provisions of Exhibit B. Tenant acknowledges and agrees that neither Landlord nor any of Landlord's agents, representatives or employees has made any representations as to the suitability, fitness or condition of the Premises for the conduct of Tenant's business or for any other purpose, including without limitation, any storage incidental thereto. Any exception to the foregoing provisions must be made by express written agreement by both parties.

6. ADDITIONAL RENT

It is intended by Landlord and Tenant that this Lease be a "triple net lease." The costs and expenses described in this Section 6 and all other sums, charges, costs and expenses specified in this Lease other than Base Rent are to be paid by Tenant to Landlord as additional rent (collectively, "Additional Rent").

6.1 Operating Expenses: In addition to the Base Rent set forth in
Section 3, Tenant shall pay Tenant's Share, which is specified in the Basic Lease Information, of all Operating Expenses as Additional Rent. The term "Operating Expenses" as used herein shall mean the total amounts paid or payable by Landlord in connection with the ownership,

maintenance, repair and operation of the Premises, the Building and the Lot, and where applicable, of the Park referred to in the Basic Lease Information. The amount of Tenant's Share of Operating Expenses shall be reviewed from time to time by Landlord and shall be subject to modification by Landlord if there is a change in the rentable square footage of the Premises, the Building and/or the Park. These Operating Expenses may include, but are not limited to:

6.1.1 Landlord's cost of repairs to, and maintenance of, the roof, the roof membrane and the exterior walls of the Building;

6.1.2 Landlord's cost of maintaining the outside paved area, landscaping and other common areas for the Park. The term "Common Areas" shall mean all areas and facilities within the Park exclusive of the Premises and the other portions of the Park leasable exclusively to other tenants. The Common Areas include, but are not limited to, interior lobbies, mezzanines, parking areas, access and perimeter roads, sidewalks, rail spurs, landscaped areas and similar areas and facilities;

6.1.3 Landlord's annual cost of insurance insuring against fire and extended coverage (including, if Landlord elects, "all risk" or "special purpose" coverage) and all other insurance, including, but not limited to, earthquake, flood and/or surface water endorsements for the Building, the Lot and the Park (including the Common Areas), rental value insurance against loss of Rent in an amount equal to the amount of Rent for a period of at least six (6) months commencing on the date of loss, and subject to the provisions of
Section 27 below, any deductible;

6.1.4 Landlord's cost of: (i) modifications and/or new improvements to the Building, the Common Areas and/or the Park occasioned by any rules, laws or regulations effective subsequent to the date on which the Building was originally constructed; (ii) reasonably necessary replacement improvements to the Building, the Common Areas and the Park after the Lease Date; and (iii) new

improvements to the Building, the Common Areas and/or the Park that reduce operating costs (to the extent of the reduction) or improve life/safety conditions, all as reasonably determined by Landlord, provided, however, if any of the foregoing are in the nature of capital improvements, then the cost of such capital improvements shal1 be amortized over the life of the improvement at an interest rate reasonably determined by Landlord, and Tenant shall pay Tenant's Share of the monthly amortized portion of such costs (including interest charges) as part of the Operating Expenses herein;

6.1.5 If Landlord elects to so procure, Landlord's cost of preventative maintenance, and repair contracts including, but not limited to, contracts for elevator systems and heating, ventilation and air conditioning systems, lifts for disabled persons, and trash or refuse collection;

6.1.6 Landlord's cost of security and fire protection services for the Building and/or the Park, as the case may be, if in Landlord's sole discretion such services are provided;

6.1.7 Landlord's cost for the maintenance and repair of any rail spur and rail crossing, and for the creation and negotiation of, and pursuant to, any rail spur or track agreements, licenses, easements or other similar undertakings;

6.1.8 Landlord's cost of supplies, equipment, rental equipment and other similar items used in the operation and/or maintenance of the Park;

6.1.9 Landlord's cost for the repairs and maintenance items set forth in Section 11.2 below; and

6.1.10 Landlord's cost for the management and administration of the Premises, the Building and/or Park or any part thereof, including, without limitation, a property management fee, accounting, auditing, billing, postage, salaries and benefits for clerical and supervisory employees, whether located on the Park or off-site, payroll taxes and legal and accounting costs and all fees, licenses and permits related to the ownership, operation and management of the Park in an amount not to exceed three percent (3%) of the gross rents of the Park for the calendar year, or the amounts charged by comparable buildings in the area, whichever is less.

Notwithstanding anything to the contrary herein, Operating Expenses shall not include and Tenant shall in no event have any obligation to perform or to pay directly, or to reimburse Landlord for, any of the following repairs, maintenance, improvements, replacements, premiums, claims, charges, costs and expenses (collectively, "Costs"): (a) Costs occasioned by casualties excluding any deductibles or by the exercise of the power of eminent domain to the extent insurance proceeds subject to Section 24 of this Lease or a condemnation award is actually received by Landlord for such purposes; (b) Costs of any renovation, improvement or redecorating of any other premises in the Park; (c) Costs, including commissions, incurred in connection with negotiations or disputes with any other occupant (or prospective occupant) of the Park; (d) expense reserves; (e) interest, charges and fees incurred on debt; (f) Costs associated with the investigation, presence and/or remediation of Hazardous Materials (hereafter defined) present in, on or about the Premises, the Building or the Park, unless such costs and expenses are the responsibility of Tenant as provided in Section 29 of this Lease, in which event such costs and expenses shall be paid solely by Tenant in accordance with the provisions of Section 29 of this Lease; and (g) Costs incurred by Landlord with respect to the performance of its obligations in Section 11.3 below.

6.2 Tax Expenses: In addition to the Base Rent set forth in Section 3, Tenant shall pay its share, which is specified in the Basic Lease Information, of all real property taxes applicable to the land and improvements included within the Lot on which the Premises are situated and one hundred percent (100%) of all personal property taxes now or hereafter assessed or levied against the Premises or Tenant's personal property. The amount of Tenant's Share of Tax Expenses shall be reviewed from time to time by Landlord and shall be subject to modification by Landlord if there is a change in the rentable square footage of the Premises, the Building and/or the Park. Tenant shall also pay one hundred percent (100%) of any increase in real property taxes attributable, in Landlord's sole discretion, to any and all alterations, Tenant Improvements or other

improvements of any kind, which are above standard improvements customarily installed for similar buildings located within the Building or the Park (as applicable), whatsoever placed in, on or about the Premises for the benefit of, at the request of, or by Tenant. The term "Tax Expenses" shall mean and include, without limitation, any form of tax and assessment (general, special, supplemental, ordinary or extraordinary), commercial rental tax, payments under any improvement bond or bonds, license fees, license tax, business license fee, rental tax, transaction tax, levy, or penalty imposed by authority having the direct or indirect power of tax (including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement district thereof) as against any legal or equitable interest of Landlord in the Premises, the Building, the Lot or the Park, as against Landlord's right to rent, or as against Landlord's business of leasing the Premises or the occupancy of Tenant or any other tax, fee, or excise, however described, Including, but not limited to, any value added tax, or any tax imposed in substitution (partially or totally) of any tax previously included within the definition of real property taxes, or any additional tax the nature of which was previously included within the definition of real property taxes. The term "Tax

Expenses" shall not include any franchise, estate, inheritance, net income, or excess profits tax imposed upon Landlord, any assessments in excess of the amount which would be payable if such tax or assessment expense were paid in installments over the longest permitted term, any increases in taxes due to the improvement of the Park for the sole use of other occupants.

6.3 Payment of Expenses: Landlord shall estimate Tenant's Share of the Operating Expenses and Tax Expenses for the calendar year in which the Lease commences. Commencing on the Commencement Date, one-twelfth (l/12th) of this estimated amount shall be paid by Tenant to Landlord, as Additional Rent, and thereafter on the first (1st) day of each month throughout the remaining months of such calendar year. Thereafter, Landlord may estimate such expenses as of the beginning of each calendar year during the Term of this Lease and Tenant shall pay one-twelfth (1/12th) of such estimated amount as Additional Rent hereunder on the first (1st) day of each month during such calendar year and for each ensuing calendar year throughout the Term of this Lease. Tenant's obligation to pay Tenant's Share of Operating Expenses and Tax Expenses shall survive the expiration or earlier termination of this Lease.

6.4 Annual Reconciliation: By June 30th of each calendar year, or as soon thereafter as reasonably possible, Landlord shall endeavor to furnish Tenant with an accounting of actual Operating Expenses and Tax Expenses. Within thirty (30) days of Landlord's delivery of such accounting, Tenant shall pay to Landlord the amount of any underpayment. Notwithstanding the foregoing, failure by Landlord to give such accounting by such date shall not constitute a waiver by Landlord of its right to collect any of Tenant's underpayment at any time. Landlord shall credit the amount of any overpayment by Tenant toward the next estimated monthly installment(s) falling due, or where the Term of the Lease has expired, refund the amount of overpayment to Tenant. If the Term of the Lease expires prior to the annual reconciliation of expenses Landlord shall have the right to reasonably estimate Tenant's Share of such expenses, and if Landlord determines that an underpayment is due, Tenant hereby agrees that Landlord

shall be entitled to deduct such underpayment from Tenant's Security Deposit. If Landlord reasonably determines that an overpayment has been made by Tenant, Landlord shall refund said overpayment to Tenant as soon as practicable thereafter. Notwithstanding the foregoing, failure of Landlord to accurately estimate Tenant's Share of such expenses or to otherwise perform such reconciliation of expenses, including without limitation, Landlord's failure to deduct any portion of any underpayment from Tenant's Security Deposit, shall not constitute a waiver of Landlord's right to collect any of Tenant's underpayment at any time during the Term of the Lease or at any time after the expiration or earlier termination of this Lease.

6.5 Audit: After delivery to Landlord of at least thirty (30) days prior written notice, Tenant, at its sole cost and expense through any accountant designated by it, shall have the right to examine and/or audit the books and records evidencing such costs and expenses for the previous one (1) calendar year, during Landlord's reasonable business hours but not more frequently than once during any calendar year. The results of any such audit (and any negotiations between the parties related thereto) shall be maintained strictly confidential by Tenant and its accounting firm and shall not be disclosed, published or otherwise disseminated to any other party other than to Landlord and its authorized agents. Landlord and Tenant shall use their best efforts to cooperate in such negotiations and to promptly resolve any discrepancies between Landlord and Tenant in the accounting of such costs and expenses.

7. Utilities

Utility Expenses, Common Area Utility Costs and all other sums or charges set forth in this Section 7 are considered part of Additional Rent. In addition to the Base Rent set forth in Section 3 hereof, Tenant shall pay the cost of all water, sewer use, sewer discharge fees and sewer connection fees, gas, heat, electricity, refuse pickup, janitorial service, telephone and other utilities billed or metered separately to the Premises and/or Tenant. Tenant shall also pay Tenant's Share of any assessments or charges for utility or similar purposes included within any tax bill for the Lot on which the Premises are situated, including, without limitation, entitlement fees, allocation unit fees, and/or any similar fees or charges, and any penalties related thereto. For any such utility fees or use charges that are not billed or metered separately to Tenant, including without limitation, water and refuse pick up charges, Tenant shall pay to Landlord, as Additional Rent, without prior notice or demand, on the Commencement Date and thereafter on the first (1st) day of each month throughout the balance of the Term of this Lease the amount which is attributable to Tenant's use of the utilities or similar services, as reasonably estimated and determined by Landlord based upon factors such as size of the Premises and intensity of use of such utilities by Tenant such that Tenant shall pay the portion of such charges reasonably consistent with Tenant's use of such utilities and similar services ("Utility Expenses"). If Tenant disputes any such estimate or determination, then Tenant shall either pay the estimated amount or cause the Premises to be separately metered at Tenant's sole expense. In addition, Tenant shall pay to Landlord Tenant's Share of any Common Area utility costs, fees, charges or expenses ("Common Area Utility Costs"). Tenant shall pay to Landlord one-twelfth (1/12th) of the estimated amount of Tenant's Share of the Common Area Utility Costs on the Commencement Date and thereafter on the first (1st) day of each month throughout the balance of the Term of this Lease and any reconciliation thereof shall be substantially in the same

manner as specified in Section 6.4 above. The amount of Tenant's Share of Common Area Utility Costs shall be reviewed from time to time by Landlord and shall be subject to modification by Landlord if there is a change in the rentable square footage of the Premises, the Building and/or the Park. Tenant acknowledges that the Premises may become subject to the rationing of utility services or restrictions on utility use as required by a public utility company, governmental agency or other similar entity having jurisdiction thereof. Notwithstanding any such rationing or restrictions on use of any such utility services, Tenant acknowledges and agrees that its tenancy and occupancy hereunder shall be subject to such rationing restrictions as may be imposed upon Landlord, Tenant, the Premises, the Building or the Park, and Tenant shall in no event be excused or relieved from any covenant or obligation to be kept or performed by Tenant by reason of any such rationing or restrictions. Tenant further agrees to timely and faithfully pay, prior to delinquency, any amount, tax, charge, surcharge, assessment or imposition levied, assessed or imposed upon the Premises, or Tenant's use and occupancy thereof. Notwithstanding anything to the contrary contained herein, if permitted by applicable Laws, Landlord shall have the right at any time and from time to time during the Term of this Lease to either contract for service from a different company or companies (each such company shall be referred to herein as an "Alternate Service Provider") other than the company or companies presently providing electricity service for the Building or the Park (the "Electric Service Provider") or continue to contract for service from the Electric Service Provider, at Landlord's sole discretion. Tenant hereby agrees to cooperate with Landlord, the Electric Service Provider, and any Alternate Service Provider at all times and, as reasonably necessary, shall allow Landlord, the Electric Service Provider, and any Alternate Service Provider reasonable access to the Building's electric lines, feeders, risers, wiring, and any other machinery within the Premises.

8. Late Charges

Any and all sums or charges set forth in this Section 8 are considered part of Additional Rent. Tenant acknowledges that late payment (the fifth day of each month or any time thereafter) by Tenant to Landlord of Base Rent, Tenant's Share of Operating Expenses, Tax Expenses, Common Area Utility Costs, and Utility Expenses or other sums due hereunder, will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any note secured by any encumbrance against the Premises, and late charges and penalties due to the late payment of real property taxes on the Premises . Therefore, if any installment of Rent or any other sum due from Tenant is not received by Landlord when due, Tenant shall promptly pay to Landlord all of the following, as applicable: (a) an additional sum equal to ten percent (10%) of such delinquent amount (except on the first occasion that a late fee is charged in which case the additional sum shall be equal to eight percent (8%) plus interest on such delinquent amount at the rate equal to the prime rate plus three percent (3%) for the time period such payments are delinquent as a late charge for every month or portion thereof that such sums remain unpaid, (b) the amount of seventy-five dollars ($75) for each three-day notice prepared for, or served on, Tenant, (c) the amount of fifty dollars ($50) relating to checks for which there are not sufficient

funds. Notwithstanding the foregoing, no late charge shall be due if Tenant has not been delinquent beyond the grace period in its payment of rent owed under this Lease during the one (1) year period preceding the rent delinquency in question. If Tenant delivers to Landlord a check for which there are not sufficient funds, Landlord may, at its sole option, require Tenant to replace such check with a cashier's check for the amount of such check. The parties agree that this late charge and the other charges referenced above represent a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge or other charges shall not constitute a waiver by Landlord of Tenant's default with respect to the delinquent amount, nor prevent Landlord from exercisng any of the other rights and remedies available to Landlord for any other breach of Tenant under this Lease. If a late charge or other charge becomes payable for any three (3) installments of Rent within any twelve (12) month period, then Landlord, at Landlord's sole option, can either require the Rent be paid quarterly in advance, or be paid monthly in advance by cashier's check or by electronic funds transfer.

9. Use of Premises

9.1 Compliance with Laws, Recorded Matters, and Rules and Regulations: The Premises are to be used solely for the purposes and uses specified in the Basic Lease Information and for no other uses or purposes without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed so long as the proposed use (i) does not involve the use of Hazardous Materials other than as expressly permitted under the provisions of Section 29 below, (ii) does not require any additional parking in excess of the parking spaces already licensed to Tenant pursuant to the provisions of Section 24 of this Lease, and
(iii) is compatible and consistent with the other uses then being made in the Park and in other similar types of buildings in the vicinity of the Park, as reasonably determined by Landlord. The use of the Premises by Tenant and its employees, representatives, agents, invitees, licensees, subtenants, customers or contractors (coliectiveiy, "Tenant's Representatives") shall subject to, and at all times in compliance with,
(a) any and all applicable laws, ordinances, statutes, orders and regulations as same exist from time to time (collectively, the "Laws"),
(b) any and all documents, matters or instruments, including without limitation, any declarations of covenants,

conditions and restrictions, and any supplements thereto, each of which has been or hereafter is recorded in any official or public records with respect to the Premises, the Building, the Lot and/or the Park, or any portion thereof (collectively, the "Recorded Matters"), and (c) any and all rules and regulations set forth in Exhibit C, attached to and made a part of this Lease, and any other reasonable rules and regulations promulgated by Landlord now or hereafter enacted relating to parking and the operation of the Premises, the Building and the Park (collectively, the "Rules and Regulations"). Tenant agrees to, and does hereby, assume full and complete responsibility to ensure that the Premises are adequate to fully meet the needs and requirements of Tenant's intended operations of its business within the Premises, and Tenant's use of the Premises and that same are in compliance with all applicable Laws throughout the Term of this

Lease. Notwithstanding the foregoing, Tenant shall be solely responsible for the payment of all costs, fees and expenses associated with any modifications, improvements or alterations to the Premises, Building, the Common Areas and/or the Park occasioned by the enactment of, or changes to, any Laws arising from Tenant's particular use of the Premises or alterations, improvements or additions made to the Premises regardless of when such Laws became effective.

9.2 Prohibition on Use: Tenant shall not use the Premises or permit anything to be done in or about the Premises nor keep or bring anything therein which will in any way conflict with any of the requirements of the Board of Fire Undewriters or similar body now or hereafter constituted or in any way increase the existing rate of or affect any policy of fire or other insurance upon the Building or any of its contents, or cause a cancellation of any insurance policy. No auctions may be held or otherwise conducted in, on or about the Premises, the Building, the Lot or the Park without Landlord's written consent thereto, which consent may be given or withheld in Landlord's sole discretion. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of Landlord, other tenants or occupants of the Building, other buildings in the Park, or other persons or businesses in the area, or injure or annoy other tenants or use or allow the Premises to be used for any unlawful or objectionable purpose, as determined by Landlord, in its reasonable discretion, for the benefit, quiet enjoyment and use by Landlord and all other tenants or occupants of the Building or other buildings in the Park; nor shall Tenant cause, maintain or permit any private or public nuisance in, on or about the Premises, Building, Park and/or the Common Areas, including, but not limited to, any offensive odors, noises, fumes or vibrations. Tenant shall not damage or deface or otherwise commit any waste in, upon or about the Premises. Tenant shall not place or store, nor permit any other person or entity to place or store, any property, equipment, materials, supplies, personal property or any other items or goods outside of the Premises for any period of time. Tenant shall not permit any animals, including, but not limited to, any household pets, to be brought or kept in or about the Premises. Tenant shall place no loads upon the floors, walls, or ceilings in excess of the maximum designed load permitted by the applicable Uniform Building Code or which may damage the Building or outside areas; nor place any harmful liquids in the drainage systems; nor dump or store waste materials, refuse or other such materials, or allow such to remain outside the Building area, except for any non-hazardous or non-harmful materials which may be stored in refuse dumpsters or in any enclosed trash areas provided. Tenant shall honor the terms of all Recorded Matters relating to the Premises, the Building, the Lot and/or the Park. Tenant shall honor the Rules and Regulations. If Tenant fails to comply with such Laws, Recorded Matters, Rules and Regulations or the provisions of this Lease, Landlord shall have the right to collect from Tenant a reasonable sum as a penalty, in addition to all rights and remedies of Landlord hereunder including, but not limited to, the payment by Tenant to Landlord of all Enforcement Expenses and Landlord's costs and expenses, if any, to cure any of such failures of Tenant, if Landlord, at its sole option, elects to undertake such cure.

10. Alterations and Additions; and Surrender of Premises

10.1 Alterations and Additions: Tenant shall not install any signs, fixtures, improvements, nor make or permit any other alterations or additions to the Premises without the prior written consent of Landlord which shall not be unreasonably withheld. If any such alteration or addition

is expressly permitted by Landlord, Tenant shall deliver at least fifteen (15) days prior notice to Landlord, from the date Tenant intends to commence construction, sufficient to enable Landlord to post a Notice of Non-Responsibility. In all events, Tenant shall obtain all permits or other governmental approvals prior to commencing any of such work and deliver a copy of same to Landlord. All alterations and additions shall be installed by a licensed contractor approved by Landlord, at Tenant's sole expense in compliance with all applicable Laws (including, but not limited to, the ADA as defined herein), Recorded Matters, and Rules and Regulations. Tenant shall keep the Premises and the property on which the Premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. As a condition to Landlord's consent to the installation of any fixtures, additions or other improvements, Landlord may require Tenant to post and obtain a completion and indemnity bond for up to one hundred percent (100%) of the cost of the work. Tenant may request, upon submission of its written request to complete such alterations or additions, that Landlord inform Tenant at that time if Tenant will be required to remove such alterations or additions, upon Tenant's vacancy of the Premises, Landlord may, but shall have no obligation to, provide Landlord's determination, along with approval of the requested alterations or additions, as to whether such alterations or additions shall be required to be removed upon Tenant's vacancy.

Notwithstanding anything to the contrary contained herein, Tenant may install, make and permit to be made improvements, alterations and additions to the Premises without first obtaining Landlord's written consent thereto, provided that such improvements, alterations or additions to the Premises
(a) are not structural and do not affect the structural integrity of the Premises and/or the Building, and/or (b) do not require the issuance of a building permit by the City of San Jose, and/or (c) do not require penetrations to the roof of the Building, and provided further that the cumulative cost of all such improvements, alterations and additions does not exceed ten thousand and 00/100 dollars (l0,000.00) in the aggregate over each twelve month period of the Term ("Permitted Improvements"). In all events, Tenant shall be required to submit to Landlord, at least ten (10) business days prior to commencement of any improvements, written notification of Tenant's intention to complete improvements along with all plans, specifications, or construction drawings of such improvements or alterations, Tenant shall cause all Permitted Improvements to be installed by a licensed contractor and Tenant shall keep the Premises and the property on which the Premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. Upon Landlord's request, at Tenant's sole expense, all such Permitted Improvements installed by Tenant shall be removed and the Premises shall be restored to its original condition at the expiration or earlier termination of this Lease.

10.2 Surrender of Premises: Upon the termination of this Lease, whether by forfeiture, lapse of time or otherwise, or upon the termination of Tenant's right to possession of the Premises, Tenant will at once surrender and deliver up the Premises, together with the fixtures (other than trade fixtures), additions and improvements which Landlord has notified Tenant, in writing, that Landlord will require Tenant not to remove, to Landlord in good condition and repair (including,

but not limited to, replacing all light bulbs and ballasts not in good working condition) and in the condition in which the Premises existed as of the Commencement Date, except for reasonable wear and tear, and casualty and condemnation, subject to the provisions of Section 27 and Section 28. Reasonable wear and tear shall not include any damage or deterioration to the floors of the Premises arising from the use of forklifts in, on or about the Premises (including, without limitation, any marks or stains of any portion of the floors), and any damage or deterioration that would have been prevented by proper maintenance by Tenant or Tenant otherwise performing all of its obligations under this Lease. Upon such termination of this Lease, Tenant shall remove all tenant signage, trade fixtures, furniture, furnishings, personal property, and any additions, and improvements unless Landlord requests, in writing, that Tenant not remove some or all of such fixtures (other than trade fixtures), additions or improvements installed by, or on behalf of Tenant or situated in or about the Premises. By the date which is twenty (20) days prior to such termination of this Lease, Landlord shall notify Tenant in writing of those fixtures (other than trade fixtures), alterations, additions and other improvements which Landlord shall require Tenant not to remove from the Premises. Tenant shall repair any damage caused by the installation or removal of such signs, trade fixtures, furniture, furnishings, fixtures, additions and improvements which are to be removed from the Premises by Tenant hereunder. If Landlord fails to so notify Tenant at least twenty
(20) days prior to such termination of this Lease, then Tenant shall remove all tenant signage, alterations, furniture, furnishings, trade fixtures, additions and other improvements (other than the Tenant Improvements) installed in or about the Premises by, or on behalf of Tenant. Tenant shall ensure that the removal of such items and the repair of the Premises will be completed prior to such termination of this Lease.

11. Repairs and Maintenance

11.1 Tenant's Repairs and Maintenance Obligations: Except for those portions of the Building to be maintained by Landlord, as provided in Sections 11.2 and 11.3 below, Tenant shall, at Tenant's sole cost and expense, keep and maintain the Premises and the adjacent dock and staging areas in good, clean and safe condition and repair to the reasonable satisfaction of Landlord including, but not limited to, repairing any damage caused by Tenant or Tenant's Representatives and replacing any property so damaged by Tenant or Tenant's Representatives. Without limiting the generality of the foregoing, Tenant shall be solely responsible for maintaining, repairing and replacing (a) components of all mechanical systems, heating, ventilation and air conditioning systems exclusively serving the Premises, except in the event that the entire replacement of such systems is necessary, then such cost shall be subject to Section 6.1.4 of the Lease, (b) all plumbing, electrical wiring and equipment serving the Premises, (c) all interior lighting (including, without limitation, light bulbs and/or ballasts) and exterior lighting serving the Premises or adjacent to the Premises, (d) all glass, windows, window frames, window casements, skylights, interior and exterior doors, door frames and door closers, (e) all roll-up doors, ramps and dock equipment, including without limitation, dock bumpers, dock plates, dock seals, dock levelers and dock lights, (f) all tenant signage, (g) lifts for disabled persons serving the Premises, (h) sprinkler systems, fire protection systems and security systems, (i) all partitions, fixtures, equipment. Interior painting, and interior walls and floors of the Premises and every part thereof (including, without limitation, any demising walls contiguous to any portion of the Premises).

11.2 Reimbursable Repairs and Maintenance Obligations: Subject to the provisions of Sections 6 and 9 of this Lease and except for (i) the obligations of Tenant set forth in Section 11.1 above, (ii) the obligations of Landlord set forth in Section 11.3 below, and (iii) the repairs rendered necessary by

the intentional or negligent acts or omissions of Tenant or any of Tenant's Representatives, Landlord agrees, at Landlord's expense, subject to reimbursement pursuant to Section 6 above, to keep in good repair the plumbing and mechanical systems exterior to the Premises, any rail spur and rail crossing, the roof, roof membranes, exterior walls of the Building, signage (exclusive of tenant signage), and exterior electrical wiring and equipment, exterior lighting, exterior glass, exterior doors/entrances and door closers, exterior window casements, exterior painting of the Building (exclusive of the Premises), and underground utility and sewer pipes outside the exterior walls of the Building. For purposes of this Section 11.2, the term "exterior" shall mean outside of and not exclusively serving the Premises. Unless otherwise notified by Landlord, in writing, that Landlord has elected to procure and maintain the following described contract(s), Tenant shall procure and maintain (a) the heating, ventilation and air conditioning systems preventative maintenance and repair contract(s); such contract(s) to be on a bimonthly or quarterly basis, as reasonably determined by Landlord, and (b) the fire and sprinkler protection services and preventative maintenance and repair contract(s) (including, without limitation, monitoring services); such contract(s) to be on a bi-monthly or quarterly basis, as reasonably determined by Landlord. Landlord reserves the right, but without the obligation to do so, to procure and maintain (i) the heating, ventilation and air conditioning systems preventative maintenance and repair contract(s), and/or (ii) the fire and sprinkler protection services and preventative maintenance and repair contract(s) (including, without limitation, monitoring services). If Landlord so elects to procure and maintain any such contract(s), Tenant will reimburse Landlord for the cost thereof in accordance with the provisions of Section 6 above. If Tenant procures and maintains any of such contract(s), Tenant will promptly deliver to Landlord a true and complete copy of each such contract and any and all renewals or extensions thereof, and each service report or other summary received by Tenant pursuant to or in connection with such contract(s).

11.3 Landlord's Repairs and Maintenance Obligations: Except for repairs rendered necessary by the intentional or negligent acts or omissions of Tenant or any of Tenant's Representatives, Landlord agrees, at Landlord's sole cost and expense, to (a) keep in good repair the structural portions of the floors, foundations and exterior perimeter walls of the Building (exclusive of glass and exterior doors), and (b) replace the structural portions of the roof of the Building (excluding the roof membrane) as, and when, Landlord determines such replacement to be necessary in Landlord's reasonable discretion.

11.4 Tenant's Failure to Perform Repairs and Maintenance Obligations: Except for normal maintenance and repair of the items described above, Tenant shall have no right of access to or right to install any device on the roof of the Building nor make any penetrations of the roof of the Building without the express prior written consent of Landlord. If Tenant refuses or neglects to

repair and maintain the Premises and the adjacent areas properly as required herein and to the reasonable satisfaction of Landlord within applicable cure periods, Landlord may, but without obligation to do so, at any time make such repairs and/or maintenance without Landlord having any liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures or other property, or to Tenant's business by reason thereof, except to the extent any damage is caused by the willful misconduct or gross negligence of Landlord or its authorized agents and representatives. In the event Landlord makes such repairs and/or maintenance, upon completion thereof Tenant shall pay to Landlord, as additional rent, the Landlord's costs for making such repairs and/or maintenance, plus twenty percent (20%) for overhead, upon presentation of a bill therefor, plus any Enforcement Expenses. The obligations of Tenant hereunder shall survive the expiration of the Term of this Lease or the earlier termination thereof. Tenant hereby waives any right to repair at the expense of Landlord under any applicable Laws now or hereafter in effect respecting the Premises.

12. Insurance

12.1 Types of Insurance: Tenant shall maintain in full force and effect at all times during the Term of this Lease, at Tenant's sole cost and expense, for the protection of Tenant and Landlord, as their interests may appear, policies of insurance issued by a carrier or carriers reasonably acceptable to Landlord and its lender(s) which afford the following coverages: (i) worker's compensation: statutory limits; (ii) employer's liability, as required by law, with a minimum limit of $100,000 per employee and $500,000 per occurrence; (iii) commercial general liability insurance (occurrence form) providing coverage against any and all claims for bodily injury and property damage occurring in, on or about the Premises arising out of Tenant's and Tenant's Representatives' use and/or occupancy of the Premises. Such Insurance shall include coverage for blanket contractual liability, fire damage, premises, personal injury, completed operations, products liability, personal and advertising, and a plate-glass rider to provide coverage for all glass in, on or about the Premises including, without limitation, skylights. Such insurance shall have a combined single limit of not less than One Million Dollars
($1,000,000) per occurrence with a Two Million Dollar ($2,000,000) aggregate limit and excess/umbrella insurance in the amount of Two Million Dollars ($2,000,000). If Tenant has other locations which it owns or leases, the policy shall include an aggregate limit per location endorsement. If necessary, as reasonably determined by Landlord, Tenant shall provide for restoration of the aggregate limit;
(iv) comprehensive automobile liability insurance: a combined single limit of not less than $2,000,000 per occurrence and insuring Tenant against liability for claims arising out of the ownership, maintenance, or use of any owned, hired

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or non-owned automobiles; (v) "all risk" or "special purpose" property insurance, including without limitation, sprinkler leakage, boiler and machinery comprehensive form, if applicable, covering damage to or loss of any personal property, trade fixtures, inventory, fixtures and equipment located in, on or about the Premises, and in addition, coverage for flood, earthquake, if flood and earthquake was available at commercially reasonable rates, and business interruption

of Tenant, together with, if the property of Tenant's invitees is to be kept in the Premises, warehouser's legal liability or bailee customers insurance for the full replacement cost of the property belonging to invitees and located in the Premises. Such insurance shall be written on a replacement cost basis (without deduction for depreciation) in an amount equal to one hundred percent (100%) of the full replacement value of the aggregate of the items referred to in this subparagraph (v); and (vi) such other insurance as may otherwise be reasonably required by any of Landlord's lenders or joint venture partners.

12.2 Insurance Policies: Insurance required to be maintained by Tenant shall be written by companies (i) licensed to do business in the State of California, (ii) domiciled in the United States of America, and (iii) having a "General Policyholders Rating" of at least A:X (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "A.M. Best's Rating Guides." Any deductible amounts under any of the insurance policies required hereunder shall not exceed Ten Thousand Dollars ($l0,000) unless specifically agreed to by Landlord on a case by case basis. Tenant shall deliver to Landlord certificates of insurance and true and complete copies of any and all endorsements required herein for all insurance required to be maintained by Tenant hereunder at the time of execution of this Lease by Tenant. Tenant shall, at least thirty (30) days prior to expiration of each policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to reduction except after thirty (30) days prior written notice to the parties named as additional insureds as required in this Lease (except for cancellation for nonpayment of premium, in which event cancellation shall not take effect until at least ten (10) days' notice has been given to Landlord). Tenant shall have the right to provide insurance coverage which it is obligated to carry pursuant to the terms of this Lease under a blanket insurance policy, provided such blanket policy expressly affords coverage for the Premises and for Landlord as required by this Lease.

12.3 Additional Insureds and Coverage: Landlord, any property management company and/or agent of Landlord for the Premises, the Building, the Lot or the Park, and any lender(s) of Landlord having a lien against the Premises, the Building, the Lot or the Park shall be named as additional insureds under all of the policies required in Section 12.l(iii) above. Additionally, such policies shall provide for severability of interest, All insurance to be maintained by Tenant shall, except for workers' compensation and employer's liability insurance, be primary subject to any waiver of subrogation, without right of contribution from insurance maintained by Landlord. Any umbrella/excess liability policy (which shall be in "following form") shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of insurance maintained by Tenant shall not limit Tenant's liability under this Lease. It is the parties' intention that the insurance to be procured and maintained by Tenant as required herein shall provide coverage for any and all damage or injury arising from or related to Tenant's operations of its business and/or Tenant's or Tenant's Representatives' use of the Premises and/or any of the areas within the Park, whether such events occur within the Premises (as described in Exhibit A hereto) or in any other areas of the Park. It is not contemplated or anticipated by the parties that the aforementioned risks of loss be borne by Landlord's insurance carriers, rather it is contemplated and anticipated by Landlord and Tenant that such risks of loss be borne by Tenant's insurance carriers pursuant to the insurance policies procured and maintained by Tenant as required herein.

12.4 Failure of Tenant to Purchase and Maintain Insurance: In the event Tenant does not purchase the insurance required in this Lease or keep the same in full force and effect throughout the Term of this Lease (including any renewals or extensions), Landlord may, but without obligation to do so, purchase the necessary insurance and pay the premiums therefor. If Landlord so elects to purchase such insurance, Tenant shall promptly pay to Landlord as Additional Rent, the amount so paid by Landlord, upon Landlord's demand therefor. In addition, Landlord may recover from Tenant and Tenant agrees to pay, as Additional Rent, any and all Enforcement Expenses and damages which Landlord may sustain by reason of Tenant's failure to obtain and maintain such insurance. If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses, damages and costs resulting from such failure.

12.5 Landlord's Insurance: Landlord shall maintain in full force and effect during the Term of this Lease, subject to reimbursement as provided in
Section 6, policies of insurance which afford such coverages as are commercially reasonable and as is consistent with other properties in Landlord's portfolio. Landlord shall also procure such additional insurance coverage as Tenant shall reasonably request Landlord to obtain; provided, however, notwithstanding anything to the contrary contained herein, Tenant shall pay, and shall be solely responsible for, any and all costs, premiums and expenses of any such additional insurance, as Additional Rent, and Tenant shall pay same to Landlord within ten
(10) days of Landlord's demand therefor. Landlord shall obtain and keep in force during the Term of this

Lease, as an item of Operating Expenses, a policy or policies in the name of Landlord, with loss payable to Landlord and to the holders of any mortgages, deeds of trust or ground leases on the Premises ("Lender(s)"), insuring loss or damage to the Building, including all improvements, fixtures (other than trade fixtures) and permanent additions. However, all alterations, additions and improvements made to the Premises by Tenant (other than the Tenant Improvements) shall be insured by Tenant rather than by Landlord. The amount of such insurance procured by Landlord shall be equal to one hundred percent (100%) of the full replacement cost of the Building (excluding the cost of excavation and installation of footings), including all improvements and permanent additions as the same shall exist from time to time, or the amount required by Lenders. At Landlord's option, such policy or policies shall insure against all risks of direct physical loss or damage (including, without limitation, the perils of earthquake), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Building required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered cause of loss. If any such insurance coverage procured by Landlord has a deductible clause, the deductible shall not exceed commercially reasonable amounts, and in the event of any casualty, the amount of such deductible shall be an item of Operating Expenses as so limited. Notwithstanding anything to the contrary contained herein, to the extent the cost of maintaining insurance with respect to the Building and/or any other buildings within the Park is increased as a result of Tenant's acts, omissions, alterations, improvements (including without limitation, the

Tenant Improvements), use or occupancy of the Premises, Tenant shall pay one hundred percent (100%) of, and for, such increase(s) as Additional Rent.

13. Waiver of Subrogation

Notwithstanding anything to the contrary in this Lease, Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss of, or damage to, either parties' property to the extent that such loss or damage is insured by an insurance policy required to be in effect at the time of such loss or damage or would have been insured had the waiving party carried the type of insurance required to be carried by such party under this Lease. Each party shall obtain any special endorsements, if required by its insurer whereby the insurer waives its rights of subrogation against the other party. This provision is intended to waive fully, and for the benefit of the parties hereto, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverage obtained by Tenant pursuant to Section 12 of this Lease shall include, without limitation, a waiver of subrogation endorsement attached to the certificate of insurance. The provisions of this Section 13 shall not apply in those instances in which such waiver of subrogation would invalidate such insurance coverage or would cause either party's insurance coverage to be voided or otherwise uncollectible. Notwithstanding anything to the contrary in this Lease, all of Landlord's and Tenant's repair and indemnity obligations under this Lease shall be subject to the waiver contained in this paragraph.

14. Limitation of Liability and Indemnity

Except to the extent of damage resulting from the gross negligence or willful misconduct of Landlord or its authorized representatives or Landlord's material default of this Lease beyond any applicable cure periods, Tenant agrees to protect, defend (with counsel acceptable to Landlord) and hold Landlord and Landlord's lenders, partners, members, property management company (if other than Landlord), agents, directors, officers, employees, representatives, contractors, shareholders, successors and assigns and each of their respective partners, members, directors, employees, representatives, agents, contractors, shareholders, successors and assigns (collectively, the "Indemnitees") harmless and indemnify the Indemnitees from and against all liabilities, damages, claims, losses, judgments, charges and expenses (including reasonable attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) arising from or in any way related to, directly or indirectly, (i) Tenant's or Tenant's Representatives' use of the Premises, Building and/or the Park, (ii) the conduct of Tenant's business, (iii) from any activity, work or thing done, permitted or suffered by Tenant in or about the Premises, (iv) in any way connected with the Premises or with the improvements or personal property therein, including, but not limited to, any liability for injury to person or property of Tenant, Tenant's Representatives, or third party persons, and/or (v) Tenant's failure to perform any covenant or obligation of Tenant under this Lease. Tenant agrees that the obligations of Tenant herein shall survive the expiration or earlier termination of this Lease.

Except to the extent of damage resulting from the gross negligence or willful misconduct of Landlord or its authorized representatives or Landlord's default of this Lease and failure to cure such default beyond any applicable cure period, to the fullest extent permitted by law, Tenant

agrees that neither Landlord nor any of Landlord's lender(s), partners, members, employees, representatives, legal representatives, successors or assigns shall at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, liability, injury, death or damage to persons or property which at any time may be suffered or sustained by Tenant or by any person(s) whomsoever who may at any time be using, occupying or visiting the Premises, the Building or the Park, including, but not limited to, any

acts, errors or omissions by or on behalf of any other tenants or occupants of the Building and/or the Park. Tenant shall not, in any event or circumstance, be permitted to offset or otherwise credit against any payments of Rent required herein for matters for which Landlord may be liable hereunder. Landlord and its authorized representatives shall not be liable for any interference with light or air, or for any latent defect in the Premises or the Building, subject to the repair requirements in Section 2.1.

15. Assignment and Subleasing

15.1 Prohibition: Except as expressly set forth herein with respect to a Related Entity, Tenant shall not assign, mortgage, hypothecate, encumber, grant any license or concession, pledge or otherwise transfer this Lease (collectively, "assignment"), in whole or in part, whether voluntarily or involuntarily or by operation of law, nor sublet or permit occupancy by any person other than Tenant of all or any portion of the Premises without first obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant hereby agrees that Landlord may withhold its consent to any proposed sublease or assignment if the proposed sublessee or assignee or its business is subject to compliance with additional requirements of the ADA (defined below) and/or Environmental Laws (defined below) beyond those requirements which are applicable to Tenant, unless the proposed sublessee or assignee shall (a) first deliver plans and specifications for complying with such additional requirements and obtain Landlord's written consent thereto, and
(b) comply with all Landlord's conditions for or contained in such consent, including without limitation, requirements for security to assure the lien-free completion of such improvements. If Tenant seeks to sublet or assign all or any portion of the Premises, Tenant shall deliver to Landlord at least fifteen (15) days prior to the proposed commencement of the sublease or assignment (the "Proposed Effective Date") the following: (i) the name of the proposed assignee or sublessee; (ii) such information as to such assignee's or sublessee's financial responsibility and standing as Landlord may reasonably require; and
(iii) the aforementioned plans and specifications, if any. Within ten (10) days after Landlord's receipt of a written request from Tenant that Tenant seeks to sublet or assign all or any portion of the Premises, Landlord shall deliver to Tenant a copy of Landlord's standard form of sublease or assignment agreement (as applicable), which instrument shall be utilized for each proposed sublease or assignmentt (as applicable), and such instrument shall include a provision whereby the assignee or sublessee assumes all of Tenant's obligations hereunder and agrees to be bound by the terms hereof. As Additional Rent hereunder, Tenant shall pay to Landlord a fee in the amount of five hundred dollars ($500) plus Tenant shall reimburse Landlord for actual

reasonable legal and other expenses incurred by Landlord in connection with any actual or proposed assignment or subletting. In the event the sublease or assignment (1) by itself or taken together with prior sublease(s) or partial assignment(s) covers or totals, as the case may be, more than twenty-five percent (25%) of the rentable square feet of the Premises or (2) is for a term which by itself or taken together with prior or other subleases or partial assignments is greater than seventy-five percent (75%) of the period remaining in the Term of this Lease as of the time of the Proposed Effective Date, then Landlord shall have the right, to be exercised by giving written notice to Tenant, to recapture the space described in the sublease or assignment. If such recapture notice is given, it shall serve to terminate this Lease with respect to the proposed sublease or assignment space, or, if the proposed sublease or assignment space covers all the Premises, it shall serve to terminate the entire term of this Lease in either case, as of the Proposed Effective Date. Notwithstanding the foregoing Landlord's recapture rights shall not apply to a Related Entity. However, no termination of this Lease with respect to part or all of the Premises shall become effective without the prior written consent, where necessary, of the holder of each deed of trust encumbering the Premises or any part thereof. Within fifteen (15) days of Landlord's receipt or Tenant's written request to sublease or assign the Lease or upon Landlord's notice to recapture to Tenant, Landlord will contact the holder of each deed of trust encumbering the Premises and attempt to obtain the required approval of such transaction. If this Lease is terminated pursuant to the foregoing with respect to less than the entire Premises, the Rent shall be adjusted on the basis of the proportion of square feet retained by Tenant to the square feet originally demised and this Lease as so amended shall continue thereafter in full force and effect. Each permitted assignee or sublessee, including without limitation, a Related Entity, shall assume and be deemed to assume this Lease and shall be and remain liable jointly and severally with Tenant for payment of Rent and for the due performance of, and compliance with all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed or complied with, for the term of this Lease. No assignment or subletting shall affect the continuing primary liability of Tenant (which, following assignment, shall be joint and several with the assignee), and Tenant shall not be released from performing any of the terms, covenants and conditions of this Lease. Tenant hereby acknowledges and agrees that it understands that Landlord's accounting department may process and accept Rent payments without verifying that such payments are being made by Tenant, a permitted sublessee or a permitted assignee in accordance with the provisions of this Lease. Although such payments may be processed and accepted bY such accounting department personnel, any and all actions or omissions by the personnel of Landlord's accounting department shall not be considered as acceptance by Landlord of any proposed assignee or sublessee nor shall such actions or omissions be deemed to be a substitute for the requirement that Tenant obtain Landlord's prior written consent to any such subletting or assignment, and

any such actions or omissions by the personnel of Landlord's accounting department shall not be considered as a voluntary relinquishment by Landlord of any of its rights hereunder nor shall any voluntary relinquishment of such rights be inferred therefrom. For purposes hereof, and except with respect to a Related Entity, in the event Tenant is a corporation, partnership, joint venture, trust or other entity other than a natural person, any change in the direct or indirect ownership of

Tenant which results in a transfer of the controlling interest of Tenant (51% or more of stock) by one party prior to a public offering shall be deemed to be an assignment within the meaning of this
Section 15 and shall be subject to all the provisions hereof provided however that the sale or other transfer of stock by Tenant shall not constitute a "change in ownership" requiring the prior written consent of Landlord if the sale or other transfer is traded through an exchange or over the counter. Except for a permissible assignment to a Related entity, any and all options, first rights of refusal, tenant improvement allowances and other similar rights granted to Tenant in this Lease, if any, shall not be assignable by Tenant unless expressly authorized in writing by Landlord. Notwithstanding anything to the contrary contained herein, so long as Tenant delivers to Landlord (1) at least fifteen (15) business days after written notice of its intention to assign or sublease the Premises to any Related Entity, which notice shall set forth the name of the Related Entity, (2) a copy of the proposed agreement pursuant to which such assignment or sublease shall be effectuated, and (3) such other information concerning the Related Entity as Landlord may reasonably require, including without limitation, information regarding any change in the proposed use of any portion of the Premises and any financial information with respect to such Related Entity, and so long as Landlord approves, in writing of any change in the proposed use of the subject portion of the Premises, then Tenant may assign this Lease or sublease any portion of the Premises to any Related Entity without having to obtain the prior written consent of Landlord thereto. For purposes of this Lease the term "Related Entity" shall mean and refer to (a) any corporation or entity which controls, is controlled by or is under common control with Tenant, as all of such terms are customarily used in the industry,
(b) an entity related to Tenant by merger, consolidation non bankruptcy, reorganization, or government action, or (c) a purchaser of substantially all of Tenant's assets, all with an equal or greater net worth as Tenant has as of the proposed transfer date.

15.2 Excess Sublease Rental or Assignment Consideration: In the event of any sublease or assignment of all or any portion of the Premises, except for Related Entity transfers or stock transfers, where the rent or other consideration provided for in the sublease or assignment either initially or over the term of the sublease or assignment exceeds the Rent or pro rata portion of the Rent, as the case may be, for such space reserved in the Lease, Tenant shall pay the Landlord monthly, as Additional Rent, at the same time as the monthly installments of Rent are payable hereunder, seventy-five percent (75%) of the excess of each such payment of rent or other consideration in excess of the Rent called for hereunder net of Tenant's reasonable costs to effectuate such assignment or sublease, limited to actual commissions paid, reasonable attorney's fees and standard tenant improvements installed by Tenant specifically for such transfer.

15.3 Waiver: Notwithstanding any assignment or sublease, or any indulgences, waivers or extensions of time granted by Landlord to any assignee or sublessee, or failure by Landlord to take action against any assignee or sublessee, Tenant agrees that Landlord may, at its option, proceed against Tenant without having taken action against or joined such assignee or sublessee, except that Tenant shall have the benefit of any indulgences, waivers and extensions of time granted to any such assignee or sublessee.

16. Ad Valorem Taxes

Prior to delinquency, Tenant shall pay all taxes and assessments levied upon trade fixtures, alterations, additions, improvements, inventories and persona1 property located and/or installed on or in the Premises by, or on behalf of, Tenant (other than the Tenant Improvements which Tenant shall pay Tenant's Share of pursuant to Section 6.2 above) and if requested by Landlord, Tenant shall promptly deliver to Landlord copies of receipts for payment of all such taxes and assessments. To the extent any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced by Landlord.

17. Subordination

Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, and at the election of Landlord or any bona fide mortgagee or deed of trust beneficiary with a lien on all or any portion of the Premises or any ground lessor with respect to the land of which the Premises are a part, the rights of Tenant under this Lease and this Lease shall be subject and subordinate at all times to: (i) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Building or the land upon which the Building is situated or both, and (ii) the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which the Building, the Lot, ground leases or underlying leases, or Landlord's interest or estate in any of said items is specified as security. Notwithstanding the foregoing, Landlord or any such ground lessor, mortgagee, or any beneficiary shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or any such liens to this Lease. If any ground lease or underlying

lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination and upon the request of such successor to Landlord, attorn to and become the Tenant of the successor in interest to Landlord, provided such successor in interest will not disturb Tenant's use, occupancy or quiet enjoyment of the Premises so long as Tenant is not in default of the terms and provisions of this Lease. The successor in interest to Landlord following foreclosure, sale or deed in lieu thereof shall not be (a) liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) subject to any offsets which Tenant might have against any prior lessor; (c) bound by prepayment of more than one (1) month's Rent, except in those instances when Tenant pays Rent quarterly in advance pursuant to Section 8 hereof, then not more than three months' Rent; or
(d) liable to Tenant for any Security Deposit not actually received by such successor in interest to the extent any portion or all of such Security Deposit has not already been forfeited by, or refunded to, Tenant. Landlord shall be liable to Tenant for all or any portion of the Security Deposit not forfeited by, or refunded to Tenant, until and unless Landlord transfers such Security Deposit to the successor in interest. Tenant covenants and agrees to execute (and acknowledge if required by Landlord, any lender or ground lessor) and deliver, within ten (10) days of a demand or request by Landlord and in the form reasonably requested by Landlord, ground lessor, mortgagee or beneficiary, any additional documents evidencing the priority or subordination of this Lease with respect to any such ground leases or underlying leases or the lien of any such

mortgage or deed of trust. Tenant's failure to timely execute and deliver such additional documents shall, at Landlord's option, constitute a material default hereunder. It is further agreed that Tenant shall be liable to Landlord, and shall indemnify Landlord from and against any loss, cost, damage or expense, incidental, consequential, or otherwise, arising or accruing directly or indirectly, from any failure of Tenant to execute or deliver to Landlord any such additional documents, together with any and all Enforcement Expenses. Notwithstanding any of the foregoing, prior to the Commencement Date, Landlord shall use reasonable efforts to cause the lender under any existing mortgages or deeds of trust encumbering the Building promptly to execute a nondisturbance and attornment agreement in a form mutually and reasonably acceptable to the beneficiary, Landlord and Tenant similar to the form attached in Exhibit I to this Lease. The subordination of this Lease to future loans is conditioned upon the execution by any such future lender to a nondisturbance agreement reasonably satisfactory to the beneficiary, Landlord and Tenant.

18. Right of Entry

Tenant grants Landlord or its agents the right to enter the Premises at all reasonable times upon 24 hours notice (except in cases of emergency) for purposes of inspection, exhibition, posting of notices, repair or alteration. Any such entry by Landlord and Landlord's agents shall comply with all reasonable security measures of Tenant and shall not impair Tenant's operations more than reasonably necessary. At Landlord's option, Landlord shall at all times have and retain a key with which to unlock all the doors in, upon and about the Premises, excluding Tenant's vaults and safes. It is further agreed that Landlord shall have the right to use any and all means Landlord deems necessary to enter the Premises in an emergency. Landlord shall have the right to place "for rent" or "for lease" signs on the outside of the Premises, the Building and in the Common Areas. Landlord shall also have the right to place "for sale" signs on the outside of the Building and in the Common Areas. Tenant hereby waives any claim from damages or for any injury or inconvenience to or interference with Tenant's business, or any other loss occasioned thereby except for any claim for any of the foregoing to the extent arising out of the gross negligence or willful misconduct of Landlord or its authorized representatives.

19. Estoppel Certificate

Tenant shall execute (and acknowledge if required by any lender or ground lessor) and deliver to Landlord, within ten (10) days after Landlord provides such to Tenant, a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification), the date to which the Rent and other charges are paid in advance, if any, acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder or specifying such defaults as are claimed, and such other matters as Landlord may reasonably require. Any such statement may be conclusively relied upon by Landlord and any prospective purchaser or encumbrancer of the Premises. Tenant's failure to deliver such statement within such time shall be conclusive upon the Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord; (b) there are no uncured defaults in Landlord's performance; and (c) not more than one month's Rent has been paid in advance, except in those instances when Tenant pays Rent quarterly in advance pursuant to

Section 8 hereof, then not more than three month's Rent has been paid in advance. Failure by Tenant to so deliver such certified estoppel certificate shall be a material default of the provisions of this Lease. Tenant shall be liable to Landlord, and shall indemnify Landlord from and against any loss, cost, damage or expense, incidental, consequential, or otherwise, arising or accruing directly or indirectly, from any failure of Tenant to execute or deliver to Landlord any such certified estoppel certificate, together with any and all Enforcement Expenses.

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20. Tenant's Default

The occurrence of any one or more of the following events shall, at Landlord's option, constitute a material default by Tenant of the provisions of this Lease:

20.1 The abandonment of the Premises by Tenant or the vacation of the Premises by Tenant which would cause any insurance policy to be invalidated or otherwise lapse. Tenant agrees to notice and service of notice as provided for in this Lease and waives any right to any other or further notice or service of notice which Tenant may have under any statute or law now or hereafter in effect;

20.2 The failure by Tenant to make any payment of Rent, Additional Rent or any other payment required hereunder within five (5) days of written notice of a delinquency. Tenant agrees that such written notice by Landlord shall serve as the statutorily required notice under the Law (including without limitation, any unlawful detainer statutes), and Tenant further agrees to notice and service of notice as provided for in this Lease and waives any right to any other or further notice or service of notice which Tenant may have under any statute or law now or hereafter in effect on the date said payment is due.;

20.3 The failure by Tenant to observe, perform or comply with any of the conditions, covenants or provisions of this Lease (except failure to make any payment of Rent and/or Additional Rent) and such failure is not cured within (i) thirty (30) days of the date on which Landlord delivers written notice of such failure to Tenant for all failures other than with respect to Hazardous Materials (defined in Section 29 hereof), and (ii) ten (10) days of the date on which Landlord delivers written notice of such failure to Tenant for all failures in any way related to Hazardous Materials. However, Tenant shall not be in default of its obligations hereunder if such failure cannot reasonably be cured within such thirty (30) or ten (10) day period, as applicable, and Tenant promptly commences, and thereafter diligently proceeds with same to completion, all actions necessary to cure such failure as soon as is reasonably possible, but in no event shall the completion of such cure be later than sixty (60) days after the date on which Landlord delivers to Tenant written notice of such failure, unless Landlord, acting reasonably and in good faith, otherwise expressly agrees in writing to a longer period of time based upon the circumstances relating to such failure as well as the nature of the failure and the nature of the actions necessary to cure such failure thirty (30) days after written notice of such failure, or such longer time as may reasonably be required to cure the default;

20.4 The making of a general assignment by Tenant for the benefit of creditors, the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant's creditors seeking the rehabilitation, liquidation, or reorganization of Tenant under any law relating to bankruptcy, insolvency or other relief of debtors and, in the case of an involuntary action, the failure to remove or discharge the same within sixty (60) days of such filing, the appointment of a receiver or other custodian to take possession of substantially all of Tenant's assets or this leasehold, Tenant's insolvency or inability to pay Tenant's debts or failure generally to pay Tenant's debts when due, any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant's assets, Tenant taking any action toward the dissolution or winding up of Tenant's affairs, the cessation or suspension of Tenant's use of the Premises, or the attachment, execution or other judicial seizure of substantially all of Tenant's assets or this leasehold;

20.5 Tenant's use or storage of Hazardous Materials in, on or about the Premises, the Building, the Lot and/or the Park other than as expressly permitted by the provisions of Section 29 below; or

20.6 The making of any intentional material misrepresentation or omission by Tenant in any materials delivered by or on behalf of Tenant to Landlord pursuant to this Lease.

21. Remedies for Tenant's Default

21.1 Landlord's Rights: In the event of Tenant's material default under this Lease, Landlord may terminate Tenant's right to possession of the Premises by any lawful means in which case upon delivery of written notice by Landlord this Lease shall terminate on the date specified by Landlord in such notice and Tenant shall immediately surrender possession of the Premises to Landlord. In addition, the Landlord shall have the immediate right of re-entry whether or not this Lease is terminated, and if this right of re-entry is exercised following abandonment of the Premises by Tenant, Landlord may consider any personal property belonging to Tenant and left on the Premises to also have been abandoned. No re-entry or taking possession of the Premises by Landlord pursuant to this Section 21 shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant. If Landlord relets the Premises or any portion thereof, (i) Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises or any part thereof, including, without limitation, broker's commissions, expenses of cleaning, redecorating, and further improving the Premises and other similar costs (collectively, the "Reletting Costs"), and (ii) the rent received by Landlord from

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such reletting shall be applied to the payment of, first, any indebtedness from Tenant to Landlord other than Base Rent, Operating Expenses, Tax Expenses, Common Area Utility Costs, and Utility Expenses; second, all costs including maintenance, incurred by Landlord in reletting; and, third, Base Rent, Operating Expenses, Tax Expenses, Common Area Utility Costs, Utility Expenses, and all other sums due under this Lease. Any and all of the Reletting Costs shall be fully chargeable to Tenant and shall not be prorated or otherwise amortized in relation to any

new lease for the Premises or any portion thereof. After deducting the payments referred to above, any sum remaining from the rental Landlord receives from reletting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. Reletting may be for a period shorter or longer than the remaining term of this Lease. No act by Landlord other than giving written notice to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. So long as this Lease is not terminated, Landlord shall have the right to remedy any default of Tenant, to maintain or improve the Premises, to cause a receiver to be appointed to administer the Premises and new or existing subleases and to add to the Rent payable hereunder all of Landlord's reasonable costs in so doing, with interest at the maximum rate permitted by law from the date of such expenditure.

21.2 Damages Recoverable: If Tenant's right to possession is terminated by Landlord because of a breach or default under this Lease, then Landlord may recover from Tenant all damages suffered by Landlord as a result of Tenant's failure to perform its obligations hereunder, including, but not limited to, the cost of any Tenant Improvements constructed by or on behalf of Tenant pursuant to Exhibit B hereto to the extent allocated to the remainder of the Lease term, the portion of any broker's or leasing agent's commission incurred with respect to the leasing of the Premises to Tenant for the balance of the Term of the Lease remaining after the date on which Tenant is in default of its obligations hereunder, and all Reletting Costs, and the worth at the time of the award (computed in accordance with paragraph (3) of SubdivisIon (a) of Section 1951.2 of the California Civil Code) of the amount by which the Rent then unpaid hereunder for the balance of the Lease Term exceeds the amount of such loss of Rent for the same period which Tenant proves could be reasonably avoided by Landlord and in such case, Landlord prior to the award, may relet the Premises for the purpose of mitigating damages suffered by Landlord because of Tenant's failure to perform its obligations hereunder; provided, however, that even though Tenant has abandoned the Premises following such breach, this Lease shall nevertheless continue in full force and effect for as long as Landlord does not terminate Tenant's right of possession, and until such termination, Landlord shall have the remedy described in Section 1951.4 of the California Civil Code (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations) and may enforce all its rights and remedies under this Lease, including the right to recover the Rent from Tenant as it becomes due hereunder. The "worth at the time of the award" within the meaning of Subparagraphs (a)(l) and (a)(2) of Section 1951.2 of the California Civil Code shall be computed by allowing interest at the rate of ten percent (10%) per annum. Tenant waives redemption or relief from forfeiture under California Code of Civil Procedure SectIons 1174 and 1179, or under any other present or future law, in the event Tenant is evicted or Landlord takes possession of the Premises by reason of any default of Tenant hereunder.

21.3 Rights and Remedies Cumulative: The foregoing rights and remedies of Landlord are not exclusive; they are cumulative in addition to any rights and remedies now or hereafter existing at law, in equity by statute or otherwise, or to any equitable remedies Landlord may have, and to any remedies Landlord may have under bankruptcy laws or laws affecting creditor's rights

generally. In addition to all remedies set forth above, if Tenant materially defaults under this Lease, any and all Base Rent waived by Landlord under Section 3 above shall be immediately due and payable to Landlord and all options granted to Tenant hereunder shall automatically terminate, unless otherwise expressly agreed to in writing by Landlord.

21.4 Waiver of a Default: The waiver by Landlord of any default of any provision of this Lease shall not be deemed or construed a waiver of any other default by Tenant hereunder or of any subsequent default of this Lease, except for the default specified in the waiver.

22. Holding Over

If Tenant holds possession of the Premises after the expiration of the Term of this Lease with Landlord's consent, Tenant shall become a tenant from month-to-month upon the terms and provisions of this Lease, provided the monthly Base Rent during such hold over period shall be 150% of the Base Rent due on the last month of the Lease Term, payable in advance on or before the first day of each month. Acceptance by Landlord of the monthly Base Rent wIthout the additional fifty percent (50%) Increase of Base Rent shall not be deemed or construed as a waiver by Landlord of any of its rights to collect the increased amount of the Base Rent as provided herein at any time. Such month-to-month tenancy shall not constitute a renewal or extension for any further term. All options, if any, granted under the terms of this Lease shall be deemed automatically terminated and be of no force or effect during said month-to-

month tenancy. Tenant shall continue in possession until such tenancy shall be terminated by either Landlord or Tenant giving written notice of termination to the other party at least thirty (30) days prior to the effective date of termination. This paragraph shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Base Rent by Landlord following expiration or termination of this Lease shall not constitute a renewal of this Lease.

23. Landlord's Default

Landlord shall not be deemed in breach or default of this Lease unless Landlord fails within a reasonable time to perform an obligation required to be performed by Landlord hereunder. For purposes of this provision, a reasonable time shall not be less than thirty (30) days after receipt by Landlord of written notice specifying the nature of the obligation Landlord has not performed; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days, after receipt of written notice, is reasonably necessary for its performance, then Landlord shall not be in breach or default of this Lease if performance of such obligation is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

24. Parking

Tenant shall have a license to use the number of non-designated and non-exclusive parking spaces specified in the Basic Lease Information. Landlord shall exercise reasonable efforts to insure that such spaces are available to Tenant for its use.

25. Sale of Premises

In the event of any sale of the Premises by Landlord or the cessation otherwise of Landlord's Interest therein, Landlord shall be and is hereby entirely released from any and all of its obligations to perform or further perform under this Lease and from all liability hereunder accruing from or after the date of such sale; and the purchaser, at such sale or any subsequent sale of the Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease. For purposes of this Section 25, the term "Landlord" means only the owner and/or agent of the owner as such parties exist as of the date on which Tenant executes this Lease. A ground lease or similar long term lease by Landlord of the entire Building, of which the Premises are a part, shall be deemed a sale within the meaning of this Section
25. Tenant agrees to attorn to such new owner provided such new owner does not disturb Tenant's use, occupancy or quiet enjoyment of the Premises so long as Tenant is not in default of any of the provisions of this Lease.

26. Waiver

No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The subsequent acceptance of Rent by Landlord after default by Tenant of any covenant or term of this Lease shall not be deemed a waiver of such default, other than a waiver of timely payment for the particular Rent payment involved, and shall not prevent Landlord from maintaining an unlawful detainer or other action based on such breach. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent and other sums due hereunder shall be deemed to be other than on account of the earliest Rent or other sums due, nor shall any endorsement or statement on any check or accompanying any check or payment be deemed an accord and satisfaction; and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or other sum or pursue any other remedy provided in this Lease. No failure, partial exercise or delay on the part of the Landlord in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

27. Casualty Damage

27.1 Casualty. If the Premises or any part thereof (excluding any alterations or improvements installed by or for the benefit of Tenant) shall be damaged or destroyed by fire or other casualty, Tenant shall give immediate written notice thereof to Landlord. Within thirty (30) days after receipt by Landlord of such notice, Landlord shall notify Tenant, in writing, whether the necessary repairs can reasonably be made: (a) within ninety (90) days; (b) in more than ninety (90) days but in less than one hundred eighty (180) days; or
(c) in more than one hundred eighty (180) days, from the date of such notice.

27.1.1 Minor Insured Damage. If the Premises are damaged only to such extent that repairs, rebuilding and/or restoration can be reasonably completed within ninety (90) days, this Lease shall not terminate and, provided that insurance proceeds are available to fully repair the damage, or if Landlord has failed to procure and maintain the insurance required in Section 12.5, then Landlord shall provide the insurance proceeds that would have otherwise been provided therefore. Landlord shall repair

the Premises to substantially the same condition that existed prior to the occurrence of such casualty, except Landlord shall not be required to rebuild, repair, or replace any alterations or improvements installed by or for the benefit of Tenant or any part of Tenant's furniture, furnishings or fixtures and equipment removable by Tenant. The Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Premises only to the extent rental abatement insurance proceeds are received by Landlord and the Premises are unfit for occupancy.

27.1.2 Insured Damage Requiring More Than 90 Days To Repair. If the Premises are damaged only to such extent that repairs, rebuilding and/or restoration can be reasonably completed in more than ninety (90) days but in less than one hundred eighty (180) days, then Landlord shall have the option of
(a) terminating the Lease effective upon the occurrence of such damage, in which event the Rent shall be abated from the date Tenant vacates the Premises; or (b) electing to repair the Premises to substantially the same condition that existed prior to the occurrence of such casualty, provided insurance proceeds are available to fully repair the damage, or if Landlord has failed to procure and maintain the insurance required in Section 12.5, then Landlord shall provide the insurance proceeds that would have otherwise been provided therefore (except that the Landlord shall not be required to rebuild, repair, or replace any alterations or improvements installed by or for the benefit of Tenant or any part of Tenant's furniture, furnishings or fixtures and equipment removable by Tenant). The Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Premises only to the extent rental abatement insurance proceeds are received by Landlord and the Premises are until for occupancy. If Landlord should fail to substantially complete such repairs within one hundred eighty (180) days after the date on which Landlord is notified by Tenant of the occurrence of such casualty (such 180-day period to be extended for delays caused by Tenant or any force majeure events), Tenant may within twenty (20) days after expiration of such one hundred eighty (180) day period (as same may be extended), terminate this Lease by delivering written notice to Landlord as Tenant's exclusive remedy, whereupon all rights of Tenant hereunder shall cease and terminate twenty (20) days after Landlord's receipt of such notice.

27.1.3 Major Insured Damage. If the premises are damaged to such extent that repairs, rebuilding and/or restoration cannot be reasonably completed within one hundred eighty (180) days, than either Landlord or Tenant may terminate this Lease by giving written notice within twenty (20) days after notice from Landlord regarding the time period of repair. If either party notifies the other of its intention to so terminate the Lease, then this Lease shall terminate and the Rent shall

be abated from the date Tenant vacates the Premises. If neither party elects to terminate this Lease, Landlord shall promptly commence and diligently prosecute to completion the repairs to the Premises, provided insurance proceeds are available to fully repair the damage, or if Landlord has failed to procure and maintain the insurance required in Section 12.5, then Landlord shall provide the insurance proceeds that would have otherwise been provided therefore (except that Landlord shall not be required to rebuild, repair, or replace any alterations or improvements installed by or for the benefit of Tenant or any part of Tenant's furniture, furnishings or fixtures and equipment removable by Tenant). During the time when Landlord is prosecuting such repairs to completion, the Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Premises only to the extent rental abatement insurance proceeds are received by Landlord and only during the time period that the Premises are unfit for occupancy,

27.1.4 Damage Near End of Term. Notwithstanding anything to the contrary contained in this Lease except for the provisions of Section 27.2 below, if the Premises are substantially damaged or destroyed during the last year of then applicable term of this Lease, Landlord may, at its option, cancel and terminate this Lease by giving written notice to Tenant of its election to do so within thirty (30) days after receipt by Landlord of notice from Tenant of the occurrence of such casualty. If Landlord so elects to terminate this Lease, all rights of Tenant hereunder shall cease and terminate thirty (30) days after Tenant's receipt of such notice.

27.2 Uninsured Casualty. Tenant shall be responsible for and shall pay to Landlord, as Additional Rent, any deductibles amount under the property insurance for the Premises and/or the Building. If any portion of the Premises is damaged and is not fully covered by insurance by insurance proceeds received by Landlord (and Tenant elects not to pay any such difference) or if the holder of any Indebtedness secured by the Premises requires that the insurance proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease by delivering written notice of termination to the other party within thirty (30) days after the date of notice to Tenant of any such event, whereupon all rights and obligations shall cease and terminate hereunder, except for those obligations expressly provided for in this Lease to survive such termination of the Lease.

27.3 Tenant's Waiver. Landlord shall not be liable for any inconvenience or annoyance to Tenant, injury to the business of Tenant, loss of use of any part of the Premises by Tenant or loss of Tenant' personal property, resulting in any way from such damage, destruction or the repair thereof, except that, Landlord shall allow Tenant a fair diminution of Rent during the time and to the extent the Premises are until for occupancy as specifically provided above in this Section 27. With respect to any damage or destruction which Landlord is obligated to repair or may elect to repair, Tenant hereby waives

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all rights to terminate this Lease or offset any amounts against Rent pursuant to rights accorded Tenant by any law currently existing or hereafter enacted, including but not limited to, all rights pursuant to the provisions of Sections 1932(2.), 1933(4.), 1941 and 1942 of the California Civil

Code, as the same may be amended or supplemented from time to time. Whenever Base Rent is to be abated under this Lease, all Base Rent and Additional Rent shall be equitably abated based upon the extent to which Tenant's use of the Premises is diminished.

28. Condemnation

If twenty-five percent (25%) or more of the Premises is condemned by eminent domain, inversely condemned or sold in lieu of condemnation for any public or quasi-public use or purpose ("Condemned"), then Tenant or Landlord may terminate this Lease as of the date when physical possession of the Premises is taken and title vests in such condemning authority, and Rent shall be adjusted to the date of termination. Tenant shall not because of such condemnation assert any claim against Landlord or the condemning authority for any compensation because of such condemnation, and Landlord shall be entitled to receive the entire amount of any award without deduction for any estate of interest or other interest of Tenant; provided, however, that Tenant shall be entitled to receive, or to prosecute a separate claim for, a condemnation award for a temporary taking of the Premises or a portion thereof by a condemnor where this Lease is not terminated (to the extent such award related to the unexpired Term), or an award or portion thereof separately designated for relocation and moving expenses or the interruption of or damage to Tenant's business or as compensation for Tenant's personal property, trade fixtures or alterations or for loss of goodwill provided such award is separate from Landlord's award and provided further such separate award does not diminish or impair the award otherwise payable to landlord If neither party elects to terminate this Lease, Landlord shall, if necessary, promptly proceed to restore the Premises or the Building to substantially its same condition prior to such partial condemnation, allowing for the reasonable effects of such partial condemnation, and a proportionate allowance shall be made to Tenant, as solely determined by Landlord, for the Rent corresponding to the time during which, and to the part of the Premises of which, Tenant is deprived on account of such partial condemnation and restoration. Landlord shall not be required to spend funds for restoration in excess of the amount received by Landlord as compensation awarded.

29. Environmental Matters/hazardous Materials

29.1 Hazardous Materials Disclosure Certificate: Prior to executing this Lease, Tenant has completed, executed and delivered to Landlord Tenant's initial Hazardous Materials Disclosure Certificate (the "Initial HazMat Certificate"), a copy of which is attached hereto as Exhibit G and incorporated herein by this reference. Tenant covenants, represents and warrants to Landlord that the information on the Initial HazMat Certificate is true and correct and accurately describes the use(s) of Hazardous Materials which will be made and/or used on the Premises by Tenant. Tenant shall commencing with the date which is one year from the Commencement Date and continuing every year thereafter, complete, execute, and deliver to Landlord, a Hazardous Materials Disclosure Certificate ("the "HazMat Certificate") describing Tenant's present use of Hazardous Materials on the Premises, and any other reasonably necessary documents as requested by Landlord. The HazMat Certificate required hereunder shall be in substantially the form as that which is attached hereto as Exhibit E.

29.2 Definition of Hazardous Materials: As used in this Lease, the term Hazardous Materials shall mean and include (a) any hazardous or toxic wastes, materials or substances, and other pollutants or contaminants, which are or become regulated by any Environmental Laws; (b) petroleum, petroleum by products, gasoline, diesel fuel, crude oil or any fraction there06 (c) asbestos and asbestos containing material, in any form, whether friable or non-friable; (d) polychlorinated biphenyls; (e) radioactive materials; (0 lead and lead-containing materials; (g) any other material, waste or substance displaying toxic, reactive, ignitable or corrosive characteristics, as all such terms are used in their broadest sense, and are defined or become defined by any Environmental Law (defined below); or (h) any materials which cause or threatens to cause a nuisance upon or waste to any portion of the Premises, the Building, the Lot, the Park or any surrounding property; or poses or threatens to pose a hazard to the health and safety of persons on the Premises or any surrounding property.

29.3 Prohibition; Environmental Laws: Tenant shall not be entitled to use nor store any Hazardous Materials on, in, or about the Premises, the Building, the Lot and the Park, or any portion of the foregoing, without, in each instance, obtaining Landlord's prior written consent thereto. If Landlord consents to any such usage or storage, then Tenant shall be permitted to use and/or store only those Hazardous Materials that are necessary for Tenant's business and to the extent disclosed in the HazMat Certificate and as expressly approved by Landlord in writing, provided that such usage and storage is only to the extent of the quantities of Hazardous Materials as specified in the then applicable HazMat Certificate as expressly approved by Landlord and provided further that such usage and storage is in full compliance with any and ail local, state and federal environmental, health and/or safety-related laws,

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statutes, orders, standards, courts' decisions, ordinances, rules and regulations (as interpreted by judicial and administrative decisions), decrees, directives, guidelines, permits or permit conditions, currently existing and as amended, enacted, issued or adopted in the future which are or become applicable to Tenant or all or any portion of the Premises (collectively, the "Environmental Laws"). Tenant agrees that any changes to the type and/or quantities of Hazardous Materials specified in the most recent HazMat Certificate may be implemented only with the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole discretion. Tenant shall not be entitled nor permitted to install any tanks under, on or about the Premises for the storage of Hazardous Materials without the express written consent of Landlord, which may be given or withheld in Landlord's sole discretion. Landlord shall have the right at all times during the Term of this Lease to (i) inspect the Premises, (ii) conduct tests and investigations to determine whether Tenant is in compliance with the provisions of this Section 29, and (iii) request lists of all Hazardous Materials used, stored or otherwise located on, under or about any portion of the Premises and/or the Common Areas. The cost of all such inspections, tests and investigations shall be borne solely by Tenant, if Landlord reasonably determines that Tenant or any of Tenant's Representatives are directly or indirectly responsible in any manner for any contamination revealed by such inspections, tests and investigations. The aforementioned rights granted herein to Landlord and its representatives shall not create (a) a duty on Landlord's part to inspect, test, investigate, monitor or otherwise observe

the Premises or the activities of Tenant and Tenant's Representatives with respect to Hazardous Materials, including without limitation, Tenant's operation, use and any remediation related thereto, or (b) liability on the part of Landlord and its representatives for Tenant's use, storage, disposal or remediation of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith.

29.4 Tenant's Environmental Obligations: Tenant shall give to Landlord immediate verbal and follow-up written notice of any spills, releases, discharges, disposals, emissions, migrations, removals or transportation of Hazardous Materials on, under or about any portion of the Premises or in any Common Areas. Tenant, at its sole cost and expense, covenants and warrants to promptly investigate, clean up, remove, restore and otherwise remediate (including, without limitation, preparation of any feasibility studies or reports and the performance of any and all closures) any spill, release, discharge, disposal, emission, migration or transportation of Hazardous Materials arising from or related to the intentional or negligent acts or omissions of Tenant or Tenant's Representatives such that the affected portions of the Park and any adjacent property are returned to the condition existing prior to the appearance of such Hazardous Materials. Any such investigation, clean up, removal, restoration and other remediation shall only be performed after Tenant has obtained Landlord's prior written consent, which consent shall not be unreasonably withheld so long as such actions would not potentially have a material adverse long-term or short-term effect on any portion of the Premises, the Building, the Lot or the Park. Notwithstanding the foregoing, Tenant shall be entitled to respond immediately to an emergency without first obtaining Landlord's prior written consent. Tenant, at its sole cost and expense, shall conduct and perform, or cause to be conducted and performed, all closures as required by any Environmental Laws or any agencies or other governmental authorities having jurisdiction thereof. If Tenant fails to so promptly investigate, clean up, remove, restore, provide closure or otherwise so remediate, Landlord may, but without obligation to do so, take any and all steps necessary to rectify the same and Tenant shall promptly reimburse Landlord, upon demand, for all costs and expenses to Landlord of performing investigation, clean up, removal, restoration, closure and remediation work. All such work undertaken by Tenant, as required herein, shall be performed in such a manner so as to enable Landlord to make full economic use of the Premises, the Building, the Lot and the Park after the satisfactory completion of such work.

29.5 Environmental Indemnity: In addition to Tenant's obligations as set forth hereinabove, Tenant and Tenant's officers and directors agree to, and shall, protect, indemnify, defend (with counsel acceptable to Landlord) and hold Landlord and the other Indemnitees harmless from and against any and all claims, judgments, damages, penalties, fines, liabilities, losses (including, without limitation, diminution in value of any portion of the Premises, the Building, the Lot or the Park, damages for the loss of or restriction on the use of rentable or usable space, and from any adverse impact of Landlord's marketing of any space within the Building and/or Park), suits, administrative proceedings and costs (including, but not limited to, attorneys' and consultant fees and court costs) arising at any time during or after the Term of this Lease in connection with or related to, directly or indirectly, the use, presence, transportation, storage, disposal, migration, removal, spill, release or discharge of Hazardous Materials on, in or about any portion of the Premises, the Common Areas, the Building, the Lot or the Park as a result (directly or indirectly) of the presence of storage, use, release or emission of Hazardous Materials by Tenant or any of

Tenant's Representatives. The written consent of Landlord to the presence, use or storage of Hazardous Materials in, on, under or about any portion of the Premises, the Building, the Lot and/or the Park, or the strict compliance by Tenant with all Environmental Laws shall not excuse Tenant and Tenant's officers and directors from its obligations of indemnification pursuant hereto. Tenant shall not be relieved of its indemnification obligations under the provisions of this Section 29.5 due to Landlord's status as either an "owner" or "operator" under any Environmental Laws.

29.6 Survival: Tenant's obligations and liabilities pursuant to the provisions of this Section 29 shall survive the expiration or earlier termination of this Lease. If it is determined by Landlord that the condition of all or any portion of the Premises, the Building, the Lot and/or the Park is not in compliance with the provisions of this Lease with respect to Hazardous Materials, including without limitation all Environmental Laws at the expiration or earlier termination of this Lease, then in Landlord's sole discretion, Landlord may require Tenant to hold over possession of the Premises until Tenant can surrender the Premises to Landlord in the condition in which the Premises existed as of the Commencement Date and prior to the appearance of such Hazardous Materials except for reasonable wear and tear, including without limitation, the conduct or performance of any closures as required by any Environmental Laws. The burden of proof hereunder shall be upon Tenant. For purposes hereof, the term "reasonable wear and tear" shall not include any deterioration in the condition or diminution of the value of any portion of the Premises, the Building, the Lot and/or the Park in any manner whatsoever related to directly, or indirectly, Hazardous Materials. Any such holdover by Tenant will be with Landlord's consent, will not be terminable by Tenant in any event or circumstance and will otherwise be subject to the provisions of Section 22 of this Lease. This Section 29 constitutes the entire agreement of Landlord and Tenant regarding Hazardous Materials. No other provision of this Lease shall be deemed to apply thereto.

29.7 Disclosure: Pursuant to the provisions of California Health & Safety Code (S)25359.7 (as amended, supplemented and replaced from time to time), Landlord hereby discloses to Tenant that as of the Lease Date the Lot contains certain Hazardous Materials as such Hazardous Materials are more particularly described and set forth in that certain Phase I Environmental Site Assessment, dated December 1997, prepared by Brown and Caldwell (the "Environmental Report"). Landlord acknowledges and agrees that none of the environmental conditions or presence of Hazardous Materials on, in or under the Lot as described in the Environmental Report has been in any way caused by Tenant or any of Tenant's Representatives. Tenant hereby acknowledges and agrees as follows: (a) prior to executing this Lease a copy has been made available at Landlord's offices located at 2026 West Winton Avenue in Hayward, California for Tenant's review; (b) except for permissibly disclosing such information to its employees and invitees, to maintain the information contained therein strictly confidential and not to make or disseminate copies of such documents or the information contained therein to any party or person without first obtaining Landlord's written consent thereto, (c) not to disseminate or otherwise permit any employee, agent or other person over which Tenant has lawful authority to copy, publish or otherwise disseminate the Environmental Report or the information contained therein

(except as may be lawfully compelled or otherwise required by valid rule, regulation or law); and (d) Landlord has made available to Tenant the Environmental Report for informational purposes only and Tenant may not rely upon the information contained in the Environmental Report unless and until Tenant obtains the environmental firms' written consent to such reliance thereon by Tenant.

29.8 Tenant's Exculpation. Tenant shall not be liable for nor otherwise obligated to Landlord under any provision of the lease with respect to
(i) any claim, remediation obligation, investigation obligation, liability, cause of action, attorney's fees, consultants' cost, expense or damage resulting from any Hazardous Material present in, on or about the Premises or any of the Buildings in the Park to the extent not caused nor otherwise permitted, directly or indirectly, by Tenant or Tenant's Representatives; or (ii) the removal, investigation, monitoring or remediation of any Hazardous Material present in, on or about the Premises, the Building or the Park caused by any source, including third parties other than Tenant and Tenant's Representatives, as a result of or in connection with the acts or omissions of persons other than Tenant or Tenant's Representatives: provided, however, Tenant shall be fully liable for and otherwise obligated to Landlord under the provisions of this Lease for all liabilities, costs, damages, penalties, claims judgments, expenses (including without limitation, attorneys' and experts' fees and costs) and losses to the extent (a) Tenant or any of Tenant's Representatives contributes to the presence of such Hazardous Materials or Tenant and/or any of Tenant's Representatives exacerbates the conditions caused by such Hazardous Materials, or (b) Tenant and/or Tenant's Representatives allows or permits persons over which Tenant or any of Tenant's Representatives has control and/or for which Tenant or any of Tenant's Representatives are legally responsible for, to cause such Hazardous Materials to be present in, on, under, through or about any portion of the Premises, the Building or the Park, or does not take a reasonably appropriate actions to prevent such persons over which Tenant or any of Tenant's Representatives has control and/or for which Tenant or any of Tenant's Representatives are legally responsible from causing the presence of Hazardous Materials in, on, under, through or about any portion of the Premises, the Building or the Park.

30. Financial Statements

Tenant, for the reliance of Landlord, any lender holding or anticipated to acquire a lien upon the Premises, the Building or the Park or any portion thereof, or any prospective purchaser of the Building or the Park or any portion thereof, within ten (10) days after Landlord's request therefor, but not more often than once annually so long as Tenant is not in material default of this Lease, shall deliver to Landlord the

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then current publicly available audited financial statements of Tenant (including interim periods following the end of the last fiscal year for which annual statements are available) which statements shall be prepared or compiled in accordance with generally accepted accounting principles and shall present fairly the financial condition of Tenant at such dates and the result of its operations and changes in its financial positions for the periods ended on such dates. If an

audited financial statement has not been prepared, Tenant shall provide Landlord with an unaudited financial statement and/or such other information, the type and form of which are acceptable to Landlord in Landlord's reasonable discretion, which reflects the financial condition of Tenant.

31. General Provisions

31.1 Time. Time is of the essence in this Lease and with respect to each and all of its provisions in which performance is a factor.

31.2 Successors and Assigns. The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

31.3 Recordation. Tenant shall not record this Lease or a short form memorandum hereof without the prior written consent of the Landlord.

31.4 Landlord's Personal Liability. The liability of Landlord (which, for purposes of this Lease, shall include Landlord and the owner of the Building if other than Landlord) to Tenant for any default by Landlord under the terms of this Lease shall be limited to the actual interest of Landlord and its present or future partners or members in the Building, and Tenant agrees to look solely to the Building for satisfaction of any liability and shall not look to other assets of Landlord nor seek any recourse against the assets of the individual partners, members, directors, officers, shareholders, agents or employees of Landlord (including without limitation, any property management company of Landlord); it being intended that Landlord and the individual partners, members, directors, officers, shareholders, agents and employees of Landlord (including without limitation, any property management company of Landlord) shall not be personally liable in any manner whatsoever for any judgment or deficiency. The liability of Landlord under this Lease is limited to its actual period of ownership of title to the Building, and Landlord shall be automatically released from further performance under this Lease upon transfer of Landlords interest in the Premises or the Building.

31.5 Separability. Any provisions of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provisions hereof and such other provision shall remain in full force and effect.

31.6 Choice of Law. This Lease shall be governed by, and construed in accordance with, the laws of the State of California.

31.7 Attorneys' Fees. In the event any dispute between the parties results in litigation or other proceeding, the prevailing party shall be reimbursed by the party not prevailing for all reasonable costs and expenses, including, without limitation, reasonable attorneys' and experts' fees and costs incurred by the prevailing party in connection with such litigation or other proceeding, and any appeal thereof. Such costs, expenses and fees shall be included in and made a part of the judgment recovered by the prevailing party, if any.

31.8 Entire Agreement. This Lease supersedes any prior agreements, representations, negotiations or correspondence between the parties, and contains the entire agreement of the parties on matters covered. No other agreement, statement or promise made by any party, that is not in writing and signed by all parties to this Lease, shall be binding.

31.9 Warranty of Authority. Landlord and Tenant each represent and warrant that (1) the person executing this Lease on such party's behalf is duly and validly authorized to do so on behalf of the entity it purports to so bind, and (2) if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Lease and perform all of its obligations hereunder. Tenant hereby warrants that this Lease is valid and binding upon Tenant and enforceable against Tenant.

31.10 Notices. Any and all notices and demands required or permitted to be given hereunder to Landlord shall be in writing and shall be sent: (a) by United States mail, certified and postage prepaid; or (b) by personal delivery; or (c) by overnight courier, addressed to Landlord at 101 Lincoln Centre Drive, Fourth Floor, Foster City, California 94404-1 167. Any and all notices and demands required or permitted to be given hereunder to Tenant shall be in writing and shall be sent: (i) by United States mail, certified and postage prepaid; or (ii) by personal delivery to any employee or agent of Tenant over the age of eighteen (18) years of age; or (iii) by overnight courier, all of which shall be addressed to Tenant

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at the address on the front page hereof. Notice and/or demand shall be deemed given upon the earlier of actual receipt or the third business day following deposit in the United States mail. Any notice or requirement of service required by any statute or law now or hereafter in effect, including, but not limited to, California Code of Civil Procedure Sections 1161, 1161.l, and 1162 (including any amendments, supplements or substitutions thereof), is hereby waived by Tenant.

31.11 Joint and Several. If Tenant consists of more than one person or entity, the obligations of all such persons or entities shall be joint and several.

31.12 Covenants and Conditions. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition.

31.13 Waiver of Jury Trial. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way related to this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, the Building or the Park, and/or any claim of injury, loss or damage.

31.14 Underlining. The use of underlining within the Lease is for Landlord's reference purposes only and no other meaning or emphasis is intended by this use, nor should any be inferred.

31.15 Merger. The voluntary or other surrender of this Lease by Tenant, the mutual termination or cancellation hereof by Landlord and Tenant, or a termination of this Lease by Landlord for a material default by Tenant hereunder, shall not work a merger, and, at the sole option of Landlord, (i) shall terminate all or any existing subleases or subtenancies, or (ii) may operate as an assignment to Landlord of any or all of such subleases or subtenancies. Landlord's election of either or both of the foregoing options shall be exercised by delivery by Landlord of written notice thereof to Tenant and all known subtenants under any sublease.

32. Signs

Tenant shall have the right to share the signage with the occupant of the balance of the Building all signs and graphics of every kind visible in or from public view or corridors or the exterior of the Premises shall be subject to Landlord's prior written approval and shall be subject to any applicable governmental laws, ordinances, and regulations and in compliance with Landlord's sign criteria as same may exist from time to time or as set forth in Exhibit H hereto and made a part hereof. Tenant shall remove all such signs and graphics prior to the termination of this Lease. Such installations and removals shall be made in a manner as to avoid damage or defacement of the Premises; and Tenant shall repair any damage or defacement, including without limitation, discoloration caused by such installation removal. Landlord shall have the right, at its option, to deduct from the Security Deposit such sums as are reasonably necessary to remove such signs, including, but not limited to, the costs and expenses associated with any repairs necessitated by such removal. Notwithstanding the foregoing, in no event shall any: (a) neon, flashing or moving sign(s) or (b) sign(s) which shall interfere with the visibility of any sign, awning, canopy, advertising matter, or decoration of any kind of any other business or occupant of the Building or the Park be permitted hereunder. Tenant further agrees to maintain any such sign, awning, canopy, advertising matter, lettering, decoration or other thing as may be approved in good condition and repair at all times.

33. Mortgagee Protection

Upon any default on the part of Landlord, Tenant will give written notice by registered or certified mail to any beneficiary of a deed of trust or mortgagee of a mortgage covering the Premises who has provided Tenant with notice of their interest together with an address for receiving notice, and shall offer such beneficiary or mortgagee a reasonable opportunity to cure the default (which, in no event shall be less than ninety (90) days), including time to obtain possession of the Premises by power of sale or a judicial foreclosure, if such should prove necessary to effect a cure. If such default cannot be cured within such time period, then such additional time as may be necessary will be given to such beneficiary or mortgagee to effect such cure so long as such beneficiary or mortgagee has commenced the cure within the original time period and thereafter diligently pursues such cure to completion, in which event this Lease shall not be terminated while such cure is being diligently pursued. Tenant agrees that each lender to whom this Lease has been assigned by Landlord is an express third party beneficiary hereof. Tenant shall not make any prepayment of Rent more than one (1) month in advance without the prior written consent of each such lender, except if Tenant is required to make quarterly payments of Rent in advance pursuant to the provisions of Section 8 above. Tenant waives the collection of any deposit from lender(s) or any purchaser at a foreclosure sale of such lender(s)'

deed of trust unless the lender(s) or such purchaser shall have actually received and not refunded the deposit. Tenant agrees to make all payments under this Lease to the lender with the most senior encumbrance upon receiving a direction, in

writing, to pay said amounts to such lender. Tenant shall comply with such written direction to pay without determining whether an event of default exists under such lender's loan to Landlord.

34. Quitclaim

Upon any termination of this Lease, Tenant shall, at Landlord's request, execute, have acknowledged and deliver to Landlord a quitclaim deed of Tenant's interest in and to the Premises.

35. Modifications For Lender

If, in connection with obtaining financing for the Premises or any portion thereof, Landlord's lender shall request reasonable modification(s) to this Lease as a condition to such financing, Tenant shall not unreasonably withhold, delay or defer its consent thereto, provided such modifications do not materially adversely affect Tenant's rights hereunder or the use, occupancy or quiet enjoyment of Tenant hereunder or increase Tenant's obligations or decrease Tenant's rights hereunder.

36. Warranties of Tenant

Tenant hereby warrants and represents to Landlord, for the express benefit of Landlord, that Tenant has undertaken an independent evaluation of the risks inherent in the execution of this Lease and the operation of the Premises for the use permitted hereby, and that, based upon said independent evaluation, Tenant has elected to enter into this Lease and except as expressly set forth herein hereby assumes all risks with respect thereto. Tenant hereby further warrants and represents to Landlord, for the express benefit of Landlord, that in entering into this Lease, Tenant has not relied upon any statement, fact, promise or representation (whether express or implied, written or oral) not specifically set forth herein in writing and that any statement, fact, promise or representation (whether express or implied, written or oral) made at any time to Tenant, which is not expressly incorporated herein in writing, is hereby waived by Tenant.

37. Compliance with Americans with Disabilities Act

Landlord and Tenant hereby agree and acknowledge that the Premises, the Building and/or the Park may be subject to the requirements of the Americans with Disabilities Act, a federal law codified at 42 U.S.C. 12101 et seq, including, but not limited to Title III thereof, all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on

the date of this Lease and may be hereafter modified, amended or supplemented (collectively, the "ADA"). Any Tenant Improvements to be constructed hereunder shall be in compliance with the requirements of the ADA, and all costs incurred for purposes of compliance therewith shall be a part of and included in the costs of the Tenant Improvements. Tenant shall be solely responsible for conducting its own independent investigation of this matter with respect to the condition of the Building, Tenant's use of the Premises and for all improvements to be made to the Premises after the actual Commencement Date other than the Tenant Improvements; provided, however, with respect to the Tenant Improvements Landlord shall be solely responsible for ensuring that the design of all Tenant Improvements strictly comply with all requirements of the ADA. Subject to reimbursement pursuant to Section 6 of the Lease, if any barrier removal work or other work is required to the Building, the Common Areas or the Park under the ADA, then such work shall be the responsibility of Landlord; provided, if such work is required under the ADA as a result of Tenant's particular use of the Premises or any work or alteration made to the Premises by or on behalf of Tenant (other than any initial improvements), then such work shall be performed by Landlord at the sole cost and expense of Tenant. Except as otherwise expressly provided in this provision, Tenant shall be responsible at its sole cost and expense for fully and faithfully complying with all applicable requirements of the ADA, including without limitation, not discriminating against any disabled persons in the operation of Tenant's business in or about the Premises, and offering or otherwise providing auxiliary aids and services as, and when, required by the ADA. Within ten (1O) days after receipt, Landlord and Tenant shall advise the other party in writing, and provide the other with copies of (as applicable), any notices alleging violation of the ADA relating to any portion of the Premises or the Building; any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Premises or the Building; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Premises or the Building. Tenant shall and hereby agrees to protect, defend (with counsel acceptable to Landlord) and hold Landlord and the other Indemnitees harmless and indemnify the Indemnitees from and against all liabilities, damages, claims, losses, penalties, judgments, charges and expenses (including reasonable attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) arising from or in any way related to, directly or indirectly, Tenant's or Tenant's Representatives' violation or alleged violation of the

ADA. Tenant agrees that the obligations of Tenant herein shall survive the expiration or earlier termination of this Lease.

38. Brokerage Commission

Landlord and Tenant each represents and warrants for the benefit of the other that it has had no dealings with any real estate broker, agent or finder in connection with the Premises and/or the negotiation of this Lease, except for the Broker(s) (as set forth on Page 1), and that it knows of no other real estate broker, agent or finder who is or might be entitled to a real estate brokerage commission or finder's fee in connection with this Lease or otherwise based upon contacts

between the claimant and Tenant. Each party shall indemnify and hold harmless the other from and against any and ail liabilities or expenses arising out of claims made for a fee or commission by any real estate broker, agent or finder in connection with the Premises and this Lease other than Broker(s), if any, resulting from the actions of the indemnifying party. Any real estate brokerage commission or finder's fee payable to the Broker(s) in connection with this Lease shall only be payable and applicable to the extent of the initial Term of the Lease and to the extent of the Premises as same exist as of the date on which Tenant executes this Lease. Unless expressly agreed to in writing by Landlord and Broker(s), no real estate brokerage commission or finder's fee shall be owed to, or otherwise payable to, the Broker(s) for any renewals or other extensions of the initial Term of this Lease or for any additional space leased by Tenant other than the Premises as same exists as of the date on which Teant executes this Lease. Tenant further represents and warrants to Landlord that Tenant will not receive (i) any portion of any brokerage commission or finder's fee payable to the Broker(s) in connection with this Lease or (ii) any other form of compensation or incentive from the Broker(s) with respect to this Lease.

39. Quiet Enjoyment

Landlord covenants with Tenant, upon the paying of Rent and observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept, and during the periods that Tenant is not otherwise in default of any of the terms or provisions of this Lease, and subject to the rights of any of Landlord's lenders, (i) that Tenant shall and may peaceably and quietly hold, occupy and enjoy the Premises and the Common Areas during the Term of this Lease, and (ii) neither Landlord, nor any successor or assign of Landlord, shall disturb Tenant's occupancy or enjoyment of the Premises and the Common Areas.

40. Landlord's Ability to Perform Tenant's Unperformed Obligations

Notwithstanding anything to the contrary contained in this Lease, if Tenant shall fail to perform any of the terms, provisions, covenants or conditions to be performed or complied with by Tenant pursuant to this Lease within the applicable cure periods, and/or if the failure of Tenant relates to a matter which in Landlord's judgment reasonably exercised is of an emergency nature and such failure shall remain uncured for a period of time commensurate with such emergency, then Landlord may, at Landlord's option without any obligation to do so, and in its sole discretion as to the necessity therefor, perform any such term, provision, covenant, or condition, or make any such payment and Landlord by reason of so doing shall not be liable or responsible for any loss or damage thereby sustained by Tenant or anyone holding under or through Tenant. If Landlord so performs any of Tenant's obligations hereunder, the full amount of the cost and expense entailed or the payment so made or the amount of the loss so sustained shall immediately be owing by Tenant to Landlord, and Tenant shall promptly pay to Landlord upon demand, as Additional Rent, the full amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable law and Enforcement Expenses.

41. Tenant's Early Termination Option:

41.1 Termination Date: Tenant shall have a one-time option (the

"Termination Option") to terminate this Lease, effective as of the 37/th/ month of the Lease Term (the "Termination Date"). The Termination Option is granted subject to the following terms and conditions:

41.1.1 Notice: Tenant delivers to Landlord written notice of Tenant's election to exercise the Termination Option, which notice is given no later than nine (9) full calendar months prior to the Termination Date; and

41.1.2 No Default: Tenant is not then in default under this Lease beyond any applicable cure periods either on the date that Tenant exercises the Termination Option, or unless waived in writing by Landlord, on the Termination Date; and

41.1.3 Termination Fee: Tenant pays to Landlord on the 30/th/ month of the Lease Term, a cash lease termination fee (the "Fee") equal to two hundred six thousand eight hundred ninety-five and 00/100 dollars ($2O6,895.00).

41.2 Terms: If Tenant timely and properly exercises the Termination Option, (i) all rent payable under this Lease shall be paid through and apportioned as of the Termination Date (in addition to payment by Tenant of the Fee); (ii) neither party shall have any rights, estates, liabilities, or obligations under this Lease for the period accruing after the Termination Date, except those which by the provisions of this Lease, expressly survive the expiration or termination of the Term of this Lease; (iii) Tenant shall surrender and vacate the Premises and deliver possession thereof to Landlord on or before the Termination Date in the condition required under this Lease for surrender of the Premises; and (iv) Landlord and Tenant shall enter into a written agreement reflecting the termination of this Lease upon the terms provided for herein, which agreement shall be executed within thirty (30) days after Tenant exercises the Termination Option and delivers to Landlord the written notice required above. It is the parties' intention that nothing contained herein shall impair, diminish or otherwise prevent Landlord from recovering from Tenant such additional sums as may be necessary for payment of Tenant's Share of the Operating Expenses, Tax Expenses, Common Area Utility Costs, Utility Expenses, Administrative Charges and any other sums due and payable under this Lease allocated to any period prior to the Termination Date, including, any sums required to repair any damage to the Premises and/or restore the Premises to the condition required under the provisions of this Lease.

41.3 Termination: The Termination Option shall automatically terminate and become null and void upon the earlier to occur of (i) the breach or default by Tenant of any of the terms of this

Lease beyond any applicable cure periods either on the date that tenant exercises the Termination Option, or unless waived in writing by Landlord, on the Termination Date; (ii) Landlord or Tenant's the termination of Tenant's right to possession of the Premises under the provisions of this Lease; or (iii) the failure of Tenant to timely or properly exercise the Termination option as contemplated herein. This Termination Option is personal to Tenant and may not be assigned voluntarily, separate from or as part of the Lease, except to a Related Entity.

IN WITNESS WHEREOF, this Lease is executed by duly authorized signatories of the parties as of the Lease Date referenced on Page 1 of this Lease.

Tenant:

NetFlix.com,
a Delaware Corporation

By: */s/ W. Barry McCarthy, Jr.*

Its: *CFO & Secretary*

Date: *10/8/99*

By:

Its: Secretary

Date:

Landlord:

LINCOLN-RECP OLD OAKLAND OPCO, LLC,
a Delaware limited liability company

By: LEGACY PARTNERS COMMERCIAL, INC.,
as manager and agent for Lincoln-RECP Old Oakland OPCO, LLC

By: */s/ [ILLEGIBLE]*

Senior Vice President

Date:

If Tenant is a CORPORATION, the authorized officers must sign on behalf of the

corporation and indicate the capacity in which they are signing. The Lease must be executed by the president or vice-president and the secretary or assistant

secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be attached to this Lease.

Exhibit A Premises

This exhibit, entitled "Premises" is and shall constitute EXHIBIT A to that certain Lease Agreement dated August 11, 1999 (the "Lease"), by and between LINCOLN-RECP OLD OAKLAND OPCO, LLC, a Delaware limited liability company ("Landlord") and NetFlix.com, a Delaware corporation ("Tenant") for the leasing of certain premises located at 2219 Old Oakland Road, San Jose, California (the "Premises").

The Premises consist of the rentable square footage of space specified in the Basic Lease Information and has the address specified in the Basic Lease Information. The Premises are a part of and are contained in the Building specified in the Basic Lease Information. The non cross-hatched area depicts the Premises within the [Building, Project]:

[MAP]

Exhibit B to Lease Agreement Tenant Improvements

This exhibit, entitled "Tenant Improvements", is and shall constitute EXHIBIT B to that certain Lease Agreement dated August 11, 1999 (the "Lease"), by and between LINCOLN-RECP OLD OAKLAND OPCO, LLC, a Delaware limited liability company ("Landlord") and NetFlix.com, a Delaware corporation ("Tenant") for the leasing of certain premises located at 2219 Old Oakland Road, San Jose, California (the "Premises"). The terms, conditions and provisions of this EXHIBIT B are hereby incorporated into and are made a part of the Lease. Any capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms as set forth in the Lease:

1. Tenant Improvements. Subject to the conditions set forth below, Landlord agrees to construct and install at its sole cost and expense certain improvements ("Tenant Improvements") in the Building of which the Premises are a part in accordance with Section 2 below and pursuant to the terms of this EXHIBIT B.

2. Definition. "Tenant Improvements" as used in this Lease shall include only those portions of the Building which are described below. "Tenant Improvements" shall specifically not include

any alterations, additions or improvements installed or constructed by Tenant, and any of Tenant's trade fixtures, equipment, furniture, furnishings, telephone equipment or other personal property (collectively, "Personal Property"). The Tenant Improvements shall include only those improvements as specified in this Section 2 below and made a part hereof. Such work, as set forth below and as shown in the Initial Plans shall be hereinafter referred to as the "Work". Landlord shall not be obligated to pay for any improvements which are not expressly set forth herein below. The Tenant Improvements shall consist of the following Work as described more fully on Exhibit B-2 hereto:

(a) Install full floor to roof joist demising wall and separately metered PG&E.
(b) Remove wall partitions in former restroom area and install 12' of upper and 12' of lower cabinets, kitchenette sink and outlets for microwave and refrigerator.
(c) Install exterior lighting in shipping and receiving area which will be operational on a 24-hour, 7 days per week basis.

3. Tenant Improvement Costs. The Tenant Improvements' cost (Tenant Improvement Costs") shall mean and include any and all costs and expenses of the Work, including, without limitation, all of the following:

(a) All costs of preliminary space planning and final architectural and engineering plans and specifications (including, without limitation, the scope of work, all plans and specifications, the Initial Plans and the Final Drawings) for the Tenant Improvements, and architectural fees, engineering costs and fees, and other costs associated with completion of said plans;

(b) All costs of obtaining building permits and other necessary authorizations and approvals from the City of San Jose and other applicable jurisdictions;

(c) All costs of interior design and finish schedule plans and specifications including as-built drawings;

(d) All direct and indirect costs of procuring, constructing and installing the Tenant Improvements in the Premises, including, but not limited to, the construction fee for overhead and profit, the cost of all on-site supervisory and administrative staff, office, equipment and temporary services rendered by Landlord's consultants and the General Contractor in connection with construction of the Tenant Improvements, and all labor (including overtime) and materials constituting the Work;

(e) All fees payable to the General Contractor, architect and Landlord's engineering firm if they are required by Tenant to redesign any portion of the Tenant Improvements following Tenant's approval of the Final Drawings; and

(f) A construction management fee payable to Landlord in the amount of five percent (5%) of all direct and indirect costs of procuring, constructing and installing the Tenant Improvements in the Premises and the Building.

4. Building Standard Work. Landlord shall provide that the Tenant Improvements be at least equal, in quality, to Landlord's building standard materials, quantities and procedures then in use by Landlord ("Building Standards") attached hereto as Exhibit B-1, and shall consist of improvements which are generic in nature. Landlord shall obtain all government approvals of the Work to the full extent necessary for the issuance of a building permit for the Tenant Improvements. Such Tenant Improvements shall he constructed in a good and workmanlike manner, free of defects and using new

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materials and equipment of good quality. Tenant shall have the right to submit a written "punch list" to Landlord, setting forth any defective item of construction, and Landlord shall promptly cause such items to be corrected. Tenant's acceptance of the Premises or submission of a "punch list" shall not be deemed a waiver of Tenant's right to have defects in the Tenant Improvements or the Premises repaired at no cost to Tenant. Tenant shall give notice to Landlord, within the first year of the Lease Term, whenever any such defect becomes reasonably apparent, and Landlord shall repair such defect as soon as practicable.

5. Landlord shall not be obligated to pay for any Tenant Improvements which are not specifically set forth in Section 2 above or in Exhibit B-1.

6. Lease Provisions; Conflict. The terms and provisions of the Lease, insofar as they are applicable, in whole or in part, to this EXHIBIT B, are hereby incorporated herein by reference, and specfically including all of the provisions of Section 31 of the Lease. In the event of any conflict between the terms of the Lease and this EXHIBIT B, the terms of this EXHIBIT B shall prevail.

Exhibit B-1 Building Standards

Outline Specification for New Office Build-Out in R&D Buildings

OFFICE AREA

Demising Partition and Corridor Walls:

Note: One hr. rated walls where required based on occupancy group.

A. 6" 20-gage metal studs at 24" O.C. (or as required by code based on roof height) framed full height from finish floor to surface above.

B. One (1) layer 5/8" drywall Type "X" both sides of wall, fire taped only.

Interior Partitions:

A. 3-5/8" 25-gage metal studs at 24" 0.C. to bottom of T-Bar ceiling grid approximately 9' 0" high.

B. One (1) layer 5/8" drywall both sides of wall, smooth ready for paint.

C. 3-5/8" metal studs including all lateral bracing as required by code.

Perimeter Drywall (At Office Areas):

A. 3-5/8" metal studs @ 24" O.C. to 12' 0" above finished floor. (or as required by Title-24 for full height envelope then use demising wall spec.)

B. One (1) layer 5/8" Type "X" drywall taped smooth and ready for paint.

Column Furring:

A. Furring channel all sides of 2-l/2" metal studs per details.

B. One (1) layer 5/8" drywall taped smooth and ready for paint.

C. Columns within walls shall be furred-out.

Acoustical Ceilings:

Note: Gyp. Bd. ceiling at all restroom Typ.

A. 2' x 4' standard white T-Bar grid system as manufactured by Chicago Metallic of equal.

B. 2' x 4' x 5/8" white, no-directional acoustical tile to be regular second look as manufactured by Armstrong or equal.

Painting:

A. Sheetrock walls within office to receive two (2) coats of interior latex paint as manufactured by Kelly Moore or equal. Some portions of second coat to be single accent color.

B. Semi-gloss paint all restrooms and lunch rooms.

Window Covering:

A. 1" aluminum mini-blinds as manufactured by Levelor, Bali or equal, color to be selected by Legacy Partners Commercial, Inc. (brushed aluminum or white).

B. Blinds to be sized to fit window module.

VCT:

A. VCT to be l/8" x 12" x 12" as manufactured by Armstrong -Excelon Series or equal.

B. Slabs shall be water proofed per manufacturer recommendations, at sheet vinyl or VCT areas.

Light Fixtures:

A. 2" x 4" T-bar lay in 3-tube energy efficient fixture with cool white fluorescent tubes with parabolic lens as manufactured by Lithonia or equal.
(Approximately 50 F.C.)

Light Switches:

A. Switching as required by Title 24.

B. Switch assembly to be Levinton or equal, color - White

Electrical Outlet:

A. 11OV duplex outlet in demising or interior partitions only, as manufactured by Leviton or equal, color to be White.

B. Maximum eight (8) outlets per circuit, spacing to meet code or minimum 2 per office, conference room, reception and 2 dedicated over cabinet at lunch room junction boxes above ceiling for large open area with furniture partitions.

C. Transformers to be a minimum of 20% or over required capacity.

D. Contractors to inspect electric room and to include all necessary metering cost.

E. No aluminum wiring is acceptable.

Telephone/Data Outlet:

A. One (1) single outlet box in wall with pullwire from outlet box to area above T-bar ceiling per office.

B. Cover plate for phone outlets by telephone/data vendors.

Fire Sprinklers:

As required by fire codes.

Topset Base:

A. 4" rubber base as manufactured by Burke or equal, standard colors only.

B. 4" rubber base at VCT areas.

Toilet Areas:

Wet walls to receive Duraboard or Wonder Board and ceramic tile up to 48". Floors to receive ceramic tile with self coved base as required by code.

Carpet:

Note any of the following carpets are acceptable

Designweave: Alumni 28 oz., Windswept Classic 30 oz, or Stratton Design Series III 30 OZ, Structure II 28 oz.

Wood Doors:

Shall be 3' 0" x 9' 0" x l-3/4" (unless otherwise specified) solid core, prefinished harmony (rotary N. birch).

Door Frames:

Shall be ACI or equal, 3-3/4" or 4-7/8" throat, brushed, standard aluminum, snap-on trim.

Hardware:

l-1/2 pr. butts F179 Stanley, Latchset Dl0S Rhodes Schlage, Lockset D53PD Rhodes Schlage, Dome Type floor stop Gylnn Johnson FB13, Closer 4110LCN (where required) brushed chrome.

Insulation:

By Title 24 insulation.

Plumbing:

A. Shall comply with all local codes and handicapped code requirements. Fixtures shall be either "American Standard", "Kohler" or "Norris". All toilet accessories and grab bars shall be "Bobrick" or equal and approved by owner.

B. Plumbing bid shall include 5 gallon minimum hot water heater, or insta hot with mixer valve including all connections.

Toilet Partitions:

Shall be as manufactured by Fiat, global or equal if approved by owner. Color to be white or gray.

HVAC:

HVAC units per specifications.

Five (5) year warranty provided on all HVAC compressor units. All penetrations including curbs and sleepers to be hot moped to Legacy Partners Commercial, Inc. standard.

Warehouse Areas:

Floor - seal concrete with water base clear acrylic sealer. Fire Extinguishers - 2A 10 BC surface mount by code x by S.F.

400 W metal halide lighting at warehouse minimum 5-7 foot candles.

Note: All high pile storage requirements are excluded for standard building T.I.

Exhibit B-2 Tenant Improvements

The floor plan below shows the Work to be provided by Landlord pursuant to Section 2 of this Exhibit B of the Lease.

Exhibit C to Lease Agreement Rules & Regulations

This exhibit, entitled "Rules & Regulations", is and shall constitute EXHIBIT C to that certain Lease Agreement dated August 11, 1999 (the "Lease"), by and between LINCOLN-RECP OLD OAKLAND OPCO, LLC, a Delaware limited liability company ("Landlord") and NetFlix.com, a Delaware corporation ("Tenant") for the leasing of certain premises located at 2219 Old Oakland Road, San Jose, California (the "Premises"). The terms, conditions and provisions of this EXHIBIT C are hereby incorporated into and are made a part of the Lease. Any capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms as set forth in the Lease:

1. No advertisement, picture or sign of any sort shall be displayed on or outside the Premises or the Building without the prior written consent of Landlord. Landlord shall have the right to remove any such unapproved item without notice and at Tenant's expense.

2. Tenant shall not regularly park motor vehicles in designated parking areas after the conclusion of normal daily business activity.

3. Tenant shall not use any method of heating or air conditioning other than that supplied by Landlord without the prior written consent of Landlord.

4. All window coverings installed by Tenant and visible from the outside of the Building require the prior written approval of Landlord.

5. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance or any flammable or combustible materials on or around the Premises, the Building or the Park.

6. Tenant shall not alter any lock or install any new locks or bolts on any door at the Premises without the prior consent of Landlord.

7. Tenant agrees not to make any duplicate keys without the prior consent of Landlord.

8. Tenant shall park motor vehicles in those general parking areas as designated by Landlord except for loading and unloading. During those periods of loading and unloading, Tenant shall not unreasonably interfere with traffic flow within the Park and loading and unloading areas of other Tenants.

9. Tenant shall not disturb, solicit or canvas any occupant of the Building or Park and shall cooperate to prevent same.

10. No person shall go on the roof without Landlord's permission.

11. Business machines and mechanical equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building, to such a degree as to be objectionable to Landlord or other Tenants, shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration.

12. All goods, including material used to store goods, delivered to the Premises of Tenant shall be immediately moved into the Premises and shall not be left in parking or receiving areas overnight.

13. Tractor trailers which must be unhooked or parked with dolly wheels beyond the concrete loading areas must use steel plates or wood blocks under the dolly wheels to prevent damage to the asphalt paving surfaces. No parking or storing of such trailers will be permitted in the auto parking areas of the Park or on streets adjacent thereto.

14. Forklifts which operate on asphalt paving areas shall not have solid rubber tires and shall only use tires that do not damage the asphalt.

15. Tenant is responsible for the storage and removal of all trash and refuse. All such trash and refuse shall be contained in suitable receptacles stored behind screened enclosures at locations approved by Landlord.

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16. Tenant shall not store or permit the storage or placement of goods, or merchandise or pallets or equipment of any sort in or around the Premises, the Building, the Park or any of the Common Areas of the foregoing. No displays or sales of merchandise shall be allowed in the parking lots or other Common Areas.

17. Tenant shall not permit any animals, including, but not limited to, any household pets, to be brought or kept in or about the Premises, the Building the Park or any of the Common Areas of the foregoing.

18. Tenant shall not permit any motor vehicles to be washed on any portion of the Premises or in the Common Areas of the Park, nor shall Tenant permit mechanical work or maintenance of motor vehicles to be performed on any portion of the Premises or in the Common Areas of the Park.

Exhibit E Hazardous Materials Disclosure Certificate

Your cooperation in this matter is appreciated. Initially, the information provided by you in this Hazardous Materials Disclosure Certificate is necessary for the Landlord (identified below) to evaluate and finalize a lease agreement with you as Tenant. After a lease agreement is signed by you and the Landlord (the "Lease Agreement"), on an annual basis in accordance with the provisions of
Section 29 of the signed Lease Agreement, you are to provide an update to the information initially provided by you in this certificate. The information contained in the initial Hazardous Materials Disclosure Certificate and each annual certificate provided by you thereafter will be maintained in confidentiality by Landlord subject to release and disclosure as required by (i) any lenders and owners and their respective environmental consultants, (ii) any prospective purchaser(s) of all or any portion of the property on which the Premises are located, (iii) Landlord to defend itself or its lenders, partners or representatives against any claim or demand, and (iv) any laws, rules, regulations, orders, decrees, or ordinances, including, without limitation, court orders or subpoenas. Any and all capitalized terms used herein, which are not otherwise defined herein, shall have the same meaning ascribed to such term in the signed Lease Agreement. Any questions regarding this certificate should be directed to, and when completed, the certificate should be delivered to:

Landlord: _____
_____
c/o Legacy Partners Commercial, Inc.
101 Lincoln Centre Drive, Fourth Floor
Foster City, California 94404
Attn: _____
Phone: (650) 571-2200

Name of (Prospective) Tenant: _____

Mailing Address: _____

Contact Person, Title and Telephone Number(s): _____

Contact Person for Hazardous Waste Materials Management and Manifests and Telephone Number(s): _____

Address of (Prospective) Premises: _____

Length of (Prospective) Initial Term: _____

1. General Information:

Describe the initial proposed operations to take place in, on, or about the Premises, including, without limitation, principal products processed, manufactured or assembled services and activities to be provided or otherwise conducted. Existing Tenants should describe any proposed changes to on-going operations.

_____

_____

2. Use, Storage and Disposal of Hazardous Materials

2.1 Will any Hazardous Materials be used, generated, stored or disposed of in, on or about the Premises? Existing Tenants should describe any Hazardous Materials which continue to be used, generated, stored or disposed of in, on or about the Premises.

Wastes	Yes [_]	No [_]
Chemical Products	Yes [_]	No [_]
Other	Yes [_]	No [_]

If Yes is marked, please explain: _____

_____

2.2 If Yes is marked in Section 2.1, attach a list of any Hazardous Materials to be used, generated, stored or disposed of in, on or about the Premises, including the applicable hazard class and an estimate of the quantities of such Hazardous Materials at any given time; estimated annual throughput; the proposed location(s) and method of storage (excluding nominal amounts of ordinary household cleaners and janitorial supplies which are not regulated by any Environmental Laws); and the proposed location(s) and method of disposal for each Hazardous Material, including, the estimated frequency, and the proposed contractors or subcontractors. Existing Tenants should attach a list setting forth the information requested above and such list should include actual data from on-going operations and the identification of any variations in such information from the prior year's certificate.

3. Storage Tanks and Sumps

3.1 Is any above or below ground storage of gasoline, diesel, petroleum, or other Hazardous Materials in tanks or sumps proposed in, on or about the Premises? Existing Tenants should describe any such actual or proposed activities.

Yes [_] No [_]

If yes, please explain: _____

4. Waste Management

4.1 Has your company been issued an EPA Hazardous Waste Generator I.D. Number? Existing Tenants should describe any additional identification numbers issued since the previous certificate.

Yes [_] No [_]

4.2 Has your company filed a biennial or quarterly reports as a hazardous waste generator? Existing Tenants should describe any new reports filed.

Yes [_] No [_]

If yes, attach a copy of the most recent report filed.

5. Wastewater Treatment and Discharge

5.1 Will your company discharge wastewater or other wastes to:

____ storm drain? ____ sewer? ____ surface water? ____ [no wastewater or other wastes discharged.

Existing Tenants should indicate any actual discharges. If so, describe the nature of any proposed or actual discharge(s).

5.2 Will any such wastewater or waste be treated before discharge?

Yes [_] No [_]

If yes, describe the type of treatment proposed to be conducted. Existing Tenants should describe the actual treatment conducted.

6. Air Discharges

6.l Do you plan for any air filtration systems or stacks to be used in your company's operations in, on or about the Premises that will discharge into the air; and will such air emissions be monitored? Existing Tenants should indicate whether or not there are any such air filtration systems or stacks in use in, on or about the Premises which discharge into the air and whether such air emissions are being monitored.

Yes [_] No [_]

If yes, please describe: _____

6.2 Do you propose to operate any of the following types of equipment, or any other equipment requiring an air emissions permit? Existing Tenants should specify any such equipment being operated in, on or about the Premises.

____ Spray booth(s)	____ Incinerator(s)
____ Dip tank(s)	____ Other (Please describe)
____ Drying oven(s)	____ No Equipment Requiring Air Permits

If yes, please describe: _____

7. Hazardous Materials Disclosures

7.1 Has your company prepared or will it be required to prepare a Hazardous Materials management plan ("Management Plan") pursuant to Fire Department or other governmental or

regulatory agencies' requirements? Existing Tenants should indicate whether or not a Management Plan is required and has been prepared.

Yes [_] No [_]

If yes, attach a copy of the Management Plan. Existing Tenants should attach a copy of any required updates to the Management Plan.

7.2 Are any of the Hazardous Materials, and in particular chemicals, proposed to be used in your operations in, on or about the Premises regulated under Proposition 65? Existing Tenants should indicate whether or not there are any new Hazardous Materials being so used which are regulated under Proposition 65.

Yes [_] No [_]

If yes, please explain: _____

8. Enforcement Actions and Complaints

8.1 With respect to Hazardous Materials or Environmental Laws, has your company ever been subject to any agency enforcement actions, administrative orders, or consent decrees or has your company received requests for information, notice or demand letters, or any other inquiries regarding its operations? Existing Tenants should indicate whether or not any such actions, orders or decrees have been, or are in the process of being, undertaken or if any such requests have been received.

Yes [_] No [_]

If yes, describe the actions, orders or decrees and any continuing compliance obligations imposed as a result of these actions, orders or decrees and also describe any requests, notices or demands, and attach a copy of all such documents. Existing Tenants should describe and attach a copy of any new actions, orders, decrees, requests, notices or demands not already delivered to Landlord pursuant to the provisions of Section 29 of the signed Lease Agreement.

8.2 Have there ever been, or are there now pending, any lawsuits against your company regarding any environmental or health and safety concerns?

Yes [_] No [_]

If yes, describe any such lawsuits and attach copies of the complaint(s), cross-complaint(s), pleadings and all other documents related thereto as requested by Landlord. Existing Tenants should describe and attach a copy of any new complaint(s), cross-complaint(s), pleadings and other related documents not already delivered to Landlord pursuant to the provisions of Section 29 of the signed Lease Agreement.

8.3 Have there been any problems or complaints from adjacent Tenants, owners or other neighbors at your company's current facility with regard to environmental or health and safety concerns? Existing Tenants should indicate whether or not there have been any such problems or complaints from adjacent Tenants, owners or other neighbors at, about or near the Premises.

Yes [_] No [_]

If yes, please describe. Existing Tenants should describe any such problems or complaints not already disclosed to Landlord under the provisions of the signed Lease Agreement.

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9. Permits and Licenses

9.1 Attach copies of all Hazardous Materials permits and licenses including a Transporter Permit number issued to your company with respect to its proposed operations in, on or about the Premises, including, without limitation, any wastewater discharge permits, air emissions permits, and use permits or approvals. Existing Tenants should attach copies of any new permits and licenses as well as any renewals of permits or licenses previously issued.

The undersigned hereby acknowledges and agrees that (A) this Hazardous Materials Disclosure Certificate is being delivered in connection with, and as required by, Landlord in connection with the evaluation and finalization of a Lease Agreement and will be attached thereto as an exhibit; (B) that this Hazardous Materials Disclosure Certificate is being delivered in accordance with, and as required by, the provisions of Section 29 of the Lease Agreement; and (C) that Tenant shall have and retain full and complete responsibility and liability with respect to any of the Hazardous Materials disclosed in the Hazardous Material Certificate notwithstanding Landlord's/Tenant's receipt and/or approval of such certificate. Tenant further agrees that none of the following described acts or events shall be construed or otherwise interpreted as either (a) excusing, diminishing or otherwise limiting Tenant from the requirement to fully and faithfully perform its obligations under the Lease with respect to Hazardous Materials, including, without limitation, Tenant's indemnification of the Indemnitees and compliance with all Environmental Laws, or (b) imposing upon Landlord, directly or indirectly, any duty or Liability with respect to any such Hazardous Materials, including, without limitation, any duty on Landlord to investigate or otherwise verify the accuracy of the representations and statements made therein or to ensure that Tenant is in compliance with all Environmental Laws; (i) the delivery of such certificate to

Landlord and/or Landlord's acceptance of such certificate, (ii) Landlord's review and approval of such certificate, (iii) Landlord's failure to obtain such certificate from Tenant at any time, or (iv) Landlord's actual or constructive knowledge of the types and quantities of Hazardous Materials being used, stored, generated, disposed of or transported on or about the Premises by Tenant or Tenant's Representatives. Notwithstanding the foregoing or anything to the contrary contained herein, the undersigned acknowledges and agrees that Landlord and its partners, lenders and representatives may, and will, rely upon the statements, representations, warranties and certifications made herein and the truthfulness thereof in entering into the Lease Agreement and the continuance thereof throughout the term, and any renewals thereof, of the Lease Agreement.

I (print name)_____, acting with full authority to bind the (proposed) Tenant and on behalf of the (proposed) Tenant, certify, represent and warrant that the information contained in this certificate is true and correct.

(Prospective) Tenant:

By: _____ Title: _____ Date: _____

Exhibit F
First Amendment to Lease Agreement
Change of Commencement Date

This First Amendment to Lease Agreement (the "Amendment") is made and entered into to be effective as of _____, by and between _____ ("Landlord"), and _____ ("Tenant"), with reference to the following facts:

Recitals

A. Landlord and Tenant have entered into that certain Lease Agreement dated _____ (the "Lease"), for the leasing of certain premises containing approximately _____ rentable square feet of space located at _____, California (the "Premises") as such Premises are more fully described in the Lease.

B. Landlord and Tenant wish to amend the Commencement Date of the Lease.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Recitals: Landlord and Tenant agree that the above recitals are true and correct.

2. The Commencement Date of the Lease shall be_____.

3. The last day of the Term of the Lease (the "Expiration Date") shall be _____.

4. The dates on which the Base Rent will be adjusted are:

for the period _____ to _____ the monthly Base Rent shall be $_____;
for the period _____ to _____ the monthly Base Rent shall be $_____; and
for the period _____ to _____ the monthly Base Rent shall be $_____.

5. Effect of Amendment: Except as modified herein, the terms and conditions of the Lease shall remain unmodified and continue in full force and effect. In the event of any conflict between the terms and conditions of the Lease and this Amendment, the terms and conditions of terms Amendment shall prevail.

6. Definitions: Unless otherwise defined in this Amendment, all terms not defined in this Amendment shall have the meaning set forth in the Lease.

7. Authority: Subject to the provisions of the Lease, this Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns. Each party hereto and the persons signing below warrant that the person signing below on such party's behalf is authorized to do so and to bind such party to the terms of this Amendment.

8. The terms and provisions of the Lease are hereby incorporated in this Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first above written.

[PROPERTY MANAGER: Please provide Tenant Information and Word Processing will complete the signature block]

Exhibit G Tenant's Initial Hazardous Materials Disclosure Certificate

Your cooperation in this matter is appreciated. Initially. the information provided by you in this Hazardous Materials Disclosure Certificate is necessary for the Landlord (identified below) to evaluate and finalize a lease agreement with you as Tenant. After a lease agreement is signed by you and the Landlord (the "Lease Agreement"), on an annual basis in accordance with the provisions of
Section 29 of the signed Lease Agreement, you are to provide an update to the information initially provided by you in this certificate. The information contained in the initial Hazardous Materials Disclosure Certificate and each annual certificate provided by you thereafter will be maintained in confidentiality by Landlord subject to release and disclosure as required by (i) any lenders and owners and their respective environmental consultants, (ii) any prospective purchaser(s) of all or any portion of the property on which the Premises are located, (iii)

Landlord to defend itself or its lenders, partners or representatives against any claim or demand, and (iv) any laws, rules, regulations, orders, decrees, or ordinances, including, without limitation, court orders or subpoenas. Any and all capitalized terms used herein, which are not otherwise defined herein, shall have the same meaning ascribed to such term in the signed Lease Agreement. Any questions regarding this certificate should be directed to, and when completed, the certificate should be delivered to:

Landlord: _____
_____
c/o Legacy Partners Commercial, Inc.
101 Lincoln Centre Drive, Fourth Floor
Foster City, California 94404
Attn: _____
Phone: (650) 571-2200

Name of (Prospective) Tenant: _____

Mailing Address: _____

Contact Person, Title and Telephone Number(s): _____

Contact Person for Hazardous Waste Materials Management and Manifests and Telephone Number(s): _____

Address of (Prospective) Premises: _____

Length of (Prospective) Initial Term: _____

1. General Information:

Describe the Initial proposed operations to take place in, on, or about the Premises, including, without limitation, principal products processed, manufactured or assembled services and activities to be provided or otherwise conducted. Existing Tenants should describe any proposed changes to on-going operations.

_____

_____

2. Use, Storage and Disposal of Hazardous Materials

2.1 Will any Hazardous Materials be used, generated, stored or disposed of in, on or about the Premises? Existing Tenants should describe any Hazardous Materials which continue to be used, generated, stored or disposed of in, on or about the Premises.

Wastes Yes [_] No [_]

Chemical Products	Yes [_]	No [_]
Other	Yes [_]	No [_]

If Yes is marked. please explain: _____

2.2 If Yes is marked in Section 2.1, attach a list of any Hazardous Materials to be used, generated, stored or disposed of in, on or about the Premises, including the applicable hazard class and an estimate of the quantities of such Hazardous Materials at any given time; estimated annual throughput; the proposed location(s) and method of storage (excluding nomina1 amounts of ordinary household cleaners and janitorial supplies which are not regulated by any Environmental Laws); and the proposed location(s) and method of disposal for each Hazardous Material, including, the estimated frequency, and the proposed contractors or subcontractors. Existing Tenants should attach a list setting forth the information requested above and such list should include actual data from on-going operations and the identification of any variations in such information from the prior year's certificate.

3. Storage Tanks and Sumps

3.1 Is any above or below ground storage of gasoline, diesel, petroleum, or other Hazardous Materials in tanks or sumps proposed in, on or about the Premises? Existing Tenants should describe any such actual or proposed activities.

Yes [_] No [_]

If yes, please explain: _____

4. Waste Management

4.1 Has your company been issued an EPA Hazardous Waste Generator I.D. Number? Existing Tenants should describe any additional identification numbers issued since the previous certificate.

Yes [_] No [_]

4.2 Has your company filed a biennial or quarterly reports as a hazardous waste generator? Existing Tenants should describe any new reports filed.

Yes [_] No [_]

If yes, attach a copy of the most recent report filed.

5. Wastewater Treatment and Discharge

5.1 Will your company discharge wastewater or other wastes to:

_____ storm drain? _____ sewer? _____ surface water? _____ no wastewater or other wastes discharged.

Existing Tenants should indicate any actual discharges. If so, describe the nature of any proposed or actual discharge(s).

5.2 Will any such wastewater or waste be treated before discharge?

Yes [_] No [_]

If yes, describe the type of treatment proposed to be conducted. Existing Tenants should describe the actual treatment conducted.

6. Air Discharges

6.1 Do you plan for any air filtration systems or stacks to be used in your company's operations in, on or about the Premises that will discharge into the air; and will such air emissions be monitored? Existing Tenants should indicate whether or not there are any such air filtration systems or stacks in use in, on or about the Premises which discharge into the air and whether such air emissions are being monitored.

Yes [ ] No [ ]

If yes, please describe: _____

6.2 Do you propose to operate any of the following types of equipment, or any other equipment requiring an air emissions permit? Existing Tenants should specify any such equipment being operated in, on or about the Premises.

_____ Spray booth(s)	_____ Incinerator(s)
_____ Dip tank(s)	_____ Other (Please describe)
_____ Drying oven(s)	_____ No Equipment Requiring Air Permits

If yes, please describe: _____

7. Hazardous Materials Disclosures

7.1 Has your company prepared or will it be required to prepare a Hazardous Materials management plan ("Management Plan") pursuant to Fire Department or other governmental or regulatory agencies' requirements? Existing Tenants should indicate whether or not a Management Plan is required and has been prepared.

Yes [ ] No [ ]

If yes, attach a copy of the Management Plan. Existing Tenants should attach a copy of any required updates to the Management Plan.

7.2 Are any of the Hazardous Materials, and in particular chemicals, proposed to be used in your operations in, on or about the Premises regulated under Proposition 65? Existing Tenants should indicate whether or not there are any new Hazardous Materials being so used which are regulated under Proposition 65.

Yes [ ] No [ ]

If yes, please describe: _____

_____

8. Enforcement Actions and Complaints

8.1 With respect to Hazardous Materials or Environmental Laws, has your company ever been subject to any agency enforcement actions, administrative orders, or consent decrees or has your company received requests for information, notice or demand letters, or any other inquiries regarding its operations? Existing Tenants should indicate whether or not any such actions, orders or decrees have been, or are in the process of being, undertaken or if any such requests have been received.

Yes [ ] No [ ]

If yes, describe the actions, orders or decrees and any continuing compliance obligations imposed as a result of these actions, orders or decrees and also describe any requests, notices or demands, and attach a copy of all such documents. Existing Tenants should describe and attach a copy of any new actions, orders, decrees, requests, notices or demands not already delivered to Landlord pursuant to the provisions of Section 29 of the signed Lease Agreement.

_____

_____

8.2 Have there ever been, or are there now pending, any lawsuits against your company regarding any environmental or health and safety concerns?

Yes [ ] No [ ]

If yes, describe any such lawsuits and attach copies of the complaint(s), cross-complaint(s), pleadings and all other documents related thereto as requested by Landlord. Existing Tenants should describe and attach a copy of any new complaint(s), cross-complaint(s), pleadings and other related documents not already delivered to Landlord pursuant to the provisions of Section 29 of the signed Lease Agreement.

8.3 Have there been any problems or complaints from adjacent Tenants, owners or other neighbors at your company's current facility with regard to environmental or health and safety concerns? Existing Tenants should indicate whether or not there have been any such problems or complaints from adjacent Tenants, owners or other neighbors at, about or near the Premises.

Yes [ ] No [ ]

If yes, please describe. Existing Tenants should describe any such problems or complaints not already disclosed to Landlord under the provisions of the signed Lease Agreement.

9. Permits and Licenses

9.1 Attach copies of all Hazardous Materials permits and licenses including a Transporter Permit number issued to your company with respect to its proposed operations in, on or about the Premises, including, without limitation, any wastewater discharge permits, air emissions permits, and use permits or approvals. Existing Tenants should attach copies of any new permits and licenses as well as any renewals of permits or licenses previously issued.

The undersigned hereby acknowledges and agrees that (A) this Hazardous Materials Disclosure Certificate is being delivered in connection with, and as required by, Landlord in connection with the evaluation and finalization of a Lease Agreement and will be attached thereto as an exhibit; (B) that this Hazardous Materials Disclosure Certificate is being delivered in accordance with, and as required by, the provisions of Section 29 of the Lease Agreement; and (C) that Tenant shall have and retain full and complete responsibility and liability with respect to any of the Hazardous Materials disclosed in the HazMat Certificate notwithstanding Landlord's/Tenant's receipt and/or approval of such certificate. Tenant further agrees that none of the following described acts or events shall be construed or otherwise interpreted as either (a) excusing, diminishing or otherwise limiting Tenant from the requirement to fully and faithfully perform its obligations under the Lease with respect to Hazardous Materials, including, without limitation, Tenant's indemnification of the Indemnitees and compliance with all Environmental Laws, or (b) imposing upon Landlord, directly or indirectly, any duty or liability with respect to any such Hazardous Materials, including, without limitation, any duty on Landlord to investigate or

otherwise verify the accuracy of the representations and statements made therein or to ensure that Tenant is in compliance with all Environmental Laws; (i) the delivery of such certificate to Landlord and/or Landlord's acceptance of such certificate, (ii) Landlord's review and approval of such certificate, (iii) Landlord's failure to obtain such certificate from Tenant at any time, or (iv) Landlord's actual or constructive knowledge of the types and quantities of Hazardous Materials being used, stored, generated, disposed of or transported on or about the Premises by Tenant or Tenant's Representatives. Notwithstanding the foregoing or anything to the contrary contained herein, the undersigned acknowledges and agrees that Landlord and its partners, lenders and representatives may, and will, rely upon the statements, representations, warranties, and certifications made herein and the truthfulness thereof in entering into the Lease Agreement and the continuance thereof throughout the term, and any renewals thereof, of the Lease Agreement.

I (print name) _____ , acting with full authority to bind the (proposed) Tenant and on behalf of the (proposed) Tenant, certify, represent and warrant that the information contained in this certificate is true and correct.

(Prospective) Tenant:

By: _____
Title: _____
Date: _____

EXHIBIT 1

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (this "Agreement") is as of the ___day of _____, 19__, between Credit Suisse First Boston Mortgage Capital LLC ("Lender") and _____ ("Tenant").

RECITALS

A. Tenant is the tenant under a certain lease (the "Lease"), dated as of _____, 19__, with _____ ("Landlord"), of premises described in the Lease (the "Premises") as more particularly described in Exhibit A hereto.

B. This Agreement is being entered into in connection with a certain loan (the "Loan") which Lender has made to Landlord, and secured in part by a Deed of Trust, assignment of leases and rents and security agreement on the Premises (the "Deed of Trust") dated as of _____, 199_ and an assignment of leases and rents dated as of _____, 199_ (the "Assignment": the Deed of Trust, the Assignment and the other documents executed and delivered in connection with the Loan are hereinafter collectively referred to as the "Loan Documents").

AGREEMENT

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Tenant agrees that the Lease and all terms and conditions contained therein and all rights, options, liens and charges created thereby is and shall be subject and subordinate in all respects to the Loan Documents and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of secured obligations and the Loan Documents, to the full extent of all amounts secured by the Loan Documents from time to time.

2. Lender agrees that, if Lender exercises any of its rights under the Loan Documents such that it becomes the owner of the Premises, including but not limited to an entry by Lender pursuant to the Deed of Trust, a forec1osure of the Deed of Trust, a power of sale under the Deed of Trust or otherwise: (a) the Lease shall continue in full force and effect as a direct lease between Lender and Tenant, and subject to all the terms, covenants and conditions of the Lease, and (b) Lender shall not disturb Tenant's right of quiet possession of the Premises under the terms of the Lease so long as Tenant is not in default beyond any applicable grace period of any term, covenant or condition of the Lease.

3. Tenant agrees that, in the event of a exercise of the power of sale or foreclosure of the Deed of Trust by Lender or the acceptance of a deed in lieu of foreclosure by Lender or any other succession of Lender to ownership of the Premises. Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease.

4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

(a) liable in any way for any act, omission, neglect or default of any prior Landlord (including, without limitation, the then defaulting Landlord), or

(b) subject to any claim, defense, counterclaim or offsets which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord), or

(c) bound by any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date under the Lease to any prior Landlord (including, without limitation, the then defaulting Landlord), or

(d) bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any prior Landlord's interest, or

(e) accountable for any monies deposited with any prior Landlord (including security deposits), except to the extent such monies are actually received by Lender, or

(f) bound by any amendment or modification of the Lease made without the written consent of Lender.

Nothing contained herein shall prevent Lender from naming Tenant in any foreclosure or other action or proceeding initiated in order for Lender to avail itself of and complete any such foreclosure or other remedy.

5. Tenant hereby agrees to give to Lender copies of all notices of Landlord default(s) under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to Lender. Lender shall have the right but no obligation to remedy any landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and for such purpose Tenant hereby grants Lender, in addition the period given to Landlord for remedying defaults, an additional 30 days to remedy, or cause to be remedied, any such default. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No Landlord default under the Lease shall exist or shall be deemed to exist (i) as long as Lender, in good faith, shall have commenced to cure such default within the above reference time period and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (ii) if possession of the Premises is required in order to cure such default, or if such default is not susceptible of being cured by Lender, as long as Lender, in good faith, shall have notified Tenant that Lender intends to institute proceedings under the Loan Documents, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event of the termination of the Lease by reason of any default thereunder by Landlord, upon Lender's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to Lender or its designee or nominee a new lease of the Premises for the remainder of the term of the Lease upon all of the terms, covenants and conditions of the Lease. Neither Lender nor its designee or nominee shall become liable under the Lease unless and until Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee remains, the owner of the Premises. In no event shall Lender have any personal liability as successor to Landlord and Tenant shall look only to the estate and property of Lender in the Premises for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender as Landlord under the Lease, and no other property or assets of Lender shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease. Lender shall have the right, without Tenant's consent, to foreclose the Deed of Trust or to accept a deed in lieu of foreclosure of the Deed of Trust or to exercise any other remedies under the Loan Documents.

6. Tenant has no knowledge of any prior assignment or pledge of the rents accruing under the Lease by Landlord. Tenant hereby acknowledges the making of the Assignment from Landlord to Lender in connection with the Loan. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in said assignments, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignments or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing.

7. If Tenant is a corporation, each individual executing this Agreement on behalf of said corporation represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the by-laws of said corporation, and that this Agreement is binding upon said corporation in accordance with its terms. If Landlord is a partnership, each individual executing this Agreement on behalf of said partnership represents and warrants the s/he is duly authorized to execute and deliver this Agreement on behalf of said partnership in accordance with the partnership agreement for said partnership.

8. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt or (b) the date of delivery, refusal or nondelivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be at the following addresses:

If to Tenant:

NetFlix.Com
750 University Ave

Los Gatos CA 95032 ATTN: CFO

with a copy to:

_____
_____
_____
_____

If to Lender: Credit Suisse First Boston Mortgage Capital LLC
11 Madison Avenue,
New York, New York 10010
Attention: _____

with a copy to: Cadwalader, Wickersham & Taft

100 Maiden Lane
New York, New York 10038
Attention: William P. McInerney, Esq.

9. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, and the term "Tenant" as used herein includes any successor and assign of the named Tenant herein.

10. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.

11. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

12. This Agreement shall be construed in accordance with the laws of the State of _____.

Witness the execution hereof as of the date first above written.

[LENDER]

By:_____
Name: _____
Title: _____

[TENANT]

By: /s/ Netflix.com
Name: /s/ W. Barry McCarthy, Jr.
Title: CFO

The undersigned Landlord hereby consents to the foregoing Agreement and confirms the facts stated in the foregoing Agreement.

[LANDLORD]

By:_____
Name: _____
Title:_____

First Amendment to Lease Agreement Change of Commencement Date

This First Amendment to Lease Agreement (the "Amendment") is made and entered into to be effective as of December 3, 1999, by and between LINCOLN-RECP OLD OAKLAND OPCO, LLC, a Delaware limited liability company ("Landlord"), and NetFlix.com, a Delaware corporation ("Tenant"), with reference to the following facts:

Recitals

A. Landlord and Tenant have entered into that certain Lease Agreement dated August 11, 1999 (the "Lease"), for the leasing of certain premises containing approximately 31,830 rentable square feet of space located at 2219 Old Oakland Road, San Jose, California (the "Premises") as such Premises are more fully described in the Lease.

B. Landlord and Tenant wish to amend the Commencement Date of the Lease.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Recitals: Landlord and Tenant agree that the above recitals are true and correct.

2. The Commencement Date of the Lease shall be December 7, 1999.

3. The last day of the Term of the Lease (the "Expiration Date") shall be December 6, 2004.

4. The dates on which the Base Rent will be adjusted are:

for the period December 7, 2000 to December 6, 2001 the monthly Base Rent shall be $38,196.00;
for the period December 7, 2001 to December 6, 2002 the monthly Base Rent shall be $39,788.00;
for the period December 7, 2002 to December 6, 2003 the monthly Base Rent shall be $41,379.00; and
for the period December 7, 2003 to December 6, 2004 the monthly Base Rent shall be $42,971.00.

5. Effect of Amendment: Except as modified herein, the terms and conditions of the Lease shall remain unmodified and continue in full force and effect. In the event of any conflict between the terms and conditions of the Lease and this Amendment, the terms and conditions of this Amendment shall prevail.

6. Definitions: Unless otherwise defined in this Amendment, all terms not defined in this Amendment shall have the meaning set forth in the Lease.

7. Authority: Subject to the provisions of the Lease, this Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns. Each party hereto and the persons signing below warrant that the person signing below on such party's behalf is authorized to do so and to bind such party to the terms of this Amendment.

8. The terms and provisions of the Lease are hereby Incorporated in this Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first above written.

Tenant:

NetFlix.com,
a Delaware corporation

By: */s/ W. Barry McCarthy, Jr.*

Its: *CFO/Secretary*

Date: *1-24-00*

By: _____

Its: Secretary

Date: _____

Landlord:

LINCOLN-RECP OLD OAKLAND, LLC.
a Delaware limited liability company

By: LEGACY PARTNERS COMMERCIAL, INC.,
as manager and agent for Lincoln-RECP Old Oakland OPCO, LLC

By: /s/ [ILLEGIBLE]
Senior Vice President

Date: _____

If Tenant is a CORPORATION, the authorized officers must sign on behalf of the corporation and indicate the capacity in which they are signing. The Lease must be executed by the president or vice-president and the secretary or assistant

secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be attached to this Lease.

Exhibit A Original Premises and Additional Premises

The non cross-hatched area below represents the "Additional Premises".

[FLOOR PLAN]
2219 OLD OAKLAND ROAD
SAN JOSE, CALIFORNIA

Second Amendment to Lease Agreement

This Second Amendment to Lease Agreement (the "Amendment") is made and entered into as of January 4, 2000, by and between LINCOLN-RECP OLD OAKLAND OPCO, LLC, a Delaware limited liability company ("Landlord"), and NETFLIX.COM, a Delaware corporation ("Tenant"), with reference to the following facts.

Recitals

A. Landlord and Tenant have entered into that certain Lease Agreement dated as of August 11, 1999 (the "Lease"), for the leasing of certain premises consisting of approximately 31,830 rentable square feet located at 2219 Old Oakland Road, San Jose, California (the "Original Premises") as such Original Premises are more fully described in the Lease.

B. Landlord and Tenant now wish to amend the Lease to provide for, among other things, the addition of certain contiguous space to the Original Premises, all upon and subject to each of the terms, conditions, and provisions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Recitals: Landlord and Tenant agree that the above recitals are true and correct and are hereby incorporated herein as though set forth in full.

2. Premises:

2.1 Commencing on February 1, 2000 (the "AP Commencement Date") there shall be added to the Original Premises those certain premises consisting of approximately 26,490 rentable square feet located at 2217 Old Oakland Road, San Jose, California (the "Additional Premises"), which Additional Premises are depicted on the buildinq plan attached hereto and made a part hereof as Exhibit
A.

2.2 For purposes of the Lease, from and after the AP Commencement Date, the "Premises" as defined in Section 1 of the Lease shall mean and refer to the aggregate of the Original Premises and the Additional Premises consisting of a combined total of approximately 57,850 rentable square feet located at 2219 Old Oakland Road. Accordingly, from and after the AP Commencement Date, all references in this Amendment and in the Lease to the term "Premises" shall mean and refer to the Original Premises and the Additional Premises. Landlord and Tenant hereby agree that for purposes of the Lease, from and after the AP Commencement Date, the rentable square footage area of the Premises shall be conclusively deemed to be 58,320 rentable square feet. In addition to the foregoing, it is the parties express intention that the balance of the Term of the Lease for the Original Premises and the Additional Premises be coterminous with the Expiration Date of the initial Term as specified in the Lease and that any option or renewal term described in the Lease shall be applicable to both the Premises and the Additional Premises.

2.3 Notwithstanding anything to the contrary contained herein or in the Lease, Landlord shall neither be subject to any liability, nor shall the validity of the Lease be affected if Landlord is not able to deliver to Tenant possession of the Additional Premises by the AP Commencement Date. Provided, however, Tenant's obligation to pay Rent on the Additional Premises shall commence on the date possession is tendered.

3. Base Rent: The Basic Lease Information and Section 3 of the Lease are hereby modified to provide that during the Term of the Lease the monthly Base Rent payable by Tenant to Landlord, in accordance with the provisions of Section 3 of the Lease shall be as follows:

Period	Original Premises Monthly Base Rent	Additional Premises Monthly Base Rent	Aggregated Amount of Monthly Base Rent

02/01/00 - 12/06/00	$ 36,464.00	$ 30,464.00	$ 67,069.00
12/07/00 - 12/06/01	$ 38,196.00	$ 31,788.00	$ 69,984.00
12/07/01 - 12/06/02	$ 39,788.00	$ 33,113.00	$ 72,901.00
12/07/02 - 12/06/03	$ 41,379.00	$ 34,437.00	$ 75,816.00
12/07/03 - 12/06/04	$ 42,971.00	$ 35,762.00	$ 78,733.00

4. Condition of the Additional Premises: Subject to the provisions of Section 2 above, on the AP Commencement Date Landlord shall deliver to Tenant possession of the Additional Premises in its then existing condition and state of repair, "AS IS", without any obligation of Landlord to remodel, improve or alter the Additional Premises, to perform any other construction or work of improvement upon the Additional Premises, or to provide Tenant with any construction or refurbishing allowance. Tenant acknowledges that no representations or warranties of any kind, express or implied, respecting the condition of the Additional Premises, Building, or Park or have been made by Landlord or any agent of Landlord to Tenant, except as expressly set forth herein. Tenant further acknowledges that neither Landlord nor any of Landlord's agents, representatives or employees have made any representations as to the suitability or fitness of the Additional Premises for the conduct of Tenant's business, including without limitation, any storage incidental thereto, or for any other purpose. Any exception to the foregoing provisions must be made by express written agreement signed by both parties.

5. Security Deposit: Tenant's existing Security Deposit of Two Hundred Nineteen Thousand Six Hundred Thirty and 00/100 Dollars ($219,630.00) shall be reduced to Zero Dollars ($0.00) and such Security Deposit amount shall be returned to Tenant upon Landlord's receipt of the Letter of Credit (which must be in form and content acceptable to Landlord as set froth in Section 14) pursuant to Section 14 of this Amendment. In addition, the final two (2) sentences of Section 4 of the Lease are hereby deleted and of no further force or effect.

6. Tenant's Share of Operating Expenses: As of the AP Commencement Date, the Lease shall be modified to provide that Tenant's Share of Operating Expenses (as defined in the Basic Lease Information and Section 6 of the Lease) shall be increased to 100% of the Building, 41% of the Park.

7. Tenant's Share of Tax Expenses: As of the AP Commencement Date, the Lease shall be modified to provide that Tenant's Share of Tax Expenses (as defined in the Basic Lease Information and Section 6.2 of the Lease) shall be increased to 41%.

8. Tenant's Share of Utility Expenses: As of the AP Commencement Date, the Lease shall be modified to provide that Tenant's Share of Utility Expenses (as defined in the Basic Lease Information and Section 7 of the Lease) shall be increased to 100% of the Building, 41% of the Park.

9. Tenant's Share of Common Area Utility Costs: As of the AP Commencement Date, the Lease shall be modified to provide that Tenant's Share of Common Area Utility Costs (as defined in the Basic Lease Information and Section 7 of the Lease) shall be increased to 100% of the Building, 41% of the Park.

10. Unreserved Parking Spaces: As of the AP Commencement Date, the Lease shall be modified to provide that Tenant's Unreserved Parking Spaces (as defined in the Basic Lease Information) shall be increased to two hundred thirty-three (233).

11. Insurance: Tenant shall deliver to Landlord, upon execution of this Amendment, a certificate of insurance evidencing that the Additional Premises are included within and covered by Tenant's insurance policies required to be carried by Tenant pursuant to the Lease.

12. Brokers: Tenant warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Amendment other than Cornish & Carey. If Tenant has dealt with any other person, real estate broker or agent with respect to this Amendment other than Cornish & Carey, Tenant shall be solely responsible for the payment of any fee due to said person or firm, and Tenant shall indemnify, defend and hold Landlord free and harmless against any claims, judgments, damages, costs, expenses, and liabilities with respect thereto, including attorneys' fees and costs.

13. Park and Building: The Park, as defined in the Basic Lease Information, shall herein be modified to reflect the current aggregate building area of 140,710 rentable square feet, and the Building, as defined in the Basic Lease Information shall herein be modified to 58,306 rentable square feet.

14. Collateral for Performance of Lease Obligations: Simultaneously with Tenant's execution and delivery of this Amendment to Landlord and as a condition precedent to the effectiveness of this Amendment, Tenant shall deliver to Landlord, as collateral for the full and faithful performance by Tenant of all of its obligations under this Lease and for all losses and damages Landlord may suffer as a result of any default by Tenant under this Lease, an irrevocable and unconditional negotiable letter of credit, in the form and containing the terms required herein, payable in the City of Foster City, California running in favor of Landlord issued by a solvent bank under the supervision of the Superintendent of Banks of the State of California, or a National Banking Association, in the amount of Four Hundred Two Thousand and 00/100 Dollars ($402,000.00)(the "Letter of Credit"). The Letter of Credit shall be (a) at sight and irrevocable,
(b) maintained in effect, whether through replacement, renewal or extension, for the entire Lease Term (the "Letter of Credit Expiration Date") and Tenant shall deliver a new Letter of Credit or certificate of renewal or extension to

Landlord at least thirty (30) days prior to the expiration of the Letter of Credit, without any action whatsoever on the part of Landlord, (c) subject to the Uniform Customs and Practices for Documentary Credits (1993-Rev) International Chamber of Commerce Publication #500, (d) acceptable to Landlord in its sole discretion, and (e) fully assignable by Landlord by amendment thereto in accordance with customary letter of credit practice and permit partial draws. In addition to the foregoing, the form and terms of the Letter of Credit (and the bank issuing the same) shall be acceptable to Landlord, in Landlord's sole discretion, and shall provide, among other things, in effect that: (1) Landlord, or its then managing agent, shall have the right to draw down an amount up to the face amount of the Letter of Credit upon the presentation to the issuing bank of Landlord's (or Landlord's then managing agent's) statement that such (A) amount is due to Landlord under the terms and conditions of this Lease, it being understood that if Landlord or its managing agent be a corporation, partnership or other entity, then such statement shall be signed by an officer (if a corporation), a general partner (if a partnership), or any authorized party (if another entity), and (B) an event of default has occurred under this Lease and all applicable notice and cure periods have elapsed; (2) the Letter of Credit will be honored by the issuing bank without inquiry as to the accuracy thereof and regardless of whether the Tenant disputes the content of such statement; and (3) in the event of a transfer of Landlord's interest in the Building, Landlord shall transfer the Letter of Credit, in whole or in part (or cause a substitute letter of credit to be delivered, as applicable), to the transferee and thereupon the Landlord shall, without any further agreement between the parties, be released by Tenant from all liability therefor, and it is agreed that the provisions hereof shall apply to every transfer or assignment of the whole or any portion of said Letter of Credit to a new Landlord. If, as a result of any such application of all or any part of the Letter of Credit, the amount of the Letter of Credit shall be less than Four Hundred Two Thousand and 00/100 Dollars ($402,000.00), Tenant shall within five (5) days thereafter provide Landlord with additional letter(s) of credit in an amount equal to the deficiency (or a replacement letter of credit in the total amount of Four Hundred Two Thousand and 00/100 Dollars ($402,000.00) and each such additional (or replacement) letter of credit shall comply with all of the provisions of this Section 14, and if Tenant fails to do so, the same shall constitute an incurable default by Tenant. Tenant further covenants and warrants that it will neither assign nor encumber the Letter of Credit or any part thereof and that neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. Without limiting the generality of the foregoing, if the Letter of Credit expires earlier than the Letter of Credit Expiration Date, Landlord will accept a renewal thereof or substitute letter of credit (such renewal or substitute letter of credit to be in effect not later than thirty
(30) days prior to the expiration thereof), which shall be irrevocable an automatically renewable as above provided through the Letter of Credit Expiration Date upon the same terms as the expiring letter of credit or such other terms as may be acceptable to Landlord in its reasonable discretion. However, if the Letter of Credit is not timely renewed or a substitute letter of credit is not timely received, or if Tenant fails to maintain the Letter of Credit in the amount and terms set forth in this Section 14, Landlord shall have the right to present such Letter of Credit to the bank in accordance with the terms of this Section 14, and the entire sum evidenced thereby shall be paid to and held by Landlord as collateral for performance of all of Tenant's obligations under this Lease and for all losses and damages Landlord may suffer as a result of any default by Tenant under this Lease. If there shall occur a default under this Lease as set forth in Section 20 of this Lease, Landlord may, but without obligation to do so, draw upon the Letter of Credit, in

part or in whole, to cure any default of Tenant and/or to compensate Landlord for any and all damages of any kind or nature sustained or which may be sustained by Landlord resulting from Tenant's default. Tenant agrees not to interfere in any way with payment to Landlord of the proceeds of the Letter of Credit, either prior to or following a "draw" by Landlord of any portion of the Letter of Credit, regardless of whether any dispute exists between Tenant and Landlord as to Landlord's right to draw from the Letter of Credit. No condition or term of this Lease shall be deemed to render the Letter of Credit conditional to justify the issuer of the Letter of Credit in failing to honor a drawing upon such Letter of Credit in a timely manner. Landlord and Tenant acknowledge and agree that in no event or circumstance shall the Letter of Credit or any renewal thereof or substitute therefor be (i) deemed to be or treated as a "security deposit" within the meaning of California Civil Code Section 1950.7 (as supplemented, amended, replaced and substituted from time to time), (ii) subject to the terms of such Section 1950.7 (as supplemented, amended, replaced and substituted from time to time), or (iii) intended to serve as a "security deposit" within the meaning of such Section 1950.7 (as supplemented, amended, replaced and substituted from time to time). The parties hereto (x) recite that the Letter of Credit is not intended to serve as a security deposit and such
Section 1950.7 (as supplemented, amended, replaced and substituted from time to time) and any and all other laws, rules and regulations applicable to security deposits in the commercial context ("Security Deposit Laws") shall have no applicability or relevancy to the Letter of Credit and (y) waive any and all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws.

Notwithstanding the foregoing, on the third anniversary of the Commencement Date of the Lease, or following Tenant's public offering of its stock and subsequent achievement of a net worth of at least Forty Million Dollars ($40,000,000.00) and such net worth is then sustained for three consecutive financial quarters and substantiated by financial reports provided by Tenant to Landlord, which ever event occurs sooner, and, so long as Tenant has not been in material default of the Lease beyond any applicable cure period, then Tenant shall have the right to provide a cash Security Deposit to Landlord in the amount of Seventy Eight Thousand Seven Hundred Thirty-Three and 00/100 Dollars ($78,733.00) (the "New Deposit"). In the event that Tenant has met the financial and other requirements set forth above and Tenant is no longer required to maintain the Letter of Credit, so long as Tenant delivers the New Deposit to Landlord, as set forth herein, Landlord and Tenant shall execute an Amendment to the Lease signifying such removal of the Letter of Credit requirement and Tenant shall deposit the New Deposit with Landlord and Landlord shall return the Letter of Credit to

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Tenant. Thereafter, for the purposes of this Lease, the New Deposit shall be
(i) deemed to be the "Security Deposit" under the terms of the Lease and (ii) subject to all of the provisions of the Lease relating to the "Security Deposit".

15. Tenant's Early Termination Option: The parties hereby acknowledge and agree that effective as of the date of this Amendment the Termination Option pursuant to Section 41 of the Lease

shall be deleted in its entirety and shall be of no further force and effect and Tenant shall have no further right to terminate the Lease.

16. Effect of Amendment: Except as modified herein, the terms and conditions of the Lease shall remain unmodified and continue in full force and effect. In the event of any conflict between the terms and conditions of the Lease and this Amendment, the terms and conditions of this Amendment shall prevail.

17. Definitions: Unless otherwise defined in this Amendment, all terms not defined in this Amendment shall have the meanings assigned to such terms in the Lease.

18. Authority: Subject to the assignment and subletting provisions of the Lease, this Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns. Each party hereto and the persons signing below warrant that the person signing below on such party's behalf is authorized to do so and to bind such party to the terms of this Amendment.

19. Incorporation: The terms and provisions of the Lease are hereby incorporated in this Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first above written.

Tenant:

NETFLIX.COM,
a Delaware corporation

By: */s/ W. Barry McCarthy, Jr.*

Its: *CFO*

Date: *1/5/00*

By: */s/ [ILLEGIBLE]*

Its: *COO*

Date: *1/2/00*

Landlord:

LINCOLN-RECP OLD OAKLAND OPCO, LLC,
a Delaware limited liability company

By: LEGACY PARTNERS COMMERCIAL, INC.,
as manager and agent for Lincoln-RECP Old Oakland OPCO, LLC

By: _____ Senior Vice President

Date: _____

If Tenant is a CORPORATION, the authorized officers must sign on behalf of the corporation and indicate the capacity in which they are signing. The Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be attached to this Lease.

Exhibit A Original Premises and Additional Premises

The non cross-hatched area below represents the "Additional Premises".

THIRD AMENDMENT TO LEASE

THIS THIRD AMENDMENT TO LEASE (this "Amendment") is made as of the 12 day of June, 2001 (the "Effective Date"), by and between JOSEPH A. SULLY, an individual ("Landlord"), and NETFLIX.COM, a Delaware corporation ("Tenant"), with reference to the following facts and objectives:

RECITALS

A. Lincoln RECP Old Oakland OPCO, LLC, a Delaware limited liability company ("Lincoln"), as predecessor in interest to Landlord, and Tenant entered into that certain Lease Agreement (NNN R&D) dated August 19, 1999 (the "Lease"), as amended by that certain First Amendment to Lease Agreement (the "First Amendment") dated January 4, 2000 by and between Lincoln and Tenant and that certain Second Amendment to Lease Agreement (the "Second Amendment") dated January 4, 2000 by and between Lincoln and Tenant, pursuant to which Tenant has leased approximately 57,580 square feet of space located at 2219 Old Oakland Road, San Jose, California, as more particularly described therein (the "Premises"). The Lease, the First Amendment and the Second Amendment shall hereinafter collectively be referred to as the "Lease Agreement." The Lease Agreement was subsequently assigned by Lincoln to Landlord.

B. Upon execution of the Lease, Tenant deposited with Lincoln Two Hundred Nineteen Thousand Six Hundred Thirty and 00/100 Dollars ($219,630.00), in cash, as a security deposit (the "Security Deposit"). Subsequently, pursuant to the Second Amendment, the Security Deposit was replaced with a letter of credit (the "Letter of Credit") provided by Tenant to Lincoln (and now held by Landlord) in the amount of Four Hundred Two Thousand and 00/100 Dollars ($402,000.00). Landlord is currently refinancing the property of which the Premises are a part and, in connection therewith, Landlord and Tenant would like to replace the Letter of Credit with cash to be held as a cash security deposit.

C. Landlord and Tenant now desire to amend the Lease Agreement to provide for replacement of the Letter of Credit with a cash security deposit.

AGREEMENT

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Security Deposit. Sections 5 and 14 of the Second Amendment are hereby deleted in their entirety. The "Security Deposit" section of the Basic Lease Information of the Lease is hereby deleted in its entirety and replaced with the following: "Security Deposit ((P)4): Four Hundred Two Thousand and 00/100 dollars ($402,000.00), subject to the adjustments set forth in Section 4 of the Lease." In addition, in lines twenty-three and twenty-four of Section 4 of the Lease, the phrase "Forty Two Thousand Nine Hundred Seventy-One and 00/100 Dollars ($42,971.00)" is hereby deleted and replaced with the following phrase:
"Seventy-Eight Thousand Seven Hundred Thirty-Three and 00/100 Dollars ($78,733.00)".

Upon the Effective Date, Landlord shall return the Letter of Credit to Tenant and, within three (3) days after Tenant receives the Letter of Credit from Landlord, Tenant shall deposit with Landlord the sum of Four Hundred Two Thousand and 00/100 Dollars ($402,000.00), in cash, to be held as a security deposit pursuant to and in accordance with and subject to Section 4 of the Lease.

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2. Miscellaneous. If any one or more of the provisions contained in this Amendment shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Captions are inserted for convenience only and will not affect the construction hereof. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed to them in the Lease Agreement. This Amendment, together with the Lease Agreement, constitutes the entire agreement between Landlord and Tenant regarding the Lease Agreement and the subject matter contained herein and supersedes any and all prior and/or contemporaneous oral or written negotiations, agreements or understandings. This Amendment may not be orally changed or terminated, nor any of its provisions waived, except by an agreement in writing signed by the party against whom enforcement of any changes, termination or waiver is sought. This

Amendment shall be binding upon, and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Amendment, by their duly authorized signatories, as of the day and year first above written.

LANDLORD:	TENANT:
	NETFLIX.COM, a Delaware corporation
/s/ Joseph A. Sully	By /s/ W. Barry McCarthy, Jr.
JOSEPH A. SULLY	Name W. BARRY MCCARTHY, JR.
	Title CFO

Exhibit 10.9

[LETTERHEAD OF NETFLIX.COM(TM)]

April 19, 1999

W. Barry McCarthy
113 Gallup Road
Princeton, NJ 08540

Dear Barry:

On behalf of NetFlix, Inc., it is my pleasure to offer to you for the position of Chief Financial Officer reporting to Reed Hastings, CEO. Your annual salary will be $170,000 to be paid bi-weekly. You will also receive an annual bonus targeted at $20,000.00 based on mutually determined factors and paid in six-month increments.

In addition, we are pleased to offer you an option to purchase 330,000 shares of the Company's Common Stock, subject to final approval by the Board of Directors. The purchase price will be equal to the fair market value at the date of the grant in accordance with the NetFlix, Inc. 1997 Stock Plan. These options will vest over four years with one year cliff vesting and monthly vesting thereafter. Should NetFlix.com be acquired, 50% (fifty percent) of these unvested options, or 12 months worth whichever is greater, will vest immediately. If the Company is acquired prior to May 1, 2000, total vested options shall be 206,250.

The Company will provide relocation assistance for you and your family to relocate from Princeton, New Jersey to the San Francisco Bay Area to a cap of $50,000. This does not include your temporary travel and short term accommodations until your family joins you (anticipated to be July 1999). These expenses will be either pre-paid by the Company or reciepted and reimbursed to you.

As a full-time employee of NetFlix, you are entitled to standard company employee benefits such as vacation, sick leave and full medical insurance.

It should be noted that as a condition of employment, you will be required to sign an agreement which addresses the issues of confidentiality, conflicts of interest, non-competition, and patent assignments. Additionally, on your first day of employment, you will be required to provide the Company documentary evidence of your identity and eligibility for employment in the United States to satisfy the requirements of Employment Eligibility Verifications (Form I-9) as required by Federal law.

While we hope and expect that this will be the beginning of a long and rewarding employment relationship, your employment is at-will, and either you or NetFlix may terminate this employment relationship at anytime and for any reason, with or without cause. We will provide you severance of six months with continued salary and benefits if your employment is terminated for reason other than cause during your first year of employment.

The entire NetFlix team is looking forward to working with you!

Sincerely,

/s/ Reed Hastings
Reed Hastings
CEO

Agreed to and accepted:

/s/ W. Barry McCarthy, Jr.	*4/19/99*	*4/19/99*
W. Barry McCarthy	*Date*	*Start Date*

Exhibit 10.10

[LETTERHEAD OF NETFLIX.COM(TM)]

March 25, 1999

Tom Dillon
102 Bell Flower Way
Scotts Valley, CA 95066

Dear Tom:

On behalf of NetFlix. Inc., it is my pleasure to offer to you for the position of Vice President of Operations reporting to Reed Hastings, CEO. Your annual salary will be $160,000.00 to be paid bi-weekly.

In addition, we are pleased to offer you an option to purchase 225,000 shares of the Company's Common Stock, subject to final approval by the Board of Directors. The purchase price will be equal to the fair market value at the date of the grant in accordance with the NetFlix, Inc. 1997 Stock Plan. These options will vest over four years with one-year cliff vesting and monthly vesting thereafter. This stock option plan includes twelve-month acceleration in the event of termination due to a change of control.

Also, you will receive an annual bonus targeted at $ 15,000.00 based on company performance. Metrics for payment of this bonus will be mutually determined upon your employment with the Company.

As a full-time employee of NetFlix, you are entitled to standard company employee benefits such as vacation. sick leave and full medical insurance.

It should be noted that as a condition of employment, you will be required to sign an agreement which addresses the issues of confidentiality, conflicts of interest, non-competition, and patent assignments. Additionally, on your first day of employment, you will be required to provide the Company documentary evidence of your identity and eligibility for employment in the United States to satisfy the requirements of Employment Eligibility Verifications (Form I-9) as required by Federal law.

While we hope and expect that this will be the beginning of a long and rewarding employment relationship, your employment is at-will, and either you or NetFlix may terminate this employment relationship at anytime and for any reason, with or without cause. We will provide you severance of three months with continued salary and benefits if your employment is terminated for reasons other than cause.

Please confirm your acceptance of this offer and start date by returning a signed copy of this letter to me by 5:00 PM, Monday, March 29, 1999.

The entire NetFlix team is looking forward to working with you!

Sincerely,

/s/ Reed Hastings

Reed Hastings

CEO

Agreed to and accepted:

/s/ Tom Dillon	*4-5-99*	
Tom Dillon	*Date*	*Start Date*

Exhibit 10.11

March 13, 2000

Leslie J. Kilgore
2509 Nob Hill Avenue North
Seattle, WA 98109

Dear Leslie,

On behalf of NetFlix.com Inc., it is my pleasure to formalize our offer to you for the position of Vice President, Marketing, reporting to Reed Hastings. Your annual salary will be $190,000 to be paid bi-weekly, beginning Wednesday, March 22, 2000.

In addition, we are pleased to offer you an option to purchase 300,000 shares of the Company's Common Stock, subject to final approval by the Board of Directors. The purchase price will be equal to the fair market value at the date of the grant in accordance with the NetFlix, Inc. 1997 Stock Plan. These options will vest over four years with one year cliff vesting and monthly vesting thereafter. If upon change of control you are involuntarily terminated, or your role within the subsequent company is substantially and materially altered against your will, there will be a twelve month acceleration of vesting of your options.

The Company agrees to compensate you for expenses associated with selling your Seattle, Washington home, transportation of household goods and vehicles to the San Francisco Bay Area, temporary housing for you up to 30 days, and up to 6 round trip airfares from SJO or SFO to Seattle to be completed by October 31, 2000, if required to settle your personal affairs. The Company will reimburse you for the actual costs of the relocation expenses not to exceed $60,000, providing that the move to the Bay Area occurs within eighteen months of your employment with the Company.

As a full-time employee of NetFlix, you are entitled to standard company employee benefits such as vacation, sick leave and full medical insurance.

Your employment is at-will, and either you or NetFlix.com, Inc. may terminate this employment relationship at anytime and for any reason, with or without cause. We will provide you severance of three months with continued salary and benefits if your employment is terminated for reasons other than cause. Although your job duties, title, compensation

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and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at-will" nature of your employment may only be changed in an express written agreement signed by you and duly authorized officer of the Company.

It should be noted that as a condition of employment, you will be required to sign an agreement which addresses issues of confidentiality, conflict of interest, non-competition, and patent assignments. Additionally, on your first day of employment, you will be required to provide the Company documentary evidence of your identity and eligibility for employment in the United States to satisfy the requirements of Employment Eligibility Verifications (Form I-9) as required by Federal law.

I hope and expect that this will be the beginning of a long and rewarding employment relationship. I look forward to working together.

Sincerely,

/s/ Reed Hastings
CEO

Agreed to and accepted:

/s/ Leslie J. Kilgore

Leslie J. Kilgore	*Date*	*Start Date*

EXHIBIT 23.1

CONSENT OF KPMG LLP

The Board of Directors
Netflix, Inc.:

We consent to the use of our report included herein and to the reference to our firm under the heading "Experts."

/S/ KPMG LLP

Mountain View, California
March 5, 2002