



## **JURISDICTION AND VENUE**

1. On September 1, 2009 (the “Petition Date”), each of the Debtors filed in this Court a *Voluntary Petition* for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). At all times following the Petition Date, the Debtors have continued in the possession of their assets and in the operation of their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Committee consents to the entry of final orders and judgments by the Court on non-core matters, if any.

## **THE PARTIES**

3. On September 11, 2009, the Office of the United States Trustee appointed the Committee pursuant to Section 1102(a) of the Bankruptcy Code. By order of this Court dated July 14, 2010, the Committee is authorized to initiate and prosecute the claims and causes of action asserted in this adversary proceeding in the name of the Debtors and for the benefit of the Estates.

4. Upon information and belief, Marcello Paladini is a resident of the State of New York. At all times relevant hereto, Paladini was an officer of CD Liquidation, CD Holdings and CD Plus, a shareholder and a director of CD Holdings, and a director of C.P.S. Group, Inc. (the “C.P.S. Group”). Upon information and belief, at all times relevant hereto, Paladini was an insider and/or an affiliate of each and all of the Debtors.

## ALLEGATIONS RELEVANT TO ALL COUNTS

5. At all times relevant hereto, CD Liquidation provided credit card payment processing and related services to merchants nationwide. Through one or more sponsoring banks, merchants would receive payment for goods or services purchased with a credit or debit card, net of certain related interchange fees, dues, assessments and expenses. CD Liquidation was paid a commission and other related fees in connection with each merchant transaction.

6. In order to account for and manage the risk associated with reversed and fraudulent credit card charges, the Debtors maintained certain reserve accounts for risk-identified merchants (the "Reserve Accounts").

7. The Debtors gave the appearance of their ability to maintain their operations, and grow in size, funded primarily by their secured working capital line of credit facilities with borrowing limits totaling approximately \$122 million.

8. Upon information and belief, the Debtors' unstable financial condition and insolvency was further exacerbated by the Paladini's negligent handling of the Reserve Accounts. Upon information and belief, Paladini, by his acts, errors or omissions, caused or permitted CD Liquidation to commingle funds of the Reserve Accounts with the Debtors' operating funds that Paladini, by his acts, errors or omissions, caused or permitted the Debtors to use to fund operating losses. Upon information and belief, Paladini, by his acts, errors or omissions, caused or permitted CD Liquidation to underfund the Reserve Accounts by approximately \$35 million.

9. Upon information and belief, Paladini relied on insufficient, inaccurate, and ineffective financial reporting and control systems in his management of the Debtors' operations. Upon information and belief, prior to the Petition Date, Paladini and the Debtors became aware

of certain internal accounting and financial reporting errors that had the effect of misstating certain of the Debtors' revenues and expenses.

10. At all times relevant hereto, and more specifically from April 16, 2007 to the Petition Date, the Debtors were insolvent as that term is defined by applicable state and federal law. The Debtors also engaged in one or more transactions including, *inter alia*, the Debtors' redemption of John Martillo's ("Martillo") equity interests in C.P.S. Group and CD Holdings, and numerous transfers of the Debtor's property to Paladini, Martillo, Andres Ordonez ("Ordonez") and Gustavo Ceballos ("Ceballos"), for which the Debtors did not receive a reasonably equivalent value, or that otherwise left the Debtors insolvent and/or with an unreasonably small capital.

**The Buyout of Martillo's Equity Interests in C.P.S. Group and CD Holdings**

11. On or about April 16, 2007, Paladini, by his acts, errors or omissions, caused or permitted the C.P.S. Group to redeem a portion of Martillo's interest therein for \$15 million in cash or cash equivalents (the "C.P.S. Buyout").

12. On November 14, 2007, C.P.S. Group merged into CD Liquidation and Paladini, Martillo, Ordonez and Ceballos exchanged their shares of C.P.S. Group for shares of CD Holdings, CD Liquidation's parent corporation.

13. On or about November 15, 2007, Paladini, by his acts, errors or omissions, caused or permitted CD Holdings to redeem Martillo's remaining equity for \$31.5 million in cash or cash equivalents (the "CD Holdings Redemption" and together with the C.P.S Buyout, the "Martillo Equity Buyout").

### **Loans to Paladini**

14. Paladini, by his acts, errors or omissions, caused or permitted the Debtors to make an unsecured loan to Paladini as evidenced by a certain interest bearing promissory note dated November 15, 2007 given to the Debtors by Paladini in the original principal amount of \$7,107,000 (the "Paladini Note"). A copy of the Paladini Note is attached hereto as Exhibit A.

15. Upon information and belief, Paladini does not hold any claims or counterclaims against the Debtors, or any defenses or rights of setoff or recoupment that excuse Paladini from the full and immediate payment of the Paladini Note.

### **Transfers to Martillo**

16. On or about February, 21, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$75,000.00 to or for the benefit of Martillo.

17. On or about March, 14, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$75,000.00 to or for the benefit of Martillo.

18. On or about March 31, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$98,334.00 to or for the benefit of Martillo.

19. On or about March 31, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$75,000.00 to or for the benefit of Martillo.

20. On or about March 31, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$37,487.00 to or for the benefit of Martillo.

21. On or about March 31, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$104,465.00 to or for the benefit of Martillo.

22. On or about April 23, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$15,000.00 to or for the benefit of Martillo.

23. On or about April 24, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$50,000.00 to or for the benefit of Martillo.

24. On or about April 30, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$140,000.00 to or for the benefit of Martillo.

25. On or about October 19, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$126,096.00 to or for the benefit of Martillo.

26. On or about October 22, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$472,107.00 to or for the benefit of Martillo.

27. On or about November 1, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$1,201,592.00 to or for the benefit of Martillo.

28. As a result of the foregoing, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer property of the Debtors, in the aggregate amount of approximately \$2,470,081, to or for the benefit of Martillo (the "Martillo Distributions" and together with the Martillo Equity Buyout, the "Martillo Transfers").

29. The Debtors did not receive a reasonably equivalent value in exchange for any one or all of the Martillo Transfers, and/or the Martillo Transfers otherwise left the Debtors insolvent and/or with an unreasonably small capital.

#### **Transfers to Paladini**

30. On or about March 31, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$98,334.00 to or for the benefit of Paladini.

31. On or about April 23, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$15,000.00 to or for the benefit of Paladini.

32. On or about April 24, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$50,000.00 to or for the benefit of Paladini.

33. On or about October 19, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$174,498.00 to or for the benefit of Paladini.

34. On or about October 19, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$486,662.00 to or for the benefit of Paladini.

35. On or about April 24, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$180,000.00 to or for the benefit of Paladini.

36. On or about April 28, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$462,000.00 to or for the benefit of Paladini.

37. On or about October 10, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$500,000.00 to or for the benefit of Paladini.

38. On or about October 20, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$687,983.00 to or for the benefit of Paladini.

39. On or about November 5, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$585.00 to or for the benefit of Paladini.

40. On or about November 5, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$3,448.00 to or for the benefit of Paladini.

41. On or about November 10, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$1,100.00 to or for the benefit of Paladini.

42. On or about November 13, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$220,000.00 to or for the benefit of Paladini.

43. On or about December 17, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$220,000.00 to or for the benefit of Paladini.

44. On or about December 31, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$40,992.00 to or for the benefit of Paladini.

45. On or about April 21, 2009, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$50,000.00 to or for the benefit of Paladini.

46. On or about April 23, 2009, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$150,000.00 to or for the benefit of Paladini.

47. As a result of the foregoing, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer property of the Debtors to Paladini in the aggregate amount of approximately \$3,340,602 (the "Paladini Distributions").

48. On or about August 8, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer property of the Debtors to Paladini in the form of a bonus in the amount of \$500,000 (the "Paladini Bonus," and together with the Paladini Note, and the Paladini Distributions, the "Paladini Transfers").

49. The Debtors did not receive a reasonably equivalent value in exchange for any one or all of the Paladini Transfers, or the Paladini Transfers otherwise left the Debtors insolvent and/or with an unreasonably small capital.

#### **Transfers to Ordonez**

50. On or about January 12, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$10,000.00 to or for the benefit of Ordonez.

51. On or about March 31, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$38,892.00 to or for the benefit of Ordonez.

52. On or about October 21, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$108,414.00 to or for the benefit of Ordonez.

53. On or about October 24, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$37,845.00 to or for the benefit of Ordonez.

54. On or about October 31, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$10,214.00 to or for the benefit of Ordonez.

55. As a result of the foregoing, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer property of the Debtors to Ordonez totaling approximately \$205,365 (the "Ordonez Transfers").

56. The Debtors did not receive a reasonably equivalent value in exchange for any one or all of the Ordonez Transfers, or the Ordonez Transfers otherwise left the Debtors insolvent and/or with an unreasonably small capital.

#### **Transfers to Ceballos**

57. On or about January 11, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$10,000.00 to or for the benefit of Ceballos.

58. On or about March 15, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$5,300.00 to or for the benefit of Ceballos.

59. On or about March 31, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$38,892.00 to or for the benefit of Ceballos.

60. On or about October 23, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$5,433.00 to or for the benefit of Ceballos.

61. On or about October 23, 2007, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$1,007.00 to or for the benefit of Ceballos.

62. On or about April 21, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$100,000.00 to or for the benefit of Ceballos.

63. On or about April 24, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$20,000.00 to or for the benefit of Ceballos.

64. On or about October 20, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$10,557.00 to or for the benefit of Ceballos.

65. On or about October 22, 2008, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer \$332.00 to or for the benefit of Ceballos.

66. As a result of the foregoing, Paladini, by his acts, errors or omissions, caused or permitted the Debtors to transfer property of the Debtors to Ceballos totaling approximately \$191,521 (the "Ceballos Transfers").

67. The Debtors did not receive a reasonably equivalent value in exchange for any one or all of the Ceballos Transfers, or the Ceballos Transfers otherwise left the Debtors insolvent and/or with an unreasonably small capital.

**COUNT I**  
**Collection on Promissory Note**

68. The Committee repeats and incorporates by reference each and every allegation contained in Paragraphs 1 through 67 above as if fully set forth at length herein.

69. The Paladini Note is immediately due and payable.

70. The Paladini Note is governed by the laws of the State of New York.

71. Paladini is liable to the Estates in the principal amount of \$7,107,000 plus all interest accrued and unpaid interest until the Paladini Note is paid in full.

**COUNT II**  
**11 U.S.C. §§ 548 & 550**

72. The Committee repeats and incorporates by reference each and every allegation contained in Paragraphs 1 through 71 above as if fully set forth at length herein.

73. On or within the two years prior to the Petition Date, the Debtors made the Paladini Transfers to or for the benefit of Paladini.

74. The Debtors received less than reasonably equivalent value in exchange for the Paladini Transfers.

75. The Debtors were insolvent at the time that the Paladini Transfers were made or became insolvent as a result thereof.

76. Upon information and belief, at the time of the Paladini Transfers the Debtors were engaged in a business or transactions, or were about to engage in a business or transactions, for which any property remaining with the Debtors was an unreasonably small capital.

77. Upon information and belief, at the time of the Paladini Transfers the Debtors intended to incur, or believed that the Debtors would incur, debts that would be beyond the Debtors' ability to pay as those debts matured.

78. The Paladini Transfers are avoidable by the Estates.

79. The Committee, acting in the name of and for the benefit of the Estates, is entitled to a judgment avoiding the Paladini Transfers and preserving the same for the benefit of the Estates.

**COUNT III**  
**N.Y. Debt. & Cred. Law §§ 273-a, 274 and 11 U.S.C. § 544**

80. The Committee repeats and incorporates by reference each and every allegation contained in Paragraphs 1 through 79 above as if fully set forth at length herein.

81. The Paladini Transfers were conveyed without fair consideration.

82. The Paladini Transfers were fraudulent as to creditors.

83. The Paladini Transfers may be set aside by the Estates.

84. The Committee, acting in the name of and for the benefit of the Estates, is entitled to a judgment avoiding the Paladini Transfers and preserving the same for the benefit of the Estates.

**COUNT IV**  
**11 U.S.C. § 502(d)**

85. The Committee repeats and incorporates by reference each and every allegation contained in Paragraphs 1 through 84 above as if fully set forth at length herein.

86. The Paladini Transfers are avoidable and recoverable by the Committee, acting in the name of and for the benefit of the Estates.

87. The Committee, acting in the name of and for the benefit of the Estates, is entitled to a judgment and order disallowing any claim asserted by Paladini against the Debtors and their Estates unless and until Paladini pays to the Estates the full amount of any judgment against Paladini.

**COUNT V**  
**Negligent Violation of Del. St. Title 8, §§ 160(a)(1) and 174(a)**

88. The Committee repeats and incorporates by reference each and every allegation contained in Paragraphs 1 through 87 above as if fully set forth at length herein.

89. The Martillo Equity Buyout and the CD Holdings Redemption occurred when the capital of CPS Group or CD Holdings was impaired or caused the impairment of the capital of CD Holdings.

90. At the time of the Martillo Equity Buyout and the CD Holdings Redemption, Paladini was a director of CPS Group or CD Holdings.

91. The Committee, acting in the name of and for the benefit of the Estates, is entitled to a judgment against Paladini for the full amount of the purchase or redemption of Martillo's stock in CPS Group and CD Holdings.

**COUNT VI**  
**Negligent Violation of Del. St. Title 8, §§ 170, 173 and 174(a)**

92. The Committee repeats and incorporates by reference each and every allegation contained in Paragraphs 1 through 91 above as if fully set forth at length herein.

93. The Paladini Transfers, Martillo Transfers, Ceballos Transfers and Ordonez Transfers (the "Insider Transfers") occurred when the capital of C.P.S. Group or CD Holdings was impaired or caused the impairment of the capital of C.P.S. Group or CD Holdings.

94. At the time of the Insider Transfers, Paladini was a director of C.P.S. Group and CD Holdings.

95. The Committee, acting in the name of and for the benefit of the Estates, is entitled to a judgment against Paladini for the full amount of the Insider Transfers.

**COUNT VII**  
**Breach of Fiduciary Duties**

96. The Committee repeats and incorporates by reference each and every allegation contained in Paragraphs 1 through 95 above as if fully set forth at length herein.

97. At all times relevant hereto, Paladini owed the Debtors, *inter alia*, the fiduciary duties of loyalty, care and good faith.

98. The Insider Transfers were made at a time when Paladini knew or reasonably should have known that the Debtors were insolvent.

99. The Insider Transfers were not in the best interests of the Debtors.

100. Paladini breached his fiduciary duties to the Debtors by, *inter alia*, causing or permitting the Debtors to make the Insider Transfers.

101. Paladini breached his fiduciary duties to the Debtors by, *inter alia*, causing or permitting the Debtors to fund operating losses with funds from the Reserve Accounts.

102. Paladini breached his fiduciary duties to the Debtors by, *inter alia*, permitting the implementation and use of, and relying on insufficient, inaccurate, and ineffective financial reporting and control systems in his management of the Debtors.

103. The Committee, acting in the name of and for the benefit of the Estates, is entitled to a judgment against Paladini in an amount of damages to be determined after a trial on the merits.

**COUNT VIII**  
**11 U.S.C. § 510(c)**

104. The Committee repeats and incorporates by reference each and every allegation contained in Paragraphs 1 through 103 above as if fully set forth at length herein.

105. Paladini's acts, errors, omissions, and breaches of his fiduciary duties to the Debtors were inequitable and detrimental to the Debtors.

106. The subordination of Paladini's claims against the Debtors and their Estates to those of the Debtors' unsecured creditors is consistent with the underlying principles of the Bankruptcy Code.

107. The Committee, acting in the name of and for the benefit of the Estates is entitled to judgment against Paladini subordinating any claim against the Debtors and their Estates to those of the Debtors' unsecured creditors.

WHEREFORE, the Committee, acting in the name of and for the benefit of the Estates, demands judgment against Paladini as follows:

i. on Count I of this Complaint, awarding to the Estates their damages under the Paladini Note;

ii. on Count II of this Complaint, avoiding the Paladini Transfers, and recovering and preserving the same for the benefit of the Estates;

iii. on Count III of this Complaint, avoiding the Paladini Transfers, and recovering and preserving the same for the benefit of the Estates;

iv. on Count IV of this Complaint, disallowing the claims of Paladini against the Debtors and their Estates in their entirety;

v. on Count V of this Complaint, awarding to the Estates their damages for the redemption of Martillo's stock in CD Holdings;

vi. on Count VI of this Complaint, awarding to the Estates their damages for the Insider Transfers;

vii. on Count VII of this Complaint, awarding to the Estates their damages for Paladini's breaches of his fiduciary duties;

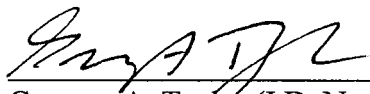
viii. on Count VIII of this Complaint, subordinating any claims of Paladini against the Debtors and their Estates to those of the Debtors' unsecured creditors;

ix. awarding to the Committee its reasonable attorneys' fees and costs incurred in prosecuting this adversary proceeding; and

x. granting to the Committee, in the name of and for the benefit of the Estates, such other and further relief as the Court deems proper and just.

Dated: October 8, 2010

ASHBY & GEDDES, P.A



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- and -

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*Counsel to the Official Committee of Unsecured  
Creditors*

**EXHIBIT A**

## PROMISSORY NOTE

**Principal Amount: \$7,107,000.00**

**Dated: November 15, 2007**

FOR VALUE RECEIVED, Marcelo Paladini ("Borrower") promises to pay in lawful money of the United States of America to the order of CYNERGY DATA, LLC, a Delaware limited liability company ("Cynergy"), at 45 West 36<sup>th</sup> St., 6<sup>th</sup> Floor, New York, NY 10018, or such other place as Cynergy may designate in writing, the principal sum of Seven Million One Hundred Seven Thousand Dollars (\$7,107,000.00), plus interest as hereinafter provided.

The unpaid principal balance of this promissory note ("Note") shall bear interest from the date hereof, computed upon the basis of a year of 365 days for the actual number of days elapsed in a month, at a rate of interest of 4.40% per annum, compounded annually. The entire principal balance of this Note, together with any accrued but unpaid interest, shall become due and payable on the earlier of (a) November 15, 2016; (b) the Borrower's disposition of all of his stock in Cynergy Data Holdings, a Delaware corporation ("Holdings"); and (c) a Change of Control. For the purposes of this Note, a "Change of Control" means: (x) the complete liquidation of Cynergy or the sale of all or substantially all of its assets; (y) the acquisition of more than 80% of the then outstanding capital stock of Cynergy or Holdings by any unaffiliated third party; or (z) any merger or consolidation of Cynergy or Holdings into another entity, such that the holders of the voting capital stock of Cynergy or Holdings, respectively, immediately prior to such merger or consolidation hold (either directly or indirectly) less than 80% of the voting power of the surviving entity.

Each of the following events shall be an "Event of Default": (a) failure to pay any principal or interest payment to Cynergy when due; (b) breach of any covenant, term, condition or agreement stated in this Note; (c) any assignment for the benefit of Borrower's creditors or the filing of any insolvency, liquidation or reorganization proceeding by or against Borrower under the U.S. Bankruptcy Code or otherwise; or (d) the issuance of any attachment, execution, levy, forfeiture, tax lien or similar writ or process against any of Borrower's property.

Upon the occurrence of an Event of Default, the entire unpaid principal balance and all accrued and unpaid interest owing under this Note shall be immediately due and payable.

The indebtedness evidenced by this Note may be prepaid in whole or in part at any time without premium or penalty. All prepayments shall be applied first to satisfy interest accrued to the date of prepayment and then against the unpaid principal balance. Borrower expressly assumes all risks of loss or delay in delivery of any payment made by mail, and no course of conduct or dealing shall affect Borrower's assumption of these risks.

Acceptance by Cynergy of any payment in an amount less than the amount then due shall be deemed an acceptance on account only. Neither the failure of Cynergy to promptly exercise its rights to declare the outstanding principal and accrued unpaid interest to be immediately due and payable, nor the failure of Cynergy to demand strict performance of any other obligation of the Borrower, nor waiver of such rights in connection with any future default on the part of

Borrower or any person who may be liable under this Note, shall constitute a waiver of any such rights.

Borrower and all endorsees, sureties and guarantors of the indebtedness evidenced by this Note hereby jointly and severally waive presentment for payment, demand, notice of non-payment, notice of protest or protest of this Note, and Cynergy diligence in collection or bringing suit.

Notwithstanding anything to the contrary contained in this Note, in no event shall Borrower be required to pay a rate of interest in excess of the Maximum Rate. The term "Maximum Rate" shall mean the maximum non-usurious rate of interest that Cynergy is allowed to contract for, charge, take, reserve or receive under the applicable laws of any applicable state or of the United States of America (whichever from time to time permits the highest rate for the use, forbearance or detention of money) after taking into account, to the extent required by applicable law, any and all relevant payments or charges, or under any other document or instrument executed and delivered in connection therewith and the indebtedness evidenced by this Note.

In the event Cynergy ever receives, as interest, any amount in excess of the Maximum Rate, such amount as would be excessive interest shall be deemed a partial prepayment of principal, and, if the principal balance is paid in full, any remaining excess shall be returned to Borrower. In determining whether or not the interest paid or payable, under any specified contingency, exceeds the Maximum Rate, Borrower and Cynergy shall, to the maximum extent permitted by law, (a) characterize any non-principal payment as an expense, fee, or premium rather than as interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread the total amount of interest through the entire contemplated term of such indebtedness until payment in full of the principal (including the period of any extension or renewal thereof) so that the interest on account of such indebtedness shall not exceed the Maximum Rate

This Note is binding upon Borrower and Borrower's successors and permitted assigns, and the benefits under this Note shall inure to Cynergy and its successors and assigns. This Note shall be governed by, and construed in accordance with, the laws of the State of New York. This Note may not be amended except in a writing specifically intended for the purpose and executed by the party against whom enforcement of the amendment is sought.

  
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**Marcelo Paladini**