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7       IN THE SUPERIOR COURT OF WASHINGTON,  
8       COUNTY OF KING, STATE OF WASHINGTON  
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10      MARK E. PHILLIPS,

11               Plaintiff,

12               v.  
13  
14      JOHN DU WORS AND AMBER DU WORS,  
15      and their marital community comprised  
16      thereof; DEREK NEWMAN AND  
17      DRIVENESS VANESSA ANDRINE  
18      NEWMAN, and their marital community  
19      comprised thereof; DEREK LINKE AND  
20      TAING KIMCHOU LINKE, and their marital  
21      community comprised thereof; NEWMAN &  
22      DU WORS, LLP formerly known as  
23      NEWMAN & NEWMAN, LLP, and DOES 1-  
24      4,  
25  
26               Defendants.

Case Number: 14-2-03111-4 SEA

**COMPLAINT**

- 1. Breach of Contract;**
- 2. Professional Negligence;**
- 3. Fraud In The Inducement;**
- 4. Negligent Misrepresentation;**
- 5. Civil Conspiracy.**

**JURY DEMAND**

27      COMES NOW Plaintiff Mark E. Phillips pleads and alleges as follows:  
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25               **INTRODUCTION**

26      1.      Plaintiff Mark Phillips brings this suit against defendants for the actions  
27      taken in representing plaintiff in a number of different matters, and for taking actions  
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1 and representing persons and entities whose interests were directly adverse to those of  
2 plaintiff. In addition to failing to comply with the applicable standard of care in  
3 representing plaintiff in a criminal case and three civil cases, defendants failed to  
4 prosecute another case as they agreed and as identified in the Retainer Agreement.  
5 Additionally, defendants actively participated in a scheme to deprive plaintiff to the  
6 rights of his valuable intellectual property. Plaintiff sues to recover his property, and in  
7 an attempt to be compensated for the tremendous damages caused to plaintiff by  
8 defendants' actions.

9

10 **PARTIES**

11 2. Plaintiff Mark E. Phillips at all times relevant was a resident of King  
12 County, State of Washington.

13 3. Defendant John Du Wors and Amber Du Wors are individuals residing in  
14 King County, State of Washington and Mr. Du Wors is licensed to practice law in the  
15 State of Washington. Defendant Amber Du Wors is the spouse of John Du Wors and  
16 the couple was married at the time the alleged incidents described herein occurred. To  
17 the extent that defendant John Du Wors' actions were for the benefit of, or in  
18 furtherance of, the marital community, the allegations made against this defendant  
19 individually shall apply equally to the defendants' spouse.

20 4. Defendant Derek Newman at all times relevant was a resident of King  
21 County, State of Washington, and licensed to practice law in the State of Washington.  
22 Defendant Driveness Vanessa Andrine is the spouse of defendant Derek Newman and  
23 the couple was married at the time the alleged incidents described herein occurred. To  
24 the extent that defendant Derek Newman's actions were for the benefit of, or in  
25 furtherance of, the marital community, the allegations made against this defendant  
26 individually shall apply equally to the defendant's spouse.

5. Defendant Derek Linke at all times relevant was a resident of King County, State of Washington, and licensed to practice law in the State of Washington. Defendant Kimchou Taing is the spouse of defendant Derek Linke and the couple was married at the time the alleged incidents described herein occurred. To the extent that defendant Derek Linke's actions were for the benefit of, or in furtherance of, the marital community, the allegations made against this defendant individually shall apply equally to the defendants' spouse.

6. Defendant Newman & Du Wors (formerly Newman & Newman) at all times relevant herein was a law firm organized under the laws of the State of Washington, with its principal place of business within King County.

7. Plaintiff is unaware of the true identities of those defendants designated as Does 1-4, or the facts that would give rise to causes of action against them, but will amend this complaint when those identities and facts are known.

## **JURISDICTION AND VENUE**

8. Jurisdiction is proper within King County, State of Washington since all contracts were executed within this jurisdiction and the contracts contemplated the State of Washington as the proper jurisdiction for enforcement. Additionally, the tortious actions of defendants took place within the jurisdictional limits of this court.

9.       Venue is proper in this court since the majority of the evidence is located in the Seattle area and all relevant witnesses either reside or work within the jurisdictional boundaries of this court.

## STATEMENT OF FACTS

10. Plaintiff Mark E. Phillips retained the services of the law firm of Newman & Newman (later Newman & Du Wors) and attorneys John Du Wors, Derek Newman

1 and Derek Linke, to represent him in a number of matters, including a criminal case  
2 (United States v. Phillips), and several civil matters (Phillips v. MOD, Banana v.  
3 Phillips, A DOT Corporation v. Bay et al., Hunts Point Ventures, LLC, and the  
4 prosecution of Mr. Phillips' intellectual property). Mr. Phillips signed a retainer  
5 agreement with Mr. Du Wors and his firm on May 25, 2010. (A true and correct copy of  
6 the Retainer Agreement is attached hereto as Exhibit "A").

7 11. Mr. Du Wors acted as co-counsel for plaintiff in his criminal trial, assisting  
8 attorney Peter Mair who had been assigned by the court to act as Mr. Phillips' primary  
9 defense attorney. Mr. Phillips was referred to Mr. Du Wors because he was a business  
10 and corporate lawyer with experience in corporate governance. The criminal complaint  
11 against Mr. Phillips stemmed from allegations that he misappropriated funds from the  
12 company he co-founded, MOD Systems, Inc. Mr. Du Wors' expertise as a corporate  
13 lawyer with practical business experience would be crucial to Mr. Phillips' defense.  
14

15 12. Essentially, all the allegations in the criminal complaint revolved around  
16 three separate transactions; the first set involved payments made to a consultant to  
17 MOD who was also Mr. Phillips' girlfriend (the "girlfriend", Ms. Jan Wallace, aka Jan  
18 Jardin, aka Juanita Mary Jardin) turned out to be a highly skilled con-woman who used  
19 a variety of pseudonyms and social security numbers and who manipulated Mr.  
20 Phillips in an attempt to wrest control of MOD from Mr. Phillips. This had been her  
21 modus operandi in the past in causing false charges to be made against the majority  
22 shareholder or executive management of a corporation in an effort to gain control of  
23 that corporation. The second allegation of wrong-doing involved a licensing agreement  
24 between Mr. Phillips and his wholly-owned entity AnythingBox, and MOD, for the use  
25 of his intellectual property which would allow MOD to fulfill its contractual obligations  
26 with a group of new investors; Toshiba, NEC Corporation, and Deluxe Entertainment  
27 (hereinafter the "Toshiba Investors"). The intellectual property owned by Mr. Phillips  
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is extremely valuable because it is used in personal electronic devices such as the iPod, and allows the device to store extensive playlists by categories, and allows the device to access the data by a variety of ways. To give the court an idea of the value of the IP, MOD was valued at more than \$123 million once it had licensed the Phillips' IP and was developing products for the Toshiba Investors.

13. The licensing agreement involved an initial payment to Mr. Phillips in the amount of \$1.5 million. When certain board members later objected to the initial \$1.5 million payment, Mr. Phillips returned that amount and he and MOD entered into a new subscription and contribution agreement and licensing agreement that would pay Mr. Phillips \$5 million over a period of years and grant him \$38 million in MOD stock. Mr. Phillips never received any money for licensing his intellectual property, and was criminally charged with fraud for the \$1.5 million initial payment that he had returned to the company. Finally, the third allegation of wrong-doing was related to Mr. Phillips' resumption of control of his MOD shares and the exercise of his contractual and fiduciary rights to reassert control over the MOD bank accounts in an effort to preserve the resources of MOD before the money was depleted by those who conspired to take MOD and its \$35 million investment away from plaintiff.

## Defendants fail to introduce the signed AnythingBox Licensing Agreement at Phillips' criminal trial.

14. On or about March 30, 2010, the government charged Mr. Phillips with mail fraud, wire fraud, and money laundering for the payments made to Ms. Wallace via his personal attorney at her request; wire fraud and money laundering for the transfer of \$1.5 million initial payment to his personal account; and bank fraud for his reassertion of control over the MOD bank accounts. After a two-week trial in front of the Honorable John C. Coughenour, a jury found Mr. Phillips guilty of mail fraud, wire

1 fraud, money laundering and obstruction of justice, but acquitted him of the charges of  
2 bank fraud. On appeal, the court overturned the count for mail fraud.

3 15. Defendants Mr. Du Wors and Mr. Linke were the primary lawyers  
4 assigned to defend plaintiff in the criminal matter. Both Mr. Du Wors and Mr. Linke  
5 were aware of the importance of the licensing agreement entered into by AnythingBox  
6 and MOD, which included the initial payment of \$1.5 million to Mr. Phillips, for the  
7 defense of Mr. Phillips. It was critical, *even vital*, that the licensing agreement be  
8 introduced at trial to demonstrate to the jury that Mr. Phillips had a contractual right to  
9 the \$1.5 million payment, and did not just perpetrate a fraud upon MOD and MOD's  
10 acting financial officer by ordering the officer to have the \$1.5 million payment made to  
11 him. In December of 2010, Mr. Du Wors told plaintiff that Mr. Phillips' friend and  
12 attorney-in-fact, Mr. Chad Rudkin, was actively searching Mr. Phillips' emails and that  
13 Mr. Du Wors would be able to use those emails that outlined the written negotiations  
14 for the licensing agreement between AnythingBox, Phillips and MOD in order to  
15 defend Mr. Phillips at trial. In addition, Defendant Mr. Du Wors told plaintiff that he  
16 had found the AnythingBox License Agreement and that he would be able to introduce  
17 the licensing agreement at trial, along with the supporting emails.

18 16. The AnythingBox Licensing Agreement was negotiated by Mr. Phillips  
19 and one of the MOD board members, Mr. Anthony Bay. Mr. Bay had been designated  
20 by the MOD board to negotiate the licensing agreement with Mr. Phillips. After a long  
21 series of negotiations that dragged out over a period of months, Mr. Bay and Mr.  
22 Phillips finally agreed on the terms of the agreement. At the time, Mr. Bay was  
23 vacationing in France and after a series of e-mails, the agreement was completed over  
24 the telephone. As was the custom and practice at MOD, Mr. Phillips signed the  
25 AnythingBox Licensing Agreement on his own behalf and on behalf of  
26 AnythingBox/MOD. (A true and correct copy of Phillips/AnythingBox/MOD licensing  
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1 agreement is attached hereto as Exhibit "B"). Mr. Bay was not an officer of MOD  
2 Systems and could not execute contracts on its behalf, but was a member of the board of  
3 directors and had been designated by the board to negotiate on behalf of MOD. MOD  
4 had licensed some of the AnythingBox (Phillips') IP the prior year for a contract with  
5 Starbucks. Mr. Phillips negotiated with Mr. Bay and signed the licensing agreement on  
6 his own behalf and on behalf of MOD (and Mr. Kenn Gordon, MOD's VP of Finance,  
7 also signed this agreement). Mr. Phillips then told the financial officer, Mr. Gordon, to  
8 send the \$1.5 initial payment to his bank account. Weeks later, when several of the  
9 board members objected to the initial payment (solely on the material misrepresentation  
10 of Mr. Bay), Mr. Phillips returned the \$1.5 million. He then requested that the MOD  
11 board of directors formally ratify the AnythingBox Licensing Agreement, which the  
12 board did on at least 4 separate occasions, including one board meeting on June 20th,  
13 2008, where Mr. Phillips did not participate in the discussion of ratification because it  
14 was a "related transaction." Another occasion, MOD held a board meeting for the sole  
15 purpose of acquiring the AnythingBox corporation for stock and the license agreement  
16 on July 8 and 9<sup>th</sup>, 2008. At that board meeting, Ms. Cane, newly appointed independent  
17 director and Mr. Bay both ratified the agreement with MOD's corporate secretary Mr.  
18 Thomas Grohlman. (A true and correct copy of an e-mail with Ms. Cane's approval of  
19 the July 8-9<sup>th</sup>, 2008 board meeting minutes is attached hereto as Exhibit "C"). MOD  
20 Corporate directors held additional meetings on September 17 and September 24<sup>th</sup> 2008  
21 for ratification of the AnythingBox Agreement. And on September 24, 2008, the MOD  
22 board of directors put forth a vote to the shareholders to ratify their actions. Mr. Bay  
23 voted in favor of ratification of the AnythingBox Licensing Agreement each time. (True  
24 and correct copies of the Minutes of the MOD Board of Directors dated June 20, 2008,  
25 July 8-9, 2008, September 17, 2008, September 24, 2008, are attached hereto as Exhibits  
26 "D," "E," "F," and "G").  
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1       17. When Toshiba, Deluxe and NCR invested in MOD, a new subscription  
2 and contribution agreement and licensing agreement was negotiated that would replace  
3 the AnythingBox Licensing Agreement, and would pay Mr. Phillips \$5 million over a  
4 period of four years and grant him \$38 million in MOD stock. This new agreement was  
5 not only ratified by the MOD board of directors, but also approved by the MOD  
6 shareholders in a Shareholder Resolution signed by Mr. Bay on September 30, 2008. (A  
7 true and correct copy of the Shareholder Resolution is attached hereto as Exhibit "H").

8       18. Prior to trial, Mr. Du Wors failed to include the license agreement as a  
9 defense exhibit. (A true and correct copy of the Defendant's Trial Exhibits pleading is  
10 attached hereto as Exhibit "I"). At trial Mr. Du Wors attempted to introduce an  
11 unsigned copy of the AnythingBox Licensing Agreement, which attempt was denied by  
12 the court. **Mr. Du Wors and Mr. Linke made no attempt to obtain a valid, signed copy**  
13 **of the AnythingBox Licensing Agreement during the discovery period, nor did they**  
14 **do any investigation or discovery that would have "verified" or "authenticated" the**  
15 **AnythingBox Licensing Agreement in compliance with the Federal Rules of Evidence**  
16 **that would have allowed the copy of the licensing agreement in Mr. Du Wors'**  
17 **possession to be introduced at trial. Additionally, Mr. Du Wors and Mr. Linke failed**  
18 **to enter into evidence the numerous e-mails discussing the licensing agreement as**  
19 **well as the numerous e-mails and tentative copies of the licensing agreement sent**  
20 **between numerous parties (including lawyers) during the negotiations. Mr. Du Wors**  
21 **and Mr. Linke failed to introduce into evidence the subsequent ratifications of the**  
22 **licensing agreement by the MOD board of directors as well as the Shareholder**  
23 **Consent that discussed the specific licensing agreement at issue in the criminal trial.**  
24 **The result is that Mr. Du Wors and Mr. Linke failed to introduce any of the**  
25 **voluminous documents that clearly demonstrated plaintiff's right to the \$1.5 million**  
26 **initial payment, as well as subsequent actions taken by the MOD board of directors**  
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1 that not only ratified those actions, but would then make the actions of Mr. Phillips  
2 non-actionable as a basis for criminal prosecution. Due to Mr. Du Wors and Mr.  
3 Linke's malfeasance and negligence, the jury had not been informed that Mr. Phillips  
4 and MOD had entered into a written, signed licensing agreement, that the licensing  
5 agreement had subsequently been ratified by the MOD board of directors, and that  
6 the license had also been the subject of negotiations during the Toshiba, et al.,  
7 investment and was subsequently replaced with a new licensing agreement. As a  
8 result of Mr. Du Wors and Mr. Linke's professional negligence, Mr. Phillips'  
9 conviction on the \$1.5 million wire fraud and money laundering charge was virtually  
10 assured.

11 19. Tellingly, in a recent meeting with plaintiff in which Mr. Du Wors, Mr.  
12 Rudkin, Mrs. Rudkin, and plaintiff's attorney Reed Yurchak were present, Mr. Du Wors  
13 claimed that he had indeed introduced the signed AnythingBox Licensing Agreement  
14 into evidence at trial; a lie that is easily rebutted by the trial record.  
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17 **Defendants fail to defend the \$100,000 payments.**

18 20. Plaintiff was introduced to Ms. Wallace at a fundraiser in Palm Springs,  
19 California, and was told that Ms. Wallace was a small business consultant as well as  
20 someone who helps small businesses raise investment. She had been the CEO of five  
21 different small businesses and spoke the corporate lingo. At the time, plaintiff was  
22 looking for both; someone to advise him on how to act as a CEO, and someone who  
23 could help him raise capital on behalf of MOD.

24 21. Ms. Wallace and plaintiff began dating while Ms. Wallace was advising  
25 plaintiff on corporate matters and introducing plaintiff to potential investors. Ms.  
26 Wallace reviewed presentations, reviewed corporate documents, and advised plaintiff  
27 on personnel matters.  
28

1           22. Eventually, Ms. Wallace demanded payment for her services and plaintiff  
2 eventually agreed to a total of \$100,000 for past services. Ms. Wallace wanted the  
3 payments to go through plaintiff's personal attorney to "protect" her payments.  
4 Plaintiff believed this to be true because he was aware that Ms. Wallace had just had a  
5 judgment against her in an Arizona case and she had unwittingly attempted to  
6 unilaterally transfer ownership of her home under plaintiff's name.

7           23. Shortly after the payments to Ms. Wallace were made, MOD began  
8 preparing for the due diligence associated with the investment of Toshiba. MOD hired  
9 a local CPA with CFO experience, Mr. David Douglass, to act as MOD's CFO and help  
10 MOD prepare for the financial due diligence.

11           24. Mr. Douglass questioned the \$100,000 payments made to Ms. Wallace  
12 when he reviewed the MOD accounts. Plaintiff explained in detail the reason for the  
13 payments as well as the reason those payments were made to Ms. Wallace via plaintiff's  
14 personal attorney. Mr. Douglass also questioned Mr. Kenn Gordon, the MOD vice  
15 president and acting financial officer, regarding the \$100,000 payments made to Ms.  
16 Wallace. Mr. Gordon, who shared an office with Mr. Phillips and heard one end of  
17 many of the conversations Mr. Phillips had with Ms. Wallace, and had conversations  
18 with her as well regarding the payment of her fees, also explained to Mr. Douglass, in  
19 detail, the reason for the payments as well as the reason those payments were made to  
20 Ms. Wallace via plaintiff's personal attorney. A true and correct copy of those  
21 discussions via Mr. Gordon's declaration in a separate matter and the supporting e-  
22 mails are attached as Exhibit "J."

23           25. Mr. Douglass recommended that the payments, including the method of  
24 payment, needed to be disclosed to the investors. Mr. Douglass also recommended that  
25 no further payments be made to Ms. Wallace until she had signed an Independent  
26 Contractor Agreement ("ICA"). To that end, plaintiff and his personal lawyers began  
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1 preparing an Independent Contractor Agreement. Copies were forwarded to Mr.  
2 Douglass for his approval. The metadata shows that Mr. Douglass is actually the last  
3 person to edit the ICA and added language that allowed Ms. Wallace to be paid under a  
4 different name "Jan Jardin" and to continue to be paid via plaintiff's personal attorneys.  
5 (A true and correct copy of the aforementioned e-mails and the MOD – "Jan Jardin"  
6 Independent Contractor Agreement and it's Microsoft Word metadata is attached  
7 hereto as Exhibit "K").

8 26. Mr. Douglass and plaintiff presented the payments to the Toshiba  
9 investors in a due diligence meeting that included representatives from Toshiba, NEC,  
10 and Deluxe, as well as their attorneys.

11 27. When Mr. Douglass was first interviewed by the FBI in plaintiff's criminal  
12 case, Mr. Douglass admitted that he was aware of the payments that were made to Ms.  
13 Wallace and was aware of the ICA with Ms. Wallace's company.

14 28. However, at plaintiff's criminal trial, Mr. Douglass dramatically changed  
15 his testimony and denied that he was aware of the payments made to Ms. Wallace, that  
16 he was aware of a subsequent ICA with Ms. Wallace, or that he was present when the  
17 payments to Ms. Wallace were disclosed during the due diligence meeting. (A true and  
18 correct copy of the trial transcript in which Mr. Douglas denies knowledge of the  
19 payments to Ms. Wallace through plaintiff's attorney is attached hereto as Exhibit "L").

20 29. On cross-examination, Mr. Du Wors failed to use Mr. Douglass' prior  
21 inconsistent statement given to the FBI (a true and correct copy of Mr. Douglass' false  
22 testimony mirrored at trial is attached hereto as Exhibit "M"); failed to introduce the  
23 metadata and email thread that proved Mr. Douglass was deeply involved in the ICA  
24 with Ms. Wallace (he signed the ICA on behalf of MOD), and that he made the changes  
25 that included payment to her under a new name as well as via plaintiff's personal  
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1 attorneys; and failed to call Mr. Gordon to refute the changed, false testimony of Mr.  
2 Douglass.

3 30. Again, Mr. Du Wors allowed false, incriminating testimony to go un-  
4 contradicted at trial leaving the jury with *only* the testimony of Mr. Douglass to  
5 consider during their deliberations. Mr. Du Wors was aware of Mr. Douglass' prior  
6 inconsistent statement give to the FBI, and was also aware of the metadata and email  
7 thread that contradicted Mr. Douglass' trial testimony, yet introduced neither. He also  
8 failed to call Mr. Gordon as a witness at trial.

9 31. Additionally, Mr. Du Wors conducted no discovery in terms of  
10 interviewing or contacting any of the due diligence counsel regarding disclosures made  
11 to them during the due diligence process. Plaintiff was convicted of "not disclosing" to  
12 MOD the \$100,000 payments made to Ms. Wallace.  
13

14 **Defendants fail to rebut the charge of Obstruction of Justice.**  
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16 32. Plaintiff testified on his own behalf at his criminal trial. His testimony  
17 contradicted the testimony of Mr. Douglass as well as Ms. Wallace. All of the  
18 documentary evidence contained in the files of plaintiff of MOD support the testimony  
19 given by plaintiff; including that he did not hide the Wallace payments from MOD, that  
20 Mr. Douglass was aware of the payments and took steps to make future payments to  
21 Ms. Wallace acceptable under the applicable accounting standards. Mr. Douglass even  
22 signed the ICA with Ms. Wallace for all work performed after the initial \$100,000  
23 payment.

24 33. Additionally, plaintiff had employed attorneys who were familiar with  
25 the payments to Ms. Wallace as well as the ICA. Due diligence for all of the parties  
26 were also made aware of the payments made to Ms. Wallace and were given an  
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1 explanation for those payments. The Toshiba representative had even declared that the  
2 matter was "fine" after the explanation was given.

3 34. None of this supporting evidence was introduced into trial to support the  
4 testimony of Mr. Phillips. Instead, based upon the jury's verdict, the court could easily  
5 conclude that plaintiff's testimony was an effort to obfuscate the truth and obstruct  
6 justice. This finding was made despite the fact that the overwhelming documentary  
7 evidence in this case actually supports plaintiff's testimony and refutes the testimony of  
8 Mr. Douglass and Ms. Wallace. But because defendants failed to introduce any of the  
9 contradictory evidence, plaintiff was found guilty of obstructing justice. Mr. Du Wors  
10 also failed to attend the July 17, 2011 Sentencing Hearing for Mr. Phillips.  
11

12 **Defendants coerce plaintiff into foregoing  
13 his \$5 million licensing fee in settling his claims against MOD.**

14 35. At the same time that Mr. Du Wors was retained to represent Mr. Phillips  
15 in the criminal matter, he was also retained to represent Mr. Phillips in a number of civil  
16 matters. In May of 2010, Mr. Du Wors agreed to represent Mr. Phillips in his claims  
17 against MOD (Phillips v. MOD Systems) for breach of contract and the failure to pay the  
18 \$5 million licensing fee that was at issue in his criminal case.  
19

20 36. During the settlement negotiations with MOD, plaintiff and Mr. Du Wors  
21 held extensive conversations regarding the protection of his intellectual property, and  
22 together with one of Mr. Phillips' friends, Mr. Stephen Schweickert, designed a plan to  
23 protect the Phillips' IP by setting up a new company, HPV and HPIP, that would  
24 monetize the IP by prosecuting violations of the IP for the benefit Mr. Phillips as well as  
25 other member of the new corporation and its attorney, Mr. Du Wors.

26 37. Mr. Du Wors was actively involved in the discussions regarding  
27 reformation of HPV and the legal strategies that would be used to protect Mr. Phillips'  
28 interests as well as his intellectual property. Mr. Schweickert wrote a series of emails

1 regarding the formation of HPV that clearly show that HPV would be set up to protect  
2 the Phillips' IP, to generate income for the benefit of Mr. Phillips, and to generate  
3 income for the benefit of all the HPV members including its attorney, Mr. Du Wors.

4       38.     The formation of HPV and its assignment of the licensing rights of the  
5 Phillips' IP were especially important to Mr. Du Wors; his agreement with Mr. Phillips  
6 was altered so that HPV would pay his fees for his work on all of the Phillips cases. At  
7 the time of his retention, Mr. Du Wors and his law firm were given \$35,000 (thirty five  
8 thousand dollars) as a retainer from an HPV account and the Newman & Newman law  
9 firm was given a security interest in a condominium owned by Mr. Phillips in the  
10 exclusive Mosler building. In multiple conversations between Mr. Du Wors, Mr.  
11 Schweickert and Mr. Phillips held in April 2010, it was agreed that HPV would be  
12 responsible for making the payments to Mr. Du Wors for all of his and his firm's legal  
13 services.

14       39.     Because Mr. Du Wors was representing Mr. Phillips in the Phillips v.  
15 MOD matter, and Mr. Du Wors and his law firm acted as corporate counsel for HPV  
16 and represented Mr. Schweickert in order to transfer the Phillips' IP into HPV, Mr.  
17 Phillips signed a waiver of that inherent conflict of interest; a waiver designed  
18 specifically to waive that conflict of interest that would allow Mr. Du Wors to set up  
19 HPV; to set up Hunts Point Intellectual Properties (hereinafter "HPIP"), a company that  
20 would be wholly-owned by Mr. Phillips that would own the Phillips' IP and would  
21 license the IP to HPV; and to represent Mr. Phillips, Mr. Schweickert and HPV during  
22 the settlement negotiations in the Phillips v. MOD matter.

23       40.     Mr. Du Wors was aware that Mr. Phillips and Mr. Schweickert clearly  
24 intended to set up corporate structures to protect the Phillips' IP while allowing Mr.  
25 Phillips' to maintain sole ownership of his IP; and allowing HPV, using the legal  
26 services of Mr. Du Wors to monetize the Phillips' IP for the benefit of Mr. Phillips as  
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1 well as the other members of HPV and Mr. Du Wors, its attorney. Mr. Du Wors  
2 presented Mr. Schweickert with a memorandum outlining his plan to pursue all  
3 violations of the Phillips' IP. A true and correct copy of the Du Wors' memorandum is  
4 attached hereto as Exhibit "N."

5 41. As settlement negotiations in the Phillips v. MOD matter continued, Mr.  
6 Du Wors presented Mr. Phillips with a Patent Sales Agreement for the transfer of the  
7 Phillips' IP. Plaintiff does not have a copy of the Patent Sales Agreement, but believes  
8 the agreement stated that the Phillips' IP would be transferred into HPIP via HPV, that  
9 Mr. Phillips would be the sole owner of that corporate entity, that HPIP would license its  
10 interests in the IP to HPV for prosecution of any IP violations, and that Mr. Du Wors  
11 would act as HPV counsel in prosecuting those violations and be compensated with a  
12 percentage of those recoveries. In addition, Mr. Du Wors personally told Mr. Phillips  
13 that his IP would be transferred into HPIP, and that the IP would always be owned by  
14 Mr. Phillips.

15 42. At the time that HPV was established, Mr. Stephen Schweickert and Mrs.  
16 Joyce Schweickert were the sole shareholders of HPV, each holding 50 shares. Mr.  
17 Schweickert and Mr. Rudkin, with the advice and counsel of Mr. Du Wors, decided to  
18 change the ownership structure of HPV, telling plaintiff that the purpose of the change  
19 in ownership structure was to sell Mr. Phillips 29% interest in HPV, allow Mr. Rudkin  
20 and another friend of Mr. Phillips to become shareholders in HPV, and to convince Mr.  
21 Phillips to transfer ownership in his IP to HPV, which would then be transferred to  
22 HPIP after it was incorporated, with Mr. Schweickert, Mr. Rudkin, and Mr. Du Wors  
23 promising Mr. Phillips that he would be the sole shareholder of HPIP. Mr. Schweickert,  
24 Mr. Rudkin and Mr. Du Wors made these same promises to Jennifer Schweickert, which  
25 promises later induced her to loan HPV \$200,000.00.  
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1       43.     Mr. Phillips paid HPV \$9,200 (nine thousand two hundred dollars) for the  
2 purchase of his shares in HPV. The incorporating documents shown to Mr. Phillips by  
3 Mr. Du Wors would allot 9,200 shares to Mr. Schweickert, Mr. Rudkin, as well as 4,000  
4 to Mrs. Joyce Schweickert. Upon information and belief, Mr. Du Wors prepared and  
5 reviewed the legal paperwork for the Joint Consent and Initial Organization of HPV (a  
6 true and correct copy is attached hereto as Exhibit "O"), as well as the roster of New  
7 Officers. The Joint Consent cancelled the shares initially issued to Mr. Stephen  
8 Schweickert and Mrs. Joyce Schweickert, and reissued those shares to Mr. Phillips and  
9 the other persons as outlined above as long as they "purchased" their shares within one  
10 year of its execution.

11       44.     Upon information and belief, no other person "purchased" his or her  
12 shares in HPV as required by the Joint Consent and Initial Organization Agreement. As  
13 plaintiff would later learn, the amended Articles of Incorporation reviewed by Mr. Du  
14 Wors were never filed with the Washington Secretary of State. Additionally, HPIP was  
15 never incorporated in the State of Washington or in any other jurisdiction as promised  
16 by Mr. Du Wors, Mr. Schweickert and Mr. Rudkin. Mr. Du Wors, Mr. Schweickert and  
17 Mr. Rudkin represented to Ms. Jennifer Schweickert that Mr. Phillips was a shareholder,  
18 officer and director of HPV, and that he would continue to direct the technology of  
19 HPV; all in an effort to induce her to loan HPV money. However, the shares in HPV  
20 purchased by Mr. Phillips are neither recorded, nor, it appears, properly issued by the  
21 corporation. And despite the assurances of Mr. Du Wors, Mr. Schweickert and Mr.  
22 Rudkin, Mr. Phillips is not an officer or director of HPV. The majority of the money  
23 invested by Ms. Schweickert went to pay Mr. Du Wors, a fact he made clear in a  
24 telephone conversation with Ms. Schweickert prior to her making the loan.

25       45.     Mr. Du Wors negotiated a settlement of the Phillips v. MOD action in  
26 which Mr. Phillips would forego his right to be paid the licensing fee of \$5 million, and  
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1 additionally he would agree to waive any claims against any MOD director, officer or  
2 employee. In return, MOD would waive any claim it had against Mr. Phillips for  
3 reimbursement of personal expenses. Mr. Phillips was adamant that the settlement  
4 agreement not be signed; he was owed the \$5 million from MOD and the claims against  
5 him were specious. Mr. Du Wors promised plaintiff that he would sue Mr. Arnold, Ms.  
6 Cane and Ms. Wallace for these claims once the Phillips v. MOD matter was settled.  
7 Mr. Du Wors further told plaintiff that the money generated by HPV would be enough  
8 to pay Mr. Phillips, as well as Mr. Du Wors, and fund plaintiff's claims against those  
9 persons identified above. Mr. Du Wors also repeatedly promised Mr. Phillips on  
10 numerous occasions that the settlement agreement would protect plaintiff's investment  
11 in HPV.

12       46.     Mr. Phillips was still hesitant to sign the settlement agreement in the  
13 Phillips v. MOD matter. On or about January 25, 2011, Mr. Du Wors personally met  
14 with plaintiff to convince him to sign the settlement agreement which would allow  
15 transfer of the Phillips' IP into HPV. Mr. Du Wors alternately threatened and cajoled  
16 Mr. Phillips, telling him that if he did not agree to settle the case, Mr. Du Wors could no  
17 longer represent him, including in the criminal matter; and that foregoing the \$5 million  
18 owed to him by MOD would easily be "made up" by suing Mr. Arnold and prosecuting  
19 violations of the IP. Mr. Du Wors repeatedly assured Mr. Phillips that he was preparing  
20 to file claims against any infringement of his patents, and that he would be able to  
21 replace the \$5 million owed to him by MOD, which money would pay for Mr. Phillips'  
22 defense, Mr. Phillips' expenses, and set up a litigation fund to pursue more patent  
23 infringement claims as well as his claims against Mr. Arnold, Ms. Cane, Ms. Wallace,  
24 and others.

25       47.     In April of 2011, Mr. Derek Linke of the Newman & Du Wors firm spoke  
26 to plaintiff asking him to sign an additional release in the Phillips v. MOD matter. At  
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1 the time, plaintiff was in federal custody and was hesitant to sign the release because he  
2 was not being kept advised of the progress of any litigation prosecuted by Mr. Linke  
3 and Mr. Du Wors. In order to induce plaintiff to sign the release, Mr. Linke specifically  
4 promised plaintiff that Mr. Linke and his firm would have \$5 million available to Mr.  
5 Phillips upon his release from federal custody. As a further inducement to get plaintiff  
6 to agree to sign the release, Mr. Linke promised plaintiff that he would prepare a  
7 complaint against the persons who had testified against him falsely at trial. He also  
8 continued to assure plaintiff that he, Mr. Du Wors, and the firm of Newman & Du Wors  
9 would continue to protect his interests and that plaintiff would return to HPV as a  
10 director and officer and that his shares in HPV were protected.

11 48. But for the specific promises and assurances made by defendants Mr. Du  
12 Wors and Mr. Linke, plaintiff would never have agreed to forego the \$5 million  
13 licensing fee owed to him, and more importantly, never would have agreed to transfer  
14 his valuable IP into HPV. It requires the suspension of disbelief to believe that plaintiff  
15 would have transferred ownership of his IP into HPV unless he was assured of being a  
16 shareholder, director and officer of HPV and that the IP would be transferred into HPIP  
17 as soon as it was incorporated.

19

20 **Mr. Du Wors fails to defend Banana, Inc.**

21 49. As an additional legal matter, Mr. Du Wors agreed to represent Mr.  
22 Phillips in a claim filed by Mr. Arnold against Mr. Phillips' wholly-owned corporation,  
23 Banana, Inc. (hereinafter "Banana litigation"). Mr. Arnold, an investor in Banana, filed  
24 a "derivative action" against Banana and plaintiff for allegedly misusing corporate  
25 funds. In order to defend the action, plaintiff hired forensic accountant Dennis Mandell  
26 to review all of the expenses of Banana, who later issued a report that found no misuse  
27 of the corporate funds by Mr. Phillips or any other person. While plaintiff was in  
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1 federal custody, plaintiff filed a motion for summary judgment, a motion easily  
2 defeated based upon the expert opinions of Mr. Mandell. Despite the fact that Mr. Du  
3 Wors had a copy of the forensic accounting report, was still prosecuting violations of  
4 the Phillips' IP, had just settled one such claim and reportedly took the majority of the  
5 settlement (plaintiff has never been provided with an accounting of the settlement), Mr.  
6 Du Wors sent plaintiff a letter in federal prison informing plaintiff that he was  
7 withdrawing as counsel in the Banana litigation *on the eve* of the hearing of the motion  
8 for summary judgment. Mr. Du Wors did not even bother to oppose the motion for  
9 summary judgment, even knowing that plaintiff was in federal prison and Mr. Du Wors  
10 had the professional opinion of Mr. Mandell, which would easily refute plaintiff's claim  
11 of non-jurisdiction. That notice from Mr. Du Wors withdrawing as Banana counsel  
12 was the only letter or correspondence received by plaintiff from Mr. Du Wors while he  
13 was in federal custody.

14       50. As a result of not filing a timely opposition, plaintiff suffered a judgment  
15 of liability against him in the Banana litigation. Upon release from federal prison,  
16 plaintiff hired competent counsel to ask for a rehearing on the motion for summary  
17 judgment. Although the court had some sympathy with Mr. Phillips' position, it  
18 refused to lift the judgment of liability pending completion of the damages portion of  
19 the case. Mr. Phillips is still involved in trial against the estate of Mr. Arnold over the  
20 "damages" caused to Banana by his alleged misuse of the corporate funds. Because Mr.  
21 Du Wors withdrew on the eve of a dispositive motion, and failed to provide Mr.  
22 Phillips with all the documents in his case, Mr. Phillips has an adverse judgment of  
23 liability against him and must now employ competent counsel to defend him in the  
24 damages phase of the trial. Regardless of the outcome, Mr. Phillips will be required to  
25 continue to employ competent counsel to reverse the erroneous finding of liability  
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1 against him, which is the direct result of Mr. Du Wors' negligence and breach of the  
2 ethical standards.

3

4 **Mr. Du Wors represents persons adverse to Mr. Phillips, helps cancel Mr. Phillips'**  
**HPV shares, and conspires to take over HPV and the Phillips' IP.**

5

6 51. Upon release from custody, Mr. Phillips learned that Mr. Rudkin and his  
7 wife had acquired half the interest in HPV from Mr. Schweickert, and shortly thereafter,  
8 the Rudkins became the sole shareholders in HPV. Mr. and Mrs. Rudkin became the  
9 sole owners of HPV with the advice and assistance of Mr. Du Wors and Mr. Linke. The  
10 Rudkins executed a Purchase Agreement with Mr. Schweickert on or about December  
11 of 2012. The Agreement fails to mention Mr. Phillips' interest in HPV or record his  
12 9,200 shares. Mr. Du Wors and/or his office prepared the sales agreement and all the  
13 documents that allegedly made the Rudkins the sole owners of HPV. Plaintiff believes  
14 that *this* amended Articles of Incorporation representing the ownership of the Rudkins  
15 has been filed with the Secretary of State.

16

17 52. Mr. Phillips spoke to Mr. Rudkin upon his release (Mr. Rudkin had been  
18 one of Mr. Phillips' attorneys in fact) who assured plaintiff that he would assign shares  
19 in the new HPV to Mr. Phillips and that he would return as a director and officer of  
20 HPV. In October of 2012, Mr. Phillips and Mr. Rudkin had a series of conversations in  
21 Mr. Rudkin promised plaintiff that the Rudkins were excited to have Mr. Phillips return  
22 as an owner and officer of HPV because Mr. and Mrs. Rudkin had no experience with  
23 intellectual property or how to monetize it, and HPV was making little progress in  
24 monetizing the Phillips IP other than the small settlement.

25 53. Mr. Phillips travelled with Mr. Rudkin to Mr. Du Wors' office to affect the  
26 transfer of shares on or about November 2, 2012. During that meeting, Mr. Du Wors  
27 told plaintiff that he would not transfer shares into his name, that he was unaware of  
28

1 his status as a shareholder, that he would not make him an officer or director of HPV  
2 because he was a felon, and that Mr. Phillips had no interest in either HPV or his IP. It  
3 was clear during the meeting that Mr. Rudkin was closely following the advice of Mr.  
4 Du Wors. It was also clear to Mr. Phillips that Mr. Du Wors was acting as the lawyer  
5 for the Rudkins and for HPV.

6 54. Mr. Phillips had not signed nor executed a further waiver of the conflict of  
7 interest that would allow Mr. Du Wors to represent other parties adverse to him, nor  
8 did he at any time give a verbal waiver of the conflict of interest.

9 55. In a subsequent letter inquiry sent to Mr. Du Wors, he again responded  
10 that he was unaware of Mr. Phillips' interest in HPV or in the intellectual property.  
11 When Mr. Phillips contacted Mrs. Rudkin about HPV corporate records, he was told  
12 that he could not look at them because they contained "privileged information."  
13 Undoubtedly Mr. Du Wors and Mr. Linke told Mrs. Rudkin not to allow plaintiff access  
14 to those records. Mr. Phillips has since learned that HPIP was never incorporated and  
15 is not a current, on-going concern. Since HPIP was never incorporated, HPV continues  
16 to own the Phillips' IP; a corporation in which Mr. Phillips' interest was wrongfully  
17 cancelled by the defendants. According to Mr. Du Wors, Mr. Phillips agreed to transfer  
18 his intellectual property (valued at hundreds of millions of dollars) into a corporate  
19 entity in which he would not have an ownership interest for no value; making it a gift.  
20 However the clear documentary trail surrounding the pre-formation and formation of  
21 HPV demonstrates the falsity of this claim and that this claim is purely a ruse to allow  
22 Mr. Du Wors and his co-conspirators, the Rudkins, to maintain control of HPV and the  
23 Phillips' IP.

24 56. In a recent meeting with Mr. Newman, plaintiff expressed his concerns  
25 regarding the conduct of Mr. Du Wors. During that meeting Mr. Newman claimed that  
26 there had been no "conflict of interest" between the firm and Mr. Phillips, and that the  
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1 firm and Mr. Du Wors were merely “scriveners” on all of the HPV matters and had  
2 offered no advice or other legal services. These were clear, obvious lies told to assuage  
3 plaintiff and to allow defendants and the Rudkins to continue owning HPV and  
4 continue controlling the Phillips’ IP. When plaintiff told Mr. Newman that all he  
5 wanted was restoration of his HPV shares and control of his IP, Mr. Newman  
6 responded, “What’s in it for us?”

7

8 **Mr. Du Wors fails to prosecute the claims of ADOT.**

9 57. Mr. Phillips was the sole owner of another corporation at this time, A Dot,  
10 Inc. A Dot was the corporate entity that Mr. Phillips used to develop the intellectual  
11 property and to develop computer programs. When MOD was formed, it shared office  
12 space with A Dot, used A Dot computers and equipment and eventually hired many of  
13 the A Dot engineers and staff.

14 58. When Mr. Phillips was wrongfully terminated at MOD, he also lost all the  
15 computers, equipment, data and other property that rightfully belonged to A Dot and  
16 Mr. Phillips.

17 59. Mr. Phillips had separate computer files for his A Dot data that were  
18 controlled by separate passwords. Members of MOD and others, including Mr. Smyth,  
19 an attorney representing Mr. Arnold, wrongfully accessed the A Dot computers and  
20 accessed the personal, protected information of A Dot and Mr. Phillips, and used that  
21 information against him in trying to extract a settlement with Mr. Phillips and in filing  
22 “derivative” claims against Mr. Phillips and his wholly-owned corporations.

23 60. Mr. Phillips retained a California attorney to prosecute the torts suffered  
24 by A Dot, and to recover the valuable computers and other equipment owned by A Dot.  
25 A complaint was filed, A Dot v. Anthony Bay et al., Case No. 2:10-CV-00549-RSM, on or  
26 about March 30th, 2010, in the U.S. District Court, Western District of Washington. The  
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1 complaint asserted claims on behalf of A Dot under the Computer Fraud and Abuse  
2 Act, for trespass, and for other claims.

3 61. At about this time, Mr. Phillips retained Mr. Du Wors to represent him in  
4 all of his legal matters. One of those matters was the A Dot case. Mr. Du Wors  
5 promised Mr. Phillips that he would substitute into that matter, that he would  
6 prosecute the claims of A Dot, that he would recover the computers of A Dot, and that  
7 he would protect the private data and information that belonged to A Dot.

8 62. Mr. Du Wors failed to substitute into that lawsuit and represent the  
9 interests of A Dot. Because Mr. Phillips told the other attorneys that Mr. Du Wors  
10 would be substituting into that case, they took no further action. During a later  
11 conversation with Mr. Du Wors, Mr. Du Wors told plaintiff that he wanted to amend  
12 the A Dot complaint to add additional parties, and that he would file a "new, amended"  
13 complaint. At the time he made this statement to plaintiff, Mr. Phillips was in federal  
14 custody awaiting trial on the criminal case.

15 63. Because of Mr. Du Wors' representations, told the California attorney that  
16 it was "o.k." for her to dismiss the A Dot suit, without prejudice.

17 64. Because Mr. Du Wors failed to file an amended A Dot complaint in a  
18 timely manner, the claims of A Dot against the defendants under the Computer Fraud  
19 and Abuse Act are now barred by the applicable statute of limitations. As a further  
20 consequence of Mr. Du Wors' failure to act, the A Dot computers, equipment, and data  
21 are likely lost and cannot be recovered at this late date.

22 65. Mr. Phillips now brings this action to recover the substantial damages he  
23 has suffered as a result of defendants' wrongful conduct.

24  
25  
26 **First Cause of Action:**  
27 **Breach of Contract**

28 **(Against Defendants Du Wors, Newman, Linke and Newman & Du Wors)**

1           66. Plaintiff repeats and incorporates the allegations contained in paragraphs  
2 through 65 as if set forth fully herein.

3           67. Plaintiff entered into a written retainer agreement with defendants to  
4 represent him in a number of legal matters.

5           68. Defendants Mr. Du Wors, Mr. Newman, and Mr. Linke of the law firm of  
6 Newman & Du Wors all participated in some way in representing plaintiff in the  
7 matters of US v. Phillips, Phillips v. MOD, the Banana litigation, and in re: HPV (HPIP).  
8 Additionally, each was responsible in some way for failing to protect the interests of A  
9 Dot as agreed upon by the parties.

10          69. Each contract carries a duty of good faith and fair dealing. Additionally,  
11 the retainer agreement carries a higher duty of good faith in executing the fiduciary  
12 duties because of the nature of the service. Plaintiff was entitled to performance of legal  
13 representation under the written agreement free from a conflict of interest, free from  
14 competing goals, and legal services that complied with the standards set forth in the  
15 contract and imposed by law.

16          70. Plaintiff complied with all the terms of the written agreement.

17          71. Defendants breached the written agreement by offering legal advice and  
18 services that did not meet the applicable standard of care, by engaging in matters in  
19 which the firm and its lawyers had a conflict of interest that was not identified to  
20 plaintiff, and by placing their own interests and the interests of others ahead of the  
21 interests of Mr. Phillips.

22          72. As a result of defendants' breach of the written agreement, plaintiff has  
23 suffered significant damages, including wrongful imprisonment, loss of income, loss of  
24 significant assets including but not limited to his IP, and other damages in an amount to  
25 be proven at trial.

**Second Cause of Action:  
Professional Negligence, US v. Phillips  
(Against defendants Du Wors, Newman, Linke and Newman & Du Wors)**

73. Plaintiff repeats and incorporates the allegations contained in paragraphs 1 through 72 as if set forth fully herein.

74. Plaintiff retained defendants to represent him in the matter of US v. Phillips and to defend him at trial.

75. Defendant Mr. Du Wors was the primary lawyer from the firm to represent plaintiff, but each defendant met with plaintiff regarding his criminal case and was involved in his defense.

76. As a result of the retainer agreement and the promises of defendants to represent plaintiff in the matters outlined above, defendants owed plaintiff a duty of care to represent him to the best of their abilities, free from conflicts of interest, and in compliance with the applicable standard of care.

77. Defendant Mr. Du Wors was aware that the defense to the charge of mail fraud and fraud involving the \$1.5 million licensing payment depended upon the introduction of that licensing agreement into evidence for consideration by the jury.

78. Defendant Mr. Du Wors represented to plaintiff that he had a copy of the licensing agreement (AnythingBox Licensing Agreement) and that he would introduce it at trial.

79. Defendant Mr. Du Wors failed to properly verify and authenticate the licensing agreement prior to trial and was rebutted by the court when he attempted to introduce an unsigned copy of the licensing agreement into evidence. Additionally, Mr. Du Wors failed to introduce into evidence any of the subsequent board ratifications by the MOD board of directors of the licensing agreement and its replacement with a new licensing agreement in the MOD Shareholder Consent. As a result, the jury had no evidence that plaintiff was contractually entitled to the \$1.5 million licensing payment

1 at trial. (A true and correct copy of the trial transcript in which the judge denies Mr. Du  
2 Wors attempt to introduce the licensing agreement is attached hereto as Exhibit "P").

3 80. Defendant Mr. Du Wors breached the applicable standard of care in not  
4 authenticating, verifying or otherwise being able to introduce into evidence key,  
5 exculpatory documents that would have altered the jury's verdict.

6 81. Defendant Mr. Du Wors was aware he breached the applicable standard  
7 of care in failing to introduce into evidence that crucial documentation because in recent  
8 meeting with plaintiff he falsely claimed that he had, in fact, introduced the licensing  
9 agreement into evidence.

10 82. Defendant Mr. Du Wors was aware that the testimony of Mr. Douglass  
11 would be key for the prosecution in establishing the count of fraud for the payment to  
12 Ms. Wallace of the \$100,000.

13 83. Defendant Mr. Du Wors was aware that Mr. Douglass had given a prior  
14 inconsistent statement to the FBI in which he admitted he was aware of the payments to  
15 Ms. Wallace, and that he had approved the subsequent Independent Contractor  
16 Agreement with her that allowed her to be paid under a new name via Mr. Phillips'  
17 personal attorneys.

18 84. Mr. Du Wors failed to use this prior inconsistent statement against Mr.  
19 Douglass when he falsely testified at the criminal trial. In addition, Mr. Du Wors failed  
20 to introduce any of the contradictory evidence, including the email thread with the  
21 metadata showing Mr. Douglass edited and approved the ICA.

22 85. As a result of Mr. Du Wors negligence, the testimony of Mr. Douglass was  
23 unchallenged and allowed the jury to infer that Mr. Phillips had improperly made the  
24 \$100,000 payments to Ms. Wallace without informing MOD.

25 86. As a further result of Mr. Du Wors' negligence, Mr. Phillips was found to  
26 have "obstructed justice" because he testified contrary to Mr. Douglass. The judge and  
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jury were never advised that the weight of the written evidence and Mr. Douglass himself, showed that the payments to Ms. Wallace were disclosed to MOD and those who executed the payments, and that those payments were later approved by Mr. Douglass as well as the Toshiba Investors.

87. As a result of defendant's breach of the applicable standard of care, plaintiff was suffered significant damages including but not limited to false imprisonment, loss of income, loss of valuable property, loss of liberty, and other damages in an amount to be proven at trial.

## Third Cause of Action Professional Negligence, Phillips v. MOD (Against defendants Du Wors, Linke and Newman & Du Wors)

88. Plaintiff repeats and incorporates the allegations contained in paragraphs 1 through 87 as if set forth fully herein.

89. Plaintiff retained defendants to represent him in the matter of Phillips v. MOD, in which Mr. Phillips was owed a \$5 million payment for the licensure of his intellectual property.

90. Defendant Mr. Du Wors was aware that Mr. Phillips intended to prosecute additional claims against individual members of the MOD board of directors and/or directors. In fact, Mr. Du Wors promised Mr. Phillips that he would undertake prosecution of those claims after the settlement of the MOD matter.

91. Defendant so negligently, so carelessly negotiated on behalf of plaintiff that he presented plaintiff with a settlement agreement to plaintiff in which plaintiff gave up his right to the \$5 million licensing payment as well as his right to pursue his other claims in exchange for promises of little or nominal value. So one-sided was the settlement against the interest of Mr. Phillips that review of the settlement agreement shocks the conscience.

92. When plaintiff was reluctant to sign the settlement agreement, defendant Mr. Du Wors met with plaintiff and tried to convince him to sign the agreement, telling him that he would easily recoup the money by prosecuting violations of the IP. When this was not persuasive, Mr. Du Wors threatened Mr. Phillips, telling him he would no longer represent him in the US v. Phillips matter unless he signed the agreement.

93. Defendant Mr. Du Wors was aware that he had a position of great trust and leverage with Mr. Phillips, who was being held in a local facility awaiting trial on the criminal matter. By threatening to withdraw as counsel on the eve of trial was a particularly pernicious tactic employed by defendant Mr. Du Wors specifically designed to ensure plaintiff's acquiescence.

94. Defendant Mr. Du Wors was motivated by his own personal interests in forcing plaintiff to sign the settlement agreement since the agreement would allow him control over the Phillips' IP which he planned to monetize by filing claims against those companies that have infringed the patents.

95. Defendant Mr. Du Wors offered plaintiff legal advice that was not in the best interest of Mr. Phillips, but which served Mr. Du Wors own personal, pecuniary interests.

96. Defendant Mr. Du Wors failed to comply with the applicable standard of care in representing plaintiff in the matter of Phillips v. MOD.

97. As a result of defendant's breach of the standard of care, plaintiff suffered significant damages including the loss of the \$5 million licensing payment, loss of income, and ultimately loss of significant assets including his intellectual property, all in an amount to be proven at trial.

## Fourth Cause of Action Professional Negligence, HPV (Against defendants Du Wors, Linke and Newman & Du Wors)

1           98. Plaintiff repeats and incorporates the allegations contained in paragraphs  
2 through 97 as if set forth fully herein.

3           99. Plaintiff retained defendants to represent his interests in the formation of  
4 HPV and HPIP, as well as the transfer of his intellectual property into HPIP which  
5 would license the rights to HPV so it could prosecute any patent violations against the  
6 IP.

7           100. Defendant Mr. Du Wors held a clear conflict of interest in representing  
8 HPV, Mr. Schweickert, and Chad and Elizabeth Rudkins as well as plaintiff. Plaintiff  
9 waived the specific conflict of interest that allowed Mr. Du Wors to represent all parties  
10 that would allow him to transfer the Phillips' IP into HPV and eventually into HPIP.  
11 No blanket waiver of the conflict of interest was granted to Mr. Du Wors.

12           101. Defendant Mr. Du Wors has continued to act contrary to the interests of  
13 Mr. Phillips, including but not limited to the following actions:

- 15           a. Not protecting plaintiff's interest in HPV;
- 16           b. Not forming HPIP to be owned solely by Mr. Phillips;
- 17           c. Representing Stephen Schweickert personally and taking positions  
18           against the interests of Mr. Phillips; specifically, not protecting his  
19           equity holding and allowing ownership of the Phillips' IP to transfer  
20           into the hands of others;
- 21           d. Representing the Rudkins and taking positions against the interests of  
22           Mr. Phillips; specifically, not protecting his equity holding and  
23           allowing ownership of the Phillips' IP to transfer into the hands of  
24           others;
- 25           e. Refusing to recognize Mr. Phillips as a shareholder of HPV.

26           102. By performing the above actions and others, defendant Mr. Du Wors has  
27 breached the applicable standard of care in the community in representing plaintiff.  
28

1 Defendant Mr. Du Wors has acted with a clear conflict of interest and has promoted the  
2 interests of others and his own interests at the expense of Mr. Phillips.

3 103. As a result of defendant Mr. Du Wors' breach of the applicable standard  
4 of care, plaintiff has suffered significant damages, including loss of income, loss of  
5 significant assets including but not limited to his IP, and other damages in an amount to  
6 be proven at trial.

7

8 **Fifth Cause of Action**  
9 **Professional Negligence, Banana Litigation**  
10 **(Against defendants Du Wors and Newman & Du Wors)**

11 104. Plaintiff repeats and incorporates the allegations contained in paragraphs  
12 1 through 103 as if set forth fully herein.

13 105. Plaintiff retained defendant Mr. Du Wors and Newman & Du Wors to  
14 represent him in the Banana litigation.

15 106. As described in above paragraphs, *supra*, the Banana litigation stemmed  
16 from a "derivative claim" filed by an investor in the Phillips' wholly-owned  
17 corporation, Banana, Inc. In a legal settlement, all claims of Banana were assigned to  
18 Mr. Arnold to prosecute against Mr. Phillips.

19 107. Mr. Phillips retained forensic accountants Mr. Mandell to perform a full  
20 forensic audit of the Banana financial records. The professional opinion of Mr. Mandell  
21 was that all of the expenses of which Mr. Arnold complained had been justified.  
22 Defendant Mr. Du Wors had a copy of this professional accounting opinion.

23 108. While plaintiff was incarcerated, plaintiff, knowing of his incarceration,  
24 filed a motion for summary judgment as to liability. Mr. Du Wors' response to the  
25 motion for summary judgment was to drop Mr. Phillips. Rather than sending a letter of  
26 explanation, or the courtesy of actually opposing the motion for summary judgment,  
27 Mr. Du Wors served Mr. Phillips with a copy of the Withdrawal of Attorney.  
28

109. As a result of Mr. Du Wors abrupt withdrawal, the motion for summary judgment went virtually unchallenged and was granted as to liability against Mr. Phillips.

110. Upon his release, plaintiff filed a motion for reconsideration that although was found meritorious, was held to be premature since the damages portion of the trial had not been completed. The trial on the damages issue has been continued due to the death of Mr. Arnold.

111. By dumping plaintiff as a client on the eve of a summary judgment motion while the client was incarcerated breaches the applicable standard of legal care in the community. Mr. Du Wors was to be paid for his legal work by the monetization of the Phillips' IP by HPV and Mr. Du Wors had only recently received payment for his legal services due to a recent settlement. Despite the fact that Mr. Du Wors was still receiving payment for his legal services and had all the information necessary to oppose the motion for summary judgment, he chose to breach the standard of care and withdraw from the case.

112. As a result of defendants' breach of the standard of care, plaintiff has suffered significant damages including a judgment of liability against him, the expense of hiring new lawyers to defend him in the Banana litigation and to attack the judgment of liability, loss of income and other assets, all in an amount to be proven at trial.

# Sixth Cause of Action

## Professional Negligence, A DOT Litigation

### (Against defendants Du Wors and Newman & Du Wors)

113. Plaintiff repeats and incorporates the allegations contained in paragraphs 1 through 112 as if set forth fully herein.

1 114. Plaintiff retained defendant Mr. Du Wors and Newman & Du Wors to  
2 represent the interests of A Dot. By agreeing to represent A Dot in this case, defendants  
3 owed A Dot and its sole owner, Mr. Phillips, a duty of care.

4 115. Defendants agreed to represent A Dot in pursuing claims against Mr.  
5 Robert M. Arnold, Mr. Jeffrey Alan Smyth, Ms. Julia De Haan, Mr. Kylene Cane, Ms.  
6 Jardin Wallace, Mr. Anthony Bay, Mr. Derek de Bakker, and others.

7 116. Defendants failed to enter an appearance on behalf of A DOT, allowed the  
8 complaint to be dismissed without filing an amended complaint, and took no actions to  
9 protect the claims of A Dot and the applicable statute of limitations. Defendants  
10 breached the duty of care owed to plaintiff by failing to provide legal services within  
11 the applicable standard of care.

12 117. As a result of defendants' negligence, the claims of A Dot, particularly  
13 those under the Computer Fraud and Abuse Act, are now barred by the applicable  
14 statute of limitations.

15 118. As a further result of defendants' negligence, A Dot and plaintiff have lost  
16 use of the A Dot computers and equipment valued in excess of \$50,000. Additionally,  
17 plaintiff has lost the use of the protected data and information contained in those  
18 computers, which data may be lost forever.

20

21 **Seventh Cause of Action**  
22 **Fraud in the Inducement**  
23 **(Against defendants Du Wors, Linke and Newman & Du Wors)**

24 119. Plaintiff repeats and incorporates the allegations contained in paragraphs  
1 through 118 as if set forth fully herein.

25 120. Defendants Mr. Du Wors and Mr. Linke were at all times relevant acting  
26 as lawyers employed by the law firm of Newman & Du Wors and were acting within  
27 the course and scope of that employment.

1           121. Defendant Mr. Du Wors made representations to Mr. Phillips as outlined  
2 in the above paragraphs, *supra*; that Mr. Du Wors would protect Mr. Phillips interests  
3 in HPV, that Mr. Du Wors would set up HPIP which would be wholly-owned by Mr.  
4 Phillips and own the Phillips' IP, that Mr. Du Wors would quickly recoup the \$5 million  
5 that Mr. Phillips waived in the MOD settlement, and that Mr. Du Wors would protect  
6 the assets and interests of Mr. Phillips.

7           122. Defendant Mr. Linke made specific representations to Mr. Phillips as  
8 outlined in the above paragraphs, *supra*; including the promise that he and Mr. Du  
9 Wors would have \$5 million available for Mr. Phillips' use upon his release from federal  
10 prison.

11           123. Defendant Mr. Du Wors made the representations to Mr. Phillips to  
12 convince him to sign the MOD settlement agreement as well as relinquish control and  
13 ownership of his valuable intellectual property.

14           124. Defendant Mr. Linke made the representations to Mr. Phillips to convince  
15 him to sign an additional waiver in the MOD settlement which would allow Mr. Linke,  
16 Mr. Du Wors and their law firm to gain *de facto* control over the Phillips' IP.

17           125. Both defendants made the representations to Mr. Phillips without  
18 intending to comply with any promises therein. Neither defendant made the  
19 assurances to Mr. Phillips in good faith; the assurances were given to plaintiff to  
20 assuage his fears and to induce action on the part of Mr. Phillips.

21           126. Both defendants knew their assurances and representations were false at  
22 the time they were made to Mr. Phillips, and neither defendant had any intention of  
23 fulfilling any promise or complying with any representation.

24           127. Mr. Phillips did rely upon the assurances and representations of Mr. Du  
25 Wors and Mr. Linke to his detriment. He entered into the MOD settlement and allowed  
26

Mr. Du Wors to control his IP. He signed the further waiver after Mr. Linke made his representations and assurances to plaintiff.

128. But for the false assurances of defendant Mr. Du Wors, Mr. Phillips never would have transferred ownership of his intellectual property into an entity in which he holds no equity or management position. As a result, plaintiff seeks rescission of the transfer of his valuable intellectual property since the transfer was based entirely upon a fraudulent premise. The fraud perpetrated upon Mr. Phillips by Mr. Du Wors was in whole or in part designed to wrongfully obtain ownership of the Phillips' IP.

129. As a result of this reliance, plaintiff has suffered significant damages, including the loss of his valuable intellectual property, loss of income, loss of his right to \$5 million in a licensing payment, and other damages in an amount to be proven at trial.

130. The actions of defendants were willful and done with malice and intended to harm plaintiff, and performed with the reckless disregard for plaintiff's rights. As a result, plaintiff is entitled to an award of punitive damages in an amount to be proven at trial.

## **Eighth Cause of Action Civil Conspiracy**

(Against defendant Du Wors, Newman, Linke and Newman & Du Wors)

131. Plaintiff repeats and incorporates the allegations contained in paragraphs 1 through 130 as if set forth fully herein.

132. Defendants Du Wors, Newman, and Linke at all relevant times herein were principals and employees of defendant Newman & Du Wors and were acting within the course and scope of that agency and employment.

133. Defendants did plan and conspire to convince plaintiff to transfer ownership of his valuable intellectual property into a corporate entity that they falsely represented would be owned by Mr. Phillips.

134. In furtherance of the conspiracy, defendants represented to plaintiff that they would protect his interest, that he would be the sole owner of HPIP, that he would always own his intellectual property, and that they would protect his interests.

135. Defendants took significant steps in furtherance of the conspiracy, including but not limited to the following actions:

- a. Eliminating plaintiff's shares in HPV;
- b. Never incorporating HPIP;
- c. Giving advice and counsel to the Rudkins that was against the interests of Mr. Phillips;
- d. Telling plaintiff that they were not adverse to him; and that they were not legal counsel to HPV but merely "scriveners."

136. As a result of the conspiracy of defendants, and all of them, plaintiff suffered significant damages including the loss of his valuable intellectual property, loss of income and other assets, and other damages in an amount to be proven at trial.

137. Defendants' actions in this case were done with malice and the intent to damage plaintiff and with the conscience disregard for the rights of plaintiff. As a result, plaintiff is entitled to an award of punitive damages in an amount to be proven at trial.

**Ninth Cause of Action  
Negligent Misrepresentation**  
**(Against defendants Du Wors, Linke and Newman & Du Wors)**

138. Plaintiff repeats and incorporates the allegations contained in paragraphs 1 through 137 as if set forth fully herein.

139. Defendants Du Wors and Linke made the misrepresentations outlined in detail, *supra*. Included in those misrepresentations is the claim that the Phillips' IP would be protected, that he would always own the IP, that his shares in HPV would be protected, that he would always be a shareholder and director of HPV, that HPIP would be wholly-owned by Mr. Phillips and would own the Phillips' IP, that the firm of Newman & Du Wors would secure settlements and/or payments for violations of the Phillips' IP in excess of \$5 million.

140. The misrepresentations of defendants were made recklessly and without regard for the true facts. The misrepresentations were made carelessly and hurriedly, without giving thought to whether each and every representation made to Mr. Phillips could be fulfilled.

141. As a result of the representations made to plaintiff, defendants owed plaintiff a duty of care.

142. Defendants breached that duty of care by failing to fulfill those promises and obligations owed to plaintiff.

143. As a result of defendants' negligence, plaintiff has suffered significant damages in an amount to be proven at trial.

## PRAYER FOR RELIEF

144. For the reasons set forth hereinabove, plaintiff respectfully requests judgment against defendants, and all of them, as follows:

145. For Compensatory Damages in an amount to be proven at trial;

146. For Punitive Damages in an amount to be proven at trial;

147. For Equitable Relief; namely, an order restoring ownership of the Phillips' IP to Mr. Phillips because the original transfer to HPV was based upon fraud;

148. For costs of the suit herein;

1 149. For attorney's fees as allowed by contract and statute;  
2 150. For such other and further relief as the court finds in the furtherance of  
3 justice.

4 DATED this 31st day of January, 2014

5 By: /s/ Reed Yurchak  
6 Reed Yurchak, WSBA #37366  
7 Attorney for Plaintiff  
8 Law Office of Reed Yurchak  
9 40 Lake Bellevue Dr. #100  
10 Bellevue, WA 98005  
11 Tel: 425-890-3883  
12 Fax: 425-654-1205  
13 yurchaklaw@gmail.com  
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## VERIFICATION

MARK PHILLIPS hereby declares as follows:

I am the Plaintiff named hereinabove. I have personal and testimonial knowledge of the facts set forth below and am competent to be a witness herein.

I have read the foregoing Complaint, know the contents thereof and believe the same to be true.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 23th day of October, 2013

mark phillips  
MARK PHILLIPS

## EXHIBIT “A”



505 Fifth Avenue South  
Suite 610  
Seattle, Washington  
98104

—  
phone 206.274.2800  
fax 206.274.2801

—  
www.newmanlaw.com  
info@newmanlaw.com

**SENT VIA HAND DELIVERY**

May 25, 2010

Mark Phillips  
11415 - 178<sup>th</sup> Avenue Court East  
Bonney Lake, WA 98391  
mark.phillips@gmail.com  
(206) 607-9415

**Re: Engagement Letter and Security Agreement**

Dear Mark:

I am pleased to welcome you as a client to the firm. This is the Fee Agreement that governs our relationship, so please read this letter carefully. You have engaged us to represent you in *Mod Systems Incorporated et al v. Mark Phillips et al*, King County Superior Court Case No. 09-2-07963-3 SEA; *Robert Arnold et al v. Mark Phillips et al*, King County Superior Court Case No. 10-2-10227-2 SEA; *A Dot Corporation v. Anthony Bay et al*, Western District of Washington Case No. 2:10-cv-00549-RSM; and the proposed case of *Mark Phillips v. MOD Systems Incorporated*. The terms below apply to both the particular subject matter for which you have retained our legal services, as well as to any subsequent matters for which you might request our assistance.

This is also a security agreement, which provides that, as security for our fees under this agreement, and also for the non-refundable retainer you are obligated to pay us under this paragraph 5 of this agreement, you will and hereby do grant us:

- a) a secured interest in the form of a deed of trust in your residence, located at 2720 Third Avenue, Penthouse One, Seattle, WA 98121 (the "Residence"), a copy of which is attached hereto as Exhibit C, and which you shall execute concurrently with this Agreement; and
- b) an assignment of all proceeds from the sale of the Residence, a copy of which is attached hereto as Exhibit D, and which you shall execute concurrent with this Agreement.

Further, you have agreed that you will take all reasonable efforts to sell the Residence. If for some reason you become unable or unwilling to sell the Residence as quickly as possible, you will and hereby do appoint this law firm

as your attorney in fact for selling your residence.

1. The Firm. Newman & Newman, Attorneys at Law, LLP (the "Firm") is a Seattle based law firm with clients and matters throughout the country and beyond. We currently have ten full time lawyers. The Firm occasionally hires contract attorneys, law clerks, and paralegals to handle overflow work, and to assist with heavy cases. Often, the use of paralegals, law clerks, or legal assistants is more cost efficient for the client. However, I will always have primary responsibility for your matters and representation, and I will always review the work of other attorneys, law clerks, paralegals, or legal assistants. Nevertheless, the Firm reserves the right to engage the services of other professionals to work on your cases.

2. Scope of Representation. I will be pleased to do whatever is required, either alone or with the aid of other professionals, to serve you. Until we agree in writing to the contrary, I will proceed only with the legal matters identified in the first paragraph of this letter.

3. Client Responsibilities. You agree to pay the Firm for the legal services rendered and costs advanced. Although you will receive a bill addressed to whatever entity you designate, you will be personally responsible for our services.

4. Fees. Unless and until we agree otherwise, under most circumstances, the Firm will charge for its services on an hourly rate, pursuant to the fee schedule attached to this letter as Exhibit A. Usually, the Firm's statements for legal services are simply the product of the hours worked multiplied by my hourly rate, which is \$250 per hour. If the Firm engages the services of another attorney, the hourly rate will not exceed a \$425 hourly rate, and may even be lower than my hourly rate, unless you agree to pay a higher fee to the outside attorney prior to commencement of such services. If the firm uses the services of a paralegal or law clerk, the hourly rate will be billed at not more than \$130 per hour; and if the firm uses the services of a legal assistant, the hourly rate will be billed at not more than \$50 per hour. Should your matters require traveling, such hourly rates will apply to travel time and time spent away from Seattle at your request, not to exceed 10 hours per calendar day. Clients occasionally request estimates of fees and costs expected to be incurred in connection with a specific matter. While the Firm is always willing to work with clients on budgets for matters, clients should be aware that estimates and budgets are by their natures imprecise, and subject to unforeseeable future events. Actual amounts billed may therefore be different from budgeted or estimated amounts, except where a specific "flat fee" is agreed upon in writing in advance.

5. Trust Account/Retainer. The Firm requires all clients to maintain a retainer on deposit in the Firm's trust account. We have agreed that you will deposit a retainer in the amount of \$500,000. The Firm's trust account is an account that holds funds in trust for clients. This is an interest-bearing trust account. However, any interest earned from any trust account deposit will be paid, as required by law, directly by the bank to the Washington State Bar Association to fund legal services for indigent persons. The money in the trust

account does not belong to the Firm or to me until so transferred. However, you agree that should your invoices go unsatisfied for more than 30 days from issuance, the Firm may transfer an amount equal to the unpaid amount of such invoice to the Firm, without notice to you. Additionally, the Firm may pay actual costs that you incur (to third parties) directly from your funds in the trust account at any time. Otherwise, the retainer will not be applied to your invoices, and no portion thereof will be transferred to the Firm, without your approval, which you may give verbally or otherwise. If, at the termination of our services the total amount of fees and costs incurred is less than the remaining balance in the Firm's trust account for you, the difference will be refunded.

6. Costs/Disbursements. The Firm will necessarily incur costs and expenses on behalf of you for various services related to your requested work. These cost items will be separately itemized on your monthly statements as "Disbursements" and are listed as Exhibit B to this letter. The Firm believes that it should not profit from such costs. Accordingly, you will not be billed for telephone calls made or received within the United States, simple postage, sending faxes, or other miscellaneous fees not listed on Exhibit B or discussed in advance. Likewise, the Firm does not attach a premium to services such as computer assisted legal research and secretarial services. If the firm is performing registration (such as copyright, trademark, patent, domain name), license (such as business, professional), or business formation services, the appropriate actual fees will be billed to you.

7. Billings; Interest On Unpaid Balances. The Firm's monthly statements will generally be mailed to you during the month following the rendering of the services, and payment is due upon receipt. Each statement will contain a description of the services rendered, the date of the service, and the amount charged for services, unless we agree otherwise. To avoid burdening those clients who pay their statements promptly with higher fees to reflect the added costs we might incur as a result of clients who are delinquent, interest at the rate of 1.5% per month will be added to the entire outstanding balance of accounts not fully paid 30 days after the most recent invoice date. Interest on unpaid balances accrues monthly. In no event will that interest charge be greater than the maximum amount allowed by law. The interest charge does not affect our right to withdraw from representation for non-payment of fees. With respect to costs advanced to third parties on your behalf, there may be a delay in our billing for the disbursement based upon our receipt of the third party's invoice. You should always review your invoice carefully, as it will indicate what you are being charged for each particular matter and for each service we provide. We understand that bills for legal services can be complicated and that you may have questions about your bills. We have done our best to make our invoices clear and comprehensive and to accurately describe the work performed. If, at any time, you wish to discuss your bill, please do not hesitate to call me. We want you to feel confident that you know what you are paying for.

8. Fee Disputes. I cannot overemphasize the importance of communication to a successful working relationship. And, while it is customary for attorneys to charge clients for time spent addressing clients' telephone inquiries, you normally will not be charged for

May 25, 2010

Page 4 of 7

inquiries addressing the attorney-client relationship, such as billing and fees (the primary exception to that is in cases where multiple clients are being represented simultaneously, in which case we may charge for such administrative costs). Unless you object to the quantity or quality of services rendered within 30 days from the date you receive the invoice, the statement shall be presumed to be fair, accurate, correct, and complete; and you waive any right to dispute the same. This requirement is designed to bring billing issues to light while the events in question remain fresh in everyone's mind.

9. Communication, Authorization and Decision Making. You agree to disclose to the Firm all relevant information concerning the matters I work on for you. I will take no further action or negotiating position without your prior approval. Accurate and complete communication is required for the best legal representation possible. Any and all communication between you and the Firm relating to our providing legal advice to you is privileged; that is, the substance of such communication cannot be compelled by law, and I may not discuss it with any person, including law enforcement, without your consent.

10. Disputes. Although we do not expect that any dispute between us will arise, in the unlikely event of any dispute under this Agreement, including a dispute regarding the amount of fees or quality of services, any dispute shall be governed by Washington law, and the exclusive venue for such proceeding shall be (*i.e.*, the action will take place in) Seattle, Washington. In the event this firm initiates efforts to collect unpaid amounts from you, or enforce its security interest against your Residence or the proceeds of the sale of your residence, you agree to reimburse us for such cost of collection, including costs and attorneys' fees.

11. Outcome of Matters. No statement that the Firm makes to you should be construed as a promise or guarantee about the outcome of your matters. The law is not always fair, and is never predictable. Accordingly, we cannot and do not make such promises or guarantees.

12. Professional Liability Insurance. In accordance with applicable state law (such as California Business & Professions Code § 6148), we hereby inform you that the Firm maintains professional errors and omissions insurance coverage applicable to the services to be rendered under this agreement.

13. Termination. You have the right to terminate our representation at any time. We have the same right, subject to an obligation to give you reasonable notice to arrange alternative representation. Upon termination of the representation, by either you or the Firm, you agree to pay all fees, costs, and disbursements incurred both prior to such termination and in connection with our cooperation with any other counsel regarding transfer of the matter or file. Additionally, you agree to pay all fees, costs, and disbursements associated with any withdrawal by the firm (*e.g.*, such as our regular hourly or other fees for a motion for or notice of withdrawal). Upon termination of our relationship, the Firm will keep copies of your files if you request us to deliver the original file to you; you will be responsible for our costs in making such copies, as well as any delivery fees.

May 25, 2010  
Page 5 of 7

Finally, a few miscellaneous terms of our relationship: First, to the extent that you are requesting that we provide legal services for a corporation, limited liability company, partnership or other such entity, your signature below warrants that you have the authority to bind that entity and you personally guarantee payment of our fees and costs by that entity. Second, you agree to keep us apprised in writing of your current mailing address, all applicable telephone numbers, fax numbers and any event which jeopardizes the integrity of our corporate or personal client, such as a bankruptcy or reorganization filing. Third, we will have a lien for attorney's fees and costs advanced on all claims and causes of action that are the subject of our representation, and on all proceeds of any recovery obtained (whether by settlement, arbitration award, or court judgment). In the event we represent you in a matter where payment is made to you, you agree the payment will be first deposited into our client trust account. You further agree that we may transfer any amounts you owe the Firm before transferring to you the remaining balance paid. Fourth, if any of these policies is held in whole or in part to be unenforceable for any reason, the remainder of that provision will remain in effect. Fifth, these policies may be modified only by an instrument in writing signed by both you and me.

This Agreement shall not take effect, and I will have no obligation to render legal services to you, until a signed copy of this Agreement is returned to me.

If the forgoing meets with your approval, please sign the enclosed acknowledgment copy of this letter. As always, please call me with any questions or concerns.

I look forward to working with you.

Very Truly Yours,

NEWMAN & NEWMAN,  
ATTORNEYS AT LAW, LLP

  
John Du Wors

Agreed, Understood, and Accepted,

  
Mark Phillips

**EXHIBIT A**  
**Fee Schedule**

| <b><u>Service</u></b>   | <b><u>Fee</u></b>  |
|---|--|
| Services rendered by John Du Wors   | \$250.00 per hour  |
| Services rendered by other attorneys  | Not more than \$425.00 per hour  |
| Services rendered by paralegals or law clerks   | Not more than \$130.00 per hour  |
| Services rendered by legal assistants   | Not more than \$50.00 per hour   |
| Formation of corporations, limited liability companies, limited liability partnerships, or other entities [service includes filing of state formation documents, drafting of basic corporate internal documents, procurement of federal and state identification numbers, business licensure, state trade name (or d/b/a) registration, and preparation of basic corporate book containing those documents] | The above referenced hourly rates; but, <u>not less than \$700.00 plus applicable state and local fees</u>     |
| Drafting of Internet Web hosting agreements, colocation agreements, and Internet operating/service agreements   | The above referenced hourly rates; but, <u>not less than \$800.00</u>  |
| Drafting of Internet content license agreements   | The above referenced hourly rates; but, <u>not less than \$800.00</u>  |
| Drafting of Web site terms and conditions   | The above referenced hourly rates; but, <u>not less than \$1200.00</u>   |
| Copyright and/or trademark license agreements   | The above referenced hourly rates; but, <u>not less than \$500.00</u>  |
| Research/drafting of intellectual property based cease and desist letters   | The above referenced hourly rates; but, <u>not less than \$500.00</u>  |
| Research/drafting of response to intellectual property based cease and desist or other demand letters   | The above referenced hourly rates; but, <u>not less than \$500.00</u>  |
| Web site legal compliance review (including review of intellectual property protection, terms and conditions, representations, privacy policy, advertising, and content)  | The above referenced hourly rates; but, <u>not less than \$1,500.00</u>  |
| Federal trademark registration application [this flat fee only covers the Firm appearing as your counsel of record with the USPTO and preparing the application - office actions are billed by the hour]  | \$550 for word mark; \$650 for design mark; \$300-\$450 for second or multiple applications for identical mark |
| Copyright registration  | The above referenced hourly rates; but, <u>not less than \$300.00 per copyright application</u>                |

**EXHIBIT B**  
**Cost Items**

| <u>Item</u>   | <u>Cost</u>  |
|---|--|
| Document reproduction (including copies, faxes received, and printing of documents in excess of 5 pages)  | \$ .15 per page                                      |
| Long distance telephone calls/faxes sent within the United States   | No Charge  |
| Long distance telephone calls/faxes sent outside of the United States   | \$2.00 per minute                                    |
| Heavy postage (over 3 pounds)   | \$1.00 plus actual cost                              |
| Simple postage (under 3 pounds)   | No Charge  |
| Faxes sent  | No Charge  |
| Local telephone calls   | No Charge  |
| Access to computer assisted legal research for California, Washington, or Ninth Circuit jurisdictions   | No Charge  |
| Access to computer assisted legal research for jurisdictions outside of California, Washington, or Ninth Circuit; as well as for other on-line databases such as Thompson & Thompson/Saegis | actual cost of vendor                                |
| Overnight/Express Courier/Messenger Service   | actual cost of vendor                                |
| Service of process or other legal delivery  | actual cost of vendor                                |
| Court reporters   | actual cost of vendor                                |
| Filing of court or other official documents   | actual filing fee, plus actual cost of vendor        |
| Document binding, collating, and related supplies   | actual cost of vendor                                |
| Expert witnesses, computer/technology/programming experts, consultants, accountants, etc.   | actual fee of service provider                       |
| Local driving transportation  | \$ .35 per mile                                      |
| Commercial transportation (e.g., airfare, taxi, etc.)   | actual cost of carrier                               |
| Parking   | actual cost of lot provider                          |
| Meals during travel   | actual cost of meals, not to exceed \$100.00 per day |
| Other incidental costs  | actual cost  |

# Exhibit C

Produced with ScanToPDF

AFTER RECORDING MAIL TO:

Name Newman and Newman LLP

Address 505 5<sup>th</sup> Ave S, #610

City, State, Zip Seattle WA 98104

Filed for Record at Request of:

Short Form  
**DEED OF TRUST**

THIS DEED OF TRUST, made this 25<sup>th</sup> day of May, 2010, between Phillips Holdings LLC, whose address is 2730 3<sup>rd</sup> Ave #1200, Seattle WA 98121, and First American Title Co., whose address is 818 Stewart #800, Seattle, WA 98101, as TRUSTEE, and Newman and Newman LLP, whose address is 505 5<sup>th</sup> Ave S. #610, Seattle WA 98104, as BENEFICIARY.

Grantor(s) hereby irrevocably grants, bargains, sells, and conveys to Trustee in trust, with power of sale, the following described property in King County, Washington:

UNIT PH1, MOSLER LOFTS CONDOMINIUM, SURVEY MAR, AND PLANS RECORDED IN VOLUME 242 OF CONDOMINIUMS, PAGES 1 THROUGH 9, INCLUSIVE, AND AMENDMENTS THERETO, IF ANY; CONDOMINIUM DECLARATION RECORDED UNDER RECORDING NUMBER 20071107001789, AND AMENDMENTS THERETO, IF ANY, IN KING COUNTY, WASHINGTON.

Assessor's Property Tax Parcel/Account Number: **567700-1480-08**

TOGETHER WITH all the tenements hereditaments and appurtenances, now or hereafter thereunto belonging or in anywise appertaining, and the rents, issues, and profits thereof and all other property or rights of any kind or nature whatsoever further set forth in the Master Form Deed of Trust hereinafter referred to, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

THIS DEED IS FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantor(s) incorporated by reference or contained herein and payment of the sum of five hundred thousand dollars DOLLARS (\$ 500,000) with interest thereon according to the terms of a promissory note of even date herewith, payable to Beneficiary or order and made by Grantor(s); all renewals, modifications or extensions thereof, and also such further sums as may be advanced or loaned by Beneficiary to Grantor(s), or any of his/her/their successors or assigns, together with interest thereon at such rate as shall be agreed upon.

By executing and delivering this Deed of Trust and the Note secured hereby, the parties agree that all provisions of Paragraphs 1 through 35 inclusive of the Master Form Deed of Trust hereinafter referred to, except such paragraphs as are specifically excluded or modified herein, are hereby incorporated herein by reference and made an integral part hereof for all purposes the same as if set forth herein at length, and the Grantor(s) hereby makes said covenants and agrees to fully perform all of said provisions. The Master Form Deed of Trust above referred to was recorded on the twenty-fifth (25th) day of July, 1968, in the Official Records of the offices of the County Auditors of the following counties in Washington in the book, and at the page designated after the name of each county, to-wit:

| COUNTY       | BOOK OR VOL.                    | PAGE NO.      | AUDITOR'S | COUNTY       | BOOK OR VOL.         | PAGE NO.        | AUDITOR'S |
|--------------|---------------------------------|---------------|-----------|--------------|----------------------|-----------------|-----------|
| Adams        | 2 of Record, Jur.               | 513-16        | 122987    | Lewis        | 7 of Official Rec.   | 839-842         | 725562    |
| Arapahoe     | Microfilmed under Auditor's No. |               | 101896    | Lincoln      | 107 of Mortgages     | 776-777         | 316596    |
| Benton       | 241 of Official Rec.            | 6954-C        | 592931    | Mason        | Recd 48              | Frances 035-838 | 236038    |
| Chelan       | 688 of Official Rec.            | 1692-1685     | 681844    | Okanogan     | 121 of Mortgages     | 517-519A        | 560658    |
| Clallam      | 315 of Official Rec.            | 195-198       | 283176    | Pacific      | 213 of Official Rec. | 649-652         | 55707     |
| Clark        | Aud. Microfilm No.              | 702859-702862 | G-519253  | Pend Oreille | 27 of Migs.          | 8-11            | 126854    |
| Columbia     | 49 of Deeds                     | 198-201       | P 2115    | Pierce       | 1234 of Migs.        | 707-710         | 2250799   |
| Cowlitz      | 747 of Official Rec.            | 234-257       | 675475    | San Juan     | 28 of Migs.          | 459-462         | 69282     |
| Douglas      | 123 of Mortgages                | 120-123       | 151893    | Skagit       | 19 of Official Rec.  | 80-83           | 716277    |
| Ferry        | 28 of Deeds                     | 413-416       | 153150    | Skamania     | 47 of Migs.          | 41-44           | 70197     |
| Franklin     | 11 of Official Rec.             | 138-141       | 309636    | Snohomish    | 233 of Official Rec. | 540-543         | 2043549   |
| Garfield     | Microfilmed under Auditor's No. |               | 13044     | Spokane      | 14 of Official Rec.  | 1048-1051       | 376267C   |
| Grays Harbor | 44 of Rec. Doc.                 | 373-376       | 538241    | Stevens      | 109 of Migs.         | 394-397         | 390635    |
| Island       | 21 of General                   | 31-34         | 207544    | Thurston     | 454 of Official Rec. | 721-734         | 785350    |
| Jefferson    | 4 of Official Rec.              | 710-713       | 211628    | Washburn     | 17 of Mortgages      | 89-92           | 24732     |
| King         | 5690 of Migs.                   | 316-319       | 196853    | Walla Walla  | 308 of Migs.         | 711-714         | 493721    |
| Kitsap       | 929 of Official Rec.            | 456-459       | 6382269   | Whatcom      | 82 of Official Rec.  | 635-639         | 104732    |
| Kittitas     | 111 of Mortgages                | 480-483       | 934770    | Whitman      | 1 of Migs.           | 291-294         | 382282    |
| Klickitat    | 101 of Mortgages                | 361-364       | 348693    | Yakima       | 712 of Official Rec. | 147-150         | 2170559   |
|              |                                 | 107-110       | 131095    |              |                      |                 |           |

A copy of such Master Form Deed of Trust is hereby furnished to the person executing this Deed of Trust and by executing this Deed of Trust the Grantor(s) acknowledges receipt of such Master Form Deed of Trust.

The property which is the subject of this Deed of Trust is not used principally or primarily for agriculture or farming purposes.

The undersigned Grantor(s) requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at the address hereinbefore set forth.

WITNESS the hand(s) and seal(s) of the Grantor(s) on the day and year first above written.

By Mark Phillips, notarized By \_\_\_\_\_

By Mark Phillips, notarized, P.D.P. By \_\_\_\_\_

By Mark Phillips, notarized, P.D.P. By \_\_\_\_\_

By \_\_\_\_\_ By \_\_\_\_\_

STATE OF Washington \_\_\_\_\_ }  
COUNTY OF King \_\_\_\_\_ }

I certify that I know or have satisfactory evidence that Mark Phillips  
(is/are) the person(s) who appeared before me, and said person(s) acknowledged that (he/she/they) signed this instrument  
and acknowledged it to be (his/her/their) free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: May 25, 2010 Mark Phillips

Notary Public in and for the state of Washington  
My appointment expires: May 11, 2013

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
(is/are) the person(s) who appeared before me, and said person(s) acknowledged that (he/she/they) signed this instrument  
on oath stated that (he/she/they) (is/are) authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of  
\_\_\_\_\_ to be the free and voluntary act of such party(ies) for the uses and purposes mentioned in  
this instrument.

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

Notary Public in and for the state of \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**Arline N. Carrico**  
NOTARY PUBLIC  
STATE OF WASHINGTON  
Certificate # 142554  
Expires May 11, 2013

**REQUEST FOR FULL RECONVEYANCE**  
*To be used only when all obligations have been paid under the note and this Deed of Trust.*

**TO: TRUSTEE**

The undersigned is the legal owner and holder of the note and all other indebtedness secured by the within Deed of Trust. Said note, together with all other indebtedness secured by said Deed of Trust, has been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you thereunder.

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

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Mail reconveyance to \_\_\_\_\_

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee before cancellation will be made.

## MASTER FORM DEED OF TRUST

Recorded by Washington Mortgage Correspondence Association, a Washington corporation, pursuant to C. 148 L. 1967

The Grantor(s) covenants and agrees as follows:

1. The following described estate, property and rights of Grantor(s) are also included as a security for the performance of each covenant and agreement of Grantor(s) contained herein or in the Short Form Deed of Trust and the payment of all sums of money secured hereby:

(a) All the estate and rights of Grantor(s) in and to said property and in and to land lying in streets and roads adjoining said premises, and all access, rights, and easements appertaining thereto.

(b) All buildings, structures, improvements, fixtures, and articles of property now or hereafter attached to, or used or adapted for use in the operation of, the said premises, including but without being limited to, all heating and incinerating apparatus and equipment whatsoever, all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, ranges, cooking apparatus and mechanical kitchen-equipment, refrigerators, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, carpeting, underpadding, elevators, escalators, partitions, mantels, built-in mirrors, window shades, blinds, screens, storm sash, awnings, furnishings of public spaces, halls and lobbies, and shrubbery and plants; and including also all interest of any owner of the said premises in any of such items hereafter at any time acquired under conditional sale, contract, chattel mortgage or other title retaining or security instrument, all of which property mentioned in this paragraph shall be deemed part of the realty and not severable wholly or in part without material injury to the freehold.

(c) All and singular the lands, tenements, privileges, water rights, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, rights, title, claim, interest and demand whatsoever of the Grantor(s), either in law or equity, of, in and to the bargained premises. TO HAVE AND TO HOLD said premises bargained and described, together with all and singular the lands, tenements, privileges, water rights, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all of the estate, right, title, claim, and demands whatsoever of the Grantor(s), either in law or in equity, of, in and to the above bargained premises, forever as security for the faithful performance of the promissory note secured hereby and as security for the faithful performance of each and all of the covenants, agreements, terms, and conditions of this Deed of Trust, SUBJECT, HOWEVER, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits.

(d) All of Grantor(s)'s rights further to encumber said property for debt except by such encumbrance which by its actual terms and specifically expressed intent shall be and at all times remain subject and subordinate to (i) any and all tenancies in existence when such encumbrance becomes effective and (ii) any tenancies thereafter created; Grantor(s) hereby (i) representing as a special inducement to Beneficiary to make this loan that as of the date hereof there are no encumbrances to secure debt junior to this Deed of Trust and (ii) covenanting that there are to be none as of the date when this Deed of Trust becomes of record, except in either case encumbrances having the prior written approval of Beneficiary, and all of Grantor(s)'s rights to enter into any lease or lease agreement which would create a tenancy that is or may become subordinate in any respect to any mortgage or deed of trust other than this Deed of Trust.

2. When and if Grantor(s) and Beneficiary shall respectively become the Debtor and Secured Party in any Uniform Commercial Code Financing Statement affecting property either referred to or described herein, or in any way connected with the use and enjoyment of these premises, this Deed of Trust shall be deemed a Security Agreement as defined in said Uniform Commercial Code and the remedies for any violation of the covenants, terms, and conditions of the agreements herein contained shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in said Financing Statement by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, all at Beneficiary's sole election. Grantor(s) and Beneficiary agree that the filing of such a Financing Statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the parties hereto, that everything used in connection with the production of income from the property that is the subject of this Deed of Trust and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained in the short form Deed of Trust or in any list filed with the Beneficiary, (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time.

3. To pay all debts and monies secured hereby, when from any cause the same shall become due. To keep the property free from statutory and governmental liens of any kind. That the Grantor(s) is/are seized in fee simple of the property and owns outright every part thereof, that there are no liens or encumbrances against or upon the same and none superior to this Deed of Trust, will be created or suffered to be created by the Grantor(s) during the life of this Deed of Trust, that he has good right to make this Deed of Trust and that he will forever warrant and defend said property unto the Beneficiary, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. The Grantor(s) upon request by mail will furnish a written statement duly acknowledged of the amount due on this Deed of Trust and whether any offsets or defenses exist against the debt secured hereby.

4. To pay to Beneficiary, if Beneficiary so requires, together with and in addition to the monthly payments of principal and interest payable under the terms of the said note, on the date set forth therein for the making of monthly payments

each month, until said note is fully paid, a sum, as estimated by the Beneficiary, equal to the ground rents, if any, and the taxes and special assessments next due on the premises covered by this Deed of Trust, plus the premiums that will next become due and payable on insurance policies as may be required under paragraph 10 hereof, Grantor(s) agreeing to deliver promptly to beneficiary all bills and notices thereof, less all sums already paid therefor, divided by the number of months to elapse before two months prior to the date when such ground rents, premiums, taxes, and special assessments will become delinquent, such sums to be held by the Beneficiary in trust to pay said ground rents, premiums, taxes, and special assessments. All payments mentioned in this paragraph and all payments to be made under said note shall be added together and the aggregate amount thereof shall be paid by the Grantor(s) each month in a single payment to be applied by Beneficiary to the following items in the order set forth: (1) ground rents, if any, taxes, special assessments, fire and other hazard insurance premiums; (2) interest on the note secured hereby; and, (3) amortization of the principal of said note. Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default under this Deed of Trust. The arrangement provided for in the paragraph 4 is solely for the added protection of the Beneficiary and entails no responsibility on the Beneficiary's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon assignment of this Deed of Trust by the Beneficiary, any funds on hand shall be turned over to the assignee and any responsibility of the assignor with respect thereto shall terminate. Each transfer of the property that is the subject of this Deed of Trust shall automatically transfer to the grantees all rights of the Grantor(s) with respect to any funds accumulated hereunder.

5. In the event that any payment or portion thereof is not paid within fifteen (15) days commencing with the date it is due, Beneficiary may collect, and the Grantor(s) agree(s) to pay with such payment, a "late charge" of two cents (\$.02) for each dollar so overdue as liquidated damages for the additional expense of handling such delinquent payments.

6. If the total of the payments (herein called reserves) made under paragraph 4 hereof relating to reserves for ground rents, taxes, special assessments, and premiums on insurance policies, shall exceed the amount of payments actually made by Beneficiary for the purposes set forth in paragraph 4, plus such amounts as have been reasonably accumulated in such reserves toward payments therefrom next to become due, such excess may, provided no default then exists under the terms of this instrument nor under the terms of the promissory note hereby secured, but not otherwise, be credited by beneficiary in payment of subsequent aggregate, but not partial, payments to be made by Grantor(s) or, at the option of the Beneficiary, refunded to the Grantor(s) or his/her/their successors in interest as may appear upon the records of the Beneficiary. If, however, the monthly payments accumulating such reserves shall not be sufficient to pay the sums required when the same shall become due and payable, the Grantor(s) shall pay to Beneficiary any amount necessary to make up the deficiency within thirty (30) days after written notice to Grantor(s) stating the amount of the deficiency. If there shall be a default under any of the provisions of this Deed of Trust and thereafter a sale of the property in accordance with the provisions hereof, or if the Beneficiary acquires the property otherwise after default, the Beneficiary shall apply, at the time of commencement of such proceedings or at the time the property is otherwise acquired, the balance then remaining in the funds accumulated under paragraph 4, less such sums as will become due and payable during the pendency of the proceedings, as a credit against the amounts secured hereby.

7. To maintain the buildings and other improvements on the property in a rentable and tenantable condition and state of repair; to neither commit nor suffer any waste, to promptly comply with all requirements of the federal, state, and municipal authorities and all other laws, ordinances, regulations, covenants, conditions, and restrictions respecting said property or the use thereof, and pay all fees or charges of any kind in connection therewith. The Beneficiary may recover as damages for any breach of this covenant the amount it would cost to put the property in the condition called for herein. In the event of breach of any requirement of this paragraph, the Beneficiary may, in addition to any other rights or remedies, at any time thereafter declare the whole of said principal sum immediately due and payable. Proof of impairment of security shall be unnecessary in any suit or proceeding under this paragraph. Grantor(s) shall permit Beneficiary or its agents the opportunity to inspect the property, including the interior of any structure at reasonable times and after reasonable notice.

8. To complete or restore promptly and in good workmanlike manner any building or improvement which may be constructed, damaged, or destroyed thereon, and pay when due all costs incurred therefor, and, if the loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on said property, Grantor(s) further agree(s):

- (a) To commence construction promptly and in any event within thirty (30) days from the date of this instrument, and complete the same in accordance with any agreements relating to construction and plans and specifications satisfactory to Beneficiary within eight months of the date of this instrument.
- (b) To allow Beneficiary to inspect said property at all times during construction.
- (c) To replace any work or materials unsatisfactory to Beneficiary, within fifteen (15) calendar days after written notice to Grantor(s) of such fact.
- (d) That work shall not cease on the construction of such improvements for any reason whatsoever for a period of fifteen (15) consecutive days.

The Trustee, upon presentation to it of an affidavit signed by Beneficiary setting forth facts showing a default by Grantor(s) under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

9. No building or other improvement on the property shall be structurally altered, removed, or demolished, without the Beneficiary's prior written consent, nor shall any fixture or chattel covered by this Deed of Trust and adapted to the proper use and enjoyment of the premises be removed at any time without like consent unless actually replaced by an

article of equal suitability, owned by the Grantor(s), free and clear of any lien or security interest except such as may be approved in writing by the Beneficiary.

10. To provide to the Beneficiary, at least thirty (30) days prior to expiration of existing insurance, and maintain unceasingly, insurance, with premiums prepaid, on all of the property that is the subject of this Deed of Trust, or hereafter becoming part of said property, against loss by fire and other hazards, casualties, and contingencies, including war damage, as may be required from time to time by the Beneficiary in such amounts and for such period of time, with loss payable clauses (without contribution) in favor of and in form satisfactory to the Beneficiary, and to deliver all policies to Beneficiary, which delivery shall constitute an assignment to Beneficiary of all return premiums. All insurance shall be carried in companies approved by Beneficiary. Beneficiary may at its option require Grantor(s) to maintain said required policies in Grantor(s)'s possession in lieu of delivering said policies to Beneficiary, in which event said policies shall be kept available by Grantor(s) at all times for return to the Beneficiary or for inspection by Beneficiary, its agents or insurers, and said requirement may be withdrawn by Beneficiary at any time. In event of foreclosure of this Deed of Trust or other transfer of title to the subject property in extinguishment of some or all of the indebtedness secured hereby, all interest of the Grantor(s) in any insurance policies in force shall pass to the purchaser or Grantee to pay to Beneficiary as Beneficiary may require a reasonable fee to cover costs of substituting policies in the event the Grantor(s) replace(s) any policy prior to its expiration. Grantor(s) will reimburse Beneficiary for any premiums paid for such insurance by the Beneficiary upon the Grantor(s)'s default in so insuring the buildings or other improvements or default in assigning and delivering such policies to the beneficiary so endorsed.

11. To appear in and defend any suit, action, or proceeding that might affect the value of this security instrument or the security itself or the rights and powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect also to appear in or defend any such action or proceeding, be made a party to such by reason of this Deed of Trust or elect to prosecute such action as appears necessary to preserve said value, the Grantor(s) will, at all times, indemnify from, and, on demand reimburse Beneficiary or Trustee for any and all loss, damage, expense, or cost, including cost of evidence of title and attorney's fees, arising out of or incurred in connection with any such suit, action, or proceeding, and the sum of such expenditures shall be secured by this Deed of Trust with interest as provided in the note secured hereby and shall be due and payable on demand. To pay costs of suit, cost of evidence of title and a reasonable attorney's fee in any proceeding or suit brought by Beneficiary to foreclose this Deed of Trust.

12. To pay in full at least thirty (30) days before delinquent all rents, taxes, assessments, and encumbrances, charges or liens with interest, that may now or hereafter be levied, assessed, or claimed upon the property that is the subject of this Deed of Trust or any part thereof, which at any time appear to be prior or superior hereto for which provision has not been made heretofore, and upon request will exhibit to Beneficiary official receipts therefor, and to pay all taxes imposed upon, reasonable costs, fees, and expenses of this Trust. On default under this paragraph Beneficiary may, at its option, pay, or pay out of reserves accumulated under paragraph 4, any such sums, without waiver of any other right of Beneficiary by reason of such default of Grantor(s), and Beneficiary shall not be liable to Grantor(s) for a failure to exercise any such option.

13. To repay immediately on written notice to Grantor(s) all sums expended or advanced hereunder by or on behalf of Beneficiary or Trustee, with interest from the date of such advance or expenditure at the rate of ten percent (10%) per annum until paid, and the repayment thereof shall be secured hereby. Failure to repay such expenditure or advance and interest thereon within ten (10) days of the mailing of such notice will, at Beneficiary's option, constitute an event of default hereunder, or, Beneficiary may, at its option, commence an action against Grantor(s) for the recovery of such expenditure or advance and interest thereon, and in such event Grantor(s) agree(s) to pay, in addition to the amount of such expenditure or advance, all costs and expenses incurred in such action, together with a reasonable attorney's fee.

14. Should Grantor(s) fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor(s) and without releasing Grantor(s) from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto, and in exercising any such power, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor including cost of evidence of title, employ counsel, and pay his/her/their reasonable fees.

15. (a) To fully comply with all of the terms, conditions, and provisions of all leases on said property so that the same shall not become in default and to do all that is needful to preserve all said leases in force.

(b) To permit no assignment of any lease, or any subletting thereunder unless the right to assign or sublet is expressly reserved by the lessee under such lease.

(c) That save and except for taxes and assessments provided to be paid by Grantor(s) as specified in paragraph 12 hereof, Grantor(s) will not create or suffer or permit to be created, subsequent to the date of the execution and delivery of this Deed of Trust any lien or encumbrance which may be or become superior to any lease affecting said property.

(d) That if any part of the automobile parking areas included within said property is taken by condemnation, or before said areas are otherwise reduced, Grantor(s) will provide parking facilities in kind, size, and location to comply with all leases, and before making any contract for such substitute parking facilities, Grantor(s) will furnish to Beneficiary satisfactory assurance of completion thereof free of liens and in conformity with all governmental zoning and regulations.

16. Should the property or any part or appurtenance thereof or right or interest therein be taken or damaged by reason of any public or private improvement, condemnation proceeding (including change of grade), fire, earthquake, or other casualty, or in any other manner, Beneficiary may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any compromise or settlement, in connection with such taking or damage, and obtain all compensation, awards, or other relief therefor. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies or insurance affecting the property, are hereby assigned to beneficiary, which may, after deducting therefrom all its expenses, including attorney's fees, release any monies so received by it, or apply the same on any indebtedness secured hereby or apply the same to the repair or restoration of the property, as it may elect. Grantor(s) further assigns to Beneficiary any return premiums or other repayments upon any insurance at any time provided for the benefit of the Beneficiary, refunds or rebates made of taxes or assessments on said property, and Beneficiary may at any time collect said return premiums, repayments, refunds, rebates, etc., notwithstanding that no sum secured hereby be overdue when such right to collection be asserted. Grantor(s) also agree(s) to execute such further assignments of any such compensation, award, damages, rebates, return of premiums, repayments, rights of action, and proceeds as Beneficiary or Trustee may require.

17. Time is of the essence hereof in connection with all obligations of the Grantor(s) herein or in said note. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

18. At any time upon written request of Beneficiary, payment of its fees and presentation of this Deed and said note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the property. The Grantee in any reconveyance may be described as the "Person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Grantor(s) agrees to pay a reasonable trustee's fee for full or partial reconveyance, together with a recording fee if Trustee, at its option, elects to record said reconveyance.

19. In case of a sale under this Deed of Trust, the said property, real, personal and mixed, may be sold in one parcel.

20. The Grantor(s) shall not, without first obtaining the Beneficiary's written consent, assign any of the rents or profits of the property or collect any rent for more than one month in advance or change the general nature of the occupancy or initiate or acquiesce in any zoning reclassification, or do or suffer any act or thing which would impair the security for said debt or the Beneficiary's lien upon said property or the rents thereof. In the event of breach of any requirement of this paragraph, the Beneficiary may, in addition to any other rights or remedies, at any time thereafter declare the whole of said principal sum immediately due and payable.

21. The holder of this Deed of Trust, in any action to foreclose it, shall be entitled (without notice and without regard to the adequacy of any security for said debt) to the appointment of a receiver of the rents and profits of the property and such receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receiver, all the rights and powers granted to the Beneficiary by the covenants contained in paragraph 23 hereof.

22. As further security for the payment of all indebtedness herein mentioned, all Grantor(s)'s rents and profits of said property and the right, title, and interest of the Grantor(s) in and under all leases now or hereafter affecting said property, are hereby assigned and transferred to the Beneficiary. So long as no default shall exist in compliance with any requirement hereof or of any further instrument at any time executed with respect to this Deed of Trust the Grantor(s) may collect assigned rents and profits as the same fall due, but upon the occurrence of any such default, or at such later time as the Beneficiary in its sole discretion may fix by written notice, all right of the Grantor(s) to collect or receive rents or profits shall wholly terminate. All rents or profits of Grantor(s) receivable from or in respect to said property which it shall be permitted to collect hereunder shall be received by it in trust to pay the usual and reasonable operating expenses of, and the taxes upon, said property and the sums owing the Beneficiary as they become due and payable as provided in this Deed of Trust or in the said note or in any modification of either. The balance of such rents and profits after payment of such operating expenses, taxes, and sums due the Beneficiary, and after the setting aside of accruals to date of such expenses, taxes, and sums, including amortization, shall be Grantor(s)'s absolute property. No lease of the whole or any part of the property involving an initial term of more than three (3) years shall be modified or terminated without the written consent of the Beneficiary, nor shall the surrender of any such lease be accepted nor any rental thereunder be collected for more than two (2) months in advance without like written consent. In the event of any default hereunder and the exercise by the Beneficiary of its rights hereby granted, Grantor(s) agree(s) that payments made by tenants or occupants to the Beneficiary shall, as to such tenants, be considered as though made to Grantor(s) and in discharge of tenants' obligations as such to Grantor(s). Nothing herein contained shall be construed as obliging the Beneficiary to perform any of Grantor(s)'s covenants under any lease or rental arrangement. Grantor(s) shall execute and deliver to the Beneficiary upon demand any further or supplemental assignments necessary to effectuate the intentions of this paragraph and upon failure of the Grantor(s) so to comply, Beneficiary may, in addition to any other right or remedy it has, declare the maturity of the indebtedness hereby secured.

23. In the event of default in compliance with any requirement of this Deed of Trust or of any further instrument at any time executed with respect to this Deed of Trust, and the continuance thereof for such period as would entitle the Beneficiary to declare said debt due and payable, or for ten (10) days if no such period be applicable, the Beneficiary may, at its option, enter upon and take possession of the said property and let the same or any part thereof, making therefor such alterations as it finds necessary, and may terminate in any lawful manner any tenancy or occupancy of said property, exercising with respect thereto any right or option available to the Grantor(s). From and after the occurrence of any such default, if any owner of said property shall occupy said property or part thereof, such owner shall pay to the Beneficiary in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do the Beneficiary shall be entitled to remove such owner from the property by any appropriate action or proceeding.

24. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies or compensation, or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

25. All sums secured hereby shall become immediately due and payable, at the option of the Beneficiary without demand or notice, after any of the following occur, each of which shall be an event of default: (a) default by Grantor(s) in the payment of any indebtedness secured hereby or in the performance or observance of any agreement contained herein, or (b) any assignment made by Grantor(s) or the then owner of said property for the benefit of creditors, or (c) any transfer of title made by the Grantor(s) or the then owner of said property to a Grantee or successors in interest without the assumption of all of the terms and conditions herein contained, or (d) any of the following shall occur, with respect to the property, the Grantor(s) or the then owner of said property: (i) the appointment of a receiver, liquidator, or Trustee; (ii) the adjudication as a bankrupt or insolvent, (iii) the filing of any Petition for Bankruptcy or reorganization; (iv) the institution of any proceeding for dissolution or liquidation, (v) if Grantor(s) be unable, or admit in writing an inability to pay his/her/their debts when due; or (vi) a default in any provision of any other instrument which may be held by Beneficiary as security for said note, including the loan agreement and related documents, the terms and covenants of which are incorporated herein by reference as though fully set forth herein. No waiver by Beneficiary of any default on the part of Grantor(s) shall be construed as a waiver of any subsequent default hereunder. In event of such default and upon written request of Beneficiary, Trustee shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington (RCW Chapter 61.24 as existing now, or hereafter amended) and the Uniform Commercial Code of the State of Washington where applicable, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (a) to the expense of sale, including a reasonable Trustee's fee and attorney's fee; (b) to the obligation secured by this Deed of Trust; and (c) the surplus, if any, shall be distributed in accordance with said Deed of Trust Act. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor(s) had or had the power to convey at the time of his/her/their execution of this Deed of Trust, and such as he may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value. The Power of Sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy and when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage. At any time Beneficiary may appoint in writing a successor trustee, or discharge and appoint a new Trustee in the place of any Trustee named herein, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the Original Trustee. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor(s), Trustee, or Beneficiary shall be a party, unless such action or proceeding is brought by the Trustee.

26. The property which is the subject of this Deed of Trust is not used principally or primarily for agricultural or farming purposes.

27. In the event of the passage after the date of this Deed of Trust of any federal, state, or local law, deducting from the value of real property for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust, or debts secured thereby, for federal, state or local purposes, or the manner of the collection of any such taxes so as to affect the interest of Beneficiary, then and in such event, Grantor(s) shall bear and pay the full amount of such taxes, provided that if for any reason payment by Grantor(s) of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the loan or indebtedness secured hereby wholly or partially usurious under any of the terms or provisions of the note, or the within Deed of Trust or otherwise. Beneficiary may, at its option, without demand or notice, declare the whole sum secured by this Deed of Trust with interest thereon to be immediately due and payable, or Beneficiary may, at its option, pay that amount or portion of such taxes as renders the loan or indebtedness secured hereby unlawful or usurious, in which event Grantor(s) shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said taxes.

28. If from any circumstances whatever fulfillment of any provision of this Deed of Trust or said note at the time of performance of such provision shall be due shall involve transcending the limit of validity prescribed by the usury statute or any other law, the ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Deed of Trust or under said note that is in excess of the limit of such validity; but such obligation shall be fulfilled to the limit of such validity. The provisions of this paragraph shall control every other provision of this Deed of Trust and said note.

29. In the event that this Deed of Trust is foreclosed as a mortgage and the property sold at a foreclosure sale, the purchaser may, during any redemption period allowed, make such repairs or alterations on said property as may be reasonably necessary for the proper operation, care, preservation, protection, and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the highest lawful rate shall be added to and become a part of the amount required to be paid for redemption from such sale.

30. Grantor(s) shall deliver to the Beneficiary within 20 days after written demand therefor a detailed operating statement in form satisfactory to the beneficiary covering the subject property and certified as correct by the Grantor(s). Grantor(s) shall permit the Beneficiary or its representative to examine all books and records pertaining to the said property, upon prior written demand of not less than ten (10) days. In default thereof Beneficiary shall, in addition to all other remedies, have the option of maturing the indebtedness hereby secured. The Beneficiary shall demand not more than one statement in any calendar year.

31. Beneficiary shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the said property and the failure to make any such tenant or tenants a party defendant to any such suit or action or to foreclose his/her/their rights will not be asserted by the Grantor(s) as a defense in any action or suit instituted to collect the indebtedness secured hereby or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the said property, any statute or rule of law at any time existing to the contrary notwithstanding.

32. Upon any default by Grantor(s) and following the acceleration of maturity as herein provided, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale (including sale under power of sale) by the Grantor(s), its successors or assigns, or by anyone in behalf of the Grantor(s), its successors or assigns, shall constitute an evasion of the prepayment terms of said note and be deemed to be a voluntary prepayment thereunder and any such payment to the extent permitted by law, will, therefore, include the additional payment required under the prepayment privilege, if any, contained in said note or if at that time there be no prepayment privilege then such payment, will to the extent permitted by law include an additional payment of five percent (5%) of the then principal balance.

33. The Beneficiary shall be subrogated for further security to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the loan secured by this Deed of Trust.

34. Grantor(s), from time to time, within fifteen (15) days after request by Beneficiary, shall execute, acknowledge and deliver to Beneficiary, such chattel mortgages, security agreements, or other similar security instruments, in form and substance satisfactory to Beneficiary, covering all property of any kind whatsoever owned by Grantor(s) or in which Grantor(s) has any interest which, in the sole opinion of Beneficiary, is essential to the operation of the said property covered by this Deed of Trust. Grantor(s) shall further from time to time, within fifteen (15) days after request by Beneficiary, execute, acknowledge, and deliver any financing statement, renewal, affidavit, certificate, continuation statement, or other document as Beneficiary may request in order to perfect, preserve, continue, extend or maintain the security interest under, and the priority of, this Deed of Trust and the priority of such chattel mortgage or other security instrument as a first lien. Grantor(s) further agree(s) to pay to beneficiary on demand all costs and expenses incurred by Beneficiary in connection with the preparation, execution, recording, filing, and refiling of any such instrument or document including the charges for examining title and the attorney's fee for rendering an opinion as to the priority of this Deed of Trust and of such chattel mortgage or other security instrument as a valid first and subsisting lien. However, neither a request so made by Beneficiary nor the failure of Beneficiary to make such request shall be construed as a release of such property, or any part thereof, from the conveyance of title by this Deed of Trust, it being understood and agreed that this covenant and any such chattel mortgage, security agreement, or other similar security instrument, delivered to beneficiary, are cumulative and given as additional security.

35. All Beneficiary's rights and remedies herein specified are intended to be cumulative and not in substitution for any right or remedy otherwise available and no requirement whatsoever may be waived at any time except by a writing signed by the Beneficiary, nor shall any waiver be operative upon other than a single occasion. This Deed of Trust cannot be changed or terminated orally. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on his/her/their heirs, devisees, legatees, administrators, executors, successors, and assigns. All obligations of Grantor(s) hereunder are joint and several. The term "Beneficiary" shall mean the holder and owner, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. Without affecting the liability of any other person for the payment of any obligation herein mentioned (including Grantor(s) should he convey said property) and without affecting the lien hereof upon any property not released, Beneficiary may, without notice, release any person so liable, extend the maturity or modify the terms of any such obligation, or grant other indulgences, release, or reconvey, or cause to be released or reconveyed at any time all or part of the said property described herein, take or release any other security or make compositions or other arrangements with debtors. Beneficiary may also accept additional security, either concurrently herewith or thereafter, and sell same or otherwise realize thereon, either before, concurrently with, or after sale hereunder. This Deed of Trust shall be so construed that wherever applicable, the use of the singular number shall include the plural number, the use of the plural number shall include the singular number, the use of any gender shall be applicable to all genders and shall likewise be so construed as applicable to and including a corporation. The word "note" shall include all notes evidencing the indebtedness secured hereby. If any of the provisions hereof shall be determined to contravene or be invalid under the laws of the State of Washington, such contravention or invalidity shall not invalidate any other provisions of this agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and all rights and obligations of the parties shall be construed and enforced accordingly. Any notices to be given to Grantor(s) by Beneficiary hereunder shall be sufficient if mailed postage prepaid, to the address of the Grantor(s) stated in the Short Form Deed of Trust, or to such other address as Grantor(s) has/have requested in writing to the Beneficiary, that such notices be sent. Any time period provided in the giving of any notice hereunder shall commence upon the date such notice is deposited in the mail.

# Exhibit D

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## IRREVOCABLE ASSIGNMENT OF SALE PROCEEDS

TO: Newman & Newman, Attorneys at Law, LLP (the "Newman Firm")

For valuable consideration, Mark Phillips, individually and on behalf of Phillips Holdings, LLC, a Washington Limited Liability Company (together "Phillips") hereby irrevocably assigns and transfers to the Newman Firm all monies (the "Monies") received or to be received by Mark Phillips ("Phillips") from the disposition of his residence (the "Residence") located at 2720 Third Avenue, Unit PH 1, Seattle, Washington 98121, and legally described as:

Unit PH1, Mosler Lofts Condominium, a Condominium, according to Declaration thereof recorded under King County Recording No. 20071107001789 and any amendments thereto; said Unit is located on Survey Map and Plans filed in Volume 242 of Condominiums, at Pages 1 through 19, in King County, Washington.

A.P.N. 567700-1480

Phillips agrees that the Newman Firm may, in its sole and unfettered discretion, apply any Monies received against any obligation of the undersigned to ATB as such obligations become due and owing.

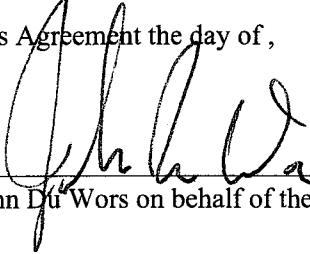
Phillips covenants and declares that: (a) there are no claims of set-off against any of the Monies; (b) there is no outstanding dispute in relation to the sale of the Residence; (c) none of the Monies have been assigned or pledged or encumbered in favour of any other person, firm or corporation; and Phillips covenants and agrees with the Newman Firm not to assign, pledge or encumber the Lands and the Monies or any part thereof so long as this Agreement remains in force, to or in favor of any other person, firm or corporation.

This Assignment shall be continuing security to the Newman Firm for payment of such amounts as may be owed by the Phillips to the Newman Firm and this Assignment shall not in any way suspend or affect the rights and remedies of the Newman Firm, nor shall it affect any securities, which the Newman Firm now has or hereafter may hold in relation to amounts owed by the undersigned to the Newman Firm.

This Agreement shall be binding upon Phillips, and if more than one, jointly and severally on each of Phillips, and the heirs, executors, administrators, successors and assigns of Phillips and shall inure to the benefit of the Newman Firm and its successors and assigns.

IN WITNESS WHEREOF the undersigned has executed this Agreement the day of,

  
\_\_\_\_\_  
Mark Phillips, individually and on behalf of  
Phillips Holdings, LLC

  
\_\_\_\_\_  
John Du Wors on behalf of the Newman Firm



## EXHIBIT “B”

## LICENSE AGREEMENT

This License Agreement ("Agreement") is made and entered into as of April 25th, 2008 ("Effective Date") by and between Mark E. Phillips, an individual citizen of the State of Washington with a mailing address of 2801 First Avenue, #1104, Seattle, WA 98121 ("Phillips"), and Anything Box, Inc., a Washington corporation with a principal place of business at 720 Third Avenue, Suite 1100, Seattle, Washington 98104 ("ABI").

WHEREAS, Phillips and ABI wish to enter an agreement by which ABI will obtain from Phillips certain rights Phillips Intellectual Property, as more particularly set forth herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be bound hereby agree as follows:

### 1. DEFINITIONS.

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

1.1. "After-developed Property" shall mean any and all intellectual property developed by or on behalf of ABI, or any licensee of ABI, before or after the Effective Date that is an idea, invention, or improvement, or a derivative work, or confidential information of, relating to, and/or resulting from access to Phillips Intellectual Property or New Phillips Intellectual Property.

1.2. "Confidential Information" means all non-public information, whether in oral, written or other tangible or intangible form, that Phillips designates as being confidential or which, under the circumstances surrounding disclosure, ABI knows or has reason to know should be treated as confidential, including, without limitation, the terms and conditions of this Agreement. Notwithstanding the foregoing, Confidential Information does not include information that ABI can establish by reasonable documentation: (i) is or becomes generally available to the public other than (a) as a result of a disclosure by ABI or its employees/agents or any other person who directly or indirectly receives such information from ABI or its employees/agents or (b) in violation of a confidentiality obligation to the disclosing party known to ABI; (ii) is or becomes available to the receiving party on a non-confidential basis from a third party which is entitled to disclose it to ABI; or (iii) was developed by employees/agents of ABI independently of, and without reference to, any information communicated to ABI by Phillips. The Phillips Intellectual Property and New Phillips Intellectual Property are Confidential Information of Phillips, except to the extent they may be excluded by the preceding sentence.

1.3. "Field of Use" shall mean the development and commercialization of (i) MOD Enterprise Software for the delivery of digital products and services at physical retail point of sale; (ii) portable media devices (including smart devices) that are specifically marketed as compatible with MOD Enterprise Software for use in connection with the storage and use by consumers of digital products and services; and (iii) cable television set-top boxes that are specifically marketed as compatible with MOD Enterprise Software for use in connection with the storage and use by consumers of digital products and services. The Field of Use does not include any direct-to-consumer businesses, such as the provision of digital products or services to consumers.

1.4. "Licensed Product" shall mean any product or service that exploits any Phillips Intellectual Property or New Phillips Intellectual Property in a manner authorized by this Agreement.

1.5. "MOD Enterprise Software" shall mean the MOD System 3.0 enterprise software and any successor software agreed by the parties.

1.6. "New Phillips Intellectual Property" shall mean any intellectual property developed or acquired by Phillips that Phillips and ABI wish to add to the portfolio of intellectual property licensable by ABI hereunder. New Phillips Intellectual Property may include documentation and confidential information. The parties may from time to time add New Phillips Intellectual Property to this Agreement and shall identify such New Phillips Intellectual Property on Exhibit B.

1.7. "Phillips Intellectual Property" shall mean (i) that intellectual property of Phillips identified in

Exhibit A, including all worldwide rights in such property, and any documentation related thereto that is provided to ABI by Phillips, (ii) all rights in After-developed Property, and (iii) all confidential information disclosed by Phillips to ABI hereunder.

## 2. LICENSE GRANT

2.1. License to ABI. Subject to all the terms and conditions of this Agreement, Phillips hereby grants to ABI an exclusive, worldwide, sub-licensable, royalty-bearing license (i) to exploit all rights included within the Phillips Intellectual Property and the New Phillips Intellectual Property within the Field of Use, and (ii) to develop After-developed Property and thereafter to exploit it pursuant to the terms of this Agreement. ABI shall cause any sublicensee exercising any right under or through this Agreement to comply with the terms and conditions of this Agreement, and in so doing, ABI shall at all times remain fully accountable for the actions and inactions of its sublicensees. ABI is not authorized to grant a sublicense to any party that will not or cannot comply with the terms and conditions of this Agreement, and any purported sublicense to such a party shall be void ab initio.

2.2. Savings Clause. For the avoidance of doubt, Phillips does not grant to ABI hereunder a license to any intellectual property that is licensed exclusively by Phillips to MOD Systems, Inc. pursuant to the License Agreement between them dated \_\_\_\_\_.

2.3. Grantback to Phillips. Subject to all the terms and conditions of this Agreement, ABI hereby assigns to Phillips all right, title, and interest in and to After-developed Property, subject only to the license granted to ABI by Phillips pursuant to paragraph 2.1. ABI shall execute all papers and perform all lawful acts requested by Phillips to effect such assignment and to secure, perfect, and enforce such rights; ABI appoints Phillips its attorney-in-fact to execute any such papers and perform any such acts if ABI fails to do so after reasonable notice from Phillips. To the extent permitted by law, After-developed Property shall be deemed a work made for hire by ABI (or its sublicensee) for Phillips. To the extent After-developed Property is not capable of being a work made for hire, the assignment provisions of this paragraph shall apply.

2.4. Implied Licenses. The only licenses granted in this Agreement are the licenses expressly set forth in paragraphs 2.1 and 2.3. There are no implied licenses under this Agreement.

2.5. Indemnification. ABI shall indemnify, defend, and hold Phillips harmless from and against any claim that arises from or relates to any sublicense granted by or any business activity of ABI.

## 3. ROYALTIES AND OTHER PAYMENTS

3.1. Initial Payment. ABI shall within thirty (30) days of the Effective Date pay to Phillips one million five hundred thousand dollars (\$1,500,000) in consideration of Phillips entering this Agreement. In addition, the parties contemplates that ABI will acquire and shall thereafter promptly convey to Phillips common stock of MOD Systems, Inc. equal to an undiluted ten percent (10%) share of ownership of such entity.

3.2. Royalties for Licensed Products. ABI shall pay royalties to Phillips for the licenses granted in paragraph 2.1. The royalties shall total three million five hundred thousand dollars (\$3,500,000) and shall be payable in annual installments of five hundred thousand dollars (\$500,000) due on each anniversary of the Effective Date, with a final payment in the amount of one million five hundred dollars (\$1,500,000) payable in 2012. Notwithstanding the foregoing, ABI may elect to forego making a royalty payment due under this paragraph 3.2 in any annual period that ABI is not profitable. In determining profitability, the parties shall rely on the opinion of an independent certified public accountant chosen by Phillips (and subject to reasonable approval by ABI), applying Generally Accepted Accounting Principles or such other accounting system as the parties may agree. If ABI elects to forego making a royalty payment pursuant to this paragraph 3.2, the license granted in paragraph 2.1 shall become non-exclusive.

3.3. Payments and Reports. All payments due pursuant to paragraph 3.2 shall be paid by ABI to Phillips annually within thirty (30) days after the anniversary of the Effective Date, unless the parties agree otherwise. If ABI wishes to be excused from making a payment due under paragraph 3.2 due to its failure to make a profit during the pertinent period, it shall in lieu of payment provide a report to Phillips that includes the information necessary to enable Phillips to verify that ABI did not make a profit.

#### 4. RECORDS

4.1. Retaining Records. ABI shall keep for at least three (3) years after each payment required to be made hereunder sufficient books and records to enable Phillips conveniently to verify the proper payment of all amounts due hereunder. Such books and records shall be kept at ABI's primary place of business.

4.2. Right to Review Records. Phillips shall have the right, at his own expense, not more than once per calendar year, to examine and audit the relevant books and records kept by ABI pursuant to paragraph 4.1 above. Phillips shall exercise this right only during reasonable business hours and shall provide reasonable notice of his intention to conduct such examination or audit. ABI shall make available to Phillips all facilities reasonably necessary to enable the examination or audit. If any examination or audit shows that ABI elected to forego royalty payments in a year in which it was profitable, ABI shall immediately pay to Phillips the royalty due, interest, and all reasonable expenses incurred by Phillips in connection with the examination or audit.

#### 5. OWNERSHIP; COOPERATION

5.1. Ownership. Title to and full ownership of the After-developed Intellectual Property, the Phillips Intellectual Property, and the New Phillips Intellectual Property shall be and remain the sole property of Phillips.

5.2. No Challenge. ABI shall not challenge or assist another in challenging the validity or enforceability of any of the Phillips Intellectual Property or the New Phillips Intellectual Property. If ABI challenges or assists another in challenging the validity or enforceability of any of the Phillips Intellectual Property or the New Phillips Intellectual Property and if this prohibition in the preceding sentence is deemed unenforceable by a court of competent jurisdiction, the Agreement shall continue in force but the royalty rate provided for in paragraph 3.2 shall become five million dollars (\$5,000,000), payable in annual installments of one million dollars (\$1,000,000) with a final payment of two million dollars (\$2,000,000), retroactive to the Effective Date.

5.3. Enforcement. Phillips shall have the sole right, but no obligation, to pursue any infringement of the Phillips Intellectual Property and the New Phillips Intellectual Property, to defend any challenge to the validity or enforceability of them, and to enter any settlements, judgments or other arrangements in respect of them. Phillips shall not, without the prior written consent of ABI, enter a settlement or consent to a judgment that comprises an admission of liability of ABI.

5.4. Assistance. Each party shall cooperate fully with the other in a party's efforts to procure, perfect, and enforce any rights within the Phillips Intellectual Property and the New Phillips Intellectual Property.

#### 6. TERM AND TERMINATION

6.1. Term. The term of this Agreement shall commence on the Effective Date and continue for so long as Phillips owns protectable rights in the Phillips Intellectual Property and the New Phillips Intellectual Property.

6.2. Notice of Material Breach or Default. If a party commits a material breach in the performance of any of its obligations under this Agreement, the other party may give the breaching party written notice of the material breach and its intention to terminate either the licenses granted to the breaching party under this Agreement or the entire Agreement (at the non-breaching party's sole discretion) if the material breach is not cured within thirty (30) days (or such later date as may be specified in writing by the other party). If such breach is not cured within such period, the licenses granted to the breaching party under this Agreement or the entire Agreement, as determined by the non-breaching party in its sole discretion, shall terminate upon the expiration of such period. Any failure by a party to pay timely to the other party any amounts owing under this Agreement will constitute a material breach of this Agreement.

6.3. Accelerated Notice and Termination. Notwithstanding the notice provisions of paragraph 6.2, if a party commits a material breach in the performance of any of its obligations under this Agreement and such material breach is not susceptible of cure, the other party may terminate the breaching party's license rights under this

Agreement or the entire Agreement (at the non-breaching party's sole discretion) effective immediately upon written notice to the breaching party.

6.4. Post-Termination Obligations. Upon termination by Phillips pursuant to paragraph 6.2 or 6.3 of (a) the licenses granted to ABI under this Agreement or (b) this entire Agreement, all licenses granted herein to ABI and its sublicensees shall immediately terminate and ABI shall promptly deliver to Phillips all Confidential Information and all documents and other records that contain Confidential Information. For this avoidance of doubt, this obligation expressly includes all tangible embodiments of Phillips Intellectual Property and New Phillips Intellectual Property, whether or not then listed on Exhibits A and B, such as source code, projects, and code groupings. Within fifteen (15) days of termination, ABI shall verify in writing to Phillips that it has complied with the requirements of this paragraph.

6.5. Termination for Convenience. ABI may terminate this Agreement upon thirty (30) days written notice to Phillips, but all unmet obligations of ABI accrued during the term of the Agreement shall continue.

6.6. Termination for Bankruptcy. If during the term of this Agreement, ABI becomes insolvent or bankrupt, makes an assignment for the benefits of its creditors, or a trustee or receiver of ABI or of all or a substantial part of its property is appointed, or any case or proceeding commences or other action is taken by or against ABI in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up arrangement, composition, or readjustment of its debts, or any other relief under any bankruptcy, insolvency, reorganization, or other similar act or law of any jurisdiction now or hereafter in effect, ABI shall immediately notify Phillips in writing, and Phillips shall have the right, but not the obligation, to terminate this Agreement immediately by giving written notice to ABI. Notwithstanding anything to the contrary, the parties agree that Confidential Information shall not come within the definition of "intellectual property" in 11 U.S.C. § 101 and shall not be subject to 11 U.S.C. § 365(n).

6.7. Survival. The following provisions shall survive termination of this Agreement: Section 1, paragraph 2.3, paragraph 2.5 (as to any claim arising during the term of this Agreement or in connection with a sublicense granted or business activity performed during the term of this Agreement), and Sections 3 through 9.

## 7. WARRANTIES AND DISCLAIMERS

7.1. Mutual Warranties. Each party represents and warrants to the other that (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

7.2. Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 7, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. PHILLIPS EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. THE INTELLECTUAL PROPERTY AND MATERIALS LICENSED AND PROVIDED HEREUNDER ARE PROVIDED AS-IS. PHILLIPS DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF ANY INTELLECTUAL PROPERTY AND MATERIALS LICENSED AND PROVIDED HEREUNDER. PHILLIPS DOES NOT WARRANT THAT ANY INTELLECTUAL PROPERTY AND MATERIALS LICENSED AND PROVIDED HEREUNDER ARE ERROR-FREE OR THAT OPERATION OR USE OF THEM WILL BE SECURE OR UNINTERRUPTED. ABI DOES NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF PHILLIPS TO ANY THIRD PARTY.

7.3. Disclaimer of Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR A BREACH OF SECTIONS 5 OR 8, NEITHER PARTY SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF A PARTY IS APPRISED OF

THE LIKELIHOOD OF SUCH DAMAGES. THIS PARAGRAPH SHALL NOT EFFECT ANY OBLIGATION TO INDEMNIFY UNDER THIS AGREEMENT.

7.4. Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE TERMS OFFERED BY THE PARTIES AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THE WARRANTIES IN THIS AGREEMENT HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

## 8. CONFIDENTIALITY

8.1. Nondisclosure and Non-use. ABI acknowledges that, in the course of performance of this Agreement, it may obtain the Confidential Information. ABI shall, at all times both during the Agreement term and thereafter, keep in confidence all of the Confidential Information received by it, using at least as great a degree of care as it uses to maintain the confidentiality of its own confidential information of a similar nature, but in no event using less than a reasonable degree of care. ABI shall not use the Confidential Information other than as expressly permitted under the terms of this Agreement. ABI shall not disclose Confidential Information to any third party other than its officers, employees and consultants who need access to such Confidential Information in order to effect the intent of this Agreement and who have entered into confidentiality agreements which protect the Confidential Information sufficient to enable ABI to comply with this Section.

8.2. Return of Materials. Upon the termination of this Agreement and as set forth in paragraph 6.4, ABI shall deliver to Phillips the all Confidential Information that it may have in its possession or control.

8.3. Records and Audit. During the term of this Agreement and for three (3) years thereafter, ABI shall keep current, complete, and accurate records regarding its reproduction, distribution, and use of Confidential Information. Phillips shall have the right, not more than once per calendar year, to examine and audit such records. Phillips shall exercise this right only during reasonable business hours of the other and shall provide reasonable notice of his intention to conduct such audit. Phillips may conduct any such audit with the assistance of an appropriate professional but shall procure from such professional an undertaking to hold all information derived from the audit confidential. ABI shall make available to Phillips all facilities reasonably necessary to enable the audit.

## 9. GENERAL

9.1. Relationship. Each party hereto shall be and act as an independent contractor (and not as the agent or representative of the other) in the performance of this Agreement. This Agreement shall not be interpreted or construed as creating or evidencing any association, joint venture, partnership, or franchise between the parties. Neither party may represent to anyone that it is an agent of the other party or is otherwise authorized to bind or commit the other party in any way without such party's prior written consent.

9.2. Equitable Remedies. Subject to the terms of this Agreement, each party agrees that the other party, without prejudice to any rights to judicial relief it may otherwise have, shall be entitled to seek equitable relief, including injunction, in the event of any breach of the provisions of this Agreement. Each party further agrees that the other party shall not oppose the granting of such relief on the basis that the other party has an adequate remedy at law. Each party also agrees that it will not seek and agrees to waive any requirement for the securing or posting of a bond in connection with the other party's seeking or obtaining such relief.

9.3. Assignment. ABI may not assign or transfer this Agreement, whether by deed of assignment; by merger, consolidation, or sale of the company; or otherwise. Notwithstanding the foregoing, ABI may assign this Agreement in its entirety to MOD Systems, Inc. if ABI is acquired by MOD Systems, Inc. within twelve (12) months of the Effective Date. Any other purported assignment or transfer by ABI shall be void ab initio.

9.4. Notices. Any notice required or permitted to be given in accordance with this Agreement shall be effective if it is in writing and sent by hand or by internationally recognized overnight courier (e.g. FedEx, DHL),

postage prepaid, to the appropriate party at the address first set forth above. Either party may change its address for receipt of notice by notice to the other party in accordance with this paragraph. Notices are deemed given upon delivery by hand or one business day following pick-up by courier.

9.5. Governing Law. This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington, without reference to its choice of law rules.

9.6. Waiver. The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement shall not be a waiver of such party's right to demand strict compliance in the future, nor shall the same be construed as a novation of this Agreement.

9.7. Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement shall remain in full force and effect.

9.8. Counterparts. This Agreement may be executed in any number of identical counterparts, notwithstanding that the parties have not signed the same counterpart, with the same effect as if the parties had signed the same document. All counterparts shall be construed as and constitute one and the same agreement. This Agreement may also be executed and delivered by facsimile and such execution and delivery shall have the same force and effect of an original document with original signatures.

9.9. Entire Agreement. This Agreement, including all exhibits, is the final and complete expression of the agreement between the parties regarding the subject matter hereof. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement. No usage of trade or other regular practice or method of dealing between the parties shall be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on its behalf by a duly authorized representative as of the Effective Date.

**Mark E. Phillips**

Signature: Mark Phillips

Date: May 5 2008

**Anything Box, Inc.**

Name: Mark Phillips

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

Signature: Mark Phillips

Date: May 5 2008

## EXHIBIT A

### Phillips Intellectual Property

|  |   |
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| <p><b>Intellectual Property Licensed to the Company ("Company Licensed IP"):</b></p> | <p><b>Patent Applications:</b></p> <ul style="list-style-type: none"><li>• 35073.001, 09/975,748<br/>(System and Method for Musical Playlist Selection in a Portable Audio Device)</li><li>• 35073.002, 09/975,749<br/>(System and Method For Data Transfer Optimization In A Portable Audio Device)</li><li>• 35073.003, 09/975,736<br/>(System and Method for Mapping Interface Functionality to Codec Functionality in a Portable Audio Device)</li><li>• 35073.004, 10/039,906<br/>(System and Method For Playlist Completion In A Portable Audio Device)</li></ul> <p><b>Phillips Patent Valuation</b></p> <p><b>Source Code, Projects, or Code Groupings:</b></p> <ul style="list-style-type: none"><li>• Iomega Media Player – Clik &amp; IBM microdrive audio media player</li><li>• Fullplay Digital Jukebox – audio encoder and decoder HDD, CD-R, network, library management, disk management, UPnP, content UX, HTTP UX</li><li>• Fullplay MMC IJam Flash Media Player – MMC dual audio player, USB</li><li>• Fullplay Dharma reference design system – system audio and video hardware and software reference SDK local, spinning, flash, network media playback</li><li>• Fullplay Cirrus reference board media player</li><li>• Fullplay Media Library Manager – desktop UPnP media library player, content jukebox, and streaming host</li><li>• Network TC/IP, Memory file systems, Cache OS systems, UX framework, FLASH 16/32 FTL</li><li>• Symmetrical MPEG3 codec, WMA framework handler, AAC, ACELP, Lossless, Ogg – source code</li><li>• Codec Manager input / output filter system – audio video media chaining system</li><li>• Embedded media database scheme – content metadata processing, look-up, sorting and media library storage system – in memory, serialization</li><li>• eCos framework and device drivers for ARM7, ARM9, memory manager, caching, network</li><li>• Dynamic and inline sample rate conversion, ASM FFT, DCT, iDCT optimization source and binary</li><li>• File System, FAT 12, 16, 32, ISO, chkdsk and various embedded file level management tools</li></ul> <p>Documentation, specifications: Fullplay directory of all copyright material from 1998-2002 of all product development, product specifications, processes, RFP, Contract, and protocol descriptions. Hardware designs, Hardware schematics<br/>Mechanical designs, Mechanical CAD drawings</p> <p>Excluded for the license are components or tools used to develop software:<br/>3<sup>rd</sup> party tools and Phillips owned tools for code generation and factoring:</p> <ol style="list-style-type: none"><li>1) GCC compiler</li><li>2) Windows OS</li><li>3) GNU bin tools</li><li>4) Batch processors</li><li>5) Code Generation for Windows</li><li>6) Convention workflow definition tool</li><li>7) Code count and version trackers</li><li>8) Source control, source comparison</li><li>9) Scheme viewer</li><li>10) Any other related development tools which may not be explicitly stated in this agreement.</li></ol> |
|--|---|



**EXHIBIT B**

New Phillips Intellectual Property

[ADD AS NEEDED.]



## LICENSE AGREEMENT

This License Agreement ("Agreement") is made and entered into as of April 25th, 2008 ("Effective Date") by and between Mark E. Phillips, an individual citizen of the State of Washington with a mailing address of 2801 First Avenue, #1104, Seattle, WA 98121 ("Phillips"), and Anything Box, Inc., a Washington corporation with a principal place of business at 720 Third Avenue, Suite 1100, Seattle, Washington 98104 ("ABI").

WHEREAS, Phillips and ABI wish to enter an agreement by which ABI will obtain from Phillips certain rights Phillips Intellectual Property, as more particularly set forth herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be bound hereby agree as follows:

### 1. DEFINITIONS.

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

1.1. "After-developed Property" shall mean any and all intellectual property developed by or on behalf of ABI, or any licensee of ABI, before or after the Effective Date that is an idea, invention, or improvement, or a derivative work, or confidential information of, relating to, and/or resulting from access to Phillips Intellectual Property or New Phillips Intellectual Property.

1.2. "Confidential Information" means all non-public information, whether in oral, written or other tangible or intangible form, that Phillips designates as being confidential or which, under the circumstances surrounding disclosure, ABI knows or has reason to know should be treated as confidential, including, without limitation, the terms and conditions of this Agreement. Notwithstanding the foregoing, Confidential Information does not include information that ABI can establish by reasonable documentation: (i) is or becomes generally available to the public other than (a) as a result of a disclosure by ABI or its employees/agents or any other person who directly or indirectly receives such information from ABI or its employees/agents or (b) in violation of a confidentiality obligation to the disclosing party known to ABI; (ii) is or becomes available to the receiving party on a non-confidential basis from a third party which is entitled to disclose it to ABI; or (iii) was developed by employees/agents of ABI independently of, and without reference to, any information communicated to ABI by Phillips. The Phillips Intellectual Property and New Phillips Intellectual Property are Confidential Information of Phillips, except to the extent they may be excluded by the preceding sentence.

1.3. "Field of Use" shall mean the development and commercialization of (i) MOD Enterprise Software for the delivery of digital products and services at physical retail point of sale; (ii) portable media devices (including smart devices) that are specifically marketed as compatible with MOD Enterprise Software for use in connection with the storage and use by consumers of digital products and services; and (iii) cable television set-top boxes that are specifically marketed as compatible with MOD Enterprise Software for use in connection with the storage and use by consumers of digital products and services. The Field of Use does not include any direct-to-consumer businesses, such as the provision of digital products or services to consumers.

1.4. "Licensed Product" shall mean any product or service that exploits any Phillips Intellectual Property or New Phillips Intellectual Property in a manner authorized by this Agreement.

1.5. "MOD Enterprise Software" shall mean the MOD System 3.0 enterprise software and any successor software agreed by the parties.

1.6. "New Phillips Intellectual Property" shall mean any intellectual property developed or acquired by Phillips that Phillips and ABI wish to add to the portfolio of intellectual property licensable by ABI hereunder. New Phillips Intellectual Property may include documentation and confidential information. The parties may from time to time add New Phillips Intellectual Property to this Agreement and shall identify such New Phillips Intellectual Property on Exhibit B.

1.7. "Phillips Intellectual Property" shall mean (i) that intellectual property of Phillips identified in

Exhibit A, including all worldwide rights in such property, and any documentation related thereto that is provided to ABI by Phillips, (ii) all rights in After-developed Property, and (iii) all confidential information disclosed by Phillips to ABI hereunder.

## 2. LICENSE GRANT

2.1. License to ABI. Subject to all the terms and conditions of this Agreement, Phillips hereby grants to ABI an exclusive, worldwide, sub-licensable, royalty-bearing license (i) to exploit all rights included within the Phillips Intellectual Property and the New Phillips Intellectual Property within the Field of Use, and (ii) to develop After-developed Property and thereafter to exploit it pursuant to the terms of this Agreement. ABI shall cause any sub-licensee exercising any right under or through this Agreement to comply with the terms and conditions of this Agreement, and in so doing, ABI shall at all times remain fully accountable for the actions and inactions of its sublicensees. ABI is not authorized to grant a sublicense to any party that will not or cannot comply with the terms and conditions of this Agreement, and any purported sublicense to such a party shall be void ab initio.

2.2. Savings Clause. For the avoidance of doubt, Phillips does not grant to ABI hereunder a license to any intellectual property that is licensed exclusively by Phillips to MOD Systems, Inc. pursuant to the License Agreement between them dated April 1, 2007.

2.3. Grantback to Phillips. Subject to all the terms and conditions of this Agreement, ABI hereby assigns to Phillips all right, title, and interest in and to After-developed Property, subject only to the license granted to ABI by Phillips pursuant to paragraph 2.1. ABI shall execute all papers and perform all lawful acts requested by Phillips to effect such assignment and to secure, perfect, and enforce such rights; ABI appoints Phillips its attorney-in-fact to execute any such papers and perform any such acts if ABI fails to do so after reasonable notice from Phillips. To the extent permitted by law, After-developed Property shall be deemed a work made for hire by ABI (or its sublicensee) for Phillips. To the extent After-developed Property is not capable of being a work made for hire, the assignment provisions of this paragraph shall apply.

2.4. Implied Licenses. The only licenses granted in this Agreement are the licenses expressly set forth in paragraphs 2.1 and 2.3. There are no implied licenses under this Agreement.

2.5. Indemnification. ABI shall indemnify, defend, and hold Phillips harmless from and against any claim that arises from or relates to any sublicense granted by or any business activity of ABI.

## 3. ROYALTIES AND OTHER PAYMENTS

3.1. Initial Payment. ABI shall within thirty (30) days of the Effective Date pay to Phillips one million five hundred thousand dollars (\$1,500,000) in consideration of Phillips entering this Agreement. In addition, the parties contemplates that ABI will acquire and shall thereafter promptly convey to Phillips common stock of MOD Systems, Inc. equal to an undiluted ten percent (10%) share of ownership of such entity.

3.2. Royalties for Licensed Products. ABI shall pay royalties to Phillips for the licenses granted in paragraph 2.1. The royalties shall total three million five hundred thousand dollars (\$3,500,000) and shall be payable in annual installments of five hundred thousand dollars (\$500,000) due on each anniversary of the Effective Date, with a final payment in the amount of one million five hundred dollars (\$1,500,000) payable in 2012. Notwithstanding the foregoing, ABI may elect to forego making a royalty payment due under this paragraph 3.2 in any annual period that ABI is not profitable. In determining profitability, the parties shall rely on the opinion of an independent certified public accountant chosen by Phillips (and subject to reasonable approval by ABI), applying Generally Accepted Accounting Principles or such other accounting system as the parties may agree. If ABI elects to forego making a royalty payment pursuant to this paragraph 3.2, the license granted in paragraph 2.1 shall become non-exclusive.

3.3. Payments and Reports. All payments due pursuant to paragraph 3.2 shall be paid by ABI to Phillips annually within thirty (30) days after the anniversary of the Effective Date, unless the parties agree otherwise. If ABI wishes to be excused from making a payment due under paragraph 3.2 due to its failure to make a profit during the pertinent period, it shall in lieu of payment provide a report to Phillips that includes the information necessary to enable Phillips to verify that ABI did not make a profit.

#### 4. RECORDS

4.1. Retaining Records. ABI shall keep for at least three (3) years after each payment required to be made hereunder sufficient books and records to enable Phillips conveniently to verify the proper payment of all amounts due hereunder. Such books and records shall be kept at ABI's primary place of business.

4.2. Right to Review Records. Phillips shall have the right, at his own expense, not more than once per calendar year, to examine and audit the relevant books and records kept by ABI pursuant to paragraph 4.1 above. Phillips shall exercise this right only during reasonable business hours and shall provide reasonable notice of his intention to conduct such examination or audit. ABI shall make available to Phillips all facilities reasonably necessary to enable the examination or audit. If any examination or audit shows that ABI elected to forego royalty payments in a year in which it was profitable, ABI shall immediately pay to Phillips the royalty due, interest, and all reasonable expenses incurred by Phillips in connection with the examination or audit.

#### 5. OWNERSHIP; COOPERATION

5.1. Ownership. Title to and full ownership of the After-developed Intellectual Property, the Phillips Intellectual Property, and the New Phillips Intellectual Property shall be and remain the sole property of Phillips.

5.2. No Challenge. ABI shall not challenge or assist another in challenging the validity or enforceability of any of the Phillips Intellectual Property or the New Phillips Intellectual Property. If ABI challenges or assists another in challenging the validity or enforceability of any of the Phillips Intellectual Property or the New Phillips Intellectual Property and if this prohibition in the preceding sentence is deemed unenforceable by a court of competent jurisdiction, the Agreement shall continue in force but the royalty rate provided for in paragraph 3.2 shall become five million dollars (\$5,000,000), payable in annual installments of one million dollars (\$1,000,000) with a final payment of two million dollars (\$2,000,000), retroactive to the Effective Date.

5.3. Enforcement. Phillips shall have the sole right, but no obligation, to pursue any infringement of the Phillips Intellectual Property and the New Phillips Intellectual Property, to defend any challenge to the validity or enforceability of them, and to enter any settlements, judgments or other arrangements in respect of them. Phillips shall not, without the prior written consent of ABI, enter a settlement or consent to a judgment that comprises an admission of liability of ABI.

5.4. Assistance. Each party shall cooperate fully with the other in a party's efforts to procure, perfect, and enforce any rights within the Phillips Intellectual Property and the New Phillips Intellectual Property.

#### 6. TERM AND TERMINATION

6.1. Term. The term of this Agreement shall commence on the Effective Date and continue for so long as Phillips owns protectable rights in the Phillips Intellectual Property and the New Phillips Intellectual Property.

6.2. Notice of Material Breach or Default. If a party commits a material breach in the performance of any of its obligations under this Agreement, the other party may give the breaching party written notice of the material breach and its intention to terminate either the licenses granted to the breaching party under this Agreement or the entire Agreement (at the non-breaching party's sole discretion) if the material breach is not cured within thirty (30) days (or such later date as may be specified in writing by the other party). If such breach is not cured with such period, the licenses granted to the breaching party under this Agreement or the entire Agreement, as determined by the non-breaching party in its sole discretion, shall terminate upon the expiration of such period. Any failure by a party to pay timely to the other party any amounts owing under this Agreement will constitute a material breach of this Agreement.

6.3. Accelerated Notice and Termination. Notwithstanding the notice provisions of paragraph 6.2, if a party commits a material breach in the performance of any of its obligations under this Agreement and such material breach is not susceptible of cure, the other party may terminate the breaching party's license rights under this

Agreement or the entire Agreement (at the non-breaching party's sole discretion) effective immediately upon written notice to the breaching party.

6.4. Post-Termination Obligations. Upon termination by Phillips pursuant to paragraph 6.2 or 6.3 of (a) the licenses granted to ABI under this Agreement or (b) this entire Agreement, all licenses granted herein to ABI and its sublicensees shall immediately terminate and ABI shall promptly deliver to Phillips all Confidential Information and all documents and other records that contain Confidential Information. For this avoidance of doubt, this obligation expressly includes all tangible embodiments of Phillips Intellectual Property and New Phillips Intellectual Property, whether or not then listed on Exhibits A and B, such as source code, projects, and code groupings. Within fifteen (15) days of termination, ABI shall verify in writing to Phillips that it has complied with the requirements of this paragraph.

6.5. Termination for Convenience. ABI may terminate this Agreement upon thirty (30) days written notice to Phillips, but all unmet obligations of ABI accrued during the term of the Agreement shall continue.

6.6. Termination for Bankruptcy. If during the term of this Agreement, ABI becomes insolvent or bankrupt, makes an assignment for the benefits of its creditors, or a trustee or receiver of ABI or of all or a substantial part of its property is appointed, or any case or proceeding commences or other action is taken by or against ABI in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up arrangement, composition, or readjustment of its debts, or any other relief under any bankruptcy, insolvency, reorganization, or other similar act or law of any jurisdiction now or hereafter in effect, ABI shall immediately notify Phillips in writing, and Phillips shall have the right, but not the obligation, to terminate this Agreement immediately by giving written notice to ABI. Notwithstanding anything to the contrary, the parties agree that Confidential Information shall not come within the definition of "intellectual property" in 11 U.S.C. § 101 and shall not be subject to 11 U.S.C. § 365(n).

6.7. Survival. The following provisions shall survive termination of this Agreement: Section 1, paragraph 2.3, paragraph 2.5 (as to any claim arising during the term of this Agreement or in connection with a sublicense granted or business activity performed during the term of this Agreement), and Sections 3 through 9.

## 7. WARRANTIES AND DISCLAIMERS

7.1. Mutual Warranties. Each party represents and warrants to the other that (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

7.2. Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 7, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. PHILLIPS EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. THE INTELLECTUAL PROPERTY AND MATERIALS LICENSED AND PROVIDED HEREUNDER ARE PROVIDED AS-IS. PHILLIPS DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF ANY INTELLECTUAL PROPERTY AND MATERIALS LICENSED AND PROVIDED HEREUNDER. PHILLIPS DOES NOT WARRANT THAT ANY INTELLECTUAL PROPERTY AND MATERIALS LICENSED AND PROVIDED HEREUNDER ARE ERROR-FREE OR THAT OPERATION OR USE OF THEM WILL BE SECURE OR UNINTERRUPTED. ABI DOES NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF PHILLIPS TO ANY THIRD PARTY.

7.3. Disclaimer of Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR A BREACH OF SECTIONS 5 OR 8, NEITHER PARTY SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF A PARTY IS APPRISED OF

THE LIKELIHOOD OF SUCH DAMAGES. THIS PARAGRAPH SHALL NOT EFFECT ANY OBLIGATION TO INDEMNIFY UNDER THIS AGREEMENT.

7.4. Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE TERMS OFFERED BY THE PARTIES AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THE WARRANTIES IN THIS AGREEMENT HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

## 8. CONFIDENTIALITY

8.1. Nondisclosure and Non-use. ABI acknowledges that, in the course of performance of this Agreement, it may obtain the Confidential Information. ABI shall, at all times both during the Agreement term and thereafter, keep in confidence all of the Confidential Information received by it, using at least as great a degree of care as it uses to maintain the confidentiality of its own confidential information of a similar nature, but in no event using less than a reasonable degree of care. ABI shall not use the Confidential Information other than as expressly permitted under the terms of this Agreement. ABI shall not disclose Confidential Information to any third party other than its officers, employees and consultants who need access to such Confidential Information in order to effect the intent of this Agreement and who have entered into confidentiality agreements which protect the Confidential Information sufficient to enable ABI to comply with this Section.

8.2. Return of Materials. Upon the termination of this Agreement and as set forth in paragraph 6.4, ABI shall deliver to Phillips the all Confidential Information that it may have in its possession or control.

8.3. Records and Audit. During the term of this Agreement and for three (3) years thereafter, ABI shall keep current, complete, and accurate records regarding its reproduction, distribution, and use of Confidential Information. Phillips shall have the right, not more than once per calendar year, to examine and audit such records. Phillips shall exercise this right only during reasonable business hours of the other and shall provide reasonable notice of his intention to conduct such audit. Phillips may conduct any such audit with the assistance of an appropriate professional but shall procure from such professional an undertaking to hold all information derived from the audit confidential. ABI shall make available to Phillips all facilities reasonably necessary to enable the audit.

## 9. GENERAL

9.1. Relationship. Each party hereto shall be and act as an independent contractor (and not as the agent or representative of the other) in the performance of this Agreement. This Agreement shall not be interpreted or construed as creating or evidencing any association, joint venture, partnership, or franchise between the parties. Neither party may represent to anyone that it is an agent of the other party or is otherwise authorized to bind or commit the other party in any way without such party's prior written consent.

9.2. Equitable Remedies. Subject to the terms of this Agreement, each party agrees that the other party, without prejudice to any rights to judicial relief it may otherwise have, shall be entitled to seek equitable relief, including injunction, in the event of any breach of the provisions of this Agreement. Each party further agrees that the other party shall not oppose the granting of such relief on the basis that the other party has an adequate remedy at law. Each party also agrees that it will not seek and agrees to waive any requirement for the securing or posting of a bond in connection with the other party's seeking or obtaining such relief.

9.3. Assignment. ABI may not assign or transfer this Agreement, whether by deed of assignment; by merger, consolidation, or sale of the company; or otherwise. Notwithstanding the foregoing, ABI may assign this Agreement in its entirety to MOD Systems, Inc. if ABI is acquired by MOD Systems, Inc. within twelve (12) months of the Effective Date. Any other purported assignment or transfer by ABI shall be void ab initio.

9.4. Notices. Any notice required or permitted to be given in accordance with this Agreement shall be effective if it is in writing and sent by hand or by internationally recognized overnight courier (e.g. FedEx, DHL),

postage prepaid, to the appropriate party at the address first set forth above. Either party may change its address for receipt of notice by notice to the other party in accordance with this paragraph. Notices are deemed given upon delivery by hand or one business day following pick-up by courier.

9.5. Governing Law. This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington, without reference to its choice of law rules.

9.6. Waiver. The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement shall not be a waiver of such party's right to demand strict compliance in the future, nor shall the same be construed as a novation of this Agreement.

9.7. Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement shall remain in full force and effect.

9.8. Counterparts. This Agreement may be executed in any number of identical counterparts, notwithstanding that the parties have not signed the same counterpart, with the same effect as if the parties had signed the same document. All counterparts shall be construed as and constitute one and the same agreement. This Agreement may also be executed and delivered by facsimile and such execution and delivery shall have the same force and effect of an original document with original signatures.

9.9. Entire Agreement. This Agreement, including all exhibits, is the final and complete expression of the agreement between the parties regarding the subject matter hereof. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement. No usage of trade or other regular practice or method of dealing between the parties shall be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on its behalf by a duly authorized representative as of the Effective Date.

**Mark E. Phillips**

Signature: Mark Phillips  
Date: May 5<sup>th</sup> 2007

**Anything Box, Inc.**

Name: Mark Phillips  
Title: \_\_\_\_\_  
Signature: Mark Phillips  
Date: May 5<sup>th</sup> 2008

## EXHIBIT A

### Phillips Intellectual Property

|  |   |
|--|---|
| <p><b>Intellectual Property Licensed to the Company ("Company Licensed IP"):</b></p> | <p><b>Patent Applications:</b></p> <ul style="list-style-type: none"><li>• 35073.001, 09/975,748<br/>(System and Method for Musical Playlist Selection in a Portable Audio Device)</li><li>• 35073.002, 09/975,749<br/>(System and Method For Data Transfer Optimization In A Portable Audio Device)</li><li>• 35073.003, 09/975,736<br/>(System and Method for Mapping Interface Functionality to Codec Functionality in a Portable Audio Device)</li><li>• 35073.004, 10/039,906<br/>(System and Method For Playlist Completion In A Portable Audio Device)</li></ul> <p><b>Phillips Patent Valuation</b></p> <p><b>Source Code, Projects, or Code Groupings:</b></p> <ul style="list-style-type: none"><li>• Iomega Media Player – Clik &amp; IBM microdrive audio media player</li><li>• Fullplay Digital Jukebox – audio encoder and decoder HDD, CD-R, network, library management, disk management, UPnP, content UX, HTTP UX</li><li>• Fullplay MMC IJam Flash Media Player – MMC dual audio player, USB</li><li>• Fullplay Dharma reference design system – system audio and video hardware and software reference SDK local, spinning, flash, network media playback</li><li>• Fullplay Cirrus reference board media player</li><li>• Fullplay Media Library Manager – desktop UPnP media library player, content jukebox, and streaming host</li><li>• Network TC/IP, Memory file systems, Cache OS systems, UX framework, FLASH 16/32 FTL</li><li>• Symmetrical MPEG3 codec, WMA framework handler, AAC, ACELP, Lossless, Ogg – source code</li><li>• Codec Manager input / output filter system – audio video media chaining system</li><li>• Embedded media database scheme – content metadata processing, look-up, sorting and media library storage system – in memory, serialization</li><li>• eCos framework and device drivers for ARM7, ARM9, memory manager, caching, network</li><li>• Dynamic and inline sample rate conversion, ASM FFT, DCT, iDCT optimization source and binary</li><li>• File System, FAT 12, 16, 32, ISO, chkdsk and various embedded file level management tools</li></ul> <p>Documentation, specifications: Fullplay directory of all copyright material from 1998-2002 of all product development, product specifications, processes, RFP, Contract, and protocol descriptions. Hardware designs, Hardware schematics<br/>Mechanical designs, Mechanical CAD drawings</p> <p>Excluded for the license are components or tools used to develop software:<br/>3<sup>rd</sup> party tools and Phillips owned tools for code generation and factoring:</p> <ol style="list-style-type: none"><li>1) GCC compiler</li><li>2) Windows OS</li><li>3) GNU bin tools</li><li>4) Batch processors</li><li>5) Code Generation for Windows</li><li>6) Convention workflow definition tool</li><li>7) Code count and version trackers</li><li>8) Source control, source comparison</li><li>9) Scheme viewer</li><li>10) Any other related development tools which may not be explicitly stated in this agreement.</li></ol> |
|--|---|



**EXHIBIT B**

New Phillips Intellectual Property

[ADD AS NEEDED.]

## EXHIBIT “C”



**Subject:** RE: board meeting via conference call

**Date:** Wednesday, July 9, 2008 8:30:41 AM Pacific Daylight Time

**From:** Cane, Kyleen <kcane@caneclark.com>

**To:** Mark E. Phillips <markp@modsystems.com>

Will do...I understand your frustration and glad we got it done.

---

**From:** Mark E. Phillips [mailto:markp@modsystems.com]

**Sent:** Wednesday, July 09, 2008 9:24 AM

**To:** Cane, Kyleen

**Subject:** RE: board meeting via conference call

Thank you for your patience through this. I'd like to include that if the rights expand from Toshiba (which will be memorialized in the series A IP term sheet, then I have the right to change the cost to the company). However the goal to not make this a moving target it to close this agreement down so I can clean up the investment structure.

---

**From:** Cane, Kyleen [mailto:kcane@caneclark.com]

**Sent:** Tuesday, July 08, 2008 12:16 PM

**To:** Mark E. Phillips; Kenn A. Gordon

**Subject:** board meeting via conference call

I have set up a conference call board meeting for 1:30 to approve the Anything Box transaction. I don't have Anthony's email but I understand he is with Mark now so Mark can provide him with notice and get him on the call.

The Call in number: 877-807-5706. The participant code: 868806. Talk to you then. Ky

**Subject:** RE: board meeting via conference call

**Date:** Tuesday, July 8, 2008 12:46:27 PM Pacific Daylight Time

**From:** Cane, Kyleen <kcane@canecarl.com>

**To:** Kenn A. Gordon <kenng@modsystems.com>, Mark E. Phillips <markp@modsystems.com>

I am in the conference. Should have no problem now.

---

**From:** Kenn A. Gordon [mailto:kenng@modsystems.com]

**Sent:** Tuesday, July 08, 2008 1:32 PM

**To:** Cane, Kyleen; Mark E. Phillips

**Subject:** RE: board meeting via conference call

Kyleen,

I'm having trouble with the access code. It won't accept 868806.

Kenn

---

Kenn Gordon | VP and Chief Information Officer

MOD SYSTEMS | modsystems.com

M 206.240.8028 T 206.973.1098 F 206.374.2718 E [kenng@modsystems.com](mailto:kenng@modsystems.com)

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**From:** Cane, Kyleen [mailto:kcane@canecarl.com]

**Sent:** Tuesday, July 08, 2008 12:16 PM

**To:** Mark E. Phillips; Kenn A. Gordon

**Subject:** board meeting via conference call

I have set up a conference call board meeting for 1:30 to approve the Anything Box transaction. I don't have Anthony's email but I understand he is with Mark now so Mark can provide him with notice and get him on the call.

The Call in number: 877-807-5706. The participant code: 868806. Talk to you then. Ky

**Subject:** RE: board meeting via conference call

**Date:** Tuesday, July 8, 2008 12:40:23 PM Pacific Daylight Time

**From:** Cane, Kyleen <kcane@canecarl.com>

**To:** Kenn A. Gordon <kenng@modsystems.com>, Mark E. Phillips <markp@modsystems.com>, Anthony Bay <abay@modsystems.com>

We can call in – in 3 minutes

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**From:** Kenn A. Gordon [mailto:kenng@modsystems.com]

**Sent:** Tuesday, July 08, 2008 1:34 PM

**To:** Cane, Kyleen; Mark E. Phillips; Anthony Bay

**Subject:** RE: board meeting via conference call

That is the correct participant code, but it says that the meeting isn't scheduled to start until 1:45.

.....  
Kenn Gordon | VP and Chief Information Officer

MOD SYSTEMS | modsystems.com

M 206.240.8028 T 206.973.1098 F 206.374.2718 E [kenng@modsystems.com](mailto:kenng@modsystems.com)

.....

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---

**From:** Cane, Kyleen [mailto:kcane@canecarl.com]

**Sent:** Tuesday, July 08, 2008 12:16 PM

**To:** Mark E. Phillips; Kenn A. Gordon

**Subject:** board meeting via conference call

I have set up a conference call board meeting for 1:30 to approve the Anything Box transaction. I don't have Anthony's email but I understand he is with Mark now so Mark can provide him with notice and get him on the call.

The Call in number: 877-807-5706. The participant code: 868806. Talk to you then. Ky

**Subject:** RE: board meeting via conference call

**Date:** Tuesday, July 8, 2008 12:34:42 PM Pacific Daylight Time

**From:** Cane, Kyleen <kcane@canecarl.com>

**To:** Kenn A. Gordon <kenng@modsystems.com>, Mark E. Phillips <markp@modsystems.com>

It seems to be set for 1:45 so it is not letting us in until then. I will try to move it up.

---

**From:** Kenn A. Gordon [mailto:kenng@modsystems.com]

**Sent:** Tuesday, July 08, 2008 1:32 PM

**To:** Cane, Kyleen; Mark E. Phillips

**Subject:** RE: board meeting via conference call

Kyleen,

I'm having trouble with the access code. It won't accept 868806.

Kenn

---

Kenn Gordon | VP and Chief Information Officer

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M 206.240.8028 T 206.973.1098 F 206.374.2718 E [kenng@modsystems.com](mailto:kenng@modsystems.com)

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**To:** Mark E. Phillips; Kenn A. Gordon

**Subject:** board meeting via conference call

I have set up a conference call board meeting for 1:30 to approve the Anything Box transaction. I don't have Anthony's email but I understand he is with Mark now so Mark can provide him with notice and get him on the call.

The Call in number: 877-807-5706. The participant code: 868806. Talk to you then. Ky

**Subject:** board meeting via conference call

**Date:** Tuesday, July 8, 2008 11:15:32 AM Pacific Daylight Time

**From:** Cane, Kyleen <kcane@caneclark.com>

**To:** Mark E. Phillips <markp@modsystems.com>, Kenn A. Gordon <kenng@modsystems.com>

I have set up a conference call board meeting for 1:30 to approve the Anything Box transaction. I don't have Anthony's email but I understand he is with Mark now so Mark can provide him with notice and get him on the call.

The Call in number: 877-807-5706. The participant code: 868806. Talk to you then. Ky



## EXHIBIT “D”



**MINUTES OF MEETING OF THE  
BOARD OF DIRECTORS OF  
MOD SYSTEMS INCORPORATED  
A WASHINGTON STATE CORPORATION**

---

June 20, 2008

A meeting of the Board of Directors of MOD Systems Incorporated (the "*Company*") was held on June 20, 2008. Directors in attendance included Mark Phillips, Anthony Bay and Kenn Gordon, constituting all of the directors of the Company. David Douglass was also present at the meeting. Mr. Phillips acted as the Chairman of the meeting and Mr. Gordon served as secretary for the meeting.

---

**Opening of the Meeting**

Mr. Phillips called the meeting to order at 5:35 pm.

The Board acknowledged the Majority Consent of Shareholders dated June 6<sup>th</sup>, 2008 which is attached.

**Minutes of Prior Meetings**

A motion was made and seconded to approve the minutes of the February 26, 2008 meeting. The motion was approved.

The minutes of the special meeting of the board held on June 2, 2008 were presented and discussed. The board tabled the approval of those minutes and requested that revised minutes be presented for approval at the next meeting of the Board.

**Resignation of Matt Carey**

The Board received, acknowledged and accepted the resignation of director Matt Carey, tendered as of June 18, 2008. The secretary was instructed to attach a copy of the written resignation.

**Resolutions of the Board**

Upon motion duly made, seconded and approved the Board adopted the following resolutions:

- a. Resolved that the Tatum LLP Executive Services Agreement, dated June 3, 2008, be and hereby is ratified and approved;
- b. Resolved that the Board appoint David Douglass Vice President – Chief Financial Officer of the corporation. Mr. Phillips is granted authority to negotiate and enter into a written employment agreement with Mr. Douglass. Mr. Douglass shall be added as an additional signer to the Corporate

bank accounts, and shall replace Mr. Kenn Gordon as Administrator of the 401k plan, with Mr. Phillips remaining the Trustee.

c. Resolved that upon further review of the facts and circumstances, the Board hereby modifies the following resolutions made at its special meeting of June 2, 2008 in their entirety to read as follows:

1. All personnel involved with accounting, financing and financial reporting functions of the Company should report to Mr. Douglass, as the CFO of the Company and, as such, all such functions shall be under the supervision of Mr. Douglass. Mr. Douglass shall report directly to Mr. Phillips as President/CEO with a dotted line to the Board.
2. The Company may only enter into contracts and otherwise transact business as vendor, purchaser, lender, borrower, or otherwise with its directors or officers, or any of their respective affiliates (collectively, the "*Conflicted Persons*"), if (a) the Conflicted Person discloses to the full Board (i) the existence and nature of the Conflicted Person's interest in any such transaction and (ii) all facts known to the Conflicted Person respecting the subject matter of such transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with such transaction, and (b) a majority of the disinterested directors approve such transaction in advance or ratify the transaction subsequently.
3. Mr. Douglass shall review the Company's current internal controls and procedures regarding financial reporting and cash management and develop recommendations as to any changes to the Company's current practices and policies concerning such matters that are needed or advisable, and as to the best means to implement any such changes (collectively, the "*Controls Recommendations*"), and report back to the full Board with respect to such Controls Recommendations for its review, approval, adoption and implementation.

Item no. 4 of the meeting of June 2, 2008 is deleted due to the controls established in 1, above.

d. Resolved that the President and CEO, Mark Phillips is authorized to negotiate a definitive agreement with Toshiba corporation on terms as provided in that certain memorandum of terms for the private placement of series A preferred stock, attached hereto, which is hereby ratified. Mr. Phillips shall be authorized to engage corporate counsel to assist in this process, as needed, and shall have authority as necessary to vary the terms of the definitive agreement as necessary to obtain the proposed financing. The negotiated terms of the Series A were to be reported back to the Board for consideration, review and final approval. The Board did not grant the President/CEO the authority to "sign the deal" without Board review and approval. Note: the Series A is contingent on the sale of Anythingbox to MOD, and Mark Phillips is a "conflicted person" in that matter per c.2. above.

e. Resolved that the Company engage counsel to negotiate and draft an agreement with Mr. Phillips for the acquisition and license of Anythingbox and that such arrangement be presented to the Board prior to the next meeting for review.

f. Resolved, with Mr. Phillips abstaining, that the A Dot Corporation Development Note be and is hereby amended to reflect a \$1,000,000 maximum value and that 20% warrant coverage will apply to the full balance at \$2.80 strike price.

g. Resolved that Mark Phillips' annual salary as an officer of the Company is increased to \$250,000 effective 10-15-07; Kenn Gordon's annual salary as an officer of the Company is increased to \$175,000 effective 10-15-07; and Anthony Bay's annual salary as an officer of the Company is increased to \$250,000 effective 4-15-08. Each Board member abstained with regard to the vote on their individual salary increase. Anthony Bay will transition from his current role as an employee to a Board - only role with a consulting agreement which is authorized by Mr. Phillips to outline.

h. Resolved that Mr. Phillips as President and CEO of the Company be granted a single spending and contracting limit of \$250,000 per contract / transaction as long as such agreement is affirmed / counter-signed by the CFO. Any single contract / transaction above \$250,000 shall require Board approval prior to execution.

i. Resolved further, that the agreement with SVB Analytics dated April 4, 2008 to perform Section 409A valuation re: stock options is hereby ratified. Mr. Douglass is tasked with following up on the project.

j. Resolved further that engagement letter hiring the law firm of Davis Wright Tremaine (Daniel Waggoner) to represent the Company on real estate matters is hereby ratified. Mr. Douglass is tasked with following up on the project;

k. Resolved further, that the resignation of Kenn Gordon as Treasurer is hereby accepted and he is appointed Vice President and Chief Information Officer. Mr. Gordon remains Corporate Secretary.

l. Resolved further, that the license agreement (April 25, 2008), development agreement (April 9, 2008) and memorandum of understanding (September 10, 2007), along with subsequent amendments, with Toshiba Corporation are hereby ratified.

m. Resolved further, that the officers of the Company are, and each hereby is, authorized, directed and empowered to take all such actions as may be necessary or appropriate to carry out the purposes of the foregoing resolutions.

**Adjournment**

The Board agreed to adjourn the meeting at 6:04 pm.

Respectfully submitted,

---

Secretary of June 20, 2008

Approval of Board at meeting of June 20, 2008:

---

Chairman

PHILLIPS0046914

17.004

## EXHIBIT "E"



**MINUTES OF SPECIAL MEETING OF THE  
BOARD OF DIRECTORS OF  
MOD SYSTEMS INCORPORATED  
A WASHINGTON STATE CORPORATION**

---

**July 8, 2008 (continued to July 9, 2008)**

A meeting of the Board of Directors of MOD Systems Incorporated (the “*Company*”) was held on July 8, 2008 and then continued to July 9, 2008. Directors in attendance, in person or over the phone included Mark Phillips, Anthony Bay, Kylene Cane and Kenn Gordon constituting all of the directors of the Company. David Douglass was also present at the meeting. Mr. Phillips acted as the Chairman of the meeting and Mr. Gordon served as secretary for the meeting.

---

**Opening of the Meeting**

Mr. Phillips called the meeting to order.

**Waiver of Notice**

The Board agreed to waive the Notice of Meeting.

**Minutes of Prior Meetings**

A motion was made and seconded to approve the minutes of the June 20, 2008 meeting. The motion was approved.

**Anythingbox Agreement**

WHEREAS, the Board deems it advisable and in the best interests of the Company and its shareholders to acquire Anythingbox Incorporated (“*Anythingbox*”) pursuant to which, among other things, (a) the Company would acquire 100% of Anythingbox stock as stated in the Stock Purchase Agreement attached hereto as Exhibit A, and (b) the Company would acquire that certain license agreement between Mark Phillips and Anythingbox attached hereto as Exhibit B, the material provisions of which have been previously discussed with each member of the Board; and

WHEREAS, to facilitate and enable the consummation of the Proposed Anythingbox Transaction, Anythingbox and the appropriate officers of the Company have negotiated and prepared a Stock Purchase Agreement, in substantially the form attached hereto as Exhibit A (the “*Agreement*”); NOW, THEREFORE, IT IS HEREBY:

RESOLVED, that the Agreement be and is hereby, authorized, approved and adopted, and the appropriate officers of the Company are, and any one of them is, hereby authorized and directed to execute and deliver the Agreement on behalf of the Company, together with such further changes, revisions or modifications as such officers of the Company shall deem appropriate, and the execution by any such officer of the Agreement as so modified will establish conclusively such officer's

authority therefore and the approval and ratification by the Board of the document so executed; and

**General Authority**

FURTHER RESOLVED, that the officers of the Company are authorized and directed, in the name and on behalf of the Company, to take all such other actions, and to cause to be prepared and to execute, deliver, file and perform all other instruments, documents and certificates as in the judgment of the officers or counsel to the Company shall be necessary or advisable to carry out the intent of the foregoing resolutions, and the execution of any such instrument, document or certificate or the taking of any such action in connection with the foregoing shall conclusively establish the authority of the officer with respect thereto and the approval and ratification by the Board of the instrument, document or certificate so executed or the action so taken; and

FURTHER RESOLVED, that the Board hereby ratifies and confirms any and all lawful actions taken by any of the appropriate officers of the Company prior to the date of these resolutions to effect the purposes and intent of the foregoing resolutions.

**Adjournment**

The Board agreed to adjourn the meeting.

Respectfully submitted,

---

Secretary of July \_\_, 2008

Approval of Board at meeting of July \_\_, 2008:

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Chairman

## EXHIBIT "F"



MINUTES OF THE MEETING  
OF THE BOARD OF DIRECTORS OF

MOD SYSTEMS INCORPORATED

SEPTEMBER 17, 2008

A meeting of the Board of Directors of MOD Systems Incorporated (the "Company") was held on September 17, 2008 commencing at approximately 2:10 p.m. in Seattle, Washington. Mark Phillips, Anthony Bay, Kenn Gordon and Kyleen Cane were in attendance by conference telephone in accordance with Section 23B.08.200(2) of the Revised Code of Washington and pursuant to Article II, Section 2.14 of the Company's Bylaws. Also in attendance by conference telephone was Tom Grohman, Steve Winters and William Lin from Lane Powell PC, outside legal counsel to the Company, along with David Douglass, the Company's Vice President and Chief Financial Officer. Mr. Phillips acted as Chairman of the Board and Mr. Grohman acted as Secretary to the Board. Notice of the meeting had been waived pursuant to Article II, Section 2.10 of the Company's Bylaws since all members were in attendance without objection.

Mr. Phillips called the meeting to order and asked Mr. Grohman to provide the Board with a summary of the Company's ongoing negotiations with the investors in the Company's Series A Preferred Stock financing. Mr. Grohman reviewed for the Board the proposed agenda items and resolutions for the meeting, which had been distributed to directors in advance of the meeting along with copies of each one of the transaction documents.

AMENDED AND RESTATED ARTICLES OF INCORPORATION

Following this discussion, Mr. Grohman presented formal resolutions with regard to the proposed amendments to the Company's Articles of Incorporation. After certain questions and clarifications with respect to the resolutions presented, and after motion duly made by Mr. Bay and seconded by Mr. Phillips, the following resolutions were unanimously approved.

WHEREAS: The officers and directors of MOD Systems Incorporated (the "Company") have been pursuing a proposed financing and strategic relationship with respect to the business plans of the Company; and

WHEREAS: The Board of Directors believes that it would be in the best interest of the Company to amend and restate the Articles of Incorporation in their entirety in order to create a new series of stock and to amend and restate the Company's Bylaws; and now therefore, it is hereby

RESOLVED: That the Board of Directors hereby adopts and approves the Amended and Restated Articles of Incorporation (the "Restated Articles"), substantially in the form attached hereto as Exhibit A, to among other things: (i) increase the number of shares of common stock of the Company authorized to be issued to 50,000,000, (ii) increase the total number of shares of preferred stock authorized to be issued to 11,900,000, of which 11,900,000 shares are to be

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United States v. Mark E. Phillips  
CR10-269JCC  
Plaintiff's Exhibit No. 22  
Admitted \_\_\_\_\_

MOD-DOJ 002983

PHILLIPS0009288

designated as Series A Preferred Stock, and (iii) designate the rights and preferences of the Series A Preferred Stock, including conversion rights, and together with such additions, changes or deletions from the form as so attached as the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer, or any one of them, may deem necessary or advisable, and hereby recommends the approval of the Restated Articles to the shareholders of the Company, which approval may be by written consent in lieu of meeting, the record date therefor shall be the date the written consent is sent to the shareholders; and it is hereby

FURTHER RESOLVED: That the Company hereby creates a series of preferred stock designated as Series A Preferred Stock consisting of up to 11,900,000 shares (the "*Series A Preferred Stock*"), of which the preferences and relative, participating, optional and other special rights, and the qualifications, limitations or restrictions on such preferences and rights shall be as specified in the Restated Articles; and it is hereby

FURTHER RESOLVED: That upon the approval of the Restated Articles by the shareholders of the Company, the officers of the Company, or any of them, are hereby authorized and directed to execute and file with the Secretary of State of Washington said Restated Articles and to take such other action in connection therewith as such officers shall in their discretion deem necessary or advisable to effectuate said Restated Articles.

#### INCREASE OF STOCK OPTION POOL

Next, Mr. Grohman provided a summary of the proposal to increase the number of shares available for issuance under the Company's 2005 Stock Option Plan. Following a discussion between Mr. Phillips, Mr. Bay and Mr. Douglass regarding the proposed amendment, Mr. Grohman presented formal resolutions with regard to the proposed amendments. After motion duly made by Mr. Phillips and seconded by Mr. Gordon, the following resolutions were unanimously approved.

WHEREAS: The Company currently maintains the MOD Systems Incorporated 2005 Stock Option Plan (the "*Plan*") in order to provide an incentive to attract, retain and reward eligible personnel performing services for the Company and to motivate such persons to contribute to the growth and profitability of the Company; and

WHEREAS: The Plan currently has 1,281,688 option shares available for issuance out of the current authorization of 3,000,000 option shares;

WHEREAS: In order to have available an adequate number of shares under the Plan, the Board has determined it to be in the best interests of the Company and its shareholders to increase the maximum number of shares of Common Stock of the Company (the "*Common Stock*") that may be issued under the Plan and reserve such shares for issuance under the Plan and to amend the Plan in accordance with the foregoing; and now therefore, it is hereby

RESOLVED: That Section 4.1 of the Plan is hereby amended as follows to increase the maximum aggregate number of shares of Common Stock that may be issued under the Plan from 3,000,000 to 5,000,000, subject to adjustment as provided by the Plan:

*"4.1 Maximum Number of Shares Issuable. Subject to adjustment as provided in Section 4.2, the maximum aggregate number of shares of Stock that may be issued under the Plan shall be Five Million (5,000,000) and shall consist of authorized but unissued or reacquired shares of Stock or any combination thereof. If an outstanding Option for any reason expires or is terminated or canceled or if shares of Stock are acquired upon the exercise of an Option subject to a Company repurchase option and are repurchased by the Company at the Optionee's exercise price, the shares of Stock allocable to the unexercised portion of such Option or such repurchased shares of Stock shall again be available for issuance under the Plan. However, except as adjusted pursuant to Section 4.2, in no event shall more than Five Million (5,000,000) shares of Stock be available for issuance pursuant to the exercise of Incentive Stock Options (the "ISO Share Issuance Limit")."*

FURTHER RESOLVED: That the Board hereby recommends the approval of Section 4.1 of the Plan, as so amended, to the shareholders of the Company, which approval may be by written consent in lieu of meeting, the record date therefor shall be the date the written consent is sent to the shareholders; and it is hereby

FURTHER RESOLVED: That an additional 2,000,000 shares of authorized but unissued shares of Common Stock, subject to adjustment as provided by the Plan, shall be reserved for issuance upon the exercise of options granted pursuant to the Plan bringing the total number of shares of Common Stock authorized under the Plan to 5,000,000; and it is hereby

FURTHER RESOLVED: That, upon receipt by the Company from an option holder of the full consideration in payment for the option shares as set forth in any applicable option grant approved by the Board pursuant to the Plan, a certificate representing such shares resulting from such option exercise shall be issued and delivered to the option holder, and such shares shall be duly authorized, validly issued, fully paid and non-assessable shares of the Common Stock of the Company.

**CONFIRMATION OF ISSUANCE OF COMMON STOCK TO ARNOLD AND LIEBERFARB**

Next, Mr. Grohman presented formal resolutions with regard to the confirmation of the shares previously issued to certain shareholders of the Company. After motion duly made by Mr. Gordon and seconded by Mr. Phillips, the following resolutions were unanimously approved.

WHEREAS: On June 8, 2006, the Board of Director adopted written consent resolutions whereby it approved the offer and sale to certain accredited investors of up to 1,421,571 shares of Common Stock at a price of \$3.50 per share;

WHEREAS: Subsequent to that authorization, the Company sold an aggregate of 928,571 shares of Company Common Stock at \$3.50 per share to Robert Arnold and Warren Lieberfarb;

WHEREAS: The Board desires to re-affirm the receipt and adequacy of the consideration received by the Company in connection with the sale and issuance of the Common Stock to Mr. Arnold and Mr. Lieberfarb; and now therefore, it is hereby

RESOLVED: That the Board of Directors hereby confirms the receipt and adequacy of the consideration received by the Company from Mr. Arnold for the Company's issuance of 857,142 shares of Common Stock to him and the consideration received by the Company from Mr. Lieberfarb for the Company's issuance of 71,429 shares of Common Stock to him, and hereby confirms that the shares of Common Stock issued to Mr. Arnold and Mr. Lieberfarb are duly authorized, validly issued, fully paid, and non-assessable shares of the Common Stock of the Company.

#### PRIVATE PLACEMENT OF SERIES A PREFERRED STOCK

Mr. Grohman then provided the Board with a summary of the material terms of the proposed Stock Purchase Agreement, the Shareholder Agreement, the Right of First Refusal and Co-Sale Agreement and the Non-Assertion Agreement. Mr. Winters provided the Board with a summary of the material terms of the Freedom of Operation Agreement, including a description of the limited remedies available to the Company in the event of a breach by Toshiba Corporation. A discussion among the members of the Board then ensued regarding the terms of the various agreements. After certain questions and clarifications with respect to the various agreements and the resolutions presented, and after motion duly made by Mr. Gordon and seconded by Mr. Phillips, the following resolutions were unanimously approved.

RESOLVED: That the issuance and sale by the Company of Series A Preferred Stock at a price of \$3.1302 per share, which is determined to be the fair market value of each of such shares as of the date hereof, and upon the terms and conditions contained in the Stock Purchase Agreement by and among the Company, Toshiba Corporation, NCR Corporation and Deluxe Entertainment Services Group Inc. in substantially the form attached hereto as Exhibit B (the "Stock Purchase Agreement") are hereby authorized and approved in all respects (the "Series A Preferred Offering"); and it is hereby

FURTHER RESOLVED: That the Stock Purchase Agreement is hereby approved in substantially the form attached to these resolutions as Exhibit B, together with such additions to, changes in or deletions from the form as so attached as the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer, or any one of them, may deem necessary or advisable (such signing to be conclusive evidence that such officer considers such additions, changes or deletions necessary or advisable), and that the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer, or any one of them is hereby authorized to execute, deliver and perform on behalf of the Company the Stock Purchase Agreement; and it is hereby

FURTHER RESOLVED: That the transaction agreements contemplated by the Stock Purchase Agreement, including, without limitation, the Shareholder Agreement in substantially the form attached hereto as Exhibit C, the Right of First Refusal and Co-Sale Agreement attached hereto as Exhibit D, the Non-Assertion Agreement in substantially the form attached hereto as Exhibit E, and the Freedom of Operation Agreement in substantially the form attached hereto as Exhibit F (collectively, the "*Transaction Agreements*") are hereby approved in all respects, together with such additions, changes or deletions from the form as so attached as the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer, or any either of them, may deem necessary or advisable (such signing to be conclusive evidence that such officer considers such additions, changes or deletions necessary or advisable), and that the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer, or either of them is hereby authorized to execute, deliver and perform on behalf of the Company the Transaction Agreements; and it is hereby

FURTHER RESOLVED: That the Board hereby acknowledges and approves the conversion by Toshiba Corporation and Deluxe Entertainment Services Group Inc. of their Convertible Promissory Notes into the Company's Series A Preferred Stock; and it is hereby

FURTHER RESOLVED: That the Company hereby sets aside and reserves 11,580,812 shares of its Series A Preferred Stock, presently authorized but unissued, for issuance under the Stock Purchase Agreement, which shall include 1,597,353 shares to Toshiba Corporation and 399,338 shares to Deluxe Entertainment Services Group Inc. upon the conversion of their Convertible Promissory Notes; and it is hereby

FURTHER RESOLVED: That, upon receipt by the Company from each subscriber of the full consideration in payment for the subscribed shares as set forth in the Stock Purchase Agreement, and upon the conversion by Toshiba Corporation and Deluxe Entertainment Services Group Inc. of their Convertible Promissory Note, a certificate representing such shares as set forth in the Stock Purchase Agreement shall be issued and delivered to each subscriber, and such shares shall be duly authorized, validly issued, fully paid and non-assessable shares of the Series A Preferred Stock of the Company; and it is hereby

FURTHER RESOLVED: That the conversion of the Series A Preferred Stock into shares of the Company's Common Stock pursuant to the terms of the Series A Preferred Stock and the issuance of Common Stock upon such conversion are hereby authorized and approved; and it is hereby

FURTHER RESOLVED: That the consideration received by the Company in exchange for the conversion of the Series A Preferred Stock into the Common Stock is adequate; and it is hereby

FURTHER RESOLVED: That up to 11,900,000 shares of the Company's Common Stock (as adjusted pursuant to the terms of the Series A Preferred Stock) are hereby reserved for

issuance by the Company upon conversion of the Series A Preferred Stock, from the authorized but unissued shares of the Company's Common Stock; and it is hereby

FURTHER RESOLVED: That the officers of the Company, jointly and severally, are hereby authorized and directed on behalf of the Company, upon conversion of the Series A Preferred Stock, to issue and deliver, or cause to be issued and delivered, the shares of the Common Stock of the Company referred to in the foregoing resolutions, and all of said shares when so issued, shall be considered fully paid and non-assessable; and it is hereby

FURTHER RESOLVED: That the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer of the Company are hereby jointly and severally authorized to take all such steps and do all such acts and things as they shall deem necessary or advisable to carry out each of the foregoing resolutions, including without limitation, to proceed with the plans to issue the Series A Preferred Stock pursuant to the Stock Purchase Agreement as presented to the Board of Directors, including, but not limited to, the making of any and all payments, the execution of any necessary or advisable instruments, certificates, affidavits, or other documents in connection therewith, the signing or endorsement of any checks, the posting of any bonds, and the payment of any fees in such connection, and from time to time to take any and all action to make, execute, verify and file all applications, certificates, documents, or other instruments, and to do any and all acts which they shall deem necessary, advisable or appropriate in order to carry out the intent and purpose of any and all of the foregoing resolutions; and it is hereby

FURTHER RESOLVED: That the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer are each hereby jointly and severally authorized and directed to execute, acknowledge, verify, deliver, file and publish in the name and on behalf of the Company, attested by its Secretary or otherwise, any and all applications, reports, statements, issuer's covenants, resolutions, consents to service of process, powers of attorney, appointments, designations, waivers of hearing, bonds, and such other documents and instruments as may be required, appropriate or advisable under the Blue Sky laws or securities acts of such jurisdictions as they may deem necessary, appropriate or advisable for the purpose of registering, qualifying, exempting or permitting the issuance and sale by the Company of the Series A Preferred Stock, and to make any and all payments of examination, filing, registration and other fees, costs and expenses and for the purpose of taking any and all further action which they shall deem necessary or advisable in connection with any of the foregoing; and it is hereby

FURTHER RESOLVED: That all actions taken to date by the officers, employees and other agents of the Company in connection with these resolutions, including but not limited to negotiation of the term sheet for the issuance and sale of the Series A Preferred Stock are hereby accepted, ratified and approved in all respects.

## CONFIRMATION OF DELUXE WARRANTS

Next, Mr. Grohman introduced resolutions to confirm the warrants previously issued to Deluxe Entertainment Services Group Inc. After motion duly made by Ms. Cane and seconded by Mr. Bay, the following resolutions were unanimously approved.

WHEREAS: On February 12, 2008, the Board of Directors approved the issuance of, and the Company issued and delivered, a warrant to Deluxe Entertainment Services Group Inc. (the "*Deluxe Warrant*") entitling such warrant holder to purchase shares of common stock or preferred stock to be issued in the Company's next equity financing equal to \$200,000 divided by the applicable purchase price at such equity financing;

WHEREAS: The Series A Preferred Offering qualifies as a Triggering Financing, as such term is defined in the Deluxe Warrant, and the Board desires to confirm the number of Series A Preferred Stock subject to the Deluxe Warrant; and it is hereby

RESOLVED: That the number of Warrant Stock subject to the Deluxe Warrant shall be 63,894 shares of Series A Preferred Stock and the purchase price per share payable upon exercise of the Deluxe Warrant shall be \$3.1302, the per share purchase price of the Series A Preferred Stock in the Series A Preferred Offering;

FURTHER RESOLVED: That the officers of the Company are hereby authorized to make such amendments to the Deluxe Warrant as they deem necessary or desirable to reflect the number of shares of Warrant Stock and Purchase Price set forth above and to deliver such amended Deluxe Warrant to the warrant holder; and it is hereby

FURTHER RESOLVED: That 63,894 shares of the Company's Series A Preferred Stock are hereby reserved for issuance upon the exercise of the Deluxe Warrant from the authorized but unissued shares of the Company's Series A Preferred Stock and that the Company hereby reserves and sets aside a sufficient number of shares of the Company's Common Stock for issuance by the Company upon conversion of the Series A Preferred Stock pursuant to the terms of the Restated Articles, from the authorized but unissued shares of the Company's Common Stock; and it is hereby

FURTHER RESOLVED: That the officers of the Company, jointly and severally, are hereby authorized and directed on behalf of the Company to: (i) upon exercise of the Deluxe Warrant, to issue and deliver, or cause to be issued and delivered, the shares of the Series A Preferred Stock referred to in the foregoing resolutions, and all of said shares when so issued, shall be considered duly authorized, fully paid and non-assessable and (ii) upon the conversion of such Series A Preferred Stock, to issue and deliver, or cause to be issued and delivered, the shares of the Common Stock of the Company referred to in the foregoing resolutions, and all of said shares when so issued, shall be considered duly authorized, fully paid and non-assessable.

## CONTENT LICENSE AGREEMENTS AND WARRANTS

Next, Mr. Grohman presented formal resolutions with regard to the proposed content license agreements with Warner Bros. Digital Distribution and Paramount Pictures Corporation. A discussion among the members of the Board then ensued regarding the status of the negotiations with the content providers. After certain questions and clarifications with respect to the resolutions presented, and after motion duly made by Mr. Bay and seconded by Mr. Cane, the following resolutions were unanimously approved.

RESOLVED: That the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer of the Company are hereby jointly and severally authorized and directed to negotiate the terms of and enter into a Download to Own and Video on Demand License Agreement ("*Paramount Agreement*") with Paramount Pictures Corporation on behalf of the Company; and it is hereby

FURTHER RESOLVED: That the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer of the Company are hereby jointly and severally authorized and directed to negotiate the terms of and enter into a Video on Demand, Electronic Sell Through and Manufacturing On Demand Distribution License Agreement ("*WB Agreement*") with Warner Bros. Digital Distribution, a division of Warner Bros. Home Entertainment Inc. ("*WB*") on behalf of the Company; and it is hereby

FURTHER RESOLVED: That the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer of the Company are hereby jointly and severally authorized and empowered, in the name and on behalf of the Company, to negotiate, execute, and deliver, and cause the Company to perform the Paramount Agreement and the WB Agreement and all other documents or agreements contemplated therein or related thereto, in the form approved by the President and Chief Executive Officer, the Vice President and Chief Financial Officer, or the Vice President and Chief Operating Officer, together with such changes therein and additions thereto as such officer, in his sole judgment, may approve (his execution thereof being deemed conclusive evidence of approval of the final form thereof by such officer and by the Board of Directors), and it is hereby

FURTHER RESOLVED: That the officers of the Company are hereby authorized to issue, on behalf of the Company, warrants to purchase up to an aggregate of 500,000 shares of the Company's Common Stock ("*Content License Warrants*") as consideration for any content license agreements to which the Company is a party; and it is hereby

FURTHER RESOLVED: That 500,000 shares of the Company's Common Stock are hereby reserved for issuance upon the exercise of the Content License Warrants from the authorized but unissued shares of the Company's Common Stock; and it is hereby

FURTHER RESOLVED: That issuance of a warrant to WB in connection with the WB Agreement granting the right to purchase up to an aggregate of 123,052 shares (inclusive in the 500,000 share authorization set forth above) of the Company's Common Stock, which shall have

an exercise price of \$3.1302, subject to adjustments set forth therein, and a ten year term are hereby ratified, adopted, authorized and approved, and the officers of the Company or any of them are hereby authorized and directed, for and in the name of the Company, to execute, deliver, and perform all of the Company's obligations under the warrant with such changes as the executing officer of the Company in his sole judgment, may approve (his execution thereof being deemed conclusive evidence of such approval); and it is hereby

RESOLVED FURTHER: That all actions taken to date by the officers, employees and other agents of the Company in connection with these resolutions, including but not limited to negotiation of the Paramount Agreement and the WB Agreement are hereby accepted, ratified and approved in the entirety.

**APPROVAL OF SUB-SUBLEASE**

Mr. Douglass then described for the Board the material terms of the Sub-Sublease with The Professional Basketball Club, LLC, including the payment terms and the length of the proposed sublease. Mr. Grohman then introduced the following resolutions which, after motion duly made by Mr. Phillips and seconded by Mr. Bay, were unanimously approved.

WHEREAS: The Board deems it to be in the Company's best interest to enter into a Sub-Sublease Agreement ("Sub-Sublease") with The Professional Basketball Club, LLC (the "Landlord") for approximately 22,022 rentable square feet on the tenth (10th) floor of the Washington Mutual Tower located at 1201 Third Avenue, Seattle, King County, Washington, with such Sub-Sublease to commence on a date not earlier than October 1, 2008 and not later than October 31, 2008, to be determined by Landlord (the "Commencement Date") and to assume all of the Landlord's obligations arising after the Commencement Date under the Master Lease and the Master Sublease attached to the Sub-Sublease presented at the meeting as Exhibit G; and it is hereby

RESOLVED: That the Board of Directors hereby approve the terms of the Sub-Sublease Agreement in substantially the form attached hereto as Exhibit G including the payment of monthly rent of \$42,208.83 until the termination of the term on December 31, 2010;

FURTHER RESOLVED: That the appropriate officers of the Company are, and any one of them is, hereby authorized and empowered, in the name and on behalf of the Company, to negotiate, execute, and deliver, and cause the Company to perform the Sub-Sublease Agreement and all other documents or agreements contemplated therein or related thereto, in the form approved, together with such changes therein and additions thereto as the officers of the Company, in his or her sole judgment, may approve (his or her execution thereof being deemed conclusive evidence of approval of the final form thereof by such officer and by the Board of Directors).

## CONFFLICT OF INTEREST TRANSACTION WITH MARK E. PHILLIPS

At the request of Mr. Grohman, Mr. Winters provided the members of the Board with a summary of the material terms of the proposed interested party transactions with Mr. Phillips, including a summary of the payment terms and the indemnity provisions of the various intellectual property contribution and license agreements. Mr. Phillips and Mr. Winters answered several questions from Mr. Bay regarding the interested party transactions after which the meeting recessed at approximately 3:35 p.m.

The meeting reconvened at approximately 4:00 p.m. for the purposes of considering the conflict of interest transactions with Mr. Phillips and Mr. Gordon by the two qualified directors, Mr. Bay and Ms. Cane. Participating in the reconvened portion of the meeting were Mr. Bay, Mr. Cane, Mr. Douglass, Mr. Grohman, Mr. Winters and Mr. Lin. Mr. Bay raised, and Mr. Winters answered, a number of questions regarding the various intellectual property agreements, including the structure of the transactions with Mr. Phillips. Following this discussion, Mr. Grohman presented formal resolutions with regard to the proposed transactions between the Company and Mr. Phillips. After certain questions and clarifications with respect to the resolutions presented, and after motion duly made by Mr. Bay and seconded by Ms. Cane, the following resolutions were approved by the qualified directors of the Company..

WHEREAS: Mark E. Phillips, the President, Chief Executive Officer, Chief Technology Officer and a Director of the Company is the owner of, or has exclusive rights to certain inventions, technology and other intellectual property that is currently used by, licensed to, or useful to the Company (the "*Phillips IP*");

WHEREAS: The Board had previously discussed and approved at its July 9, 2008 meeting the Company's acquisition of the Phillips IP by acquiring 100% of the stock of AnythingBox Incorporated ("*AnythingBox*"), a Company wholly owned by Mr. Phillips that was to own certain Phillips IP, pursuant to the terms of a stock purchase agreement and the acquisition of a license agreement between Mark Phillips and the Company for certain Phillips IP;

WHEREAS: The Company's Series A Preferred Stock Purchase Agreement requires the Company to acquire by assignment certain Phillips IP and by license certain other Phillips IP as a precondition to closing the issuance and sale of the Series A Preferred Stock pursuant to that Stock Purchase Agreement;

WHEREAS: Mark Phillips has agreed to contribute to the Company his right, title and interest in and to certain of the Phillips IP pursuant to the terms of a Contribution and Assignment Agreement and Assignment and Grantback License Agreement presented at the meeting as Exhibit H (collectively, the "*IP Contribution Agreements*") and to license certain other Phillips IP to the Company pursuant to the terms of a Contribution and License Agreement and License Agreement presented at the meeting as Exhibit I (collectively, the "*IP License Agreements*") (the Contribution and Assignment Agreements and the Contribution and License Agreements collectively as the "*Phillips Transaction Documents*" and the transactions contemplated therein, collectively as the "*Phillips Transaction*");

WHEREAS: Mark Phillips has provided the Board with the required disclosure of his conflicting interest in the proposed transaction as required under RCW 23B.08.700(4) and the Board deems it advisable and in the best interest of the Company and its shareholders to acquire the Phillips IP pursuant to the terms of the IP Contribution Agreements and the IP License Agreements, the material provisions of which have been previously discussed with each member of the Board;

WHEREAS: Because Kenn Gordon is an employee and officer of the Company, he is playing no part, directly or indirectly, in the deliberations or vote by the Board concerning the Phillips Transaction; it is hereby

RESOLVED: That because Mark Phillips is a director and officer of the Company, the proposed acquisition by the Company of the Phillips IP constitutes a "director's conflicting interest transaction," as such term is defined in RCW 23B.08.700(2) and the Board hereby acknowledges that approval by the directors of the Company (excluding that of Mr. Phillips and Mr. Gordon) to these resolutions as it relates to the Phillips Transaction is being given only after disclosure of the existence of the nature of the conflicting interest concerning Mr. Phillips and the employment relationship between the Company and Mr. Gordon; and it is hereby

FURTHER RESOLVED: That because Mr. Phillips and Mr. Gordon are playing no part, directly or indirectly, in the deliberations or vote by the Board concerning the Phillips Transaction and the remaining directors, Mr. Anthony Bay and Ms. Kyleen Cane, constitute "qualified directors," as such term is defined in RCW 23B.08.720(4), and are at least two in number, the approval of each of the Phillips Transactions has been effected in accordance with RCW 23B.08.720; and it is hereby

FURTHER RESOLVED: That the qualified directors of the Company have considered the financial and strategic benefits to the Company of entering into the Series A Preferred Stock Purchase Agreement and all the agreements and transactions contemplated therein, including the Phillips Transaction and the Phillips Transaction Documents, and believes they are in the best interest of the Company and shareholders holding qualified shares notwithstanding the conflict of interest and the dilution to existing Company shareholders; and it is hereby

FURTHER RESOLVED: That the qualified directors of the Board of Directors hereby approve the acquisition of the Phillips IP in all respects, and the form, terms, and provisions of the IP Contribution Agreements by and among Mark Phillips and the Company in substantially the form attached hereto as Exhibit H, including all exhibits and schedules and agreements attached thereto and contemplated thereby, together with such modifications or amendments to the IP Contribution Agreements as the Vice President and Chief Financial Officer shall approve, and it is hereby

FURTHER RESOLVED: That the qualified directors of the Board of Directors hereby approve the issuance of 11,401,196 shares of the Company's common stock, having an agreed value of Thirty-Eight Million Nine hundred thousand Dollars (\$38,900,000) in the aggregate (the "Equity Payment") to Mr. Phillips, and that, upon receipt by the Company of the IP Contribution Agreements which represent the full consideration in payment for the shares, a certificate representing such shares shall be issued and delivered to Mr. Phillips, and such shares shall be

duly authorized, validly issued, fully paid and non-assessable shares of the Common Stock of the Company; and it is hereby

FURTHER RESOLVED: That the qualified directors of the Board of Directors hereby approve the terms of the IP License Agreements between Phillips and the Company in substantially the form attached hereto as Exhibit I including the payment of royalties of up to \$5,000,000 over a four year period from the date of the License Agreement pursuant to the payment schedule set forth in the IP License Agreements; and it is hereby

FURTHER RESOLVED: That the Vice President and Chief Financial Officer is hereby authorized and empowered, in the name and on behalf of the Company, to negotiate, execute, and deliver, and cause the Company to perform the Phillips Transaction Documents and all other documents or agreements contemplated therein or related thereto, in the form approved by the Vice President and Chief Financial Officer, together with such changes therein and additions thereto as the Vice President and Chief Financial Officer, in his sole judgment, may approve (his execution thereof being deemed conclusive evidence of approval of the final form thereof by such officer and by the Board of Directors), and it is hereby

FURTHER RESOLVED: That the Vice President and Chief Financial Officer is hereby authorized and empowered, in the name and on behalf of the Company to do all other things and acts, to execute and deliver all other instruments, documents, schedules, exhibits, and certificates and to pay all costs, fees and taxes as the officer, in his sole judgment, may deem necessary, proper or advisable in order to carry out and comply with the purposes and intent of the foregoing resolutions; and that all acts and deeds of such officer which are consistent with the purposes and intent of these resolutions be and they are hereby, in all respects, approved, ratified, confirmed and adopted as the acts and deeds of the Company.

#### MARK PHILLIPS EMPLOYMENT AGREEMENT

Next, Mr. Grohman described for the qualified directors the material terms of the employment agreement with Mark Phillips. After certain questions and clarifications with respect to the employment agreement, and after motion duly made by Mr. Bay and seconded by Ms. Cane, the following resolutions were approved by the qualified directors of the Company.

RESOLVED: That the qualified directors of the Company hereby authorize and approve the Employment Agreement between the Company and Mark E. Phillips ("Employment Agreement") in substantially the form attached hereto as Exhibit J, generally providing for a salary of \$500,000 per year and severance consisting of two years upon termination under certain circumstances as described in the Employment Agreement, and certain other benefits as described therein; and it is hereby

FURTHER RESOLVED: That the Vice President and Chief Financial Officer or the Vice President and Chief Operating Officer of the Company is hereby authorized and directed, for and in the name of and on behalf of the Company, to execute, deliver and perform on behalf of the Company the Employment Agreement with Mr. Phillips and to take any and all other steps

and to do any and all other things which he may deem necessary or advisable in order to effectuate the purpose of the foregoing resolution.

**KENN GORDON LOAN**

Next, Mr. Douglass described for the qualified directors the material terms of the short-term loan provided by Mr. Gordon to the Company. After motion duly made by Mr. Bay and seconded by Ms. Cane, the following resolutions were approved by the qualified directors of the Company.

RESOLVED: That the qualified directors of the Company hereby authorize and approve the terms of the short-term loan by Kenn Gordon to the Company in the principal amount of \$110,000 bearing interest at Prime + 1% and subject to a 1% loan fee;

FURTHER RESOLVED: That the Vice President and Chief Financial Officer of the Company is hereby authorized and directed, for and in the name of and on behalf of the Company, to execute and deliver any loan agreements to Mr. Gordon and to take any and all other steps and to do any and all other things which he may deem necessary or advisable in order to effectuate the purpose of the foregoing resolution.

**GENERAL**

RESOLVED: That the Vice President and Chief Financial Officer of the Company is hereby authorized and directed, in the name of and on behalf of the Company, to execute and deliver any and all certificates, agreements and other documents and take any and all other steps and do any and all other things which he deem necessary or advisable, including without limitation the placing of the Company's corporate seal on any documents or certificates, in order to effectuate the purpose of the foregoing resolutions, and the performance of any such acts and the execution and delivery by him of any such certificates, agreements and other documents shall conclusively establish the authority of such officer therefor.

There being no further business, the meeting was adjourned.

DATED this 17th day of September 2008.

*Mark E. Phillips*  
\_\_\_\_\_  
Mark E. Phillips  
Chairman of the Board

*Thomas F. Grohman*  
\_\_\_\_\_  
Thomas F. Grohman  
Secretary to the Board

## EXHIBIT “G”



**MINUTES OF THE MEETING  
OF THE BOARD OF DIRECTORS OF  
MOD SYSTEMS INCORPORATED**

**SEPTEMBER 24, 2008**

A meeting of the Board of Directors of MOD Systems Incorporated (the "Company") was held on September 24, 2008 commencing at approximately 12:50 p.m. in Seattle, Washington. Mark Phillips, Anthony Bay, Kenn Gordon and Kyleen Cane were in attendance by conference telephone in accordance with Section 23B.08.200(2) of the Revised Code of Washington and pursuant to Article II, Section 2.14 of the Company's Bylaws. Also in attendance by conference telephone was Tom Grohman, Steve Winters and William Lin from Lane Powell PC, outside legal counsel to the Company, along with David Douglass, the Company's Vice President and Chief Financial Officer. Mr. Phillips acted as Chairman of the Board and Mr. Grohman acted as Secretary to the Board. Notice of the meeting had been waived pursuant to Article II, Section 2.10 of the Company's Bylaws since all members were in attendance without objection.

Mr. Phillips called the meeting to order and asked Mr. Grohman to provide the Board with an overview of the agenda for the meeting. Mr. Grohman reviewed for the Board the matters approved by the Board at its meeting on September 17, 2008 and the desire to have the Board re-confirm their prior approval due to certain revisions that had been made to the previously approved documents during the past week. Mr. Grohman also reviewed for the Board the proposed agenda items and resolutions for the meeting, which had been distributed to directors in advance of the meeting along with copies of each of the proposed agreements.

**AMENDED AND RESTATED ARTICLES OF INCORPORATION**

Mr. Grohman then described for the Board the revisions made to the Company's Amended and Restated Articles of Incorporation since the date of the Board's last meeting on September 17. Mr. Bay asked a number of questions regarding the proposed amendments to the Amended and Restated Articles of Incorporation, which were answered by Mr. Grohman to Mr. Bay's satisfaction. After motion duly made by Mr. Bay and seconded by Mr. Gordon, the following resolutions were unanimously approved.

WHEREAS: The Board of Directors at its special meeting of the Board on September 17, 2008 adopted and approved amendments to the Company's Amended and Restated Articles of Incorporation in connection with the proposed offer and sale by the Company of Series A Preferred Stock;

WHEREAS: Subsequent to that meeting, the Company engaged in further discussions regarding the amendments to the Amended and Restated Articles of Incorporation in connection with its discussions with the investors in the Series A Preferred Stock financing;

WHEREAS: The Board of Directors have reviewed the changes made to the previously approved form of Amended and Restated Articles of Incorporation and desire to re-confirm its prior approval; now therefore be it

RESOLVED: That the Board of Directors hereby adopts and approves the Amended and Restated Articles of Incorporation, substantially in the form presented at the meeting and attached hereto as Exhibit A (the “*Restated Articles*”), to among other things: (i) increase the number of shares of common stock of the Company authorized to be issued to 50,000,000, (ii) increase the total number of shares of preferred stock authorized to be issued to 11,900,000, of which 11,900,000 shares are to be designated as Series A Preferred Stock, and (iii) designate the rights and preferences of the Series A Preferred Stock, including conversion rights, and together with such additions, changes or deletions from the form as so attached as the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer, or any one of them, may deem necessary or advisable, and hereby recommends the approval of the Restated Articles to the shareholders of the Company, which approval may be by written consent in lieu of meeting, the record date therefor shall be the date the written consent is sent to the shareholders; and it is hereby

FURTHER RESOLVED: That the Company hereby creates a series of preferred stock designated as Series A Preferred Stock consisting of up to 11,900,000 shares (the “*Series A Preferred Stock*”), of which the preferences and relative, participating, optional and other special rights, and the qualifications, limitations or restrictions on such preferences and rights shall be as specified in the Restated Articles; and it is hereby

FURTHER RESOLVED: That upon the approval of the Restated Articles by the shareholders of the Company, the officers of the Company, or any of them, are hereby authorized and directed to execute and file with the Secretary of State of Washington said Restated Articles and to take such other action in connection therewith as such officers shall in their discretion deem necessary or advisable to effectuate said Restated Articles.

#### **PRIVATE PLACEMENT OF SERIES A PREFERRED STOCK**

Next, Mr. Grohman described for the Board the changes to the Series A Preferred Stock offering documents that were made subsequent to the Board’s approval on September 17, 2008, including a requirement for the Company to obtain a second studio content license as a new condition to closing. A discussion among the Board members then ensued regarding the timing of the transaction and the ongoing negotiations with Paramount Pictures Corporation regarding the second studio content license. After motion duly made by Mr. Gordon and seconded by Mr. Phillips, the following resolutions were unanimously approved.

WHEREAS: The Board of Directors at its special meeting of the Board on September 17, 2008 approved the issuance and sale by the Company of Series A Preferred Stock at a price of \$3.1302 per share and approved the form of Stock Purchase Agreement by and among the Company, Toshiba Corporation, NCR Corporation and Deluxe Entertainment Services Group Inc. (the “*Stock Purchase Agreement*”), the Shareholder Agreement, the Right of First Refusal and Co-Sale Agreement, the Non-Assertion Agreement, and the Freedom of Operation

Agreement (collectively with the Stock Purchase Agreement, the “*Series A Transaction Documents*”);

WHEREAS: The President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer and the Company’s legal counsel have negotiated and finalized the terms of the Series A Transaction Documents, copies of which have been re-distributed to the Board;

WHEREAS: The material revisions to the Series A Transaction Documents have been described to the Board and the Board desires to confirm its prior approval of the Series A Transaction Documents, notwithstanding the revisions that have been negotiated and made by the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer and the Company’s legal counsel; now therefore be it

RESOLVED: That the Stock Purchase Agreement in the form presented at the meeting and attached as Exhibit B, the Shareholders Agreement in the form presented at the meeting and attached as Exhibit C, Right of First Refusal and Co-Sale Agreement in the form presented at the meeting and attached as Exhibit D, the Non-Assertion Agreement in the form presented at the meeting and attached as Exhibit E, and the Freedom of Operation Agreement in the form presented at the meeting and attached as Exhibit F, are each hereby authorized and approved in all respects, together with such additions to, changes in or deletions from the forms as so presented as the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer, or any one of them, may deem necessary or advisable (such signing to be conclusive evidence that such officer considers such additions, changes or deletions necessary or advisable), and that the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer, or any one of them is hereby authorized to execute, deliver and perform on behalf of the Company the Series A Transaction Documents; and it is hereby

FURTHER RESOLVED: That the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer of the Company are hereby jointly and severally authorized to take all such steps and do all such acts and things as they shall deem necessary or advisable to carry out the foregoing resolution, including without limitation, to proceed with the plans to issue the Series A Preferred Stock pursuant to the Stock Purchase Agreement as presented to the Board of Directors, including, but not limited to, the making of any and all payments, the execution of any necessary or advisable instruments, certificates, affidavits, or other documents in connection therewith, the signing or endorsement of any checks, the posting of any bonds, and the payment of any fees in such connection, and from time to time to take any and all action to make, execute, verify and file all applications, certificates, documents, or other instruments, and to do any and all acts which they shall deem necessary, advisable or appropriate in order to carry out the intent and purpose of any and all of the foregoing resolutions.

## INFORMATION RIGHTS AGREEMENT

Mr. Grohman then described for the Board the terms of a proposed information rights agreement between the Company and the founding shareholders of the Company, which entitles such shareholders to certain financial information and reports regarding the Company. After motion duly made by Ms. Cane and seconded by Mr. Gordon, the following resolutions were unanimously approved.

RESOLVED: That Board of Directors hereby approve the Information Rights Agreement between the Company and its founding shareholders, Mark Phillips and Anthony Bay, substantially in the form presented at the meeting and attached as Exhibit J, pursuant to which Mr. Phillips and Mr. Bay will be entitled to certain financial information and other reports regarding the Company, and it is hereby

FURTHER RESOLVED: That the Vice President and Chief Financial Officer is hereby authorized and empowered, in the name and on behalf of the Company, to execute and deliver the Information Rights Agreement in the form approved, together with such changes therein and additions thereto as the Vice President and Chief Financial Officer, in his sole judgment, may approve (his execution thereof being deemed conclusive evidence of approval of the final form thereof by such officer and by the Board of Directors).

At this point, Mark Phillips and Kenn Gordon exited the meeting.

## CONFLICT OF INTEREST TRANSACTION WITH MARK E. PHILLIPS

At the request of Mr. Grohman, Mr. Winters described for Ms. Cane and Mr. Bay, the qualified directors, the revised structure of the transaction with Mr. Phillips that was previously approved by the qualified directors. Mr. Winters also noted for the qualified directors that the payment terms previously approved by the qualified directors on September 17, 2008 remained the same. Mr. Bay then asked several questions of Mr. Winters regarding the revised structure and Mr. Winters answered the questions to Mr. Bay's satisfaction. After motion duly made by Mr. Bay and seconded by Ms. Cane, the following resolutions were approved by the qualified directors of the Company's Board of Directors.

WHEREAS: The qualified directors of the Board of Directors at its special meeting of the Board on September 17, 2008 approved of certain interested party transactions between the Company and Mark E. Phillips, including a Contribution and Assignment Agreement, an Assignment and Grantback License Agreement, a Contribution and License Agreement, and a License Agreement (collectively, the "*IP Agreements*");

WHEREAS: Subsequent to that meeting, the Company and Mark E. Phillips engaged in further discussions regarding the terms of the IP Agreements and made changes thereto, including removal of the grantback license to Mr. Phillips with respect to the intellectual property assigned to the Company;

WHEREAS: Under the revised structure, Mark E. Phillips has agreed to contribute, assign and deliver to the Company his right, title and interest in and to certain of the intellectual property and technology pursuant to the terms of a Subscription and Contribution Agreement presented substantially in the form presented at the meeting and attached as **Exhibit G** (the “*Subscription and Contribution Agreement*”) and to exclusively license to the Company certain patent applications and related software technology to the Company pursuant to the terms of a License Agreement substantially in the form presented at the meeting and attached as **Exhibit H** (the “*License Agreement*”) (the Subscription and Contribution Agreements and the License Agreement collectively as the “*Phillips Transaction Documents*” and the transactions contemplated therein, collectively as the “*Phillips Transaction*”);

WHEREAS: Mark Phillips has provided the Board with the required disclosure of his conflicting interest in the proposed transaction as required under RCW 23B.08.700(4) and the qualified directors of the Board deem it advisable and in the best interest of the Company and its shareholders to acquire the intellectual property pursuant to the terms of the Phillips Transaction Documents;

WHEREAS: Because Kenn Gordon is an employee and officer of the Company, he is playing no part, directly or indirectly, in the deliberations or vote by the Board concerning the Phillips Transaction; it is hereby

WHEREAS: The qualified directors of the Board of Directors have reviewed the changes made to the previously approved transaction structure and forms of IP Agreements and desire to re-confirm their prior approval of the interested party transaction with Mark E. Phillips; now therefore be it

RESOLVED: That because Mark Phillips is a director and officer of the Company, the proposed acquisition by the Company of the Phillips IP constitutes a “director’s conflicting interest transaction,” as such term is defined in RCW 23B.08.700(2) and the Board hereby acknowledges that approval by the directors of the Company (excluding that of Mr. Phillips and Mr. Gordon) to these resolutions as it relates to the Phillips Transaction is being given only after disclosure of the existence of the nature of the conflicting interest concerning Mr. Phillips and the employment relationship between the Company and Mr. Gordon; and it is hereby

FURTHER RESOLVED: That because Mr. Phillips and Mr. Gordon are playing no part, directly or indirectly, in the deliberations or vote by the Board concerning the Phillips Transaction and the remaining directors, Mr. Anthony Bay and Ms. Kylene Cane, constitute “qualified directors,” as such term is defined in RCW 23B.08.720(4), and are at least two in number, the approval of each of the Phillips Transactions has been effected in accordance with RCW 23B.08.720; and it is hereby

FURTHER RESOLVED: That the qualified directors of the Company have considered the financial and strategic benefits to the Company of entering into the Series A Preferred Stock Purchase Agreement and all the agreements and transactions contemplated therein, including the Phillips Transaction and the Phillips Transaction Documents, and believes they are in the best

interest of the Company and shareholders holding qualified shares notwithstanding the conflict of interest and the dilution to existing Company shareholders; and it is hereby

FURTHER RESOLVED: That the qualified directors of the Board of Directors hereby approve the acquisition of the intellectual property from Mr. Phillips in all respects, and the form, terms, and provisions of the Subscription and Contribution Agreement by and among Mark Phillips and the Company in substantially the form presented at the meeting, including all exhibits and schedules and agreements attached thereto and contemplated thereby, together with such modifications or amendments to the Subscription and Contribution Agreement as the Vice President and Chief Financial Officer shall approve, and it is hereby

FURTHER RESOLVED: That in connection with the Subscription and Contribution Agreement, the qualified directors of the Board of Directors hereby re-affirms its prior approval of the issuance of 11,401,196 shares of the Company's common stock, having an agreed value of Thirty-Eight Million Nine hundred thousand Dollars (\$38,900,000) in the aggregate (the "*Equity Payment*") to Mr. Phillips, and that, upon receipt by the Company of the Subscription and Contribution Agreement which represent the full consideration in payment for the shares, a certificate representing such shares shall be issued and delivered to Mr. Phillips, and such shares shall be duly authorized, validly issued, fully paid and non-assessable shares of the Common Stock of the Company; and it is hereby

FURTHER RESOLVED: That the qualified directors of the Board of Directors hereby approve the terms of the License Agreement between Phillips and the Company in substantially the form presented at the meeting including the payment of royalties of up to \$5,000,000 over a four year period from the date of the License Agreement pursuant to the payment schedule set forth in the License Agreements; and it is hereby

FURTHER RESOLVED: That the Vice President and Chief Financial Officer is hereby authorized and empowered, in the name and on behalf of the Company, to negotiate, execute, and deliver, and cause the Company to perform the Phillips Transaction Documents and all other documents or agreements contemplated therein or related thereto, in the form approved by the Vice President and Chief Financial Officer, together with such changes therein and additions thereto as the Vice President and Chief Financial Officer, in his sole judgment, may approve (his execution thereof being deemed conclusive evidence of approval of the final form thereof by such officer and by the Board of Directors), and it is hereby

FURTHER RESOLVED: That the Vice President and Chief Financial Officer is hereby authorized and empowered, in the name and on behalf of the Company to do all other things and acts, to execute and deliver all other instruments, documents, schedules, exhibits, and certificates and to pay all costs, fees and taxes as the officer, in his sole judgment, may deem necessary, proper or advisable in order to carry out and comply with the purposes and intent of the foregoing resolutions; and that all acts and deeds of such officer which are consistent with the purposes and intent of these resolutions be and they are hereby, in all respects, approved, ratified, confirmed and adopted as the acts and deeds of the Company.

## **MARK PHILLIPS EMPLOYMENT AGREEMENT**

Next, Mr. Grohman and Mr. Douglas summarized for the qualified directors the changes made to the previously approved Employment Agreement with Mr. Phillips. A discussion between Mr. Bay and Mr. Douglas then ensued regarding the details of the changes to Mr. Phillips' employment agreement. After motion duly made by Mr. Bay and seconded by Ms. Cane, the following resolutions were unanimously approved.

WHEREAS: The qualified directors of the Board of Directors at its special meeting of the Board on September 17, 2008 approved of a form of employment agreement with the Mark E. Phillips;

WHEREAS: Subsequent to that meeting, the Company and Mark E. Phillips engaged in further discussions regarding the terms of the employment agreement and made changes thereto;

WHEREAS: The qualified directors of the Board of Directors have reviewed the changes made to the previously approved form of employment agreement and desire to re-confirm their prior approval; now therefore be it

RESOLVED: That the qualified directors of the Company hereby authorize and approve the Employment Agreement between the Company and Mark E. Phillips substantially in the form presented at the meeting and attached as Exhibit I ("Employment Agreement"), generally providing for a salary of \$500,000 per year and severance consisting of two years upon termination under certain circumstances as described in the Employment Agreement, and certain other benefits as described therein; and it is hereby

FURTHER RESOLVED: That the Vice President and Chief Financial Officer or the Vice President and Chief Operating Officer of the Company is hereby authorized and directed, for and in the name of and on behalf of the Company, to execute, deliver and perform on behalf of the Company the Employment Agreement with Mr. Phillips and to take any and all other steps and to do any and all other things which he may deem necessary or advisable in order to effectuate the purpose of the foregoing resolution.

## **GENERAL**

RESOLVED: That the Vice President and Chief Financial Officer of the Company is hereby authorized and directed, in the name of and on behalf of the Company, to execute and deliver any and all certificates, agreements and other documents and take any and all other steps and do any and all other things which he deem necessary or advisable, including without limitation the placing of the Company's corporate seal on any documents or certificates, in order to effectuate the purpose of the foregoing resolutions, and the performance of any such acts and the execution and delivery by him of any such certificates, agreements and other documents shall conclusively establish the authority of such officer therefor.

There being no further business, the meeting was adjourned.

DATED this 24th day of September 2008.

Mark Phillips

Mark E. Phillips  
Chairman of the Board

Thomas Grohman

Thomas F. Grohman  
Secretary to the Board



## EXHIBIT “H”



## MOD SYSTEMS INCORPORATED

### Written Consent for Shareholder Action in Lieu of Special Meeting

The undersigned shareholders of MOD Systems Incorporated., a Washington corporation (the “**Company**”), by this instrument in lieu of a special meeting, hereby consent to the adoption of the following resolutions and hereby waive any notices required by law, all in accordance with Section 23B.07.040 of the Washington Business Corporation Act. The following resolutions will be effective on the date on which (i) this Consent (or counterparts) signed by sufficient shareholders entitled to vote on the following actions are in the possession of this Company and (ii) notice of the taking of such actions by non-unanimous consent has been sent to non-consenting shareholders in accordance with the Company’s articles of incorporation.

#### **AMENDED AND RESTATED ARTICLES OF INCORPORATION**

RESOLVED: That pursuant to the recommendation by the Board of Directors, the Amended and Restated Articles of Incorporation (the “**Restated Articles**”), substantially in the form attached hereto as Exhibit A, to among other things: (i) increase the number of shares of common stock of the Company authorized to be issued to 50,000,000, (ii) increase the total number of shares of preferred stock authorized to be issued to 11,900,000, of which 11,900,000 shares are to be designated as Series A Preferred Stock, and (iii) designate the rights and preferences of the Series A Preferred Stock, including conversion rights, and together with such additions, changes or deletions from the form as so attached as the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer, or any one of them, may deem necessary or advisable, is hereby adopted and approved; and it is hereby

#### **INCREASE OF STOCK OPTION POOL**

WHEREAS: The Company currently maintains the MOD Systems Incorporated 2005 Stock Option Plan (the “**Plan**”) in order to provide an incentive to attract, retain and reward eligible personnel performing services for the Company and to motivate such persons to contribute to the growth and profitability of the Company; and

WHEREAS: The Plan currently has 1,281,688 option shares available for issuance out of the current authorization of 3,000,000 option shares;

WHEREAS: In order to have available an adequate number of shares under the Plan, the Board had determined it to be in the best interests of the Company and its shareholders to increase the maximum number of shares of Common Stock of the Company (the “**Common Stock**”) that may be issued under the Plan and reserve such shares for issuance under the Plan and to amend the Plan in accordance with the foregoing; and now therefore, it is hereby

RESOLVED: That based upon the recommendation by the Board of Directors, Section 4.1 of the Plan is hereby amended as follows to increase the maximum aggregate number of shares of Common Stock that may be issued under the Plan from 3,000,000 to 5,000,000, subject to adjustment as provided by the Plan:

“4.1 Maximum Number of Shares Issuable. Subject to adjustment as provided in Section 4.2, the maximum aggregate number of shares of Stock that may be issued under the Plan shall be Five Million (5,000,000) and shall consist of authorized but unissued or reacquired shares of Stock or any combination thereof. If an outstanding Option for any reason expires or is terminated or canceled or if shares of Stock are acquired upon the exercise of an Option subject to a Company repurchase option and are repurchased by the Company at the Optionee’s exercise price, the shares of Stock allocable to the unexercised portion of such Option or such repurchased shares of Stock shall again be available for issuance under the Plan. However, except as adjusted pursuant to Section 4.2, in no event shall more than Five Million (5,000,000) shares of Stock be available for issuance pursuant to the exercise of Incentive Stock Options (the “*ISO Share Issuance Limit*”).”

### **PRIVATE PLACEMENT OF SERIES A PREFERRED STOCK**

RESOLVED: That the issuance and sale by the Company of Series A Preferred Stock at a price of \$3.1302 per share, which is determined to be the fair market value of each of such shares as of the date hereof, and upon the terms and conditions contained in the Stock Purchase Agreement by and among the Company, Toshiba Corporation, NCR Corporation and Deluxe Entertainment Services Group Inc. in substantially the form attached hereto as **Exhibit B** (the “*Stock Purchase Agreement*”) are hereby authorized and approved in all respects (the “*Series A Preferred Offering*”); and it is hereby

FURTHER RESOLVED: That the Stock Purchase Agreement is hereby approved in substantially the form attached to these resolutions as **Exhibit B**, together with such additions to, changes in or deletions from the form as so attached as the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer, or any one of them, may deem necessary or advisable (such signing to be conclusive evidence that such officer considers such additions, changes or deletions necessary or advisable), and that the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer, or any one of them is hereby authorized to execute, deliver and perform on behalf of the Company the Stock Purchase Agreement; and it is hereby

FURTHER RESOLVED: That the transaction agreements contemplated by the Stock Purchase Agreement, including, without limitation, the Shareholder Agreement in substantially the form attached hereto as **Exhibit C**, the Right of First Refusal and Co-Sale Agreement attached hereto as **Exhibit D**, the Non-Assertion Agreement in substantially the form attached hereto as **Exhibit E**, and the Freedom of Operation Agreement in substantially the form attached hereto as **Exhibit F** (collectively, the “*Transaction Agreements*”) are hereby approved in all

respects, together with such additions, changes or deletions from the form as so attached as the President and Chief Executive Officer, the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer, or any either of them, may deem necessary or advisable (such signing to be conclusive evidence that such officer considers such additions, changes or deletions necessary or advisable), and that the Vice President and Chief Financial Officer, and the Vice President and Chief Operating Officer, or either of them is hereby authorized to execute, deliver and perform on behalf of the Company the Transaction Agreements; and it is hereby

FURTHER RESOLVED: That all actions taken to date by the officers, employees and other agents of the Company in connection with these resolutions, including but not limited to negotiation of the term sheet are hereby accepted, ratified and approved in all respects.

### **CONFFLICT OF INTEREST TRANSACTION WITH MARK E. PHILLIPS**

WHEREAS: Mark E. Phillips, the President, Chief Executive Officer, Chief Technology Officer and a Director of the Company is the owner of, or has exclusive rights to certain inventions, technology and other intellectual property that is currently used by, licensed to, or useful to the Company (the "**Phillips IP**");

WHEREAS: The Company's Series A Preferred Stock Purchase Agreement requires the Company to acquire by assignment certain Phillips IP and by license certain other Phillips IP as a precondition to closing the issuance and sale of the Series A Preferred Stock pursuant to that Stock Purchase Agreement;

WHEREAS: Mark Phillips has agreed to contribute to the Company all of his right, title and interest in and to certain of the Phillips IP pursuant to the terms of a Subscription and Contribution Agreement and Assignment attached to this consent as **Exhibit G** (the "**Subscription and Contribution Agreement**") and to license certain other Phillips IP to the Company pursuant to the terms of a License Agreement attached hereto as **Exhibit H** (the "**License Agreements**") (the Subscription and Contribution Agreement and the License Agreement collectively as the "**Phillips Transaction Documents**" and the transactions contemplated therein, collectively as the "**Phillips Transaction**");

WHEREAS: The shareholders of the Company have been provided with the notice and disclosures in the form attached hereto as **Exhibit I** as required under RCW 23B.08.730; and now therefore, it is hereby

RESOLVED: That because Mark Phillips is a director and officer of the Company, the proposed acquisition by the Company of the Phillips IP constitutes a "director's conflicting interest transaction," as such term is defined in RCW 23B.08.700(2) and the undersigned shareholders hereby acknowledge that approval by the undersigned shareholder as it relates to the Phillips Transaction is being given only after disclosure of the existence of the nature of the conflicting interest concerning Mr. Phillips; and it is hereby

FURTHER RESOLVED: That the undersigned shareholder hereby approves the acquisition by the Company of the Phillips IP in all respects, and the form, terms, and provisions of the Subscription and Contribution Agreement by and among Mark Phillips and the Company in substantially the form attached hereto as **Exhibit G**, including all exhibits and schedules and agreements attached thereto and contemplated thereby, together with such modifications or amendments to the Subscription and Contribution Agreements as the Vice President and Chief Financial Officer shall approve, and it is hereby

FURTHER RESOLVED: That the undersigned shareholder hereby approves the issuance of 11,401,196 shares of the Company's common stock, having an agreed value of Thirty-Eight Million Nine hundred thousand Dollars (\$38,900,000) in the aggregate (the "**Equity Payment**") to Mr. Phillips;

FURTHER RESOLVED: That the undersigned shareholder hereby approves the terms of the License Agreement between Phillips and the Company in substantially the form attached hereto as **Exhibit H** including the payment of royalties of up to \$5,000,000 over a four year period from the date of the License Agreement pursuant to the payment schedule set forth in the License Agreements; and it is hereby

FURTHER RESOLVED: That the Vice President and Chief Financial Officer is hereby authorized and empowered, in the name and on behalf of the Company, to negotiate, execute, and deliver, and cause the Company to perform the Phillips Transaction Documents and all other documents or agreements contemplated therein or related thereto, in the form approved by the Vice President and Chief Financial Officer, together with such changes therein and additions thereto as the Vice President and Chief Financial Officer, in his sole judgment, may approve (his execution thereof being deemed conclusive evidence of approval of the final form thereof by such officer and by the Board of Directors), and it is hereby

FURTHER RESOLVED: That the Vice President and Chief Financial Officer is hereby authorized and empowered, in the name and on behalf of the Company to do all other things and acts, to execute and deliver all other instruments, documents, schedules, exhibits, and certificates and to pay all costs, fees and taxes as the officer, in his sole judgment, may deem necessary, proper or advisable in order to carry out and comply with the purposes and intent of the foregoing resolutions; and that all acts and deeds of such officers which are consistent with the purposes and intent of these resolutions be and they are hereby, in all respects, approved, ratified, confirmed and adopted as the acts and deeds of the Company.

### **MARK PHILLIPS EMPLOYMENT AGREEMENT**

RESOLVED: That the undersigned shareholder of the Company hereby authorizes and approves the Employment Agreement between the Company and Mark E. Phillips ("**Employment Agreement**") in substantially the form attached hereto as **Exhibit J**, generally providing for a salary of \$500,000 per year and severance consisting of two years upon termination under certain

FURTHER RESOLVED: That the Vice President and Chief Financial Officer or the Vice President and Chief Operating Officer of the Company is hereby authorized and directed, for and in the name of and on behalf of the Company, to execute, deliver and perform on behalf of the Company the Employment Agreement with Mr. Phillips and to take any and all other steps and to do any and all other things which he may deem necessary or advisable in order to effectuate the purpose of the foregoing resolution.

**COUNTERPARTS SIGNATURES**

RESOLVED: The written consent to these resolutions may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. The Secretary of the Company is directed to file an executed copy of this consent in the minute book of the Company.

Mark Phillips \_\_\_\_\_ Date: 9-24-08

Mark Phillips

Anthony Bay \_\_\_\_\_

Robert Arnold

\_\_\_\_\_ Date: 9/30/08

\_\_\_\_\_ Date: \_\_\_\_\_

Warren Lieberfarb

\_\_\_\_\_ Date: \_\_\_\_\_

## **COUNTERPARTS SIGNATURES**

RESOLVED: The written consent to these resolutions may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. The Secretary of the Company is directed to file an executed copy of this consent in the minute book of the Company.

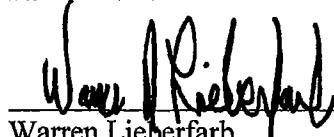
\_\_\_\_\_  
Mark Phillips

Date: \_\_\_\_\_

\_\_\_\_\_  
Anthony Bay

Date: \_\_\_\_\_

\_\_\_\_\_  
Robert Arnold

  
\_\_\_\_\_  
Warren Lieberfarb

Date: \_\_\_\_\_

Date: Oct 1, 2008

# EXHIBIT “I”



The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA.

Case No. 10-CR-269-JCC

Plaintiff,

DEFENDANT'S EXHIBIT LIST

V.

MARK E. PHILLIPS,

## Defendants.

Mark E. Phillips, by and through his attorneys of Record John Du Wors and Peter Mair, respectfully submits this Exhibit List:

## D - 1. MOD Quickbooks Chart of Accounts:

D - 2. Materials Submitted to Price Waterhouse Coopers For Due Diligence audit

## D - 3. August 21, 2008 Board Minutes:

**D - 4. Subscription Agreement;**

#### D - 5. Mod Founders Agreement;

## D - 6. Mod aka Pop Media Bylaws;

D - 7. April 22, 2008 Email exchange:

1 D - 8. Intercompany Services Agreement;  
2 D - 9. August 1, 2008 Email exchange;  
3 D - 10. Graph showing MOD's use;  
4 D - 11. June 20, 2011 Board Minutes;  
5 D - 12. Summary of Billing;  
6 D - 13. September 17, 2008 Board;  
7 D - 14. A-Dot Promissory Note March 23, 2007;  
8 D - 15. Agreement to terminate Anything Box Transaction;  
9 D - 16. February 22, 2008 Mod Board Minutes;  
10 D - 17. License Agreement October 17, 2008;  
11 D - 18. Employment Agreement October 17, 2008;  
12 D - 19. Intercompany Services Agreement December 18, 2006;  
13 D - 20. December 31, 2008 Quickbook Journal Entry;  
14 D - 21. Email dated March 17, 2008;  
15 D - 22. Email from May 12, 2008;  
16 D - 23. Email from Gordon dated May 20, 2008;  
17 D - 24. Settlement Agreement with Jan Wallace;  
18 D - 25. December 2008 email from Phillips to Board;  
19 D - 26. Related Party Receivable Showing Mark's Personal Expenditures;  
20 D - 27. Metawallet due from;  
21 D - 28. Dot - Due From;  
22 D - 29. Anything Box - Due From;  
23 D - 30. Anything Box - Other Asset;  
24 D - 31. Short Term Note - A Dot Corp;  
25 D - 32. Shareholder Loan Payable;  
26 D - 33. A Dot Corporation - Due To;  
27 D - 34. Mark Phillips - Due To;

1 D - 35. A Dot Asset Purchase Account;  
2 D - 36. Convertible Notes;  
3 D - 37. Accrued Interest - M Phillips;  
4 D - 38. Voting Trust Agreement;  
5 D - 39. December 16, 2009 email to Buckley and Anderson from S. Lawrence  
6 re freeze and payroll;  
7 D - 40. FBI Witness Interview of Kari Scott (Wells Fargo);  
8 D - 41. Russ Cardson's REVISED account of the bank freeze;  
9 D - 42. Phillips Whistleblower email to Wells Fargo;  
10 D - 43. Techflash Interview with Bay;  
11 D - 44. Email exchange with J. Fluke dated December 15, 2009;  
12 D - 45. Russ Carson (Wells Fargo) email account of bank freeze;  
13 D - 46. Phillips email dated December 15, 2009;  
14 D - 47. Douglas's June 24, 2008 email;  
15 D - 48. Phillips December 15, 2008 email to Rindlaub;  
16 D - 49. MOD Stock Ownership Tables;  
17 D - 50. License Agreement Phillips & Anythingbox, Inc. April 25, 2008;  
18 D - 51. Pop Media Joint Consent of Directors & Shareholders;  
19 D - 52. Independent Contractor Service Agreement with Meteor June 3, 2008;  
20 D - 53. Email From M. Phillips to Wallace Re Companies & Nominees October  
21 9, 2007;  
22 D - 54. Email from B. Bromfield July 27, 2007;  
23 D - 55. Email from A. AuYeung August 26, 2007;  
24 D - 56. Email from A. Bay November 08, 2007;  
25 D - 57. Email from M. Phillips January 25, 2008;  
26 D - 58. Email from M. Phillips January 26, 2008;  
27 D - 59. Email from M. Phillips February 12, 2008;  
28

1 D - 60. Email from M. Phillips March 3, 2008;  
2 D - 61. Email from M. Phillips April 2, 2008;  
3  
4 D - 62. Email from M. Phillips April 2, 2008;  
5 D - 63. Email to B. Bromfield April 4, 2008;  
6 D - 64. Email from M. Phillips April 29, 2008;  
7 D - 65. Email from B. Bromfield May 28, 2008;  
8 D - 66. Email from B. Bromfield May 29, 2008;  
9 D - 67. Email from L. Calcano May 29, 2008;  
10 D - 68. Email from B. Bromfield May 31, 2008;  
11 D - 69. Email from B. Bromfield June 2, 2008;  
12 D - 70. Email from L. Calcano June 12, 2008;  
13 D - 71. Email from A. Bay June 5, 2008;  
14 D - 72. Email from A. Bay June 22, 2008;  
15 D - 73. Email from M. Phillips to Wallace February 18, 2009;  
16 D - 74. September 24, 2008 Schedule of Exceptions;  
17 D - 75. December 15, 2009 Lane Powell Letter;  
18 D - 76. December 18, 2008 email from Wallace;  
19 D - 77. DRC Report;  
20 D - 78. DRC's preliminary summary and detailed findings;  
21 D - 79. June 13, 2007 email from Phillips to Wallace;  
22 D - 80. KPMG Report;  
23 D - 81. March 29, 2007 email from Phillips to Wallace;  
24 D - 82. October 8, 2007 email from Mark to Jan asking which of Jan's  
25 companies should be identified as Vendor for consulting services;  
26 D - 83. Order on Motion to Revoke Voting Trust;  
27 D - 84. Mako Banana Report 9-17-2009;  
28

1 D - 85. Mako Banana Report 9-17-2009;  
2 D - 86. Mandell Power Point  
3 D - 87. Independent information provided to the IRS DOJ and the SEC.

4

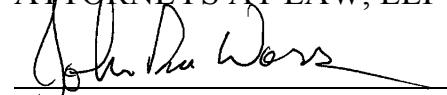
5 DATED this 9th day of February, 2011.

6 Respectfully submitted,

7

8 NEWMAN & NEWMAN,  
9 ATTORNEYS AT LAW, LLP

10 By:

11   
John Du Wors, WSBA No. 33987

12 *duwors@newmanlaw.com*

13 Derek Linke, WSBA No. 38314

14 *linke@newmanlaw.com*

15 Derek A. Newman, WSBA No. 26967

16 *derek@newmanlaw.com*

17 1201 Third Avenue, Suite 1600

18 Seattle, Washington 98101

19 Telephone: (206) 274-2800

20 Facsimile: (206) 274-2801



## EXHIBIT “J”



1 THE HONORABLE JOHN C. COUGHENOUR  
2  
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4  
5  
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9

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Case Number: 2:10-CR-00269-JCC

12 Plaintiff,

13 v.

14 MARK E. PHILLIPS,

15 Defendant.

16 **DECLARATION OF KENNETH  
GORDON IN SUPPORT OF PHILLIPS'  
MOTION UNDER F.R.C.P. RULE 33**

17  
18 I, Kenneth Gordon, hereby declare as follows:

19 1. I was the Vice President of Finance and Operations for MOD from 2005 to 2008. I  
20 have personal knowledge of the facts contained in this declaration and if called as a  
21 witness, would competently testify thereto.

22 2. I set up the accounting system and designated the accounts inputted into  
23 Quickbooks that recorded the finances and financial transactions of MOD during that  
24 time period.

25  
26 **DECLARATION OF KENNETH GORDON IN  
SUPPORT OF PHILLIPS' MOTION UNDER F.R.C.P. RULE 33— 1**  
27 UNITED STATES v. MARK E. PHILLIPS  
28

1 3. I shared an office with Mr. Phillips and personally observed or heard the facts  
2 outlined in this declaration.

3 4. I was aware that Jan Wallace was performing consulting services for Mr. Phillips  
4 in 2007. I was aware that Ms. Wallace was introducing Mr. Phillips to potential  
5 investors for MOD and MetaWallet.

6 5. I personally sent corporate by laws, resolutions, and board minutes to Mr.  
7 Phillips for Ms. Wallace on several occasions for her review and opinions.

8 6. On September 2, 2007, Ms. Wallace sent me a memorandum identifying a list of  
9 documents that she wanted me to send her. A true and correct copy of the  
10 memorandum is attached hereto as "Exhibit A."

11 7. I was not surprised when Mr. Phillips instructed me to send money to Ms.  
12 Wallace as payment for her services. He had been talking to me for some time about  
13 having to pay Ms. Wallace for her work in 2007; but did not want to pay her the amount  
14 she demanded and wanted to couple the payment with a contract for her services.

15 8. When David Douglass was hired as the Chief Financial Officer of MOD, he took  
16 over all responsibilities for all financial transactions of MOD; including the Quickbooks  
17 accounting records.

18 9. Mr. Douglass was instrumental in preparing MOD for the financial portion of the  
19 due diligence performed prior to the Toshiba Series A financing. Mr. Douglass was  
20 hired as the CFO on June 3, 2008.

21 10. After Mr. Douglass became MOD CFO, I had a specific conversation with him  
22 about Ms. Wallace work with MOD Systems. Mr. Douglass was told who Jan Wallace  
23 was, why she and her expenses were paid. I received an e-mail requesting more  
24 information about her, which I responded verbally to him, after asking Mr. Phillips. A

25  
26 **DECLARATION OF KENNETH GORDON IN**  
27 **SUPPORT OF PHILLIPS' MOTION UNDER F.R.C.P. RULE 33—2**  
28 **UNITED STATES v. MARK E. PHILLIPS**

1 true and correct copy of the e-mail communication is attached hereto as "Exhibit B and  
2 C." I knew that payments to the attorney Holman Cahill were to Jan Wallace because  
3 she was involved in a lawsuit and she asked to be paid this way.

4 The conversation with Mr. Douglass took place long before the Demand Review  
5 Committee in February 2009.

6 I declare under penalty of perjury under the laws of the State of Washington that  
7 the foregoing is true and correct to the best of my knowledge.

8 Executed this 25 day of March, 2013, at Seattle, Washington.



9  
10 Kenn Gordon  
11  
12 Declarant  
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**DECLARATION OF KENNETH GORDON IN  
SUPPORT OF PHILLIPS' MOTION UNDER F.R.C.P. RULE 33— 3  
UNITED STATES v. MARK E. PHILLIPS**



## EXHIBIT “A”



---

**From:** Jan Wallace [janwallace@att.net]  
**Sent:** Sunday, September 02, 2007 7:42 PM  
**To:** Kenn A. Gordon  
**Subject:** meta wallet

Hi ken

I'm almost hoping you don't see this e-mail, because it means you're resting. It sounds like all the hard work for you guys are really going to pay off you should be proud and I'm very proud of mark. I spoke with mark while he was in Venice and he told me to contact you concerning information pertaining to metawallet. We discussed re-newing the plan of taking the company public, either thru a reverse merger (purchasing a "shel" on OTC.BB) or filing an SB2 to file small-cap, my preference being the latter.

I have reviewed the documents that mark sent on march 29<sup>th</sup> they are dated to 06, my requests would start with:  
-an up date on the subscription as to content and dollar value or any additional information that is pertinent  
-current financials and there status as auditble  
-prior capital infusions and related debt or equity instruments  
- change in bylaws and board positions  
-new business  
Value of the assets

As I go through the information it will more than likely require more input to create the capital formation. I am cognoscente that your work load is critical and directed to MOD, therefore please let me know what works for you as to communication flow.

I am trying to arrange a surprise for marks birthday will you be able to show up within 24 hours notice. Don't let him know In 3 weeks the weather will be beautiful her until end of May, if you need a break, you have an open invitation

Cheers

jan



## EXHIBIT "B"



## **Kenneth Gordon**

---

**From:** Mark E. Phillips  
**Sent:** Wednesday, June 18, 2008 9:58 AM  
**To:** Kenn A. Gordon  
**Subject:** RE: Invoices - RE: Jan Wallace?

Jan has been helping with getting a new board member and general board issues. She introduced me to Scott Lipsky and is doing so for the SEC attorney who I am considering presenting to the board. Therefore, I have accepted paying her expenses since we don't have a formal contract for services, which considering the relationship I am sensitive to. Is this ok? I would prefer to refer to Jan as a consultant that has been helping with fund raising, board members, and advice.

-----Original Message-----

From: Kenn A. Gordon  
Sent: Wednesday, June 18, 2008 9:32 AM  
To: Mark E. Phillips  
Subject: FW: Invoices - RE: Jan Wallace?

Mark, are you booking Jan's travel through MOD? Why is their a flight booking in here for Adam?

.....  
Kenn Gordon | VP Finance & Operations MOD SYSTEMS | [modsystems.com](http://modsystems.com) M 206.240.8028  
T 206.973.1098 F 206.374.2718 E [kenng@modsystems.com](mailto:kenng@modsystems.com)

.....  
This electronic message transmission contains information which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.  
If you have received this electronic transmission in error, please contact [erroremail@modsystems.com](mailto:erroremail@modsystems.com) or call 206-973-1036.

-----Original Message-----

From: David Douglass  
Sent: Wednesday, June 18, 2008 8:14 AM  
To: Kenn A. Gordon  
Subject: FW: Invoices - RE: Jan Wallace?

Kenn,  
Who is Jan Wallace?  
David

-----Original Message-----

From: Cheryl Gradwohl  
Sent: Wednesday, June 18, 2008 8:10 AM  
To: David Douglass  
Subject: FW: Invoices

The invoice for Wallace for travel is being paid on the MOD centurion card and I am not sure she is doing business for the company, Durr is an employee and usually travels to the Best Buy Stores.

Please let me know how you want to handle this.

Thx

Cheryl

-----Original Message-----

From: Kimberley Turnbull [<mailto:kimberley.turnbull@us.fcm.travel>]

Sent: Tuesday, June 17, 2008 9:17 PM

To: Rachel Huffman

Cc: Cheryl Gradwohl

Subject: Invoices

Hi Rachel,

Here are a couple of invoices from Monday and Tuesday.

;-)

Kimberley

Kimberley Turnbull | Account Manager | FCm Travel Solutions | 500 Union St, Unit #435 Seattle WA 98101 | (T) 206-903-0750 | (T) 866-318-5314 | (F) 206-903-0787 | Emergency Assistance 206-313-1908 | [kimberley.turnbull@us.fcm.travel](mailto:kimberley.turnbull@us.fcm.travel)

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This email is intended only to be read or used by the addressee. It is confidential and may contain legally privileged information. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not copy or deliver this message to anyone, and you should destroy this message and kindly notify the sender by reply email. Confidentiality and legal privilege are not waived or lost by reason of mistaken delivery to you.

## EXHIBIT “C”



## Kenneth Gordon

---

**From:** David Douglass  
**Sent:** Wednesday, June 18, 2008 8:14 AM  
**To:** Kenn A. Gordon  
**Subject:** FW: Invoices - RE: Jan Wallace?  
**Attachments:** Invoice - MOD - Wallace 18jun08 sealax.pdf; Invoice - MOD - Durr 22jun8 sealas.pdf

Kenn,  
Who is Jan Wallace?  
David

-----Original Message-----

From: Cheryl Gradwohl  
Sent: Wednesday, June 18, 2008 8:10 AM  
To: David Douglass  
Subject: FW: Invoices

The invoice for Wallace for travel is being paid on the MOD centurion card and I am not sure she is doing business for the company, Durr is an employee and usually travels to the Best Buy Stores.

Please let me know how you want to handle this.

Thx  
Cheryl

-----Original Message-----

From: Kimberley Turnbull [<mailto:kimberley.turnbull@us.fcm.travel>]  
Sent: Tuesday, June 17, 2008 9:17 PM  
To: Rachel Huffman  
Cc: Cheryl Gradwohl  
Subject: Invoices

Hi Rachel,

Here are a couple of invoices from Monday and Tuesday.

;-)  
Kimberley

Kimberley Turnbull | Account Manager | FCm Travel Solutions | 500 Union St, Unit #435 Seattle WA 98101 | (T) 206-903-0750 | (T) 866-318-5314 | (F) 206-903-0787 | Emergency Assistance 206-313-1908 | [kimberley.turnbull@us.fcm.travel](mailto:kimberley.turnbull@us.fcm.travel)

---

This email is intended only to be read or used by the addressee. It is confidential and may contain legally privileged information. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not copy or deliver this message to anyone, and you should destroy this message and kindly notify the sender by reply email. Confidentiality and legal privilege are not

waived or lost by reason of mistaken delivery to you.

## EXHIBIT “K”



**Subject:** FW: Final Agreement for Meteor / Jan Jardin

**Date:** Thursday, August 14, 2008 6:53:38 PM Pacific Daylight Time

**From:** David Douglass </O=DOTCORPORATE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DAVIDD>

**To:** Mark E. Phillips <markp@modsystems.com>

**Priority:** High

Mark,

Here is the Jan agreement I sent you yesterday morning. ☺

dmd

---

**From:** David Douglass

**Sent:** Wednesday, August 13, 2008 9:15 AM

**To:** Mark E. Phillips

**Cc:** Kenn A. Gordon

**Subject:** Final Agreement for Meteor / Jan Jardin

**Importance:** High

Mark,

Attached is the final version of the agreement we discussed yesterday for Meteor / Jan Jardin. Please have Jan sign. Also, please ask Jan to submit a revised invoice (just one invoice) for the \$50,000 that requests \$25K be paid to Meteor and \$25K be paid to Holman Cahill Garrett. The ICA allows for this.

The file is at \\Dotshare\mod\Corporate\Legal\Contracts\Jan Jardin\_Meteor International Group Corporation.

dmd

---

David M. Douglass | VP - Chief Financial Officer

MOD SYSTEMS | modsystems.com

M 206.664.1133 T 206.973.1036 x563 F 206.374.2718 E [davidd@modsystems.com](mailto:davidd@modsystems.com)

---

**Subject:** Final Agreement for Meteor / Jan Jardin

**Date:** Wednesday, August 13, 2008 9:14:35 AM Pacific Daylight Time

**From:** David Douglass </O=DOTCORPORATE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DAVIDD>

**To:** Mark E. Phillips <markp@modsystems.com>

**CC:** Kenn A. Gordon <kenng@modsystems.com>

**Priority:** High

Mark,

Attached is the final version of the agreement we discussed yesterday for Meteor / Jan Jardin. Please have Jan sign. Also, please ask Jan to submit a revised invoice (just one invoice) for the \$50,000 that requests \$25K be paid to Meteor and \$25K be paid to Holman Cahill Garrett. The ICA allows for this.

The file is at \\Dotshare\mod\Corporate\Legal\Contracts\Jan Jardin\_Meteor International Group Corporation.

dmd

---

David M. Douglass | VP - Chief Financial Officer  
MOD SYSTEMS | modsystems.com  
M 206.664.1133 T 206.973.1036 x563 F 206.374.2718 E [davidd@modsystems.com](mailto:davidd@modsystems.com)

---

720 3<sup>rd</sup> Ave #1100  
Seattle, WA 98104  
+1(206)973-1036

INDEPENDENT CONTRACTOR SERVICES AGREEMENT  
(between MOD and Meteor International Group Corporation)

This Agreement is made and entered into, as of June 3, 2008 ("Effective Date"), by and between MOD Systems, Inc ("Company"), having a principal place of business at 720 Third Avenue, Suite 1100, Seattle, WA 98104, and Meteor International Group Corporation ("Meteor"), a(n)  individual,  partnership,  limited liability partnership,  corporation,  limited liability company (check the appropriate box) of the state of NA, having a principal place of business at Amsterdam, Netherlands ("Contractor").

**1. Engagement of Services.** Company may issue Project Assignments to Contractor in the form attached to this Agreement as Exhibit A (Project Assignment). A Project Assignment will become binding when both parties have signed it and once signed, Contractor will be obligated to provide the services as specified in such Project Assignment. The terms of this Agreement will govern all Project Assignments and services undertaken by Contractor for Company. Contractor will not subcontract or otherwise delegate performance of any work to third parties ("Subcontractors") without, in each instance, first executing an agreement with each Subcontractor that contains (a) confidentiality provisions substantially similar to Contractor's confidentiality obligations under this Agreement, and (b) intellectual property rights provisions that, among other things, assign all Company Innovations (defined below) resulting from such Subcontractor's work to Contractor. Company will have the right to approve the form of such confidentiality and assignment agreements between Contractor and Subcontractors, or to provide its own form of agreement for execution by Subcontractors. Upon request by Company, Contractor will provide copies of all confidentiality and proprietary rights assignment agreements executed by Subcontractors performing services for Company's benefit.

**2. Compensation; Timing.** Company will pay Contractor the fee set forth in each Project Assignment for the services provided as specified in such Project Assignment. If provided for in the Project Assignment, Company will reimburse Contractor's expenses no later than thirty (30) days after Company's receipt of Contractor's invoice, provided that reimbursement for expenses may be delayed until such time as Contractor has furnished reasonable documentation for authorized expenses as Company may reasonably request. Upon termination of this Agreement for any reason, Contractor will be (a) paid fees on the basis stated in the Project Assignment(s) and (b) reimbursed only for expenses that are incurred prior to termination of this Agreement and which are either expressly identified in a Project Assignment or approved in advance in writing by an authorized Company manager.

**3. Independent Contractor Relationship.** Contractor's relationship with Company is that of an independent contractor, and nothing in this Agreement is intended to, or will be construed to, create a partnership, agency, joint venture, employment or similar relationship. Contractor will not be entitled to any of the benefits that Company may make available to its employees, including, but not limited to, group health or life insurance, profit sharing or retirement benefits. Contractor is not authorized to make any representation, contract or commitment on behalf of Company unless specifically requested or authorized in writing to do so by a Company manager. Contractor is solely responsible for, and will file, on a timely basis, all tax returns and payments required to be filed with, or made to, any federal, state or local tax authority with respect to the performance of services and receipt of fees under this Agreement. Contractor is solely responsible for, and must maintain adequate records of, expenses incurred in the course of performing services under this Agreement. No part of Contractor's compensation will be subject to withholding by Company for the payment of any social security, federal, state or any other employee payroll taxes. Company will regularly report amounts paid to Contractor by filing Form 1099 MISC with the Internal Revenue Service as required by law.

**4. Disclosure and Assignment of Work Resulting from Project Assignments.**

**"Innovations" and "Company Innovations" Definitions.** "Innovations" means all discoveries, designs, developments, improvements, inventions (whether or not protectable under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protectable under copyright laws), trade secrets, know-how, ideas (whether or not protectable under trade secret laws), mask works, trademarks, service marks, trade names and trade dress. "Company Innovations" means innovations that Contractor, solely or jointly with others, conceives, develops or reduces to practice related to any Project Assignment.

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1

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MOD\_ARB0003215

United States v. Mark E. Phillips  
CR10-269JCC  
Plaintiff's Exhibit No. 308  
Admitted \_\_\_\_\_

MOD-DOJ 007107

PHILLIPS0033485

308.001

## Independent Contractor Services Agreement

**Disclosure and Assignment of Company Innovations.** Contractor agrees to maintain adequate and current records of all Company Innovations, which records will be and remain the property of Company. Contractor agrees to promptly disclose and describe to Company all Company Innovations. Contractor hereby does and will assign to Company or Company's designee all of Contractor's right, title and interest in and to any and all Company Innovations and all associated records. To the extent any of the rights, title and interest in and to Company Innovations cannot be assigned by Contractor to Company, Contractor hereby grants to Company an exclusive, royalty-free, transferable, irrevocable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to practice such non-assignable rights, title and interest. To the extent any of the rights, title and interest in and to the Company Innovations can neither be assigned nor licensed by Contractor to Company, Contractor hereby irrevocably waives and agrees never to assert such non-assignable and non-licensable rights, title and interest against Company or any of Company's successors in interest.

**Assistance.** Contractor agrees to perform, during and after the term of this Agreement, all acts that Company deems necessary or desirable to permit and assist Company, at its expense, in obtaining, perfecting and enforcing the full benefits, enjoyment, rights and title throughout the world in the Company Innovations as provided to Company under this Agreement. If Company is unable for any reason to secure Contractor's signature to any document required to file, prosecute, register or memorialize the assignment of any rights under any Company Innovations as provided under this Agreement, Contractor hereby irrevocably designates and appoints Company and Company's duly authorized officers and agents as Contractor's agents and attorneys-in-fact to act for and on Contractor's behalf and instead of Contractor to take all lawfully permitted acts to further the filing, prosecution, registration, memorialization of assignment, issuance and enforcement of rights under such Company Innovations, all with the same legal force and effect as if executed by Contractor. The foregoing is deemed a power coupled with an interest and is irrevocable.

**Out-of-Scope Innovations.** If Contractor incorporates or permits to be incorporated any Innovations relating in any way, at the time of conception, reduction to practice, creation, derivation, development or making of such Innovation, to Company's business or actual or demonstrably anticipated research or development but which were conceived, reduced to practice, created, derived, developed or made by Contractor (solely or jointly) either unrelated to Contractor's work for Company under this Agreement or prior to the Effective Date (collectively, the "Out-of-Scope Innovations") into any of the Company Innovations, then Contractor hereby grants to Company and Company's designees a non-exclusive, royalty-free, irrevocable, worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) to practice all patent, copyright, moral right, mask work, trade secret and other intellectual property rights relating to such Out-of-Scope Innovations. Notwithstanding the foregoing, Contractor agrees that Contractor will not incorporate, or permit to be incorporated, any Innovations conceived, reduced to practice, created, derived, developed or made by others or any Out-of-Scope Innovations into any Company Innovations without Company's prior written consent.

### 5. Confidentiality.

**Definition of Confidential Information.** "Confidential Information" means (a) any technical and non-technical information related to the Company's business and current, future and proposed products and services of Company, including for example and without limitation, Company Innovations, Company Property (as defined in Section 6 ("Ownership and Return of Confidential Information and Company Property")), and Company's information concerning research, development, design details and specifications, financial information, procurement requirements, engineering and manufacturing information, customer lists, business forecasts, sales information and marketing plans and (b) any information that may be made known to Contractor and that Company has received from others that Company is obligated to treat as confidential or proprietary.

**Nondisclosure and Nonuse Obligations.** Except as permitted in this Section, Contractor will not use, disseminate or in any way disclose the Confidential Information. Contractor may use the Confidential Information solely to perform Project Assignment(s) for the benefit of Company. Contractor will treat all Confidential Information with the same degree of care as Contractor accords to Contractor's own confidential information, but in no case will Contractor use less than reasonable care. If Contractor is not an individual, Contractor will disclose Confidential Information only to those of Contractor's employees who have a need to know such information. Contractor certifies that each such employee will have agreed, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions at least as protective as those terms and conditions applicable to Contractor under this Agreement. Contractor will immediately give notice to Company of any unauthorized use or disclosure of the Confidential Information.

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MOD\_ARB0003216

MOD-DOJ 007108

PHILLIPS0033486

308.002

## Independent Contractor Services Agreement

Contractor will assist Company in remediying any such unauthorized use or disclosure of the Confidential Information. Contractor agrees not to communicate any information to Company in violation of the proprietary rights of any third party.

**Exclusions from Nondisclosure and Nonuse Obligations.** Contractor's obligations under Section 5 (Nondisclosure and Nonuse Obligations) will not apply to any Confidential Information that Contractor can demonstrate (a) was in the public domain at or subsequent to the time such Confidential Information was communicated to Contractor by Company through no fault of Contractor; (b) was rightfully in Contractor's possession free of any obligation of confidence at or subsequent to the time such Confidential Information was communicated to Contractor by Company; or (c) was developed by employees of Contractor independently of and without reference to any Confidential Information communicated to Contractor by Company. A disclosure of any Confidential Information by Contractor (i) in response to a valid order by a court or other governmental body or (ii) as otherwise required by law will not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that Contractor will provide prompt prior written notice thereof to Company to enable Company to seek a protective order or otherwise prevent such disclosure.

**6. Ownership and Return of Confidential Information and Company Property.** All Confidential Information and any materials (including, without limitation, documents, drawings, papers, diskettes, tapes, models, apparatus, sketches, designs and lists) furnished to Contractor by Company, whether delivered to Contractor by Company or made by Contractor in the performance of services under this Agreement and whether or not they contain or disclose Confidential Information (collectively, the "Company Property"), are the sole and exclusive property of Company or Company's suppliers or customers. Contractor agrees to keep all Company Property at Contractor's premises unless otherwise permitted in writing by Company. Within five (5) days after any request by Company, Contractor will destroy or deliver to Company, at Company's option, (a) all Company Property and (b) all materials in Contractor's possession or control that contain or disclose any Confidential Information. Contractor will provide Company a written certification of Contractor's compliance with Contractor's obligations under this Section.

**7. Observance of Company Rules.** At all times while on Company's premises, Contractor will observe Company's rules and regulations with respect to conduct, health, safety and protection of persons and property.

**8. No Conflict of Interest.** During the term of this Agreement, Contractor will not accept work, enter into a contract or accept an obligation inconsistent or incompatible with Contractor's obligations, or the scope of services to be rendered for Company, under this Agreement. Contractor warrants that, to the best of Contractor's knowledge, there is no other existing contract or duty on Contractor's part that conflicts with or is inconsistent with this Agreement. Contractor agrees to indemnify Company from any and all loss or liability incurred by reason of the alleged breach by Contractor of any services agreement with any third party.

### **9. Term and Termination.**

**Term.** This Agreement is effective as of the Effective Date set forth above and will terminate in two (2) years unless terminated earlier as set forth below.

**Termination by Company.** Company may terminate this Agreement without cause at any time, with termination effective fifteen (15) days after Company's delivery to Contractor of written notice of termination. Company also may terminate this Agreement (a) immediately upon Contractor's breach of Section 4 (Disclosure and Assignment of Work Resulting from Project Assignments), 5 (Confidentiality) or 10 (Noninterference with Business), or (b) immediately for a material breach by Contractor if Contractor's material breach of any other provision under this Agreement or obligation under a Project Assignment is not cured within ten (10) days after the date of Company's written notice of breach.

**Termination by Contractor.** Contractor may terminate this Agreement without cause at any time, with termination effective fifteen (15) days after Contractor's delivery to Company of written notice of termination. Contractor also may terminate this Agreement immediately for a material breach by Company if Company's material breach of any provision of this Agreement is not cured within ten (10) days after the date of Contractor's written notice of breach.

**Effect of Expiration or Termination.** Upon expiration or termination of this Agreement, Company will pay Contractor for services performed under this Agreement as set forth in each then pending Project Assignment(s). The definitions contained in this Agreement and the rights and obligations contained in this Section and Sections 4 (Disclosure and

## Independent Contractor Services Agreement

Assignment of Work Resulting from Project Assignments), 5 (Confidentiality), 6 (Ownership and Return of Confidential Information and Company Property), 10 (Noninterference with Business) and 11 (General Provisions) will survive any termination or expiration of this Agreement.

**10. Noninterference with Business.** During this Agreement, and for a period of two (2) years immediately following the termination or expiration of this Agreement, Contractor agrees not to solicit or induce any employee or independent contractor to terminate or breach an employment, contractual or other relationship with Company.

### 11. General Provisions.

**Successors and Assigns.** Contractor may not subcontract or otherwise delegate Contractor's obligations under this Agreement without Company's prior written consent. Subject to the foregoing, this Agreement will be for the benefit of Company's successors and assigns, and will be binding on Contractor's assignees.

**Injunctive Relief.** Contractor's obligations under this Agreement are of a unique character that gives them particular value; Contractor's breach of any of such obligations will result in irreparable and continuing damage to Company for which money damages are insufficient, and Company will be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including money damages if appropriate).

**Notices.** Any notice required or permitted by this Agreement will be in writing and will be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when actually delivered; (b) by overnight courier, upon written verification of receipt; (c) by facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice will be sent to the addresses set forth above or to such other address as either party may provide in writing.

**Governing Law; Forum.** This Agreement will be governed in all respects by the laws of the United States of America and by the laws of the State of Washington, as such laws are applied to agreements entered into and to be performed entirely within Washington between Washington residents. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in King County, Washington, as applicable, for any matter arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of such federal or state courts located in King County, Washington, such personal jurisdiction will be nonexclusive.

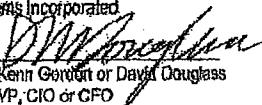
**Severability.** If a court of law holds any provision of this Agreement to be illegal, invalid or unenforceable, (a) that provision will be deemed amended to achieve an economic effect that is as near as possible to that provided by the original provision and (b) the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby.

**Waiver; Modification.** If Company waives any term, provision or Contractor's breach of this Agreement, such waiver will not be effective unless it is in writing and signed by Company. No waiver by a party of a breach of this Agreement will constitute a waiver of any other or subsequent breach by Contractor. This Agreement may be modified only by mutual written agreement of authorized representatives of the parties.

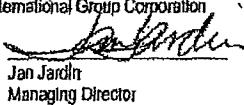
**Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or contemporaneous agreements concerning such subject matter, written or oral.

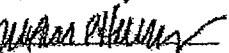
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

MOD Systems Incorporated

Signed:   
Name: Kenn Gordan or David Douglass  
Title: VP, CIO or CFO

Meteor International Group Corporation

Signed:   
Name: Jan Jardin  
Title: Managing Director

Signed: 

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4

MOD\_ARB0003218

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MOD-DOJ 007110

PHILLIPS0033488

308.004

Independent Contractor Services Agreement

Name: Authorization by Mark Phillips  
Title: CEO

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5

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MOD\_ARB0003219

MOD-DOJ 007111

PHILLIPS0033489

308.005

# Independent Contractor Services Agreement

## EXHIBIT A PROJECT ASSIGNMENT

| Services  | Milestones |
|---|------------|
| 1. Development of financial relationships   |            |
| 2. Introduction to all financial investment groups either individual groups or capital          |            |
| 3. Aid to review all presentation materials for story telling, brevity and color                |            |
| 4. Corporate Governance and aid regarding any board matters, legal matters, corporate structure |            |
| 5. <b>Executive coaching</b>  |            |
| 6. Liaison between any party and any matter that the CEO requests.                              |            |

### Acceptance Criteria

1. All contacts, meeting dates, and discussions are recorded in an agenda book.
2. All invoices are submitted first to the CEO to be reviewed and 1 week to discuss any differences of opinions.

### Payment of Fees: Fees will be (CHECK ONE):

A fixed price for completion of project assignment(s): \$15,000-25,000/month/  
NOT to exceed \$250,000 per year without approval of Board of Directors

Based on a rate \$1,000 per day

Other as follows (describe payment): Fees associated with travelling, if not booked through the company, equipment as authorized, phone charges, transportation, lodging, any materials printed or developed for MOD, gifts or customary cards for etiquette, subject to submission of adequate receipts.

Payment will be made via wire or check to:  
ING BANK N.V., AMSTERDAM, NETHERLAND  
Swift Address: INGBNL2A  
Account No: 50914375  
Banking: ING ASIA PRIVATE BANK LIMITED  
Swift Code: INSPSGGG  
Message: Attn: Iey Ling / Pearl Lim  
For account: 102880  
Beneficiary's name: Metvor International Group Corporation

### OR to another entity or attorney for remittance as requested

If either party for any reason terminates this Project Assignment or the Independent Contractor Services Agreement that governs it, fees will be paid based on:

Contractor time spent.  
 The proportion of the deliverables furnished Company, as determined by Company.  
 Other, as follows (describe payment): time spent and finalization for any expenses required to settle engagement. Termination of the Agreement without cause by the Company prior to June 3, 2003 will result in a \$50,000 payment to Metvor International Group Corporation, payable in 3 equal monthly installments beginning 30 days from the date of termination in exchange for a general and unconditional release, from Metvor and Jan Jardim as an individual, satisfactory to the Company.

Expenses: Company will reimburse Contractor for the following expenses incurred in connection with this Project Assignment upon receipt of proper documentation of those expenses from Contractor (describe expenses):

## Independent Contractor Services Agreement

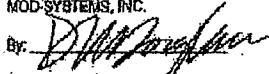
1. Parking, hotel accommodations—not to exceed \$1,000 per day
2. Travel—to be arranged by the company

Some travel arrangements may have company operate and manage expenses, therefore a per diem fee may be provided without reimbursement, all per diem invoices must have specific day approvals.

NOTE: This Project Assignment is governed by the terms of an Independent Contractor Services Agreement in effect between Company and Contractor. Any item in this Project Assignment that is inconsistent with such agreement is invalid.

IN WITNESS WHEREOF, the parties have executed this Project Assignment as of the later date below.

MOD-SYSTEMS, INC.

By: 

Name: Karen Gordon or David Douglass  
Title: VP, CIO/CFO  
Date: 9-01-08

Meteur International Group Corporation

By: 

Name: Jan Jardin  
Title: Managing Director  
Date: \_\_\_\_\_

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**CONFIDENTIAL**

**MOD\_ARB0003221**

**MOD-DOJ 007113**

**PHILLIPS0033491**

**308.007**

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Created: Wednesday, August 13, 2008 9:07 AM

Modified: Wednesday, August 13, 2008 9:07 AM

Printed: Tuesday, June 3, 2008 2:11 PM

Last saved by: davidd

Revision number: 3

Total editing time: 0 Minutes

Statistics:

| Statistic name            | Value |
|---------------------------|-------|
| Characters (with spaces): | 23036 |
| Characters:               | 19699 |
| Words:                    | 3354  |
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| Pages:                    | 6     |

Cancel

OK

## EXHIBIT "L"



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA, )  
Plaintiff, ) NO. CR10-269JCC  
v. ) SEATTLE, WASHINGTON  
MARK E. PHILLIPS, ) February 24, 2011  
Defendant. ) TRIAL - DAY 7

VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE JOHN C. COUGHENOUR  
UNITED STATES DISTRICT JUDGE

## APPEARANCES:

For the Plaintiff: MR. ARAVIND SWAMINATHAN  
MR. MATTHEW DIGGS

For the Defendant: MR. JOHN DU WORS  
MR. PETER MAIR

Reported by: Kari McGrath, CCR, RMR, CRR  
Federal Court Reporter  
206.370.8509  
kari\_mcgrath@wawd.uscourts.gov

Proceedings recorded by mechanical stenography, transcript produced by Reporter on computer.

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1 A No.

2 Q And when was the first time you learned about Exhibit 144?

3 A During my work for the DRC, probably in the January,  
4 February time frame of 2009.

5 Q Take a look at Exhibit 182.

6 MR. SWAMINATHAN: Which has been admitted, your  
7 Honor.

8 Q Mr. Douglass, you are familiar with Exhibit 182?

9 A Yes.

10 Q This is an invoice for W. Black Services?

11 A Yes.

12 Q Did Mr. Phillips tell you about the existence of Exhibit  
13 182 in June of 2008?

14 A No.

15 Q Did he ever show you this invoice for W. Black Consulting  
16 Services in June of 2008?

17 A No.

18 Q Did he ever provide you with this invoice for W. Black  
19 Consulting Services in June of 2008?

20 A No.

21 Q Did Mr. Phillips ever tell you that Jan Wallace had no  
22 ability to generate her own invoices in June of 2008?

23 A No.

24 Q Did Mr. Phillips ever tell you that Jan Wallace wanted  
25 invoices to her company to be changed to W. Black from

1 Wallace Black in June of 2008?

2 | A No.

3 Q Did Mr. Phillips ever tell you that \$100,000 that went to  
4 Holman Cahill should be booked to him as a personal expense?

5 A No.

## 6 | Q As a bonus?

7 | A No.

8 Q How about for personal executive coaching?

9 | A No.

10 Q Did he ever tell you that the \$100,000 should be booked to  
11 him personally, for convenience?

12 A No.

13 Q Was the \$100,000 that went to Holman Cahill disclosed to  
14 PricewaterhouseCoopers during their due diligence review?

15 A Not that I'm aware of.

16 Q Did you talk to Mr. Phillips around this time about  
17 payment that had gone to the Holman Cahill account?

18 A No, I don't believe so.

19 Q When did you first discover that \$100,000 had gone to the  
20 Holman Cahill trust account?

21 | A During the DRC review, in early 2009.

22 Q Did Mr. Phillips tell you that he wanted to retain Jan  
23 Wallace as a consultant to provide services to MOD in June of  
24 2008?

25 A Yes.

## C E R T I F I C A T E

I, Kari McGrath, CCR, CRR, RMR, Official Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

9 I further certify that thereafter, I have caused  
10 said stenographic notes to be transcribed under my direction  
11 and that the foregoing pages are a true and accurate  
12 transcription to the best of my ability.

/S/ KARI MCGRATH

Kari McGrath, CCR, CRR, RMR  
Official Court Reporter



## EXHIBIT "M"



- 1 -

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 02/24/2011

DAVID DOUGLASS, white male, [REDACTED]

[REDACTED] was interviewed. Also attending were Assistant United States Attorneys (AUSAs) Aravind Swaminathan and Matthew Diggs, Internal Revenue Service Criminal Investigation Special Agent Benjamin George, and United States Postal Inspection Service Inspector Amy Kerkoff.

DOUGLASS was asked the following questions regarding his work as the Chief Financial Officer (CFO) of MOD Systems Incorporated (MOD).

DOUGLASS was asked if, in June of 2008, MARK PHILLIPS gave him the invoices which requested payment for services provided by W Black (the W Black invoices).

DOUGLASS replied, "No."

DOUGLASS was asked if PHILLIPS showed the W Black invoices to him in June of 2008.

DOUGLASS replied, "No."

DOUGLASS was asked if PHILLIPS told him in June of 2008 that JAN WALLACE could not generate invoices.

DOUGLASS replied, "No."

DOUGLASS was asked if PHILLIPS told him, in June of 2008, that WALLACE asked for the invoices to be changed from Wallace Black to W Black.

DOUGLASS replied, "No."

DOUGLASS was asked if, in June of 2008, PHILLIPS instructed him to record the transactions documenting the transfer of \$100,000 to the law firm Holman Cahill (the Holman Cahill transactions) in MOD's accounting records as personal to PHILLIPS.

DOUGLASS replied, "Absolutely not."

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Investigation on 02/24/2011 at Seattle, Washington (telephonically)

File # 318A-SE-96305 Date dictated N/A

by SA Spencer B. Walker

318A-SE-96305

Continuation of FD-302 of David Douglass, On 02/24/2011, Page 2

DOUGLASS was asked if, in June of 2008, PHILLIPS instructed him to record the Holman Cahill transactions in MOD's accounting records as a bonus to PHILLIPS.

DOUGLASS replied, "No. Definitely Not."

DOUGLASS was asked if, in June of 2008, PHILLIPS told him that the Holman Cahill transactions were to pay for personal executive coaching.

DOUGLASS replied, "No."

DOUGLASS was asked if PHILLIPS ever told him that the Holman Cahill transactions should be booked to the due from Phillips account. DOUGLASS was also asked if PHILLIPS said that he (PHILLIPS) would pay the money back to MOD.

DOUGLASS replied, "No."

The first time DOUGLASS heard the name JAN WALLACE was in July or August of 2008, when discussion arose regarding the Meteor consulting agreement.

All the discussions about WALLACE were prospective from July or August of 2008. DOUGLASS told PHILLIPS that a contract needed to be put in place.

The first time DOUGLASS saw a W Black invoice was in conjunction with his work for the Demand Review Committee.

DOUGLASS stated that, had there been discussion between he and PHILLIPS regarding the recording of the Holman Cahill transactions, "my records would have been papered with it and my entries would have reflected that."

Regarding the notion that PHILLIPS had asked DOUGLASS, in June of 2008, to classify the entries surrounding the Holman Cahill transactions as personal to PHILLIPS, DOUGLASS replied,

"That's unadulterated bull-shit."

The Holman Cahill transactions were never discussed with PricewaterhouseCoopers.

## EXHIBIT “N”



From: John Du Wors <John@newmanlaw.com>  
Subject: HPV Patent litigation  
Date: April 10, 2011 11:43:07 AM PDT  
To: "steves1@mac.com" <steves1@mac.com>



Dear Steve,

The purpose of this email is to outline our strategy in monetizing the buffering and playlist patents Hunts Point Ventures purchased from Mark Phillips. Our strategy is to replicate the experience we have had enforcing a patent for another client, Essassociate, over the past year and a half. Essassociate holds a patent for certain internet marketing technology that, like the buffering and playlist patents, became the technological norm for every participant in the industry. We have obtained settlements for Essassociate over the last 18 months totaling approximately \$1,500,000.

The key to our success in the Essassociate litigation has been keeping our settlement demands lower than the amount a defendant would likely spend litigating a patent through trial. All of the Essassociate defendants have paid a settlement between \$75,000 and \$250,000, except one very large defendant which paid us \$550,000. The average cost of defending a patent infringement case through discovery is \$300,000; through claim construction is \$500; and through trial is \$800,000. The Essassociate defendants settled irrespective of whether they thought they could win on the issue of infringement or patent validity, simply because it was economically efficient to do so.

HPV's buffering and playlist patents appear to cover all portable video and audio players distributed until 2009, and some distributed after. On Monday, we will file an action for infringement of the buffering and playlist patents against Digecore, which distributes the portable media players offered to customers on most commercial airlines. We will file our action in the Western District of Wisconsin, which has the fastest patent docket in the country, with cases going to trial typically within nine months of filing. We believe the incredible pace toward trial will cause Digecore to settle in the \$250,000 range within a few short months of filing.

Shortly thereafter, we will file another action in the Eastern District of Texas, naming five separate defendants. These defendants will be distributors of the lower priced portable digital media players in Walmart, Target and Radio Shack. The Eastern district of Texas is the most patent-plaintiff-friendly venue in the country, and although it does not bring cases to trial as quickly as the Western District of Wisconsin, it is known for issuing the highest patent infringement awards in the country. The overall purpose of this strategy is to bring an immediate cash infusion to HPV to provide a return to the HPV investors who facilitated HPV's acquisition of the buffering and play list patents, followed by a steady stream of seed income in the low seven figure range over the following 12 months.

The one risk to be aware of is the possibility of reexamination of the buffering and playlist patents. Reexamination is a proceeding whereby the United States Patent and Trademark Office reviews a patent at the request of a defendant who submits prior art they claim anticipates (and therefore invalidates) the patent being reexamined. Some courts will stay a lawsuit pending a reexamination proceeding, however this is statistically less likely in the Western District of Wisconsin and the Eastern District of Texas. The cost of a good reexamination petition is \$100,000, and the best way to avoid one is to settle for \$150,000 when one is threatened.

We anticipate having selected our 5 Eastern District of Texas defendants within the next 14 days, and filing shortly thereafter. Please let me know if you have any other questions.

Very truly yours,

John Du Wors

## EXHIBIT “O”



**HUNTS POINT VENTURES, INC.**

**JOINT CONSENT IN LIEU**  
**OF**  
**SPECIAL MEETING OF BOARD OF DIRECTORS AND SHAREHOLDERS**

Pursuant to the Washington Business Corporation Act, the undersigned, being (i) the sole director of Hunts Point Ventures, Inc., a Washington corporation (the “**Corporation**”), and (ii) all of the shareholders of the Corporation, waiving all notices required by the Washington Business Corporation Act, by this instrument in lieu of an special meeting of the Board of Directors of the Corporation (the “**Board**”) and the shareholders of the Corporation, hereby consent to the adoption of the following resolutions and direct the secretary of the Corporation to include a copy of this consent in the minute books of the Corporation:

**Resignation of Joyce Schweickert as Director and Officer**

WHEREAS, Joyce Schweickert has resigned as Vice President and as a director of the Corporation, effective as of May 17, 2010

RESOLVED, that the resignation of Joyce Schweickert is hereby accepted.

**Articles of Amendment – Board Approval and Recommendation to Shareholders**

RESOLVED, that the Board hereby adopts and approves the Articles of Amendment of the Corporation, substantially in the form attached hereto as Exhibit A; and

RESOLVED, that the Board hereby recommends that the shareholders of the Corporation approve the Articles of Amendment; and

FURTHER RESOLVED, that, subject to the approval of the shareholders of the Corporation, the President of the Corporation is hereby directed to file the Articles of Amendment with the Secretary of State of the State of Washington.

**Articles of Amendment – Shareholder Approval**

RESOLVED, that the shareholders hereby adopt and approve the Articles of Amendment of the Corporation.

## **Number of Directors; Vacancies**

RESOLVED, that the Board hereby sets the number of directors of the Corporation at five (5) directors; and

RESOLVED, that the Board hereby appoints the following individuals to fill two (2) of the vacancies on the Board until his or her respective successor is appointed and qualified or his earlier resignation, death or removal:

Chad Rudkin  
[Mark Phillips or Designee]

## **Appointment of Officers**

RESOLVED, that the following persons are appointed to the office appearing opposite their respective names, each to serve until his respective successor is appointed and qualified or his earlier resignation, death or removal:

Executive Vice President and Chief Technology Officer  
Executive Vice President and Chief Operations Officer

Mark Phillips  
Chad Rudkin

## **Sale and Issuance of Common Stock**

RESOLVED, that the officers of the Company are, and each of them is, authorized and directed, on behalf of the Company, to sell and issue the number of shares of its Common Stock and for the consideration as set forth opposite each person's name, which the Board has determined in good faith is adequate, as identified in the table below:

| Name              | Number of Shares                | Consideration |
|-------------------|---------------------------------|---------------|
| Steve Schweickert | 9,200 – Voting Common Stock     | \$9,200       |
| Mark Phillips     | 9,200 – Voting Common Stock     | \$9,200       |
| Chad Rudkin       | 9,200 – Voting Common Stock     | \$9,200       |
| Joyce Schweickert | 4,000 – Non-Voting Common Stock | \$4,000       |

FURTHER RESOLVED, that the form terms and conditions of the Stock Subscription Agreement, substantially in the form attached hereto as Exhibit B, is hereby authorized and approved;

FURTHER RESOLVED, the Company's officers are authorized and directed to issue and deliver a certificate for such shares to that subscriber and such shares of Common Stock shall be duly and validly issued, fully paid and nonassessable;

FURTHER RESOLVED, that the shares of Common Stock authorized to be sold and issued by the Company shall be offered and sold in accordance with the terms of the exemption

from qualification provided by applicable state securities laws and Section 4(2) of the Securities Act of 1933, as amended; and

FURTHER RESOLVED, that the officers of the Company are, and each of them is, authorized and directed, for and on behalf of the Company, to take such further action and execute such additional documents as each may deem necessary or appropriate to carry out the purposes of the above resolutions.

### **Cancellation of Initial Issuance of Common Stock**

RESOLVED, that the previous subscriptions for 50 shares of Common Stock of the Corporation by each of Steve Schweickert and Joyce Schweickert are hereby cancelled and revoked, effective as of the date following the date of the effectiveness of this written consent;

RESOLVED, that the shareholders hereby consent to the cancellation of such previous subscriptions and acknowledge and agree that such subscriptions will be replaced by the subscriptions contemplated by this written consent.

### **Omnibus Resolutions**

RESOLVED, that the officers of the Corporation be, and they hereby individually are, authorized and empowered on behalf of the Corporation to do and perform all such further acts and things and to execute and deliver all such further agreements, documents, notices, certificates, schedules, exhibits, contracts, notes, instruments or other papers, and to make all such payments as they may in their sole and absolute discretion deem necessary or appropriate to carry out, comply with and effectuate the purposes and intent of the foregoing resolutions and the transactions contemplated thereby (the execution by such officer or officers of any such instrument or document or the doing by him or them of any act in connection with the foregoing matters to establish conclusively his or their authority therefore from this Corporation and the approval and ratification by this Board of the instruments and documents so executed and the actions so taken); and

FURTHER RESOLVED, that all acts of any officer of the Corporation heretofore taken in connection with the transactions contemplated by the foregoing resolutions be, and they hereby are, in all respects, approved, adopted and ratified in all respects.

**[Remainder of Page Intentionally Left Blank; Signature Page Follows]**

This written consent may be signed in counterparts, including by facsimile transmission, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same document.

**SOLE DIRECTOR:**

---

STEVE SCHWEICKERT

Dated: May \_\_\_, 2010

**SHAREHOLDERS:**

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STEVE SCHWEICKERT

Dated: May \_\_\_, 2010

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JOYCE SCHWEICKERT

Dated: May \_\_\_, 2010

**EXHIBIT A**  
**ARTICLES OF AMENDMENT**

**EXHIBIT B**  
**FORM OF STOCK SUBSCRIPTION AGREEMENT**

## EXHIBIT "P"



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA, )  
Plaintiff, ) NO. CR10-269JCC  
v. ) SEATTLE, WASHINGTON  
MARK E. PHILLIPS, ) February 24, 2011  
Defendant. ) TRIAL - DAY 7

VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE JOHN C. COUGHENOUR  
UNITED STATES DISTRICT JUDGE

## APPEARANCES:

For the Plaintiff: MR. ARAVIND SWAMINATHAN  
MR. MATTHEW DIGGS

For the Defendant: MR. JOHN DU WORS  
MR. PETER MAIR

Reported by: Kari McGrath, CCR, RMR, CRR  
Federal Court Reporter  
206.370.8509  
kari\_mcgrath@wawd.uscourts.gov

Proceedings recorded by mechanical stenography, transcript produced by Reporter on computer.

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1 MR. DU WORS: Permission to publish?

2 THE COURT: Yes.

3 BY MR. DU WORS:

4 Q What is going on in this e-mail, Mark Phillips?

5 A I had spoken to Mr. Douglass and explained the prior  
6 payment to Ms. Wallace and provided him with the  
7 documentation. And we agreed that the payments to her would  
8 be booked to me as a personal bonus of \$100,000 and added to  
9 my compensation and that he would then execute an independent  
10 consulting agreement between the company and Ms. Wallace and  
11 expects that invoices in the future would be provided by her  
12 directly.

13 Q Thank you. Mr. Phillips, can I please direct your  
14 attention to Exhibit D50, in the black binders in front of  
15 you and also on the screen in front of you. Do you recognize  
16 this agreement, or do you recognize this document?

17 A Yes.

18 Q What is this document?

19 A This is a licensing agreement between myself and Anything  
20 Box.

21 Q What is the date of the document?

22 A April 25, 2008.

23 MR. DU WORS: Defense moves to admit Exhibit D50 into  
24 evidence.

25 MR. SWAMINATHAN: Objection, your Honor. This isn't

1 signed.

2 THE COURT: Sustained.

3 BY MR. DU WORS:

4 Q Mr. Phillips, may I direct your attention to Exhibit D57,  
5 in the black binders in front of you and also on the screen  
6 in front of you. Do you recognize this document?

7 A Yes, I do.

8 Q How do you recognize this document?

9 A It's an e-mail.

10 Q Who are the parties to the e-mail?

11 A Myself, Mr. Bromfield, Mr. Bay.

12 Q And what is the date?

13 A January 25th.

14 Q And without recounting the content, what's the general  
15 subject matter?

16 A This was discussing how to describe the Anything Box  
17 transaction. And I was providing other options to simplify  
18 the transaction.

19 MR. DU WORS: Defense moves to admit D57 into  
20 evidence.

21 MR. SWAMINATHAN: No objection.

22 THE COURT: Admitted.

23 (Exhibit(s) D27 admitted.)

24 MR. DU WORS: Permission to publish, your Honor?

25 THE COURT: Yes.

## C E R T I F I C A T E

I, Kari McGrath, CCR, CRR, RMR, Official Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

9 I further certify that thereafter, I have caused  
10 said stenographic notes to be transcribed under my direction  
11 and that the foregoing pages are a true and accurate  
12 transcription to the best of my ability.

/S/ KARI McGRATH

Kari McGrath, CCR, CRR, RMR  
Official Court Reporter



## LICENSE AGREEMENT

This License Agreement ("Agreement") is made and entered into as of April 25th, 2008 ("Effective Date") by and between Mark E. Phillips, an individual citizen of the State of Washington with a mailing address of 2801 First Avenue, #1104, Seattle, WA 98121 ("Phillips"), and Anything Box, Inc., a Washington corporation with a principal place of business at 720 Third Avenue, Suite 1100, Seattle, Washington 98104 ("ABI").

WHEREAS, Phillips and ABI wish to enter an agreement by which ABI will obtain from Phillips certain rights Phillips Intellectual Property, as more particularly set forth herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be bound hereby agree as follows:

### 1. DEFINITIONS.

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

1.1. **"After-developed Property"** shall mean any and all intellectual property developed by or on behalf of ABI, or any licensee of ABI, before or after the Effective Date that is an idea, invention, or improvement, or a derivative work, or confidential information of, relating to, and/or resulting from access to Phillips Intellectual Property or New Phillips Intellectual Property.

1.2. **"Confidential Information"** means all non-public information, whether in oral, written or other tangible or intangible form, that Phillips designates as being confidential or which, under the circumstances surrounding disclosure, ABI knows or has reason to know should be treated as confidential, including, without limitation, the terms and conditions of this Agreement. Notwithstanding the foregoing, Confidential Information does not include information that ABI can establish by reasonable documentation: (i) is or becomes generally available to the public other than (a) as a result of a disclosure by ABI or its employees/agents or any other person who directly or indirectly receives such information from ABI or its employees/agents or (b) in violation of a confidentiality obligation to the disclosing party known to ABI; (ii) is or becomes available to the receiving party on a non-confidential basis from a third party which is entitled to disclose it to ABI; or (iii) was developed by employees/agents of ABI independently of, and without reference to, any information communicated to ABI by Phillips. The Phillips Intellectual Property and New Phillips Intellectual Property are Confidential Information of Phillips, except to the extent they may be excluded by the preceding sentence.

1.3. **"Field of Use"** shall mean the development and commercialization of (i) MOD Enterprise Software for the delivery of digital products and services at physical retail point of sale; (ii) portable media devices (including smart devices) that are specifically marketed as compatible with MOD Enterprise Software for use in connection with the storage and use by consumers of digital products and services; and (iii) cable television set-top boxes that are specifically marketed as compatible with MOD Enterprise Software for use in connection with the storage and use by consumers of digital products and services. The Field of Use does not include any direct-to-consumer businesses, such as the provision of digital products or services to consumers.

1.4. **"Licensed Product"** shall mean any product or service that exploits any Phillips Intellectual Property or New Phillips Intellectual Property in a manner authorized by this Agreement.

1.5. **"MOD Enterprise Software"** shall mean the MOD System 3.0 enterprise software and any successor software agreed by the parties.

1.6. **"New Phillips Intellectual Property"** shall mean any intellectual property developed or acquired by Phillips that Phillips and ABI wish to add to the portfolio of intellectual property licensable by ABI hereunder. New Phillips Intellectual Property may include documentation and confidential information. The parties may from time to time add New Phillips Intellectual Property to this Agreement and shall identify such New Phillips Intellectual Property on Exhibit B.

1.7. **"Phillips Intellectual Property"** shall mean (i) that intellectual property of Phillips identified in

Exhibit A, including all worldwide rights in such property, and any documentation related thereto that is provided to ABI by Phillips, (ii) all rights in After-developed Property, and (iii) all confidential information disclosed by Phillips to ABI hereunder.

## 2. LICENSE GRANT

2.1. License to ABI. Subject to all the terms and conditions of this Agreement, Phillips hereby grants to ABI an exclusive, worldwide, sub-licensable, royalty-bearing license (i) to exploit all rights included within the Phillips Intellectual Property and the New Phillips Intellectual Property within the Field of Use, and (ii) to develop After-developed Property and thereafter to exploit it pursuant to the terms of this Agreement. ABI shall cause any sublicensee exercising any right under or through this Agreement to comply with the terms and conditions of this Agreement, and in so doing, ABI shall at all times remain fully accountable for the actions and inactions of its sublicensees. ABI is not authorized to grant a sublicense to any party that will not or cannot comply with the terms and conditions of this Agreement, and any purported sublicense to such a party shall be void ab initio.

2.2. Savings Clause. For the avoidance of doubt, Phillips does not grant to ABI hereunder a license to any intellectual property that is licensed exclusively by Phillips to MOD Systems, Inc. pursuant to the License Agreement between them dated \_\_\_\_\_.

2.3. Grantback to Phillips. Subject to all the terms and conditions of this Agreement, ABI hereby assigns to Phillips all right, title, and interest in and to After-developed Property, subject only to the license granted to ABI by Phillips pursuant to paragraph 2.1. ABI shall execute all papers and perform all lawful acts requested by Phillips to effect such assignment and to secure, perfect, and enforce such rights; ABI appoints Phillips its attorney-in-fact to execute any such papers and perform any such acts if ABI fails to do so after reasonable notice from Phillips. To the extent permitted by law, After-developed Property shall be deemed a work made for hire by ABI (or its sublicensee) for Phillips. To the extent After-developed Property is not capable of being a work made for hire, the assignment provisions of this paragraph shall apply.

2.4. Implied Licenses. The only licenses granted in this Agreement are the licenses expressly set forth in paragraphs 2.1 and 2.3. There are no implied licenses under this Agreement.

2.5. Indemnification. ABI shall indemnify, defend, and hold Phillips harmless from and against any claim that arises from or relates to any sublicense granted by or any business activity of ABI.

## 3. ROYALTIES AND OTHER PAYMENTS

3.1. Initial Payment. ABI shall within thirty (30) days of the Effective Date pay to Phillips one million five hundred thousand dollars (\$1,500,000) in consideration of Phillips entering this Agreement. In addition, the parties contemplates that ABI will acquire and shall thereafter promptly convey to Phillips common stock of MOD Systems, Inc. equal to an undiluted ten percent (10%) share of ownership of such entity.

3.2. Royalties for Licensed Products. ABI shall pay royalties to Phillips for the licenses granted in paragraph 2.1. The royalties shall total three million five hundred thousand dollars (\$3,500,000) and shall be payable in annual installments of five hundred thousand dollars (\$500,000) due on each anniversary of the Effective Date, with a final payment in the amount of one million five hundred dollars (\$1,500,000) payable in 2012. Notwithstanding the foregoing, ABI may elect to forego making a royalty payment due under this paragraph 3.2 in any annual period that ABI is not profitable. In determining profitability, the parties shall rely on the opinion of an independent certified public accountant chosen by Phillips (and subject to reasonable approval by ABI), applying Generally Accepted Accounting Principles or such other accounting system as the parties may agree. If ABI elects to forego making a royalty payment pursuant to this paragraph 3.2, the license granted in paragraph 2.1 shall become non-exclusive.

3.3. Payments and Reports. All payments due pursuant to paragraph 3.2 shall be paid by ABI to Phillips annually within thirty (30) days after the anniversary of the Effective Date, unless the parties agree otherwise. If ABI wishes to be excused from making a payment due under paragraph 3.2 due to its failure to make a profit during the pertinent period, it shall in lieu of payment provide a report to Phillips that includes the information necessary to enable Phillips to verify that ABI did not make a profit.

#### 4. RECORDS

4.1. Retaining Records. ABI shall keep for at least three (3) years after each payment required to be made hereunder sufficient books and records to enable Phillips conveniently to verify the proper payment of all amounts due hereunder. Such books and records shall be kept at ABI's primary place of business.

4.2. Right to Review Records. Phillips shall have the right, at his own expense, not more than once per calendar year, to examine and audit the relevant books and records kept by ABI pursuant to paragraph 4.1 above. Phillips shall exercise this right only during reasonable business hours and shall provide reasonable notice of his intention to conduct such examination or audit. ABI shall make available to Phillips all facilities reasonably necessary to enable the examination or audit. If any examination or audit shows that ABI elected to forego royalty payments in a year in which it was profitable, ABI shall immediately pay to Phillips the royalty due, interest, and all reasonable expenses incurred by Phillips in connection with the examination or audit.

#### 5. OWNERSHIP; COOPERATION

5.1. Ownership. Title to and full ownership of the After-developed Intellectual Property, the Phillips Intellectual Property, and the New Phillips Intellectual Property shall be and remain the sole property of Phillips.

5.2. No Challenge. ABI shall not challenge or assist another in challenging the validity or enforceability of any of the Phillips Intellectual Property or the New Phillips Intellectual Property. If ABI challenges or assists another in challenging the validity or enforceability of any of the Phillips Intellectual Property or the New Phillips Intellectual Property and if this prohibition in the preceding sentence is deemed unenforceable by a court of competent jurisdiction, the Agreement shall continue in force but the royalty rate provided for in paragraph 3.2 shall become five million dollars (\$5,000,000), payable in annual installments of one million dollars (\$1,000,000) with a final payment of two million dollars (\$2,000,000), retroactive to the Effective Date.

5.3. Enforcement. Phillips shall have the sole right, but no obligation, to pursue any infringement of the Phillips Intellectual Property and the New Phillips Intellectual Property, to defend any challenge to the validity or enforceability of them, and to enter any settlements, judgments or other arrangements in respect of them. Phillips shall not, without the prior written consent of ABI, enter a settlement or consent to a judgment that comprises an admission of liability of ABI.

5.4. Assistance. Each party shall cooperate fully with the other in a party's efforts to procure, perfect, and enforce any rights within the Phillips Intellectual Property and the New Phillips Intellectual Property.

#### 6. TERM AND TERMINATION

6.1. Term. The term of this Agreement shall commence on the Effective Date and continue for so long as Phillips owns protectable rights in the Phillips Intellectual Property and the New Phillips Intellectual Property.

6.2. Notice of Material Breach or Default. If a party commits a material breach in the performance of any of its obligations under this Agreement, the other party may give the breaching party written notice of the material breach and its intention to terminate either the licenses granted to the breaching party under this Agreement or the entire Agreement (at the non-breaching party's sole discretion) if the material breach is not cured within thirty (30) days (or such later date as may be specified in writing by the other party). If such breach is not cured within such period, the licenses granted to the breaching party under this Agreement or the entire Agreement, as determined by the non-breaching party in its sole discretion, shall terminate upon the expiration of such period. Any failure by a party to pay timely to the other party any amounts owing under this Agreement will constitute a material breach of this Agreement.

6.3. Accelerated Notice and Termination. Notwithstanding the notice provisions of paragraph 6.2, if a party commits a material breach in the performance of any of its obligations under this Agreement and such material breach is not susceptible of cure, the other party may terminate the breaching party's license rights under this

Agreement or the entire Agreement (at the non-breaching party's sole discretion) effective immediately upon written notice to the breaching party.

6.4. **Post-Termination Obligations.** Upon termination by Phillips pursuant to paragraph 6.2 or 6.3 of (a) the licenses granted to ABI under this Agreement or (b) this entire Agreement, all licenses granted herein to ABI and its sublicensees shall immediately terminate and ABI shall promptly deliver to Phillips all Confidential Information and all documents and other records that contain Confidential Information. For this avoidance of doubt, this obligation expressly includes all tangible embodiments of Phillips Intellectual Property and New Phillips Intellectual Property, whether or not then listed on Exhibits A and B, such as source code, projects, and code groupings. Within fifteen (15) days of termination, ABI shall verify in writing to Phillips that it has complied with the requirements of this paragraph.

6.5. **Termination for Convenience.** ABI may terminate this Agreement upon thirty (30) days written notice to Phillips, but all unmet obligations of ABI accrued during the term of the Agreement shall continue.

6.6. **Termination for Bankruptcy.** If during the term of this Agreement, ABI becomes insolvent or bankrupt, makes an assignment for the benefits of its creditors, or a trustee or receiver of ABI or of all or a substantial part of its property is appointed, or any case or proceeding commences or other action is taken by or against ABI in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up arrangement, composition, or readjustment of its debts, or any other relief under any bankruptcy, insolvency, reorganization, or other similar act or law of any jurisdiction now or hereafter in effect, ABI shall immediately notify Phillips in writing, and Phillips shall have the right, but not the obligation, to terminate this Agreement immediately by giving written notice to ABI. Notwithstanding anything to the contrary, the parties agree that Confidential Information shall not come within the definition of "intellectual property" in 11 U.S.C. § 101 and shall not be subject to 11 U.S.C. § 365(n).

6.7. **Survival.** The following provisions shall survive termination of this Agreement: Section 1, paragraph 2.3, paragraph 2.5 (as to any claim arising during the term of this Agreement or in connection with a sublicense granted or business activity performed during the term of this Agreement), and Sections 3 through 9.

## 7. WARRANTIES AND DISCLAIMERS

7.1. **Mutual Warranties.** Each party represents and warrants to the other that (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

7.2. **Disclaimer.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 7, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. PHILLIPS EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. THE INTELLECTUAL PROPERTY AND MATERIALS LICENSED AND PROVIDED HEREUNDER ARE PROVIDED AS-IS. PHILLIPS DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF ANY INTELLECTUAL PROPERTY AND MATERIALS LICENSED AND PROVIDED HEREUNDER. PHILLIPS DOES NOT WARRANT THAT ANY INTELLECTUAL PROPERTY AND MATERIALS LICENSED AND PROVIDED HEREUNDER ARE ERROR-FREE OR THAT OPERATION OR USE OF THEM WILL BE SECURE OR UNINTERRUPTED. ABI DOES NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF PHILLIPS TO ANY THIRD PARTY.

7.3. **Disclaimer of Consequential Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR A BREACH OF SECTIONS 5 OR 8, NEITHER PARTY SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF A PARTY IS APPRISED OF

THE LIKELIHOOD OF SUCH DAMAGES. THIS PARAGRAPH SHALL NOT EFFECT ANY OBLIGATION TO INDEMNIFY UNDER THIS AGREEMENT.

7.4. Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE TERMS OFFERED BY THE PARTIES AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THE WARRANTIES IN THIS AGREEMENT HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

#### 8. CONFIDENTIALITY

8.1. Nondisclosure and Non-use. ABI acknowledges that, in the course of performance of this Agreement, it may obtain the Confidential Information. ABI shall, at all times both during the Agreement term and thereafter, keep in confidence all of the Confidential Information received by it, using at least as great a degree of care as it uses to maintain the confidentiality of its own confidential information of a similar nature, but in no event using less than a reasonable degree of care. ABI shall not use the Confidential Information other than as expressly permitted under the terms of this Agreement. ABI shall not disclose Confidential Information to any third party other than its officers, employees and consultants who need access to such Confidential Information in order to effect the intent of this Agreement and who have entered into confidentiality agreements which protect the Confidential Information sufficient to enable ABI to comply with this Section.

8.2. Return of Materials. Upon the termination of this Agreement and as set forth in paragraph 6.4, ABI shall deliver to Phillips the all Confidential Information that it may have in its possession or control.

8.3. Records and Audit. During the term of this Agreement and for three (3) years thereafter, ABI shall keep current, complete, and accurate records regarding its reproduction, distribution, and use of Confidential Information. Phillips shall have the right, not more than once per calendar year, to examine and audit such records. Phillips shall exercise this right only during reasonable business hours of the other and shall provide reasonable notice of his intention to conduct such audit. Phillips may conduct any such audit with the assistance of an appropriate professional but shall procure from such professional an undertaking to hold all information derived from the audit confidential. ABI shall make available to Phillips all facilities reasonably necessary to enable the audit.

#### 9. GENERAL

9.1. Relationship. Each party hereto shall be and act as an independent contractor (and not as the agent or representative of the other) in the performance of this Agreement. This Agreement shall not be interpreted or construed as creating or evidencing any association, joint venture, partnership, or franchise between the parties. Neither party may represent to anyone that it is an agent of the other party or is otherwise authorized to bind or commit the other party in any way without such party's prior written consent.

9.2. Equitable Remedies. Subject to the terms of this Agreement, each party agrees that the other party, without prejudice to any rights to judicial relief it may otherwise have, shall be entitled to seek equitable relief, including injunction, in the event of any breach of the provisions of this Agreement. Each party further agrees that the other party shall not oppose the granting of such relief on the basis that the other party has an adequate remedy at law. Each party also agrees that it will not seek and agrees to waive any requirement for the securing or posting of a bond in connection with the other party's seeking or obtaining such relief.

9.3. Assignment. ABI may not assign or transfer this Agreement, whether by deed of assignment; by merger, consolidation, or sale of the company; or otherwise. Notwithstanding the foregoing, ABI may assign this Agreement in its entirety to MOD Systems, Inc. if ABI is acquired by MOD Systems, Inc. within twelve (12) months of the Effective Date. Any other purported assignment or transfer by ABI shall be void ab initio.

9.4. Notices. Any notice required or permitted to be given in accordance with this Agreement shall be effective if it is in writing and sent by hand or by internationally recognized overnight courier (e.g. FedEx, DHL).

postage prepaid, to the appropriate party at the address first set forth above. Either party may change its address for receipt of notice by notice to the other party in accordance with this paragraph. Notices are deemed given upon delivery by hand or one business day following pick-up by courier.

9.5. Governing Law. This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington, without reference to its choice of law rules.

9.6. Waiver. The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement shall not be a waiver of such party's right to demand strict compliance in the future, nor shall the same be construed as a novation of this Agreement.

9.7. Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement shall remain in full force and effect.

9.8. Counterparts. This Agreement may be executed in any number of identical counterparts, notwithstanding that the parties have not signed the same counterpart, with the same effect as if the parties had signed the same document. All counterparts shall be construed as and constitute one and the same agreement. This Agreement may also be executed and delivered by facsimile and such execution and delivery shall have the same force and effect of an original document with original signatures.

9.9. Entire Agreement. This Agreement, including all exhibits, is the final and complete expression of the agreement between the parties regarding the subject matter hereof. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement. No usage of trade or other regular practice or method of dealing between the parties shall be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on its behalf by a duly authorized representative as of the Effective Date.

Mark E. Phillips

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

Date: \_\_\_\_\_

Anything Box, Inc.

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

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

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

Date: \_\_\_\_\_

**EXHIBIT A**

**Philips Intellectual Property**

|  |   |
|--|---|
| <p><b>Intellectual Property Licensed to the Company ("Company Licensed IP"):</b></p> | <p><b>Patent Applications:</b></p> <ul style="list-style-type: none"><li>• 35073,001, 09/975,748<br/>(System and Method for Musical Playlist Selection in a Portable Audio Device)</li><li>• 35073,002, 09/975,749<br/>(System and Method For Data Transfer Optimization In A Portable Audio Device)</li><li>• 35073,003, 09/975,736<br/>(System and Method for Mapping Interface Functionality to Codec Functionality in a Portable Audio Device)</li><li>• 35073,004, 10/039,908<br/>(System and Method For Playlist Completion in A Portable Audio Device)</li></ul> <p><b>Philips Patent Valuation</b></p> <p><b>Source Code Projects or Code Groupings:</b></p> <ul style="list-style-type: none"><li>• Iomega Media Player – Clik &amp; IBM microdrive audio media player</li><li>• Fulplay Digital Jukebox – audio encoder and decoder HDD, CD-R, network, library management, disk management, UPnP, content UX, HTTP UX</li><li>• Fulplay MMC Ijam Flash Media Player – MMC dual audio player, USB</li><li>• Fulplay Dharma reference design system – system audio and video hardware and software reference SDK local, spinning, flash, network media playback</li><li>• Fulplay Cirrus reference board media player</li><li>• Fulplay Media Library Manager – desktop UPnP media library player, content jukebox, and streaming host</li><li>• Network TCP/IP, Memory file systems, Cache OS systems, UX framework, FLASH 16/32 FTL</li><li>• Symmetrical MPEG3 codec, WMA framework handler, AAC, ACELP, Lossless, Ogg – source code</li><li>• Codec Manager input / output filter system – audio video media chaining system</li><li>• Embedded media database scheme – content metadata processing, look-up, sorting and media library storage system – in memory, serialization</li><li>• eCos framework and device drivers for ARM7, ARM9, memory manager, caching, network</li><li>• Dynamic and inline sample rate conversion, ASM FFT, DCT, IDCT optimization source and binary</li><li>• File System, FAT 12, 16, 32, ISO, chkdsk and various embedded file level management tools</li></ul> <p>Documentation, specifications: Fulplay directory of all copyright material from 1998-2002 of all product development, product specifications, processes, RFP, Contract, and protocol descriptions. Hardware designs, Hardware schematics<br/>Mechanical designs, Mechanical CAD drawings</p> <p><b>Excluded for the license are components or tools used to develop software:</b><br/>3rd party tools and Phillips owned tools for code generation and factoring:</p> <ol style="list-style-type: none"><li>1) GCC compiler</li><li>2) Windows OS</li><li>3) GNU bin tools</li><li>4) Batch processors</li><li>5) Code Generation for Windows</li><li>6) Convention workflow definition tool</li><li>7) Code count and version trackers</li><li>8) Source control, source comparison</li><li>9) Schema viewer</li><li>10) Any other related development tools which may not be explicitly stated in this agreement.</li></ol> |
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**EXHIBIT B**

**New Phillips Intellectual Property**

[ADD AS NEEDED.]