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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

**FORM 10-Q**

**Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the Quarterly Period Ended March 31, 2004**

Or

**Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the Transition Period From \_\_\_\_\_ to \_\_\_\_\_**

Commission file number 0-33169



**CROSS COUNTRY HEALTHCARE, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
Incorporation or organization)

**13-4066229**

(I.R.S. Employer  
Identification Number)

**6551 Park of Commerce Blvd, N.W.**

**Boca Raton, Florida**

(Address of principal executive offices)

**33487**

(Zip Code)

**(561) 998-2232**

(Registrant's telephone number, including area code)

**Not Applicable**

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Sections 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The registrant had outstanding 31,962,881 shares of Common Stock, par value \$0.0001 per share, as of April 30, 2004.

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FORM 10-Q

MARCH 31, 2004

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PART I. FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

**Cross Country Healthcare, Inc.**  
**Condensed Consolidated Balance Sheets**  
**(Amounts in thousands)**

	March 31, 2004	December 31, 2003
	(Unaudited)	
<b>Current assets:</b>		
Cash and cash equivalents	\$ 17	\$ —
Accounts receivable, net	112,656	112,407
Income taxes receivable	—	2,310
Other current assets	12,826	12,572
<b>Total current assets</b>	<b>125,499</b>	<b>127,289</b>
Property and equipment, net	12,568	12,602
Goodwill, net	309,110	307,532
Trademarks, net	15,749	15,749
Other identifiable intangible assets, net	8,048	8,580
Other assets, net	2,906	2,972
<b>Total assets</b>	<b>\$ 473,880</b>	<b>\$ 474,724</b>
<b>Current liabilities:</b>		
Accounts payable and accrued expenses	\$ 4,228	\$ 9,462
Accrued employee compensation and benefits	32,740	29,994
Current portion of long-term debt and notes payable	4,668	4,944
Other current liabilities	4,502	3,358
<b>Total current liabilities</b>	<b>46,138</b>	<b>47,758</b>
Deferred income taxes	17,649	17,649
Long-term debt and notes payable	82,823	88,794
<b>Total liabilities</b>	<b>146,610</b>	<b>154,201</b>
Commitments and contingencies		
<b>Stockholders' equity:</b>		
Common stock	3	3
Additional paid-in capital	254,139	251,988
Other stockholders' equity	73,128	68,532
<b>Total stockholders' equity</b>	<b>327,270</b>	<b>320,523</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 473,880</b>	<b>\$ 474,724</b>

See accompanying notes to the condensed consolidated financial statements

**Cross Country Healthcare, Inc.**  
**Condensed Consolidated Statements of Income**  
(Unaudited, amounts in thousands, except per share data)

	Three Months Ended March 31,	
	2004	2003
Revenue from services	\$ 172,612	\$ 161,003
Operating expenses:		
Direct operating expenses	132,436	121,481
Selling, general and administrative expenses	28,095	25,013
Bad debt expense	626	—
Depreciation	1,593	1,068
Amortization	692	747
Total operating expenses	163,442	148,309
Income from operations	9,170	12,694
Other expenses:		
Interest expense, net	1,247	586
Income from continuing operations before income taxes	7,923	12,108
Income tax expense	3,066	4,686
Income from continuing operations	4,857	7,422
Discontinued operations, net of income taxes	—	(371)
Net income	\$ 4,857	\$ 7,051
Net income/(loss) per common share-basic:		
Income from continuing operations	\$ 0.15	\$ 0.23
Discontinued operations, net of income taxes	—	(0.01)
Net income	\$ 0.15	\$ 0.22
Net income/(loss) per common share-diluted:		
Income from continuing operations	\$ 0.15	\$ 0.23
Discontinued operations, net of income taxes	—	(0.01)
Net income	\$ 0.15	\$ 0.22
Weighted average common shares outstanding-basic	31,861	32,247
Weighted average common shares outstanding-diluted	32,570	32,607

See accompanying notes to the condensed consolidated financial statements

**Cross Country Healthcare, Inc.**  
**Condensed Consolidated Statements of Cash Flows**  
**(Unaudited, amounts in thousands)**

	Three Months Ended March 31,	
	2004	2003
<b>Operating activities</b>		
Net income	\$ 4,857	\$ 7,051
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	1,593	1,068
Amortization	692	747
Bad debt expense	626	—
Amortization of deferred compensation	16	—
Loss from discontinued operations	—	371
Changes in operating assets and liabilities:		
Accounts receivable	(875)	1,143
Income tax receivable and other current assets	2,057	1,819
Accounts payable and accrued expenses	(2,488)	478
Other current liabilities	1,701	3,490
Net cash provided by continuing operations	8,179	16,167
Loss from discontinued operations, net	—	(371)
Loss on impairment of discontinued operations	—	302
Change in net assets from discontinued operations	—	(225)
Net cash used in discontinued operations	—	(294)
Net cash provided by operating activities	8,179	15,873
<b>Investing activities</b>		
Acquisitions and earnout payments	(1,578)	(3,195)
Purchases of property and equipment	(1,559)	(573)
Other investing activities	—	(47)
Net cash used in investing activities	(3,137)	(3,815)
<b>Financing activities</b>		
Repayment of debt	(79,872)	(15,320)
Proceeds from issuance of debt	73,625	—
Other financing activities	1,222	273
Net cash used in financing activities	(5,025)	(15,047)
Change in cash and cash equivalents	17	(2,989)
Cash and cash equivalents at beginning of period	—	17,210
Cash and cash equivalents at end of period	\$ 17	\$ 14,221
<b>Supplemental disclosures of noncash financing activities:</b>		
Tax benefit from stock option exercises	\$ 557	\$ 28

See accompanying notes to the condensed consolidated financial statements

**CROSS COUNTRY HEALTHCARE, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

**1. ORGANIZATION AND BASIS OF PRESENTATION**

On May 8, 2003, the name of the corporation was changed to Cross Country Healthcare, Inc. from Cross Country, Inc. The condensed consolidated financial statements include the accounts of Cross Country Healthcare, Inc. and its subsidiaries, all of which are wholly-owned (collectively, the "Company"). All material intercompany transactions and balances have been eliminated in consolidation. The accompanying condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. These operating results are not necessarily indicative of the results that may be expected for the year ending December 31, 2004. These unaudited interim condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto for the year ended December 31, 2003, included in the Company's Form 10-K as filed with the Securities and Exchange Commission.

**2. RECLASSIFICATIONS**

Certain prior period amounts have been reclassified to conform to the current period presentation.

**3. EARNINGS PER SHARE**

In accordance with the requirements of Financial Accounting Standards Board (FASB) Statement No. 128, *Earnings Per Share*, basic earnings per share is computed by dividing net income by the weighted average number of shares outstanding including the vested portion of restricted shares. The denominator used to calculate diluted earnings per share reflects the dilutive effects of stock options and nonvested restricted stock (as calculated utilizing the treasury stock method). Certain shares of common stock that are issuable upon the exercise of options have been excluded from the per share calculation because their effect would have been anti-dilutive. Incremental shares of common stock included in the diluted weighted average shares outstanding calculation for the three month periods ended March 31, 2004 and 2003, were 708,788 and 359,179, respectively.

**4. STOCK-BASED COMPENSATION**

The Company, from time to time, grants stock options for a fixed number of common shares to employees. The Company accounts for employee stock option grants in accordance with Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees*, and accordingly, recognizes no compensation expense for stock option grants when the exercise price of the options equals, or is greater than, the average market value of the underlying stock on the date of grant.

The Company issued a total of 16,216 shares of restricted stock to certain key employees in the first quarter of 2003. The restricted stock vests based on continued employment in three equal annual installments on the first, second and third anniversary of the grant date. Under APB Opinion No. 25, compensation expense related to grants of restricted stock is recognized over the period in which services are performed. The fair market value of the shares on the grant date approximated \$0.2 million. On the date of grant, deferred compensation of \$0.2 million was recorded as a contra-equity account in additional paid-in capital and is being amortized to operations over the related vesting period.

The pro-forma disclosure of stock based compensation required by FASB Statement No. 148, *Accounting for Stock Based Compensation—Transition and Disclosure*, is shown below.

The Company's consolidated net income during the three month periods ended March 31, 2004 and 2003, would have changed to the pro forma amounts set forth below had the Company's stock option grants been accounted for under the fair value based method prescribed by FASB Statement No. 123, *Accounting for Stock-Based Compensation*.

	Three Months Ended March 31,	
	2004	2003
	(Unaudited, amounts in thousands, except per share data)	
Net income as reported	\$ 4,857	\$ 7,051
Stock based employee compensation included in reported net income	—	—
Stock based employee compensation, net of tax, applying FASB Statement No. 123	(216)	(592)
Pro forma net income applying FASB Statement No. 123	\$ 4,641	\$ 6,459
Basic and diluted earnings per share as reported:		
Net income per common share-basic	\$ 0.15	\$ 0.22
Net income per common share-diluted	\$ 0.15	\$ 0.22
Pro forma basic and diluted earnings per share:		
Pro forma net income per common share-basic	\$ 0.15	\$ 0.20
Pro forma net income per common share-diluted	\$ 0.14	\$ 0.20

## 5. ACQUISITIONS

On June 5, 2003, the Company acquired substantially all of the assets of Med-Staff, Inc. (Med-Staff) for \$102.2 million in cash, net of a post-closing working capital adjustment. The Company made the strategic acquisition to broaden its travel nurse recruiting and placement efforts, to provide a sizable platform in per diem nurse staffing, and to gain a direct presence in nurse staffing at military hospitals and clinics. The consideration for this acquisition was \$104.0 million in cash paid at closing, of which \$7.5 million is being held in escrow to cover any post-closing liabilities that may occur before December 5, 2004. The purchase price was subject to a post-closing adjustment based on changes in the net working capital of the acquired company. In the fourth quarter of 2003, the post-closing net working capital adjustment of approximately \$1.8 million was calculated and allocated to goodwill as a reduction to the purchase price.

In addition, the related asset purchase agreement provided for potential earnout payments up to a maximum of \$37.5 million based on adjusted earnings before interest, taxes, depreciation and amortization (as defined in the asset purchase agreement) of Med-Staff for the one year period ending December 31, 2003. Med-Staff did not qualify to receive any earnout payments.

The acquisition has been included in the healthcare staffing segment and the results of Med-Staff's operations have been included in the condensed consolidated statements of income since the date of acquisition, in accordance with FASB Statement No. 141, *Business Combinations*.

Had the Company purchased Med-Staff on January 1, 2003, on a pro forma basis revenue, net income, and basic and diluted earnings per share, would have been \$203.5 million, \$7.7 million, and \$0.24, respectively. These pro forma amounts give effect to certain adjustments, including amortization of specifically identifiable intangibles, incremental ongoing expenses, incremental interest expense and

related income tax effects. These pro forma results include a pre-tax reduction to net income for a loss on early extinguishment of debt of approximately \$1.1 million. The pro forma financial information does not purport to be indicative of the results of operations that would have occurred had the transaction taken place on January 1, 2003 or of future results of operations.

As of March 31, 2004, the Company is contingently liable for additional earnout payments of approximately \$0.6 million in the aggregate relating to its acquisitions of Gill/Balsano Consulting, LLC (Gill/Balsano), and Jennings Ryan & Kolb (JRK). Each of these contingent payments is based on profitability measures as defined by their respective purchase agreements (earnout payments). Upon payment, the amounts are allocated to goodwill as additional purchase price. During the three month period ended March 31, 2004, the Company paid approximately \$0.7 million and \$0.9 million in earnout payments for Gill/Balsano and JRK, respectively, in accordance with their purchase agreements. During the three month period ended March 31, 2003, the Company paid approximately \$2.0 million, \$0.7 million and \$0.5 million in earnout payments for Heritage Professional Education, LLC, Gill/Balsano, and JRK, respectively.

## **6. DISPOSAL OF BUSINESS**

The Company abandoned its efforts to sell the E-staff business during the first quarter of 2003 and decided to dispose of this subsidiary by winding down its operations. E-staff operations ceased as of March 31, 2003. The Company determined that approximately \$0.3 million of the net carrying amount of the assets from discontinued operations was impaired. This impairment charge was taken during the first quarter of 2003 and is included in the accompanying condensed consolidated statements of income as loss from discontinued operations for the three month period ending March 31, 2003.

## **7. COMPREHENSIVE INCOME**

The Company was party to an interest rate swap agreement which effectively fixed the interest rate paid on \$45.0 million of borrowings under the Company's prior amended credit facility at 6.71%, effective January 1, 2001, plus an applicable margin. The Company recorded the fair value of this instrument in accordance with FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities*. In February 2003, the Company paid the last payment on the interest rate swap agreement in accordance with the maturity date of the instrument. Upon maturity of the interest rate swap agreement, the Company reclassified the remaining accumulated derivative loss of \$0.4 million to interest expense, net, on the accompanying condensed consolidated statements of income. There are no other components of comprehensive income other than the Company's consolidated net income and the accumulated derivative change during the three month periods ending March 31, 2004 and 2003.

## **8. DEBT**

During the three month period ended March 31, 2004, the Company repaid \$6.2 million on the term loan portion of its credit facility, of which \$5.0 million was an optional prepayment. The aggregate

scheduled maturities of all of the Company's long-term debt are as follows, including amounts due for the remainder of 2004:

Year Ending December 31:	(Unaudited, amounts in thousands)	
2004	\$	3,390
2005		4,520
2006		4,520
2007		4,519
2008		36,156
Thereafter		33,896
	\$	87,001

## 9. STOCKHOLDERS' EQUITY

On November 1, 2002, the Company's Board of Directors authorized a stock repurchase program whereby the Company may purchase up to 1.5 million of its common shares at an aggregate price not to exceed \$25.0 million. During the three month period ended March 31, 2004, the Company purchased 16,400 shares of common stock at an average cost of \$15.94 per share pursuant to its current authorization. The cost of such purchases was approximately \$0.3 million. Substantially all of these shares were retired as of March 31, 2004.

The Company can purchase up to an additional 482,200 shares at an aggregate price not to exceed approximately \$11.0 million under the previously authorized stock repurchase program. This repurchase program is within the limits of the Company's current senior secured credit facility covenants. Under this program, the shares may be purchased from time-to-time in the open market. The repurchase program may be discontinued at any time at the discretion of the Company. At March 31, 2004, the Company had approximately 32.0 million shares outstanding.

## 10. SEGMENT DATA

Information on operating segments and a reconciliation to income from continuing operations before income taxes for the periods indicated are as follows:

	Three Months Ended March 31,	
	2004	2003
(Unaudited, amounts in thousands)		
Revenue from unaffiliated customers:		
Healthcare staffing	\$ 158,960	\$ 148,243
Other human capital management services	13,652	12,760
	<u>\$ 172,612</u>	<u>\$ 161,003</u>
Contribution income (a):		
Healthcare staffing	\$ 15,574	\$ 18,902
Other human capital management services	1,682	1,427
Unallocated corporate overhead	5,801	5,820
Depreciation	1,593	1,068
Amortization	692	747
Interest expense, net	1,247	586
	<u>\$ 7,923</u>	<u>\$ 12,108</u>

- (a) The Company defines contribution income as income from continuing operations before interest, income taxes, depreciation, amortization and corporate expenses not specifically identified to a reporting segment. Contribution income is a financial measure used by management when assessing segment performance.

## 11. CONTINGENCIES

The Company's Cross Country TravCorps, Inc. and Cross Country Nurses, Inc. subsidiaries are the subjects of a class action lawsuit filed in the Superior Court of California in Orange County alleging, among other things, violations of certain sections of the California Labor Code, unfair competition and breach of contract. This lawsuit is currently in the very early stages, it has not been certified by the court as a class action, and no monetary damages have been specified. As a result, the Company is unable to determine its potential exposure, if any, and intends to vigorously defend this matter.

The Company is also subject to other legal proceedings and claims that arise in the ordinary course of its business. In the opinion of management, the outcome of these other matters will not have a significant effect on the Company's consolidated financial position or results of operations.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The Company's condensed consolidated financial statements present a consolidation of all its operations. This discussion supplements the detailed information presented in the condensed consolidated financial statements and notes thereto which should be read in conjunction with the consolidated financial statements and related notes contained in the Company's Form 10-K, filed for the year ended December 31, 2003, and is intended to assist the reader in understanding the financial results and condition of the Company.

Certain prior period information has been reclassified to conform to the current period presentation.

### RESULTS OF OPERATIONS

The following table summarizes, for the periods indicated, selected statements of income data expressed as a percentage of revenue:

	Three Months Ended March 31,	
	2004	2003
	(Unaudited)	
Revenue from services	100.0%	100.0%
Direct operating expenses	76.7	75.5
Selling, general and administrative expenses	16.3	15.5
Bad debt expense	0.4	—
Depreciation and amortization	1.3	1.1
	5.3	7.9
Income from operations	5.3	7.9
Interest expense, net	0.7	0.4
	4.6	7.5
Income from continuing operations before income taxes	4.6	7.5
Income tax expense	1.8	2.9
	2.8	4.6
Income from continuing operations	2.8	4.6
Discontinued operations, net of income taxes	—	(0.2)
	2.8%	4.4%
Net income	2.8%	4.4%

### RESULTS OF OPERATIONS—Three months ended March 31, 2004 compared to three months ended March 31, 2003

**REVENUE FROM SERVICES** increased \$11.6 million, or 7.2%, to \$172.6 million for the three months ended March 31, 2004 as compared to \$161.0 million for the three months ended March 31, 2003. The increase was primarily due to the acquisition of Med-Staff, Inc. (Med-Staff) on June 5, 2003. Excluding the effect of this acquisition, revenue decreased \$21.9 million, or 13.6%. This decrease was primarily due to a decrease in revenue from other healthcare staffing businesses partially offset by an increase in our other human capital management businesses. The organic decrease in other healthcare staffing was mostly from our travel staffing operations but was partially offset by an increase in our clinical trials, international recruitment and organic per diem business. The increase in other human capital management was primarily due to an increase in our educational seminars business. See Segment Information below for further analysis.

**DIRECT OPERATING EXPENSES** are comprised primarily of field employee compensation expenses, housing expenses, travel expenses and field insurance expenses. Direct operating expenses totaled \$132.4 million for the three months ended March 31, 2004 as compared to \$121.5 million for

the three months ended March 31, 2003. As a percentage of revenue, direct operating expenses represented 76.7% of revenue for the three months ended March 31, 2004 and 75.5% for the three months ended March 31, 2003. This increase is primarily attributable to the higher mix of healthcare staffing businesses, which operate at higher direct cost structures than our other human capital management services businesses, as well as higher housing and insurance costs.

**SELLING, GENERAL AND ADMINISTRATIVE EXPENSES** totaled \$28.1 million for the three months ended March 31, 2004 as compared to \$25.0 million for the three months ended March 31, 2003. This increase is primarily due to the added selling, general and administrative expenses of the Med-Staff organization. As a percentage of revenue, selling, general and administrative expenses were 16.3% and 15.5% for the three months ended March 31, 2004 and 2003, respectively, reflecting negative operating leverage resulting from an organic decline in volume.

**BAD DEBT EXPENSE** totaled \$0.6 million for the three months ended March 31, 2004, which represented 0.4% of revenue. The amount primarily represents an increase in the allowance for doubtful accounts to cover the increased aging on certain accounts in the three months ended March 31, 2004. We experienced a shift in relative mix of our business towards the Northeast where we tend to have slower-paying customers. We did not record bad debt expense for the three months ended March 31, 2003 primarily due to improved collections and a decrease in write-offs.

**DEPRECIATION AND AMORTIZATION EXPENSE** totaled \$2.3 million for the three months ended March 31, 2004 and included a \$0.2 million write-off of certain software the Company will not be using in the future. This compared to depreciation and amortization of \$1.8 million for the three months ended March 31, 2003. As a percentage of revenue, depreciation and amortization expense was 1.3% of revenue for the three months ended March 31, 2004 as compared to 1.1% for the three months ended March 31, 2003.

**NET INTEREST EXPENSE** totaled \$1.2 million for the three months ended March 31, 2004 as compared to \$0.6 million for the three months ended March 31, 2003. This increase was primarily due to an increase in interest expense relating to higher average borrowings outstanding during the three months ended March 31, 2004 compared to the three months ended March 31, 2003, partially offset by lower average interest rate charges in the three months ended March 31, 2004 relating, in part, to the expiration in February 2003 of our interest rate swap agreement. Average borrowings outstanding were higher in the three months ending March 31, 2004 due to the incremental financing for the acquisition of Med-Staff partially offset by repayments of debt. The effective interest rate for the three months ended March 31, 2004 was 5.3% compared to a rate of 8.4% for the three months ended March 31, 2003.

**INCOME TAX EXPENSE** totaled \$3.1 million for the three months ended March 31, 2004 as compared to \$4.7 million for the three months ended March 31, 2003. The effective tax rate was 38.7% for both the three month periods ending March 31, 2004 and 2003.

**DISCONTINUED OPERATIONS** for the three months ended March 31, 2003 was a loss of \$0.4 million relating to the discontinued E-Staff business which included an impairment charge of \$0.3 million after taxes, relating to the E-Staff technology, a web-enabled business. In the first quarter of 2003, E-Staff operations ceased.

## SEGMENT INFORMATION

The following table presents, for the periods indicated, selected statements of income data by segment in accordance with Financial Accounting Standards Board (FASB) Statement No. 131, *Disclosures about Segments of an Enterprise and Related Information*:

	Three Months Ended March 31,	
	2004	2003
(Unaudited, amounts in thousands)		
Revenue from unaffiliated customers:		
Healthcare staffing	\$ 158,960	\$ 148,243
Other human capital management services	13,652	12,760
	<u>\$ 172,612</u>	<u>\$ 161,003</u>
Contribution income (a):		
Healthcare staffing	\$ 15,574	\$ 18,902
Other human capital management services	1,682	1,427
Unallocated corporate overhead	5,801	5,820
Depreciation	1,593	1,068
Amortization	692	747
Interest expense, net	1,247	586
	<u>\$ 7,923</u>	<u>\$ 12,108</u>

(a) We define contribution income as income from continuing operations before interest, income taxes, depreciation, amortization and corporate expenses not specifically identified to a reporting segment. Contribution income is a financial measure used by management when assessing segment performance.

## HEALTHCARE STAFFING

Revenue from our healthcare staffing business segment increased \$10.7 million, or 7.2%, to \$159.0 million for the three months ended March 31, 2004 from \$148.2 million for the three months ended March 31, 2003. This increase was primarily attributable to the acquisition of Med-Staff on June 5, 2003, as well as increases in revenue from our international nurse recruitment and clinical trials staffing businesses, and partially offset by a decrease in other healthcare staffing businesses. Excluding the effect of the Med-Staff acquisition, revenue decreased \$22.8 million, or 15.4%. This decrease was due to a decrease in the average number of full time equivalents (FTEs), representing \$19.8 million of the decrease; a decrease in the average hourly bill rate, contributing \$1.7 million to the decrease; and an increase in the percentage of FTEs working under mobile contracts, representing \$1.3 million of the decrease.

On a combined basis, the number of full time equivalents (FTEs) increased 9% over the prior year quarter. Excluding the FTEs from the Med-Staff acquisition, the average number of FTEs on contract, decreased 15% from the prior year. This decrease in FTEs was due to a decrease in FTEs from our travel staffing operations and partially offset by higher FTEs in our clinical trials staffing, per diem and international recruitment businesses. Demand for our travel nurse operations had weakened throughout 2003 due to a more cautious buying process on the part of acute care hospital customers. We believe the cautious buying process will continue in the short term and is primarily due to current economic conditions that enable hospitals to meet more of their nurse staffing needs internally at prevailing wages. However, there may be a change in direction in this dynamic based on the number of orders for contract nurses we have been receiving, although, our contract bookings remain well below prior year's

levels. We believe nurses have become more reluctant to seek travel assignments when the demand for contract employment weakens. We believe that demand for outsourced travel nursing services will increase in the long term, driven by an aging population and an increasing shortage of nurses, but we cannot predict when that will happen.

The average bill rates in our core travel nurse staffing business during the three months ended March 31, 2004, were 1% lower than the three months ended March 31, 2003. Fees relating to the co-marketing arrangements we have with group purchasing organizations in which we have exclusive or preferred provider status and third-party administrative fees relating to vendor managed programs we provide services under, are included as an offset to revenue. As we have seen an increase in co-marketing expenses dispersed to secure more preferred provider relationships and an increase in vendor management services being utilized by our customers, these fees have impacted our average bill rates to a greater extent in the three months ended March 31, 2004.

Mobile contracts, where the nurse is on the hospital payroll, accounted for 3% of our volume in our core travel nursing operations in the three months ended March 31, 2004 as compared to 2% of our volume in our core travel nursing operations in the three months ended March 31, 2003.

For the three months ended March 31, 2004, nurse staffing operations generated 88.3% of healthcare staffing revenue and 11.7% was generated by other operations. For the three month period ended March 31, 2003, 88.2% of healthcare staffing revenue was generated from nursing operations and 11.8% was generated by other operations.

Contribution income from our healthcare staffing segment for the quarter ended March 31, 2004 decreased 17.6% or \$3.3 million from \$18.9 million to \$15.6 million. Contribution income was impacted by relatively higher housing and insurance costs, partially offset by the contribution from the Med-Staff acquisition. As a percentage of healthcare staffing revenue, contribution income was 9.8% for the three months ended March 31, 2004 compared to 12.8% for the three months ended March 31, 2003. As mentioned above, our revenue for the three months ended March 31, 2004 was impacted by third-party vendor management fees and co-marketing expenses. In addition, the increase in direct costs in our travel staffing businesses was not offset by an increase in pricing to our customers. All of these factors combined with less leverage on our overhead contributed to this decrease in contribution income as a percentage of revenues.

#### **OTHER HUMAN CAPITAL MANAGEMENT SERVICES**

Revenue from other human capital management services increased 7.0% for the three months ended March 31, 2004 compared to the three months ended March 31, 2003. This increase was primarily due to higher revenue from our educational training business reflecting higher seminar attendance than the prior year's quarter.

Contribution income from other human capital management services for the quarter ended March 31, 2004 increased 17.9% to \$1.7 million from \$1.4 million for the three months ended March 31, 2003. This increase was primarily due to the increase in revenues from our educational seminars business. Contribution income as a percentage of other human capital management services revenue for the three months ended March 31, 2004 was 12.3% compared to 11.2% for the three months ended March 31, 2003.

#### **UNALLOCATED CORPORATE OVERHEAD**

Unallocated corporate overhead was \$5.8 million in both the three months ended March 31, 2004 and 2003. As a percentage of consolidated revenue, unallocated corporate overhead was 3.4% during the three months ended March 31, 2004 compared to 3.6% during the three months ended March 31, 2003.

## LIQUIDITY AND CAPITAL RESOURCES

As of March 31, 2004 and December 31, 2003, we had a current ratio, the amount of current assets divided by current liabilities, of 2.7 to 1.0. Working capital was \$79.4 as of March 31, 2004 compared to \$79.5 million as of December 31, 2003.

Net cash provided by operating activities for the three months ended March 31, 2004 was \$8.2 million compared to \$15.9 million for the three months ended March 31, 2003. This decrease was primarily due to a relatively large decrease in working capital in the three months ended March 31, 2003 compared to only a slight decrease in working capital in the three months ended March 31, 2004. While Day's Sales Outstanding (DSO) improved from 60 days as of December 31, 2003 to 59 days at March 31, 2004, the increased revenue contributed to an increase in accounts receivable in the three months ended March 31, 2004. Conversely, during the three months ended March 31, 2003, there was an improvement in DSO of 2 days and a related decrease in accounts receivable. Additionally, timing of vendor and employee compensation payments affected the comparisons between the two periods.

Investing activities used \$3.1 million of cash in the three months ended March 31, 2004 compared to \$3.8 million during the three months ended March 31, 2003. Investing activities in both the three months ended March 31, 2004 and 2003 were primarily attributable to earnout payments relating to previous acquisitions and capital expenditures.

Net cash used in financing activities in the three months ended March 31, 2004 was \$5.0 million compared to \$15.0 million in the three months ended March 31, 2003. During the three months ended March 31, 2004 we repaid \$6.2 million of the term loan portion of debt, including prepayments on our term loan of \$5.0 million. The use of cash in the three months ended March 31, 2004 was partially offset by net proceeds from other financing activities. Other financing activities included the proceeds from the exercise of stock options and the purchase of our common stock pursuant to our stock repurchase program.

On November 5, 2002, our Board of Directors authorized a stock repurchase program, whereby we may purchase up to 1.5 million of our common shares at an aggregate price not to exceed \$25.0 million. During the three month period ended March 31, 2004, we purchased 16,400 shares of common stock at an average cost of \$15.94 per share pursuant to its current authorization. The cost of such purchases was approximately \$0.3 million. As of March 31, 2004, we purchased 1,017,800 shares of our common stock at an average cost of \$13.74 per share pursuant to the current authorization. Substantially all of the common stock was retired. The cost of such purchases was approximately \$14.0 million. Under this program, the shares may be purchased from time to time on the open market. The repurchase program may be discontinued at any time at the discretion of the Company.

Our operating cash flows constitute our primary source of liquidity and historically have been sufficient to fund our working capital, capital expenditures, and internal business expansion and debt service. We believe that our capital resources are sufficient to meet our working capital needs for the next twelve months. We expect to meet our future needs for working capital, capital expenditures, internal business expansion, debt service and any additional stock repurchases from a combination of operating cash flows and funds available under our credit facility. We also continue to evaluate acquisition opportunities that may require additional funding.



#### **ITEM 4. CONTROLS AND PROCEDURES**

The Company carried out an evaluation, under the supervision and with the participation of the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company's "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), as of the end of the period covered by this report. Based upon the evaluation, the Company's Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective. Disclosure controls and procedures are designed to ensure that information required to be disclosed in Company reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms.

There have been no significant changes in the Company's internal controls or in other factors that could significantly affect the Company's internal controls subsequent to the date of the evaluation.

### **PART II. OTHER INFORMATION**

#### **ITEM 1. LEGAL PROCEEDINGS**

##### **Theodora Cossack, et. al. v. Cross Country TravCorps, Inc. and Cross Country Nurses, Inc.**

On August 26, 2003, Theodora Cossack and Barry S. Phillips, C.P.A., filed suit in the Superior Court of the State of California, for the County of Orange, naming Cross Country TravCorps, Inc. and Cross Country Nurses, Inc. as defendants. Plaintiffs plead causes of action for (1) Violation of California Business and Professions Code §§ 17200, et. seq; (2) Violations of California Labor Code §§ 200, et. seq; (3) Recovery of Unpaid Wages and Penalties; (4) Conversion; (5) Breach of Contract; (6) Common Counts—Work, Labor, Services Provided; and (7) Common Counts—Money Had and Received.

Plaintiffs, who purport to sue on behalf of themselves and all others similarly situated, allege that Defendants failed to pay plaintiffs, and the class they purport to represent, properly under California law. Plaintiffs claim that defendants failed to pay nurses hourly overtime as required by California law; failed to calculate correctly their employees' regular rate of pay used to calculate the rate at which overtime hours are to be compensated; failed to calculate correctly and pay a double time premium for all hours worked in excess of 12 in a workday; scheduled some of its employees on an alternative workweek schedule, but failed to pay them additional compensation when those employees did not work such alternative workweek, as scheduled; failed to pay for missed meal and rest breaks; and failed to pay employees for the minimum hours defendants had promised them.

Plaintiffs seek (among other things) an order enjoining defendants from engaging in the practices challenged in the complaint; for an order for full restitution of all monies Defendants allegedly failed to pay Plaintiffs (and their purported class); for pre-judgment interest; for certain penalties provided for by the California Labor Code; and for attorneys' fees and costs.

Cross Country demurred to all causes alleged by one of the plaintiffs, Barry Phillips, on the grounds that he lacks standing to sue. On December 12, 2003, the court sustained the demurrer as to all causes of action brought by that plaintiff, except his representative claim under §17200 of the California statutes. On or about December 15, 2003, plaintiffs filed an amended complaint. Cossack remains a plaintiff on all causes of action. On or about January 14, 2004, the Company filed its answer to the amended complaint.

The lawsuit is currently in its very early stages and has not yet been certified by the court as a class action. As a result, we are unable at this time to determine our potential exposure. We intend to vigorously defend this matter.

**ITEM 2. CHANGES IN SECURITIES, USE OF PROCEEDS AND ISSUER PURCHASES OF EQUITY SECURITIES.**

On November 4, 2002, we announced that our Board of Directors authorized a stock repurchase program, whereby we may purchase up to 1.5 million of our common shares at an aggregate price not to exceed \$25.0 million. The Board of Directors did not specify an expiration date. During the three month period ended March 31, 2004, we purchased 16,400 shares of common stock at an average cost of \$15.94 per share pursuant to its current authorization. A summary of the repurchase activity for the Company's first quarter of 2004 follows:

<b>Period</b>	<b>(a) Total Number of Shares (or Units) Purchased</b>	<b>(b) Average Price Paid per Share (or Unit)</b>	<b>(c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs</b>	<b>(d) Maximum Number (or Approximate Dollar Value) of Shares (or units) that May Yet Be Purchased Under the Plans or Programs</b>
January 1—January 31, 2004	-	NA	NA	498,600
February 1—February 29, 2004	-	NA	NA	498,600
March 1—March 31, 2004	16,400	\$ 15.94	16,400	482,200
Total January 1—March 31, 2004	16,400	\$ 15.94	16,400	482,200

**ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K**

a) See Exhibit Index immediately following signature page.

b) On January 9, 2004, the Company filed a Report on Form 8-K announcing a presentation the Company was going to make. This information was filed under items 7, 9 and 12.

On January 27, 2004, the Company filed a Report on Form 8-K to announce the dates of its quarterly earning release and teleconference call and another presentation it will be making. This information was filed under items 5, 7, 9 and 12.

On February 20, 2004, the Company filed a Report on Form 8-K under items 7 and 12 announcing the Company's fourth quarter results with related financial information.

On February 24, 2004, the Company filed a Report on Form 8-K under items 7, 9 and 12 announcing a presentation that the Company was making at a conference.

**SIGNATURES**

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

CROSS COUNTRY HEALTHCARE, INC.

By: /s/ EMIL HENSEL

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Emil Hensel  
Chief Financial Officer and Director  
(Principal Financial Officer)

By: /s/ DANIEL J. LEWIS

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Daniel J. Lewis  
Corporate Controller  
(Principal Accounting Officer)

Date: May 10, 2004

**EXHIBIT INDEX**

<b>No.</b>	<b>Description</b>
10.1	Second Amendment to Lease by and between Canterbury Hall 1C, LLC (successor-in-interest to Petula Associates, Ltd.), and Principal Life Insurance Company as tenants-in-common, and Clinforce, Inc. (successor by name change to Clinical Trials Support Services, Inc.), dated October 10, 2003, including Commencement Letter.
10.2	Lease Agreement by and between the Goldberg Brothers Real Estate LLC, Steven J. Goldberg and William H. Goldberg, Co-Managers as Landlords and TVCM, Inc. as Tenant, dated January 30, 2004.
31.1	Certification Pursuant to pursuant to Rule 13a-14(a) and Rule 15d-14 (a) by Joseph A. Boshart, President and Chief Executive Officer
31.2	Certification Pursuant to pursuant to Rule 13a-14(a) and Rule 15d-14 (a) by Emil Hensel, Chief Financial Officer
32.1	Certification Pursuant to 18 U.S.C. Section 1350 by Joseph A. Boshart, Chief Executive Officer
32.2	Certification Pursuant to 18 U.S.C. Section 1350 by Emil Hensel, Chief Financial Officer



**TRI PROPERTIES**

January 9, 2004  
ClinForce, Inc.  
PO Box 14298  
RTP, NC 27709  
Attn: Maria Phillips

RE: Commencement Letter with respect to the Second Lease Amendment dated October 10, 2003, by and between Canterbury Hall 1C, LLC, as Landlord, and ClinForce, Inc., as Tenant, for 8,656 rentable square feet, in the Building Located at 4815 Emperor Boulevard, Durham, NC

Dear Ms. Phillips:

This letter will serve as official record that:

1. The Commencement Date for the 1,859 sq. ft. First Floor Expansion Space and the 1,670 Second Floor Expansion Space is October 1, 2003.
2. The Commencement Date for the 5,127 sq. ft. 2004 Expansion Space is January 1, 2004.
3. The Rent Commence Date of the Revised Premises is October 1, 2004.
4. The Monthly Payment as of October 1, 2004 is \$19,663.21.
5. The Termination Date of the Lease is September 30, 2013.

Rent checks are due on our office on or before the first day of each month. Please make checks payable to PFG Imperial Center Holding Company, LLC and forward to our office at 4309 Emperor Boulevard, Suite 110, Durham, NC 27703.

Should you have any questions regarding the above, please contact me at (919) 281-2314. Thank you.

Sincerely,

/s/ CARRIE KARCHER, CSM  
Property Manager

cc: Lease Binder  
PFG File

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## COUNTY OF DURHAM

THIS SECOND AMENDMENT TO LEASE (the "Second Amendment") is made and entered into as of the 10th day of October, 2003, by and between CANTERBURY HALL 1C, LLC, a Delaware limited liability company ("Landlord") [successor-in-interest to Petula Associates, Ltd., an Iowa corporation ("Petula") and Principal Life Insurance Company, an Iowa corporation ("Principal") as tenants-in-common (collectively, "Petula /Principal")] and CLINFORCE, INC./ a Delaware corporation ("Tenant") [successor by name change to Clinical Trials Support Services, Inc., a North Carolina corporation ("CTSS")].

## WTTNESSETH:

A. Petula/Principal and CTSS entered into a Lease dated as of November 3, 1999 (as amended, the "Existing Lease") for certain premises known as Suites 240 and 206 consisting of approximately 8,080 rentable square feet of space (the "Original Premises") on the second floor of that certain building known as Canterbury Hall (the "Building") located at 4815 Emperor Blvd., Durham, North Carolina as more particularly described in the Existing Lease;

B. Pursuant to that certain First Amendment to Lease dated December 20, 1999 (the "First Amendment") between Petula/Principal and CTSS, the Original Premises was expanded to include approximately 4,664 rentable square feet of space on the third floor of the Building, creating the "Combined Premises" containing approximately 12,744 rentable square feet as more particularly described in the First Amendment.

C. Landlord (as successor-in-interest to Petula/Principal) and Tenant (as successor by name change to CTSS) desire to further amend the terms of the Existing Lease: (i) to increase the size of the Combined Premises to include approximately 1,859 rentable square feet of additional space on the first floor of the Building as shown on *Exhibit A-2* attached hereto (the "First Floor Expansion Space"), 1,670 rentable square feet of additional space on the second floor of the Building as shown on *Exhibit A-3* attached hereto (the "Second Floor Expansion Space"), and 5,127 rentable square feet of additional space on the first floor of the Building as shown on *Exhibit A-4* attached hereto (the "2004 Expansion Space"), (ii) to extend the Term of the Lease, and (iii) to modify certain other terms and conditions of the Existing Lease. For purposes hereof, the First Floor Expansion Space, the Second Floor Expansion Space and the 2004 Expansion Space are collectively hereinafter referred to as the "Expansion Space" and the Existing Lease as amended by this Second Amendment is referred to as the "Lease."

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree that, effective as of the date set forth above, the Existing Lease shall be, and hereby is, amended as follows:

1. *Recitals.* The recitals shall form a part of this Second Amendment.

2. *Extension of Term.* Notwithstanding anything in the Lease to the contrary, effective as of the Extension Commencement Date (as hereinafter defined), which is currently estimated to be October 1, 2003, the term of the Lease shall be extended for a period of ten (10) years from said date (the "Extension Term") and the Expiration Date of the Lease shall be redefined to be the ten (10) year anniversary of the Extension Commencement Date.

3. *Premises.* Effective as of the date of Landlord's delivery of the First: Floor Expansion Space and the Second Floor Expansion Space to Tenant with said space being repainted and re-carpeted by Landlord with building standard materials in, accordance with the terms herein (the "Extension

Commencement Date")/ the Combined Premises shall be further expanded to include the First Floor Expansion Space and the Second Floor Expansion Space, and the Premises shall be redefined to be 16,273 rentable square feet on the first, second and third floors of the Building (the "Revised Premises") as more particularly described on the floor plan attached hereto as *Exhibit "A-2"*. Accordingly, as of the Extension Commencement Date and continuing until the 2004 Expansion Date (as hereinafter defined), wherever reference is made in, the Lease to the Premises, it shall be deemed to mean the Revised Premises, and *Exhibit A-1* to the First Amendment shall be replaced with *Exhibits A-2 and A-3* attached hereto in order to evidence the location of the Revised Premises.

Effective as of the date of Landlord's delivery of the 2004 Expansion Space to Tenant upfitted in substantial accordance with the Plans (as hereinafter defined) or the date upon which Landlord would have delivered the 2004 Expansion Space to Tenant upfitted in substantial accordance with the Plans but for delays attributable to Tenant or Tenant's agents, employees or contractors (the "2004 Expansion Date") and continuing throughout the Extension Term, the Revised Premises shall be further expanded to include the 2004 Expansion Space and the Premises shall be redefined to be 21,400 rentable square feet on the first, second and third floors of the Building (the "Complete Premises") as more particularly described on the floor plan attached hereto as *Exhibit "A-4"*. Accordingly, as of the 2004 Expansion Date, wherever reference is made in the Lease to the Premises or the Revised Premises, it shall be deemed to mean the Complete Premises, and *Exhibit A-1* to the First Amendment (and *Exhibits A-2 and A-3* attached hereto) shall be replaced with *Exhibit A-4* attached hereto in order to evidence the location of the Complete Premises.

4. *Delivery.* Landlord shall act in good faith and use diligent efforts to deliver the First Floor Expansion Space and the Second Floor Expansion Space, re-painted and re-carpeted in accordance with the terms hereof, on or before October 1, 2003. Landlord shall act in good faith and use diligent efforts to deliver the 2004 Expansion Space upfitted in accordance with the Plans to Tenant on or before January 1, 2004. Notwithstanding anything contained herein to the contrary, in no event shall Landlord's completion of the improvements to the 2004 Expansion Space be dependent upon, or the 2004 Expansion Date delayed because of, the installation of any special equipment or improvements to the 2004 Expansion Space to be supplied and installed by Tenant. Except as otherwise provided herein, Landlord shall deliver the Expansion Space to Tenant in its "as is, where is" condition without any further improvements thereto by Landlord.

5. *Tenant Improvements.* Tenant agrees that it currently occupies, and shall continue to occupy, the Combined Premises in its "as is" condition without any further improvements thereto except as otherwise provided herein. Landlord shall supervise (i) the repainting and re-carpeting of the First Floor Expansion Space and the Second Floor Expansion Space as herein provided, (ii) the construction and installation of the initial tenant improvements in the 2004 Expansion Space as herein provided/ and (iii) any future additional tenant improvements in the Complete Premises (collectively, the "Additional Improvements"), all in accordance with Tenant's plans and specifications for the design, construction and installation of the Additional Improvements, as such plans and specifications are reviewed and approved by Landlord and Tenant, such approval not to be unreasonably withheld. Landlord shall substantially complete the Additional Improvements in accordance with said plans and in a good and workmanlike manner, such substantial completion to be certified by Landlord's engineer and Tenant's architect inspecting the work.

Landlord shall contribute up to a maximum of One Hundred Eighty Thousand Three Hundred Thirty-Six and No/100 Dollars (\$180,336.00) (which consists of \$12.00 per rentable square foot of the Expansion Space and \$6.00 per rentable square foot of the Combined Premises and is collectively hereinafter referred to as the "Improvement Allowance") toward only the following costs: (i) any cost of installing any Additional Improvements on an "as completed" basis which is performed in accordance with the Plans and related to the work to be done for the purpose of improving the Premises for Tenant's occupancy and use, (ii) the cost of preparing the Plans, (iii) design costs for

architectural, mechanical, plumbing and electrical design, (iv) construction documents and permits, and (v) any other costs directly related to any Additional Improvements which is reasonably acceptable to Landlord; provided, however, in no event shall Tenant be obligated to pay Landlord any construction management fee in connection with the installation of any Additional Improvements and in no event shall the Improvement Allowance be used for any costs associated with Tenant's personal property, equipment, trade fixtures or other items of a non-permanent nature installed in the Premises, including without limitation, telephone and data cable lines. In the event that either prior to the commencement of the installation of any Additional Improvements or at any time during or following the installation of the Additional Improvements, the cost of any Additional Improvements exceeds the Improvement Allowance or Tenant requests any change to the aforementioned Plans which has resulted or might result in an increase in the cost of the installation of such Additional Improvements so that the cost exceeds the Improvement Allowance, then Tenant shall promptly deliver the necessary funds to defray such excess cost to Landlord no later than fifteen (15) days after Landlord demands same. Notwithstanding the foregoing, any change order(s) requested by Tenant which will result in an increase in the cost of the construction and installation of any Additional Improvements shall be agreed to in advance by Landlord and Tenant. Any savings or unused portion of the Improvement Allowance after any Additional Improvements are completed shall be retained by Landlord.

Notwithstanding anything contained herein to the contrary, in no event shall Landlord be obligated to disburse any portion of the Improvement Allowance after that date which is five (5) years after the Extension Commencement Date or at any time following an Event of Default hereunder. Tenant acknowledges that Landlord may be supervising the construction of the Additional Improvements while Tenant occupies the complete Premises and Landlord agrees that it shall use reasonable efforts to minimize any interference with Tenant's business operations within the Complete Premises while constructing such improvements.

6. *Rental.* Notwithstanding anything in the Existing Lease to the contrary, beginning on the Extension Commencement Date and continuing throughout the remainder of the Extension Term, Tenant shall pay Minimum Rental as follows:

Period	Minimum Rental per rentable square foot:	Monthly Minimum Rental	Annual Minimum Rental:
10/1/03 to 9/30/04* (Revised Premises)	\$ 0.00	\$ 0.00	\$ 0.00
1/1/04 to 12/31/04* (2004 Expansion Space)	\$ 0.00	\$ 0.00	\$ 0.00
10/1/04 to 12/31/04 (Revised Premises)	\$ 14.50	\$ 19,663.21	\$ 235,958.52
1/1/05 to 9/30/05 (Complete Premises)	\$ 14.50	\$ 25,858.33	\$ 310,299.96
10/1/05 to 9/30/06 (Complete Premises)	\$ 14.86	\$ 26,500.33	\$ 318,003.96
10/1/06 to 9/30/07 (Complete Premises)	\$ 15.23	\$ 27,160.17	\$ 325,922.04
10/1/07 to 9/30/08 (Complete Premises)	\$ 15.61	\$ 27,837.83	\$ 334,053.96
10/1/08 to 9/30/09 (Complete Premises)	\$ 16.00	\$ 28,533.33	\$ 342,399.96
10/1/09 to 9/30/10 (Complete Premises)	\$ 16.40	\$ 29,246.67	\$ 350,960.04
10/1/10 to 9/30/11 (Complete Premises)	\$ 16.81	\$ 29,977.83	\$ 359,733.96
10/1/11 to 9/30/12 (Complete Premises)	\$ 17.23	\$ 30,726.83	\$ 368,721.96
10/1/12 to 9/30/13 (Complete Premises)	\$ 17.66	\$ 31,493.67	\$ 377,924.04

\* Assumes Extension Commencement Date of October 1, 2003 and 2004 Expansion Date of January 1, 2004.

Effective as of the Extension Commencement Date, the Operating Expense Stop shall be redefined to be the actual Operating Expenses for the calendar year 2004, Commencing as of the Extension Commencement Date and continuing throughout the Extension Term, as same may be extended. Tenant shall continue to pay Tenant's Proportionate Share of Operating Expenses, including insurance costs, taxes and operating expense charges, and any other amounts due and payable under the Lease, in accordance with the terms of the Lease, provided Tenant's Proportionate Share shall be adjusted to reflect the Revised Premises (i.e. 16,273/44,161) as of the Extension Commencement Date, and the Complete Premises (i.e. 21,400/44,161) as of the 2004 Expansion Date.

7. *Option to Extend.*

A. *Notice and Exercise.* Provided no Event of Default is continuing under this Lease and Tenant has not assigned this Lease nor sublet all or any portion of the Complete Premises, Tenant is hereby granted the option to extend the Term of the Lease once for an additional period of five (5) years (the "Renewal Term") commencing upon the expiration of the Extension Term on the same terms and conditions as contained in the other provisions of this Lease other than any upfitting allowance (Tenant accepting the Complete Premises in its "as, is" condition), additional renewal options and as otherwise provided in this Section. This option shall be exercised only by delivery of written notice (the "Renewal

Notice") to Landlord no later than nine (9) months prior to the expiration of the Extension Term. The Minimum Rental for the Complete Premises shall be the then fair market rental ("Market Rate") applicable to the Complete Premises. Tenant shall continue to pay its Proportionate Share of Operating Expenses for the Complete Premises throughout the Renewal Term.

B. *Determination of Market Rate.* For purposes of this Section 7, the term "Market Rate" shall mean the annual amount per rentable square foot that comparable landlords of comparable buildings have accepted in then-current transactions between non-affiliated parties from new, non-expansion, non-renewal (unless the lease involved a procedure invoked by landlord and tenant for a 100% determination of "fair market rental") and non-equity tenants of comparable credit-worthiness, for comparable space, for a comparable use/ for a comparable period of time ("Comparable Transactions"). In any determination of Comparable Transactions appropriate consideration shall be given to the annual rental rates per rentable square foot, the standard of measurement by which the rentable square footage is measured, the ratio of rentable square feet to usable square feet, the type of escalation clause implemented, the extent of tenant's liability under the lease, abatement provisions reflecting free rent and/or no rent during the period of construction or subsequent to the commencement date as to the space in question, parking considerations, length, of the lease term, size and location of premises being leased, building standard work letter and/or tenant improvement allowances, if any, or any other tenant concessions and other generally applicable conditions of tenancy for such Comparable Transactions. The intent is that Tenant will obtain the same rent and other economic benefits that Landlord would otherwise give in Comparable Transactions and that Landlord will make/ and receive the same economic payments and concessions that Landlord would otherwise make, and receive in Comparable Transactions.

Landlord shall determine the Market Rate by using its good faith judgment. Landlord shall provide written notice of such amount within thirty (30) days (but in no event later than forty-five (45) days) after Tenant provides the notice to Landlord exercising Tenant's option rights which require a calculation of the Market Rate. Tenant shall have thirty (30) days ("Tenant's Review Period") after receipt of Landlord's notice of the new rental within which to accept such rental or to object thereto in writing. In the event Tenant objects, Landlord and Tenant shall attempt to agree upon such Market Rate using their best good faith efforts. If Landlord and Tenant fail to reach agreement within thirty (30) days following Tenant's Review Period ("Outside Agreement Date"), then each party shall place in a separate sealed envelope its final proposal as to Market Rate and such determination shall be submitted to arbitration in accordance with subsections (i) through (v) below. Failure of Tenant to so accept in writing such rental within Tenant's Review Period shall conclusively be deemed its disapproval of the Market Rate determined by Landlord.

(i) Landlord and Tenant shall meet with each other within five (5) business days of the Outside Agreement Date and exchange the sealed envelopes and then open such envelopes in each other's presence. If Landlord and Tenant do not mutually agree upon the Market Rate within one (1) business day of the exchange and opening of envelopes, then, within ten (10) business days of the exchange and opening of envelopes Landlord and Tenant shall agree upon and jointly appoint a single arbitrator who shall by profession be a real estate broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of comparable commercial properties in the vicinity of the Building. Neither Landlord nor Tenant shall consult with such broker as to his or her opinion as to Market Rate prior to the appointment. The determination of the arbitrator shall be limited solely to the issue of whether Landlord's or Tenant's submitted Market Rate for the Premises is the closer to the actual Market Rate for the Premises as determined by the arbitrator, taking into account the requirements of this Section 2. Such arbitrator may hold such hearings and require such briefs as the arbitrator, in his or her sole discretion, determines is necessary, hi addition, Landlord or Tenant may submit to the arbitrator with a copy to the other party within five (5) business days after the appointment of the arbitrator any market data and additional information that such party deems

relevant to the determination of Market Rate ("MR Data") and the other party may submit a reply in writing within five (5) business days after receipt of such MR Data.

(ii) The arbitrator shall, within thirty (30) days of his or her appointment, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Market Rate, and shall notify Landlord and Tenant of such determination. Alternatively, the arbitrator may elect to engage another real estate broker (who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of comparable commercial properties in the vicinity of the Building) to determine the Market Rate and the arbitrator may elect to use such broker's submitted Market Rate and thereafter notify Landlord and Tenant of such determination-

(iii) The decision of the arbitrator shall be binding upon Landlord and Tenant.

(iv) If Landlord and Tenant fail to agree upon and appoint an arbitrator, then the appointment of the arbitrator shall be made by the Presiding Judge of the Superior Court, or, if he or she refuses to act, by any judge having jurisdiction over the parties.

(v) The cost of arbitration shall be paid by Landlord and Tenants equally.

Immediately after the base rent for the Renewal Term is determined pursuant to this Section, Landlord and Tenant shall execute an amendment to the Lease stating the new base rent in effect.

8. *Right of First Refusal.* Provided no Tenant default has occurred and is continuing hereunder and provided Tenant has not sublet more than 25% of the total square footage of the Complete Premises, Tenant shall have a continuing right of first refusal to lease the balance of the space in the Building as more particularly described on Exhibit F attached hereto (the "Additional Space") at such time as said Additional Space becomes available for lease during the Extension Term; provided, however, Tenant shall have no right to lease any portion of the Additional Space which is re-leased to existing tenants occupying such space. Prior to entering into any new lease for any portion of the Additional Space, Landlord shall first offer (by written notice to Tenant) to lease such portion of the Additional Space to Tenant upon the same terms and conditions as set forth in a bona fide third party offer (the "Third Party Offer") for said space. Tenant shall have a period of ten (10) days following receipt of said written notice from Landlord to provide Landlord with written notice of its election to lease all (but not a portion) of the available portion of said Additional Space. In the event Tenant fails to respond to Landlord within said ten (10) day period, Tenant shall be deemed to have waived its rights with respect to the leasing of the Additional Space. If Tenant elects not to exercise its right to lease the Additional Space and such space subsequently becomes available for lease, Tenant shall again have a right of first refusal with respect to such space. In the event Tenant elects to exercise its right of first refusal with respect to the Additional Space, Tenant shall be deemed to lease said space subject to all the terms and conditions as set forth in the Third Party Offer and the parties hereto shall amend the Lease (or enter into a new lease) to memorialize the terms of said Lease.

9. *Exterior Signage.* Tenant, at its sole cost and expense, shall have the right to install a single tenant identification sign on the exterior of the Building; provided, however, prior to any such installation, Tenant shall obtain Landlord's prior written approval as to design, size, color and location of such signage. Further, Tenant shall comply with any and all rules and regulations of any municipal authority applicable to such signage.

10. *Ratification.* Except as expressly or by necessary implication amended or modified hereby, the terms of the Existing Lease are hereby ratified, confirmed and continued in full force and effect.

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Second Amendment as of the day and year first above written.

LANDLORD:

CANTERBURY HALL IC, LLC,  
a Delaware limited liability company

By: PRINCIPAL REAL ESTATE INVESTORS, LLC,  
A Delaware limited liability company, its authorized Agent

By: /s/ MARK F. SCHOLZ

Name: Mark F. Scholz

Title: Investment Director, Asset Management

Date:

By: /s/ WILLIS K. BRAMWELL

Name: Willis K. Bramwell

Its: Assistant Managing Director, Asset Management

Date: October 10, 2003

TENANT:

CLINFORCE, INC.,  
a Delaware corporation

By: /s/ TONY SIMS

Name: Tony Sims

Its: President

Date: 9/17/03

*EXHIBIT "A-2"*

*EXHIBIT "A-3"*

*EXHIBIT "A-4"*

FLOOR PLANS

*EXHIBIT "F"*

ADDITIONAL SPACE

Exhibits are available upon request

QuickLinks

[Exhibit 10.1](#)

[TRI PROPERTIES](#)

[SECOND AMENDMENT TO LEASE](#)

March 30<sup>th</sup> 2004

**LEASE AGREEMENT**

**TVCM, Inc./Goldberg Brothers Real Estate LLC**

**40 Eastern Avenue, Malden, Massachusetts 02148**

This lease made this 30<sup>th</sup> day of January, 2004 by and between the Goldberg Brothers Real Estate LLC, a Delaware Company, Steven J. Goldberg and William H. Goldberg, Co-Managers, whose current business address is 7 Rantoul Street, Suite 100 B, Beverly, Massachusetts, 01915, ("Landlord") and TVCM, Inc., a Delaware Corporation, whose current business address is 40 Eastern Avenue, Malden, Massachusetts, 02148-9104, ("Tenant") and shall bind and inure to the benefit of their respective representatives, successors and assigns.

*Tenant hereby attests, warrants and affirms that Edward R. Spadoni as President thereof has the authority to execute this Lease on behalf of Tenant and bind Tenant to the terms hereof.*

*Landlord hereby attests, warrants and affirms that Steven J. Goldberg and William H. Goldberg, as Co-Managers have the authority to execute this Lease on behalf of Landlord and bind Landlord to the terms hereof.*

**1. PREMISES:**

In consideration of the rent to be paid by Tenant, Landlord hereby does let, lease and demise unto Tenant 31,662+/- square feet of commercial space, ("the Leased Premises") situated within the building addressed 30-40 Eastern Avenue, Malden, Massachusetts, 02148, (the "Building") together with the right to use in common with others entitled thereto, the Building's common utility pipes, utility service connections, area entrances and exits, access ways for the purpose of providing utility and other services and access to and from the Leased Premises, providing such uses do not unreasonably interfere with other Tenant's normal business operations.

The Leased Premises are specifically identified with type of use permitted hereby with respect to each unit and useable square footage as follows:

<u>Unit</u>	<u>Square footage</u>	
F-101	1,656 +/- Sq Ft	Office use
F-102	2,650 +/- Sq Ft	Office use
F-103	1,350 +/- Sq Ft	Office use
F-104	3,301 +/- Sq Ft	Office use
F-104a	1,200 +/- Sq Ft	Office use
S-201	10,051 +/- Sq Ft	Office use
T-301	10,051 +/- Sq Ft	Office use
B-101	1,200 +/- Sq Ft	Storage use
BB-101	203 +/- Sq Ft	Storage use

*Tenant's total useable office area is 30,259+/- Square Feet.*

*Tenant's total useable storage area is 1,403+/- Square Feet.*

*Tenant's useable square footage was determined by measuring to the centerline of all of Tenant's exterior/perimeter walls and includes Tenant's proportional share of the common areas of this building.*

**2. TERM AND BASE RENT:**

Tenant covenants and agrees to pay rent to Landlord at Landlord's mailing address (Goldberg Brothers Real Estate LLC, 7 Rantoul Street, Suite 100 B, Beverly, Massachusetts, 01915) or to such

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person or entity at such other address as Landlord may from time to time direct in writing. All monetary payments to Landlord are to be made payable to the **Goldberg Brothers Real Estate LLC**.

Tenant's lease term is for a five year and five month period commencing February 1<sup>st</sup> 2004 and expiring June 30<sup>th</sup> 2009.

Tenant shall pay Landlord a MINIMUM base rent of Two Million Three Hundred and Ten Thousand Six Hundred and Ninety-Eight U.S. Dollars and Ninety-Six Cents (\$2,310,698.96) payable in monthly installments as follows;

		Monthly	Annually
02/01/04	06/30/04	\$ 39,925.13	\$ 199,625.65
07/01/04	06/30/05	\$ 39,925.13	\$ 479,101.55
07/01/05	06/30/06	\$ 33,999.41	\$ 407,992.94
07/01/06	06/30/07	\$ 33,999.41	\$ 407,992.94
07/01/07	06/30/08	\$ 33,999.41	\$ 407,992.94
07/01/08	06/30/09	\$ 33,999.41	\$ 407,992.94
<b>Total Lease Term Base Rent:</b>			<b>\$ 2,310,698.96</b>

Tenant's rental payments were determined as follows;

			Annual Payments
02/01/04 — 06/30/05	Office space	\$ 15.45 psf	\$ 467,501.55
07/01/05 — 06/30/09	Office space	\$ 13.10 psf	\$ 396,392.90
02/01/04 — 06/30/09	Storage space	\$ 6.41 psf	\$ 9,000.00
02/01/04 — 06/30/09	Janitorial extras	n/a	\$ 2,600.00

In addition to the above base rent the Tenant covenants and agrees to pay Landlord all other sums and additional rents that may become due as set forth in this lease.

All Base Rent shall be due on the first day of each month in advance. If this lease shall commence on any day other than the first day of the month, then that month's Base Rent shall be prorated so all future monthly rents will be due on the first of the month.

Tenant shall immediately pay to Landlord a penalty of One Hundred (\$100.00) Dollars each time that Tenant issues and delivers to Landlord a check or draft that is not honored for any reason or returned for insufficient funds by Tenant's financial institution. If Tenant does not pay this penalty and replace said "bounced check" within Ten (10) days of written notification from Landlord then such inaction by Tenant shall be considered a material breach of this lease which may result in its early termination.

Should Landlord not receive Tenant's monthly rental payment "**in hand**" on or before the 10<sup>th</sup> day of the month, then Tenant shall pay to Landlord as additional rent, a late penalty fee of Five Hundred (\$500.00) dollars. If Tenant does not pay this late fee and past due rent within Ten (10) days after Tenant's receipt of written notification from Landlord, such inaction by Tenant shall be considered a material breach of this lease which may result in its early termination.

### 3. OPTION TO EXTEND LEASE TERM:

Tenant shall have the right to extend the Lease Term with respect to all space leased hereunder for one (1) additional five (5) year term (the "Option Period") provided Tenant meets and adheres to the following conditions:

- A: Tenant sends and Landlord receives "**in hand**" on or before 5:00 PM September 30<sup>th</sup> 2008 written notice via certified mail, return receipt requested or by nationally-recognized overnight

delivery service providing a receipt for delivery, a notice evidencing Tenant's intent to exercise Tenant's right to extend the Lease Term for the Option Period.

- B: At the time of exercising this option, Tenant must be in conformance and in good standing in all material aspects, obligations and conditions under this lease. It being understood monetary arrearage in excess of fifteen (15) days by Tenant, shall constitute a material breach of this Lease and prevent Tenant from exercising this right of lease extension.
- C: During the Option Period, all terms, covenants, conditions and provisions of this Lease shall remain in full effect and force except Tenant's Base Rent during the first year of this Option Period shall be 95.00% of the then "Current Market Rent" for the Leased Premises.

The phrase "Current Market Rent" shall mean the rental and all other monetary payments and escalations that Landlord could obtain from a third party desiring to lease space in the Malden Commercial Market as of July 1, 2009, taking into account the type of building, the size, use, location, floor levels and then condition of the demise premises, the quality of construction of the building and of the demised premises, the services provided under the terms of the proposed lease, including without limitation any special rights there under, the rental then being attained for new leases of space comparable to the demised premises in the Malden commercial market and all other factors that would be relevant to a third party desiring to lease the demised premises; provided however that no reduction, deduction or allowance for the construction of lessee improvements shall be taken into account in determining Current Market Rent. Upon Tenant's election to extend the Lease term, or if Tenant elects not to extend the Lease term as herein provided, on or before September 30<sup>th</sup> 2008, Landlord may, at its election, initially designate "Current Market Rent" by written notice to Tenant, this notice shall be accompanied by data to support such designation (the "Designation"). If Tenant disagrees with the Designation, Tenant shall notify Landlord within fifteen (15) days after such Designation, of such disagreement in writing.

In the event that the parties hereto disagree as to the Current Market Rent, each party shall, within thirty (30) days after the date of notice by Tenant, appoint an appraiser. Each appraiser so appointed shall be instructed to determine independently the Current Market Rent for the option term. If the difference between the amounts so determined by such appraisers shall not exceed ten percent (10%) of the lesser of such amounts, then the Current Market Rent shall be an amount equal to fifty percent (50%) of the combined total of the amounts so determined. If the difference between the amounts so determined exceeds ten percent (10%) of the lesser of such amounts, then such two (2) appraisers shall have ten (10) days thereafter to appoint a third appraiser, but if such appraisers fail to do so within such ten (10) day period, then either Landlord or Tenant may request the American Arbitration Association or any successor organization thereto to appoint an appraiser within ten (10) days of such request, and both Landlord and Tenant shall be bound by any appointment so made within such ten (10) day period. If no such appraiser shall have been appointed within such ten (10) days either Landlord or Tenant may apply to any court having jurisdiction to have such appointment made by such court. Any appraiser appointed by the original appraiser, by the American Arbitration Association or by such court shall be instructed to determine the Current Market Rent in accordance with the definition of such term contained herein and within twenty (20) days after its appointment. If the third appraisal shall exceed the higher of the first two (2) appraisals, the Current Market Rent shall be the higher of the first two (2) appraisals; if the third appraisal is less than the lower of the first two (2) appraisals, the Current market rent shall be the lower of the first two (2) appraisals. In all other cases, the Current Market Rent shall be equal to the third appraisal. All such determinations of the Current Market Rent shall be final and binding upon Landlord and Tenant as the Current Market Rent for the applicable effective date. Notwithstanding the foregoing, if either party shall fail to appoint its appraiser within the thirty (30) day period specified above (such party being referred to herein as the "failing party"), the other party may serve notice on the failing party requiring the fail party to appoint its appraiser within ten (10) days of the giving of such notice. If the

failing party shall not respond by appointment of its appraiser within said ten (10) day period, then the appraiser appointed by the other party shall be the sole appraiser whose determination of the Current Market Rent shall be binding and conclusive upon Landlord and Tenant. This provision for determination by appraisal shall be specifically enforceable to the extent such remedy is available under applicable law, and any determination hereunder shall be final and binding upon the parties except as otherwise provided by applicable law. Each party shall pay for the fees and expenses of the appraiser appointed by it, but the fees and expenses of the third appraiser shall be shared equally by the parties. All appraisers appointed hereunder shall be MAI appraisers, so-called.

#### **4. HOLD-OVER BY TENANT:**

In the event that Tenant fails to deliver up the Leased Premises to Landlord at the end of the Lease Term in accordance with the terms hereof, Tenant shall be liable to Landlord for all of the following, without set off or reduction in any manner:

- A:** All of Landlord's actual damages resulting from such holdover;
- B:** A penalty equal to One and one-half (1 2) times Tenant's then daily calculated rental rate per day for each day, or portion of a day, after the date on which this Lease terminates during which Tenant or its employees or agents occupies any portion of the Leased Premises. Tenant shall be deemed to occupy the Leased Premises under either of the following circumstances: (1) the presence in the Leased Premises of the Tenant or Tenant's employees or agents, (2) the material presence in the leased premises or portions thereof of furniture or equipment belonging to the Tenant or its employees or agents.
- C:** Any additional relief awarded to the Landlord in any judicial proceeding regarding this Lease or Tenant's occupation of the Leased Premises.

#### **5. REAL ESTATE TAXES:**

Tenant agrees to pay to Landlord within thirty (30) days of receipt of notice thereof EIGHTY TWO AND FORTY FIVE Hundredths percent (82.45%) of any increase in the real estate taxes over Base Real Estate Taxes for the property addressed 30-40 Eastern Avenue, Malden, Massachusetts, 02148 (the Property). Landlord warrants and represents that the Leased Premises contains no less than EIGHTY TWO AND FORTY FIVE Hundredths (82.45%) percent of the total square footage of the Building.

The Base Real Estate Taxes for the period February 1<sup>st</sup> 2004 to June 30<sup>th</sup> 2005 shall be the real estate taxes assessed by the City of Malden for the 2000 fiscal tax year, commencing July 1, 1999 and ending June 30 2000. Landlord warrants and represents the 2000 Base Real Estate Taxes are \$36,851.59.

The Base Real Estate Taxes for the period July 1<sup>st</sup> 2005 to June 30<sup>th</sup> 2009 shall be the taxes assessed by the City of Malden for the 2005 fiscal tax year, commencing July 1, 2004 and ending June 30 2005.

In the event of any abatement of real estate taxes at any time, Landlord shall immediately notify Tenant in writing and Tenant's real estate tax payment due hereunder shall be reduced or if already paid in full for the relevant period, the difference between the amount so paid by Tenant and the amount due shall be reimbursed to Tenant within thirty (30) days after Landlord receives such abatement. Landlord shall be entitled to deduct from the whole of the taxes abated Landlord's reasonable expenses, including reasonable professional fees spent by Landlord in the obtaining of such abatement, in calculating any adjustment in the amount due from Tenant or to be refunded to Tenant under this provision.

Landlord shall provide Tenant complete detail of any expenses of Landlord in procuring said abatement.

Tenant is fully responsible for taxes assessed on Tenant's personal property and equipment within the Leased Premises.

**6. OPERATING EXPENSE ESCALATIONS:**

For the period February 1<sup>st</sup> 2004 to June 30<sup>th</sup> 2005 the Tenant shall pay to Landlord as additional rent hereunder when and as designated by notice in writing by Landlord, EIGHTY TWO AND FORTY FIVE Hundredths percent (82.45%) of any increase in Landlord's operating expenses over those incurred during the calendar year period commencing January 1, 2001 and ending December 31, 2001, which for this provision shall be Tenant's base year (referred to herein as the "Base Year").

For the period July 1<sup>st</sup> 2005 to June 30<sup>th</sup> 2009 the Tenant shall pay to Landlord as additional rent hereunder when and as designated by notice in writing by Landlord, EIGHTY TWO AND FORTY FIVE Hundredths percent (82.45%) of any increase in Landlord's operating expenses over those incurred during the calendar year period commencing January 1, 2005 and ending December 31, 2005, which for this provision shall be Tenant's base year (referred to herein as the "Base Year").

For this provision, operating expenses are defined as all reasonable expenses of Landlord in the maintenance, repair and operation and management of the property for the benefit or protection of all property, tenants and Owners thereof.

Capital improvements, reimbursed expenses, interest, and expenses related to mortgaging of the Property or extension of any mortgage financing shall not be considered operating expenses under this provision. Additionally operating expenses shall also exclude any costs related to leasing or marketing of vacant office space and any costs reimbursed by Tenant.

For calculating Landlord's annual operating expenses for the Property. Landlord's operating expenses shall include, but are not limited to, the following categories with descriptions:

**Heat:**

Fuel necessary to heat the entire Building.

**Hot Water:**

Fuel necessary to provide hot water to all bathroom areas within the Building.

**Air Conditioning:**

Electric power necessary to air condition all applicable interior areas of the Building, unless served by a separate system maintained by any Tenant.

**City Water and Sewage:**

Public water and sewage charges for the property.

**Off-Street Parking:**

Cost to rent and maintain all parking lot(s) used by all Tenant's of the Property.

**Landscaping:**

Costs for grass cutting, shrub maintenance, tree pruning, watering, etc.

**Exterior Maintenance:**

Costs for maintaining and repairing all exterior areas of the property.

**Snow Removal:**

Costs to shovel, plow, sand, salt, and remove said snow off-site from the parking lots and exterior common entryway areas servicing this property.

**Common Area Janitorial:**

Costs to clean and maintain the interior common areas of the Building.

**Common Area Janitorial Supplies:**

Costs of all supplies and materials to clean and maintain the interior common areas of the Building.

**Rubbish:**

Cost to remove all rubbish and debris off-site from the Building and rental fees for a dumpster(s) for use by all Tenants or by Landlord in maintaining the Building.

**On-Line Alarm System:**

Cost of maintaining, repairing and monitoring as necessary all electronic common area security systems for the protection of the common areas of the Building.

**On-Site Security Person:**

Costs of providing one (1) on-site security person from 4:30 P.M. to 8:30 P.M. (four hours per business day) Monday through Friday excepting holidays from October 1<sup>st</sup> of each calendar year through March 31st in the following calendar year.

**Insurance:**

Cost of obtaining reasonable property insurance and liability insurance primarily protecting the Building, the Property and its owners.

**Energy Management System(s):**

Cost of the maintenance, repairing and monitoring as necessary the energy management system which serves the entire building.

**Professional Fees:**

Costs reasonably incurred for the reporting of taxes and legal fees and other reasonable fees associated with the on-going operations of the Building and Property.

**Elevator:**

Costs of the contractual maintenance, all inspection fees and necessary repairs for the elevator serving the Building.

**Repairs and Maintenance:**

Costs under contractual agreements or otherwise to maintain and repair all physical, mechanical, electrical, HVAC or other systems serving the entire property.

Should this lease be in effect with respect to only a portion of any calendar year, Tenant's responsibility under this provision shall be pro-rated to accurately reflect Tenant's precise period of occupancy when calculating any monies Tenant may owe to Landlord under this provision.

Tenant's obligations to pay operating expenses as additional rent for Tenant's period of occupancy in Tenant's final lease year shall survive the expiration of the Lease Term.

Commencing March 1, 2004+/- and on or about the same date every year thereafter, Landlord shall provide Tenant with the previous year's operating expense and real estate tax amounts. Upon Tenant's request, Landlord shall provide Tenant a letter of certification from Landlord's accounting firm affirming the accuracy of Landlord's operating expenses and real estate tax figures. If requested by Tenant, Landlord shall reasonably provide pertinent receipts and records as proof of that year's operating expenses and real estate taxes.

Should Tenant request Landlord's accountant's certification, and if Landlord's accountant determines Landlord's expense figures are materially accurate, then Tenant shall reasonably reimburse Landlord for the costs of Landlord's accountant certification. However, if Landlord's accountant determines Landlord's expense figures are not materially accurate (within 5.00%+/-), then Tenant shall reasonably reimburse Landlord for the costs of Landlord's accountant certification. In either case, Landlord's certified numbers shall be the actual number for Tenant's operating expense reimbursement determination.

Tenant shall pay Landlord any amount owed under this provision within thirty (30) days of receipt of the bill therefore from Landlord and any such amount owed shall be considered additional rent under this lease.

**7. JANITORIAL SERVICES:**

Landlord will provide Tenant the following janitorial services with supplies:

**DAILY: (Monday–Friday but excluding holidays)**

**1: OFFICES:**

- a: Empty all trash receptacles. Change liners as necessary.
- b: Wipe and dust all furniture surfaces.
- c: Vacuum all carpet surfaces, paying particular attention to corners edges and under exposed furnishings.
- d: Sweep and vacuum all non-carpeted floors.
- e: Wipe down all finger prints off doors and door frames.
- f: Remove Rubbish to designated disposail area.

**2: KITCHEN:**

- a: Wipe down all tables and chairs.
- b: Wipe down all cabinets and counters.
- c: Clean sink area.
- d: Wipe down all appliances, including the interior of microwave.
- e: Sweep and wash flooring.

**3: BATHROOMS:**

- a: Clean and disinfect all bathroom fixtures.
- b: Replenish supplies (paper towels, toilet paper, soap, etc.)
- c: Wipe down walls and paper dispensers.
- d: Sweep and wash flooring using a disinfectant solution.
- e: Empty all waste receptacles, change liners daily.
- f: Clean and polish all mirrors and bright work.

**WEEKLY:**

- a: Wash all non-carpeted flooring. Tenant is responsible to remove all paper products and/or other belongings that could be reasonably determined to be damaged if the Cleaning Service washes and/or waxes Tenant's "Mail room" flooring.
- b: Wipe and clean all glass wall inserts,
- c: Police/clean debris from rear lot and front sidewalk.

**QUARTERLY:**

- a: Wax all non-carpet floor areas:

**YEARLY:**

- a: Vacuum all ceiling vents.
- b: Dust all ceiling light fixtures.

The above described janitorial services shall be performed only for Tenant's office areas. Landlord shall be responsible for all common area janitorial services.

Any and all additional janitorial services shall be at Tenant's expense and shall be scheduled through Goldberg Properties Management Inc.

Landlord solely reserves the right, at any time, to change cleaning services, if in Landlord's reasonable determination such change is appropriate, after notice to Tenant of the proposed change. At any time after such change, Tenant shall have the option, exercised by notice to Landlord, to cause to be performed Landlord's janitorial obligations within the Leased Premises as set forth above, by a contractor or service of Tenant's selection, at Tenant's expense. In the event Tenant so elects, the rent

for the entire Leased Premises shall be decreased by \$1.00 per square foot of office space therein, for the then remainder of the Lease Term.

**Janitorial expense Escalations:**

To accurately reflect Landlord's and Tenant's agreement pursuant to Section 6 and as Landlord is providing interior Lease Premises janitorial services only to Tenant, Tenant shall pay to Landlord as additional rent hereunder one hundred (100.00%) percent of any increase in Landlord's costs for performing the above described janitorial services over those costs incurred therefor during the base Year, provided that this provision shall not apply to any services or supplies associated with (i) common area janitorial services or (ii) services provided benefitting other tenants of the Building.

Notwithstanding the above, Tenant shall be responsible also for its proportional share pursuant to Section 6 of any increase in costs for the janitorial expenses associated with the common areas of this property.

**8. COMMON AREAS:**

Tenant shall have the shared right of use and access to the common area bathrooms, staircases, hallways, elevators, lobbies, driveway, parking lot(s) etc., within and outside of the Property. Tenant understands this right shall be contingent upon Tenant not being in material default under the terms of this Lease.

**9. PARKING:**

Landlord, at no charge shall provide Tenant three (3) parking spaces per 1,000 sq ft or portion thereof of office space Tenant Leases. However, Tenant understands this does not include the basement or storage areas.

Tenant currently leases 30,259 square feet of office space which includes the 2,650 square feet of office space sub-leased to Harbor Tech Inc. Accordingly, Landlord shall continue to provide Tenant Eighty three (83) parking spaces and Harbor Tech Inc. eight (8) parking spaces within the rear parking lot, the MBTA parking lot or any other parking lot within five hundred (500) feet of the Property.

Tenant understands that Landlord shall have the right to allocate which parking spaces Tenant shall have use of. Tenant further agrees, should Landlord request it, to provide Landlord registration number, year, color and make of the cars which will be using Tenant's parking spaces.

Notwithstanding the above, Tenant shall have the exclusive right to use the corresponding percentage of parking spaces in the immediate rear lot to the percentage of the building Tenant occupies. Said calculation shall not include the parking spaces in this lot exclusively allocated to customer/visitor parking.

Additionally Landlord has been leasing to Tenant an additional Thirty-Five (35) parking spaces at Fifty Dollars (\$50.00) per space per month which is the same rental rate the Malden Redevelopment Authority charges Landlord for these same spaces.

Upon the signing of this Lease Agreement, Landlord will immediately pursue a new Lease Agreement with the Malden Redevelopment Authority (MRA) with the following conditions;

- A. Increase number of MRA rental parking spaces by 57 \*.
- B. Establish a Lease term for this rental through 6/30/09
- C. Request a volume discount which would bring the rental rate down to \$40.00-\$45.00 per space per month.
- D. Relocate the rubbish receptacle from the upper level parking lot to the MRA lower level parking lot.

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\* In doing so, Landlord will Lease roughly 150 parking spaces from the MRA.

#### **10. PERMITTED USE:**

Tenant covenants and agrees that Tenant shall occupy and use the Leased Premises throughout the Lease Term or any renewals or extensions thereof, including any period of holding over, only for professional or general office use.

#### **11. TENANT'S ADDITIONAL COVENANTS:**

Tenant covenants and agrees at Tenants sole cost and at all times during the course of the Lease Term and any such future terms of occupancy by Tenant of the Leased Premises or any part thereof:

- A. To conduct Tenant's business at all times in a professional and reputable manner.
- B. To comply with all governmental rules and regulations related to the storage and disposal of refuse; to store all trash and refuse within the Leased Premises or within the dumpster located in the rear parking lot area of the Property.

After each use of the dumpster, Tenant shall make sure the wooden gate accessing this dumpster is closed and secured. Tenant, further agrees to place Tenant's trash and refuse only inside the dumpster and not on the ground around said dumpster.

Tenant's use of this dumpster is for reasonable use only (normal daily business operations, which term shall specifically exclude disposal of any furniture or bulk items). If Tenant's use becomes unreasonable as reasonably determined by Landlord, then Tenant shall reimburse Landlord for such excess use.

- C. Not to use the Leased Premises in a manner which shall be unlawful, improper, noisy, odorous or offensive to the other Tenants within the Building and not to use the Leased Premises in any way that shall be contrary to any law or any municipal by-law of the City of Malden. Tenant agrees that Landlord has made no representation or warranties with respect to the Tenant's intended use of the leased premises.
- D. To comply promptly with all applicable laws, rules, regulations, ordinances, requirements, or orders of public authorities, the Board of Fire Underwriters, and similar organizations except

when the Landlord is responsible for compliance therewith under the terms and conditions of this Lease.

- E. Not to make any use of the Leased Premises which shall invalidate or increase the cost of the Landlord's insurance, nor use any advertising medium which may constitute a nuisance; nor do any act tending to injure the reputation of the property.
- P. To be responsible for all maintenance and repairs within the interior of the Leased Premises. Landlord shall be responsible for structural repairs and any equipment that is the Landlord's obligation to maintain pursuant to Section # 14. Tenant's responsibility shall include without limitation, electrical, plumbing, windows, doors, and any interior improvements serving the Leased Premises exclusively. At the end of Tenant's occupancy, Tenant shall surrender the Leased Premises in the same condition as at the commencement of Tenant's occupancy, reasonable wear and tear only excepted.
- G. Not to overload or deface the Leased Premises.
- H. To save harmless and to indemnify Landlord from and against any and all liability, costs and expenses for damages, losses, injuries, or death to persons or losses to property as a result of Tenant's occupation of the Leased Premises excepting only those arising from any omission, negligence or willful misconduct of Landlord or its Agents, such indemnification to include Landlord's reasonable attorney's fees and costs. Tenant agrees to maintain public liability insurance on the Leased Premises protecting both Landlord and the Tenant, and shall furnish the Landlord a certificate showing such to Landlord on an annual basis a certificate showing such insurance to be in force. The amount of such public liability insurance shall be a minimum of \$1,000,000.00 dollars per occurrence and \$2,000,000.00 in the aggregate. Tenant's insurer must be licensed to do business in the Commonwealth of Massachusetts. In addition, Landlord recommends this policy have a plate glass and door endorsement, for the Tenant is responsible for repairing and replacing any broken glass, doors and frames within or providing access to the Leased Premises which for any reason may occur other than by Landlord's fault.
- I. To understand and agree Tenant's furnishings, fixtures, equipment, effects, and property of every kind, in the Building shall be at the sole risk and hazard of Tenant. If all or any part thereof shall be destroyed or damaged by fire, water, or any other casualty, or by leakage or bursting of water pipes, or any other pipes, by theft or from other cause, no part of such loss is to be charged to or be borne by Landlord unless such damage was caused by the negligence or willful misconduct of Landlord.
- J. Not assign this lease, nor sublet in whole or any portion of the Leased Premises, nor permit the use of all or any part of the Leased Premises by persons other than the Tenant, its servants and agents, without the written consent of the Landlord. Any such assignment, sublease or permission to occupy without such consent shall be a material breach of this Lease by Tenant, and at the option of the Landlord, entitle Landlord to terminate this Lease. Landlord's permission to assign, sublease or permit occupancy of the Leased Premises by others shall not be unreasonably withheld or delayed.

Any assignment to any parent, subsidiary or affiliate of Tenant shall not be deemed as assignment hereunder for purposes of requiring Landlord's approval. Affiliate shall mean any business entity controlling, controlled by or under common control with Tenant, and any entity or person which may come to own a controlling portion (fifty one percent 51%) or more of Tenant's assets or the ownership interest in Tenant.

Notwithstanding the above, neither Tenant nor any assignee, whether or not an Affiliate shall be relieved of tenant's obligations hereunder, as a result of any such assignment, sublease or permission to occupy the Leased Premises.

If either Tenant or Landlord engages a real estate broker to procure a substitute Tenant or Subtenant in accordance with the terms hereof, Tenant shall be responsible for the real estate commission payable to such real estate broker on account of such substitute Tenant's or Subtenant's occupancy of the Leased Premises (or any portion thereof) for the period commencing as of the effective date of such assignment or sublease through the last day of the term of this Lease Term. Thereafter, Landlord shall be reasonably responsible for the remaining portion of said standard and reasonable real estate commission.

- K. Not to make any alterations, installations, (other than trade fixtures) or additions to the Leased Premises, nor permit the painting, or placing of signs, awnings, flagpoles, or various types of advertisement media or the like in, or about the Leased Premises, without on each occasion obtaining the prior written permission of Landlord, which shall not be unreasonably withheld or delayed.
- L. Excluding the \$30,000.00 credit to provided by Landlord, to pay promptly when due the entire cost of any alterations or improvements in the Leased Premises undertaken by Tenant and to bond against or discharge any liens for labor or materials in connection therewith within ten (10) days after a request by Landlord; to procure all necessary permits before undertaking such work; and to do all such work in a good and workmanlike manner, employing materials equal in quality to those used in Landlord's work and to comply with all governmental requirements in connection with such improvements.
- M. To discharge (by payment or by filing of the necessary bond or otherwise) any mechanics, materialman's or other liens against the Leased Premises or the Landlord's interest therein, which liens may arise out of any payments due, or purported to be due, for any labor, services, materials, supplies, or equipment alleged to have been furnished to or at the request of Tenant in, upon, or about the leased premises.
- N. Upon Landlord providing Tenant reasonable oral notice (not less than 24 hours in advance), to permit Landlord during business hours to enter to view the Leased Premises or to show the same to prospective purchasers, lenders, Tenants, agents of Landlord, or repair personal. If an emergency arises, in Landlord's reasonable determination, Landlord shall have the right of access at any time to rectify such emergency.
- O. To remove at the termination of this Lease Tenant's or occupation of the Leased Premises, all Tenant's goods and effects from the Leased Premises which are not the property of the Landlord, and to yield up to Landlord the Leased Premises with all keys and locks. The Leased Premises shall be in the same condition as at the commencement of this Lease or as altered/built out during the course of the Lease, reasonable wear and tear only excepted. Landlord shall have the right to treat any remaining property as abandoned and to dispose of such property at Tenant's expense in any manner the Landlord deems fit.
- P. To permit Landlord without molestation to install reasonable "for lease" sign(s) within Tenant's windows NINE (9) months prior to the end of the Lease Term. Landlord covenant's to remove said sign(s) upon Landlord's leasing of the Leased Premises.
- Q. To pay when due all electricity separately metered to Leased Premises, telephone, and other charges payable on account of Tenant's use of utilities in the Leased Premises.

## 12. LANDLORD'S IMPROVEMENTS

Landlord shall provide to Tenant an allowance of Thirty Thousand Dollars (\$30,000.00) towards work within the Leased premises. Such allowance shall be used at any time during the first two (2/1/04 - 1/31/06) years of the Lease Term by Tenant.

Tenant shall provide Landlord a thirty (30) day period after the date Landlord receives Tenant's notice of Tenant's intent to physically move into Suite F-102, so Landlord at Landlord's expense can install new carpet with cove base and paint all existing previously paintable surfaces within this office suite. Notwithstanding the above, this work by Landlord is not part of the \$30,000.00 credit Landlord is providing to Tenant.

Landlord and Tenant shall cooperate and work together to complete any and all improvements to "the Building during the Lease Term in a reasonable, timely, workmanlike and quiet fashion.

Landlord shall charge Tenant standard overtime rates should Tenant request Landlord to work within the Lease Premises before or after normal business hours, defined herein as 8:00 AM to 5:00 PM Monday through Friday excepting holidays.

Any built-in improvements installed for Tenant shall, at Landlord's option, remain part of the Leased Premises at the termination of this Lease or shall be removed at Tenant's expense. Tenant shall notify Landlord not less than thirty (30) nor more than ninety (90) days prior to expiration or termination of this Lease that Landlord is required to notify Tenant of which improvements Landlord so designates for removal. Any leasehold improvements not designated for removal by Landlord by notice to Tenant within seven (7) days after Tenant's notice shall remain in the Leased premises after the expiration or termination of the Lease term.

Goldberg Properties Management Inc. shall be the general contractor for all Work to the Lease Premises which physically or permanently alters any portion of the Property or requires a building permit issued by the City of Malden's Building Department or any associate City Department. However, Tenant shall have the right to seek alternative quotes from other licensed Contractors. Tenant may select an alternative contractor's quote if such quote equals or exceeds a seven & half percent (7.50%) reduction from Landlord's quote and Landlord declines to match such alternative quote within forty-eight (48) hours, after receiving a copy of such alternative contractor's quote from Tenant. Tenant's contractor, if selected, shall meet the following conditions:

- 1: Contractor shall provide to Landlord prior to commencement of any work at the Property evidence of appropriate workman compensation insurance coverage and Liability Insurance Coverage (Minimum of One Million Dollars) by an Insurance Company licensed to provide such insurance within the Commonwealth of Massachusetts.
- 2: Contractor shall only use materials equal to or that exceeds the quality of materials already in place. Contractor shall further make all reasonable efforts to match all existing materials in place.

Tenant understands that any licensed contractor selected by Tenant other than Goldberg Properties Management Inc. shall be considered an agent of the Tenant. Therefore, Tenant shall be liable and responsible for all actions or inactions on the part of Tenant's contractor while within or on the Property.

## 13. SMOKING POLICY

The Building shall be a **SMOKE FREE** building. At no time shall Tenant's employees smoke inside any interior area of the Property. Tenant's employees shall smoke only in designated exterior areas. Tenant shall be responsible for policing and picking up all improperly discarded cigarette butts in the designated smoking areas.

**14: LANDLORDS COVENANTS:**

A. Landlord covenants and agrees to maintain in good repair the roof and the structural integrity of the Building, the common areas, internally and externally in and about the Building, all heating, ventilation and air conditioning units and all other equipment located exterior to, but serving the Building and the Leased Premises and all electrical and plumbing systems which do not exclusively serve the Leased Premises, except to the extent Tenant is obligated to maintain any such system pursuant to the terms of this Lease. However, if any damage arises from Tenant or Tenant's employees, agents' or customers' misuse, Tenant shall be solely responsible for repairing such damage and restoring the Building and the Property to the same good working order and condition as on the Commencement Date of this Lease, reasonable wear and tear only excepted. Landlord warrants that at the commencement of this Lease, all plumbing, electrical, mechanical and other systems serving the Leased premises shall be in good working order.

**Notwithstanding the above, Tenant shall be solely responsible for all maintenance and repairs (including replacement) of any HVAC system exclusively serving Tenant's computer room.**

B. Landlord and Tenant shall use all reasonable efforts to resolve any problems or conflicts that may arise between Landlord and Tenant in a timely and common sense fashion.

C: Landlord shall furnish at no charge to Tenant in **reasonable** amounts the following services and utilities;

Heating:

Air Conditioning:

Hot Water:

City Water and Sewage:

Base Real Estate taxes

Off-Street Parking

Landscaping

Common Area Janitorial and related supplies

Tenant area Janitorial and related supplies

Common area Snow Plowing and Shoveling

Standard Rubbish Services

24-Hour Monitored Security System

On site security (10/1/-3/31; 4:30-8:30 M-F business days)

*Notwithstanding Landlord's obligations as set forth in this **Section 14**, Tenant in a timely and as necessary manner shall keep Tenant's exterior entryways and steps at the rear entrance off the rear parking lot of Tenant's Leased Premises (F-102, F-104 & F-104A) reasonably clear and clean of all rubbish, snow and ice.*

*Tenant has requested and Landlord has agreed to reasonably clear Tenant's private entryway to suites F-101, F-102, F-103 F-104 and F-104A and steps of snow and ice and salt this area in a reasonable fashion. Additionally it is agreed Landlord make good faith effort to coordinate such removal before 8:00 AM. Tenant shall be charged a fee of Forty Five (\$45.00) dollars per snow storm as an additional charge for such service.*

*Landlord shall provide this service at the same time Landlord is providing snow and ice removal services to other Tenant's and the exterior common areas of the Property. If Tenant deems it necessary and so notifies Landlord, Landlord shall attempt to accelerate the timing of this service by Landlord's then-current vendor. Until such time, as the entryways and steps are cleared in each instance. Tenant shall direct Tenant's employees, visitors and agents to use the main entryway areas of this Building.*

Landlord shall shovel on behalf of the Tenant, but at Landlord's expense the access way leading to Tenant's basement storage area. Landlord shall provide this service at the same time Landlord is providing snow and ice removal services to other Tenant's and the exterior common areas of this property.

**D. Reasonable use**

Landlord's providing of services or utilities to Tenant as described above is strictly contingent upon Tenant's reasonable use or consumption of such utilities and services. If Landlord reasonably determines Tenant is wasting such utilities, such as city water or other building services, and Tenant fails to reduce such use after notice by Landlord, then such irresponsible use by Tenant shall constitute a material breach of this Lease which at Landlord's option may result in either an early termination of the Lease Term or an immediate stoppage of Landlord supplying to Tenant such utilities and/or services.

**E. Timing of Utilities**

Heat and air conditioning shall be supplied during normal business hours defined herein as:

Monday–Friday	8:00 a.m.–8:00 p.m.
Saturday	8:00 a.m.–2:00 p.m.
Sunday	None

"Supplied", as used herein, shall mean that reasonably comfortable temperatures are maintained during such hours, notwithstanding that HVAC systems may have to be put in operation prior to 8:00 a.m., or operate until or after 8:00 p.m. on such days.

Landlord acknowledges that Tenant shall be using the Leased Premises frequently beyond normal business hours and agrees to arrange for heat, air conditioning, hot and cold water within the Leased Premises during all extended "Tenant" business hours.

If Tenant's business hours exceed 8:00 a.m.—8:00 p.m. Monday through Friday and 8:00 a.m.—2:00 p.m. on Saturday on a frequent basis, then Tenant shall reimburse Landlord for the additional costs of providing such services during such periods.

F. Landlord shall furnish services in accordance with the terms of this Lease; provided, however, that Landlord shall not be liable for, nor shall rent abate because of interruption or cessation of any essential service to the Leased Premises of the Building or agreed in this Lease to be furnished, which is due to an accident, labor difficulties, scarcity of or inability to obtain fuel, electricity, or any services or supplies from the sources from which they may customarily have been obtained, fault of Tenant or any third party, or due to any cause beyond the Landlord's control.

G. Upon Tenant paying the rent and performing and observing all the covenants, conditions, duties, and other provisions of this Lease on the Tenant's part to be performed and observed, Tenant shall peacefully and quietly have and enjoy the Leased Premises during the Lease Term without any manner of hindrance or molestation from Landlord, subject however, to the terms and conditions of this Lease.

H. Landlord, warrants that within NINETY (90) days of the signing of this Lease by Landlord and Tenant, Landlord at Landlord's sole expense, shall commence the following work items to the HVAC, roofing and parking lot systems serving the entire Building. All work contemplated under this subsection 14.H shall be completed unless otherwise noted, no later than October 31st 2004.

Retain the services of Siemens Inc. and Tech Air Inc. to perform the following;

1. Revisit options to write and install a software patch creating separate winter and summer programs. Additionally, program the software so it will allow the computer to switch back and forth based upon outside temperature setting and actual interior space temperature.
2. Demonstrate to Tenant steps involved to access EMS system and initiate various commands Tenant would control. On or before August 31<sup>st</sup>2004, upon Tenant's request, Landlord shall provide on-site a four (4) hour education session for up to three (3) Tenant and two (2) Landlord personal to learn the following commands:
  - a. Ability to temporarily override existing temperature settings in a particular area.
  - b. Ability to view and reset setting point(s) computer uses to switch from summer to winter or from winter to summer.
  - c. Install software (if presently existing) that would allow temporary override from winter setting to summer or reverse depending on perceived needs. Such software shall have a time out mechanism which effectively would reset system back to original guidelines before temporary override.
  - d. Priority on/off commands.
  - e. Review temperature and command status settings per zone.
  - f. Review trends for individual area zones.
  - g. Method to change hours of operations including holidays, weekends etc.
  - h. Track and review listing of changes with ability to identify who made the changes.
3. Review HVAC common lobby equipment and take all reasonable steps (including replacement) to ensure all HVAC systems serving the three floors' of the common lobby are working properly.
4. Resolve Estelle's old office (FCU 23 zone) HVAC needs by installing within such office area a motorized damper tied into a thermostatic control that the occupant shall be able to control and adjust.
5. Upgrade by installing a metal roof over the smoking area located in the rear of the 30 Eastern Avenue lobby.
7. Upgrade or replace Building directory signs and displays.
8. Cosmetically upgrade the interior (walls, ceiling, floors and lighting) of the elevator.
9. Upgrade all existing light fixtures in first floor common bathrooms.

10. On or before June 21, 2004, Landlord shall replace the old tar and gravel roof section and install a new rubber membrane roof system.
11. On or before June 21, 2004 Landlord shall reseal existing seams in the rubber membrane roof system.
12. Commencing in the Spring of 2004, Landlord shall commence replacing (minimally four units per year) all roof mounted HVAC systems upon these units reaching 20 years in age or upon any individual unit requiring more than \$2,500.00 of repair work at any one time.
13. Shall re-asphalt and reline the upper level parking lot.

**15. CASUALTY OR EMINENT DOMAIN TAKING:**

If the Leased Premises or Building, or any substantial part (twenty-five percent (25%) or more of either materially affecting Tenant's operations), shall be taken by or under threat of right of Eminent Domain or shall be materially destroyed or damaged by fire or other casualty or by action of any public or other authority, or shall suffer any material direct or consequential damage for which Landlord and Tenant, or either of them, shall be entitled to compensation by reason of anything done in pursuance of any public or other authority during the term of this Lease or any extension or renewal thereof, then this Lease shall forthwith terminate at the election of the Landlord, which election may be made notwithstanding Landlord's entire interest may have been divested; and, if Landlord shall not so elect, then in case such taking, destruction, or damage renders the Leased Premises unfit for use and occupation, a just proportion of the rent according to the nature and extent of injury, shall be abated until the Leased Premises (or, in case of a partial taking, what remains thereof) shall have been put in proper condition for use and occupation. If a partial or total taking renders the remainder of the Leased Premises insufficient for Tenant's use and Tenant shall so certify in good faith to Landlord, or if a taking or such casualty shall be so extensive that restoration or repair cannot reasonably be effected within 90 days from the date on which insurance proceed become available or if Landlord shall fail to repair and/or restore the Leased Premises within ninety (90) days following such date on which insurance proceeds become available or condemnation, then Tenant may terminate this Lease by notifying Landlord of such election. Landlord reserves all rights to damage to the Leased Premises and Building and the leasehold hereby created, whether now accrued or hereafter accruing, by reason of anything lawfully done in pursuance of any public or other authority, and by way of confirmation, Tenant grants to Landlord all of Tenant's rights to such damages and covenants to execute and deliver such further instruments of assignments thereof as Landlord may from time to time reasonably request, provided, however, that nothing herein shall impair Tenants right to maintain an action for a separate award from a third party for damage to the Leased Premises or Tenant's separate property or for moving and relocation expenses. Landlord shall notify Tenant of Landlord's decision to terminate this Lease or to Landlord's obligations to restore the Leased Premises or the Building within thirty (30) days after the occurrence of any event giving rise to Landlord's right so to terminate or to restore, and Tenant shall deliver its above described certificate to and notify Landlord of Tenant's election to terminate this Lease within thirty (30) days after the event giving rise to its right to so terminate and any such termination by Tenant shall be effective thirty (30) days after the date of notice of such termination. Notwithstanding anything to the contrary, if Landlord does not reasonably repair or restore the Lease Premises within a 120 day period from such casualty or taking, then Tenant may terminate this Lease Agreement at that time by providing Landlord written notice of said termination.

**16. BROKERAGE:**

Both the Tenant and the Landlord warrant that except as set forth in this Section 15. neither party has had any dealings with any agent or broker in connection with the Leased Premises which would result in any brokerage fees or commissions being due and payable by either party.

**17. LIMITATIONS OF LANDLORDS LIABILITY:**

Landlord's obligations, rights and privileges under this Lease (including, without limitation, any work letter or similar agreement between Landlord and Tenant) beyond mere holding of legal title to the Leased Premises and other real estate of which the Leased Premises are a part, shall be performed, held and enjoyed by the beneficial owners of Landlord's; but without recourse by Tenant in any case against the personal estate of such beneficiaries or beyond the real estate of which the leased premises are a part.

The covenants and agreements of Landlord and Tenant shall run with the land and will be binding on and inure to the benefit of them and their respective heirs, executors, administrators, successors and assigns; but no covenant, agreement or undertaking of Landlord, expressed or implied, shall bind any person except for matters occurring during such person's period of ownership of the Building, and no fiduciary, shareholder, or beneficiary of Landlord, if a trust shall be individually bound. Tenant agrees to look only to the owner of the Building for performance of Landlord's obligations.

**18. REMEDIES CUMULATIVE:**

Any and all rights and remedies which the Landlord may have under this Lease, at law in equity, shall be cumulative and shall not be deemed inconsistent with each other or exclusive, and any two (2) or more of such rights and remedies may be exercised at the same time insofar as permitted by law.

**19. EFFECT OF WAIVERS OF DEFAULT:**

No consent or waivers, expressed or implied, by the Landlord to or of any breach of any covenant, condition or duty of Tenant shall be construed as a consent or waiver to or for any other breach of the same or any other covenant, condition, or duty hereunder.

The parties acknowledge that their covenants under this Lease are independent and therefore Tenant waives any right to set off against the Tenant's obligations to Landlord any money allegedly due from Landlord by reason of any purported default by the Landlord hereunder or otherwise.

**20. NOTICE FROM ONE PARTY TO THE OTHER:**

Any notice from Landlord to Tenant shall be deemed to have been given if mailed by Registered or Certified Mail addressed to the Tenant at the Leased Premises with a copy to Tenant's legal or such other address as the Tenant shall have last designated by written notice to the Landlord, so mailed. Any notice from the Tenant to the Landlord shall be deemed to have been given if mailed by Registered or Certificate Mail addressed to the Landlord at Goldberg Properties Management Inc., Harbor Place Suite 100 B, 7 Rantoul Street, Beverly, Massachusetts, 01915, or such other address as the Landlord shall have last designated by written notice to the Tenant so mailed.

**21. LANDLORD'S REMEDIES UPON DEFAULT:**

In the event that Tenant fails to pay any rent or other charges due hereunder within ten (10) days after notice from Landlord that the same is due; or fails to perform any of Tenant's obligations under the terms, conditions, or covenants of this Lease for more than thirty (30) days after receipt of written notice of such failure or if such failure shall be of such nature that the same cannot be reasonable cured or remedied within such thirty (30) day period, Tenant shall not in good faith have commenced the curing or remedying of such failure within such thirty (30) day period and thereafter diligently proceed therewith to completion; or if the Tenant shall abandon the Leased Premises; or if this Lease or the estate created hereby, shall be taken in execution or by other process of law; or if the Tenant shall be adjudicated insolvent or bankrupt pursuant to the provisions of any state or federal insolvency or bankruptcy act; or if a receiver or Trustee or the property of the Tenant shall be appointed by

reason of the Tenant's insolvency and inability to pay debts; or if any assignment shall be made of the Tenant's property for the benefit of the creditors,(all of the foregoing being events of default), then and in any such event, the Landlord, besides other rights or remedies it may have, shall have the immediate right to re-enter the Leased Premises and to remove all persons and property there from without notice or resort to legal process and without being deemed guilty of trespass or become liable for any loss or damage which may be occasioned thereby.

If Tenant shall fail to pay the rent or any other charges within Ten (10) days after same becomes due and payable, such unpaid amounts shall bear interest from the due date at FOUR percent (4.00%) above the prime interest rate of the CitiBank or its successor. In no event shall the interest rate payable by Tenant exceed eighteen percent (18%).

## **22. RULES AND REGULATIONS:**

Landlord may establish at any time rules and regulations which Landlord may reasonably deem appropriate for, among other things, the orderly and efficient management and operation of the Building, the safety and convenience of all persons at any time properly within or about the Building, the protection and security of property, and for dealing with any emergencies. Tenant agrees always to comply with such rules and regulations notwithstanding any failure of other Tenant's or occupants of the Building to observe the same or Landlord's failure to enforce the same against any persons other than Tenant. Landlord agrees to enforce its rules and regulations with respect to other Tenants.

## **23. SUBORDINATION:**

This lease shall, at the option of the Landlord, be subject and subordinate to any mortgages or trust deeds, present or future, to any bank, financial institution, and/or insurance company, covering the leased premises.

Such subordination shall not be effective against the Tenant, unless the Tenant is provided with a non-disturbance agreement executed by the party to which Tenant's interest will be subordinated. Tenant's tenancy shall not be disturbed so long as Tenant is not in default under this Lease. Landlord shall, within reasonable time after the execution of this Lease, provide Tenant with such non-disturbance agreement from Landlord's mortgagee. Tenant agrees that it shall upon notice of the Landlord, execute, acknowledge and deliver any and all instruments requested by the Landlord which Landlord may reasonably require in order to effect the issuance of such subordination.

Any future subordination, non-disturbance and attornment agreement will be substantially similar to documents already in place or current CitiBank standard agreements.

## **24. NO ACCORD AND SATISFACTION:**

No acceptance by the Landlord of a sum smaller than the Base Rent, additional rent, or any other amount due to Landlord shall be deemed accepted other than on account of the earliest installment of such amount as then may be due and payable by Tenant nor shall any such payment of a smaller amount than due be deemed an accord and satisfaction under the terms of this Lease.

## **25. APPLICABLE LAW AND CONSTRUCTION:**

This lease shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. If any provisions of this Lease shall to any extent be invalid, the remainder of this Lease shall not be affected thereby. There are no oral or other written agreements between Landlord and Tenant affecting this Lease. This Lease may be amended only by an instrument in writing executed by both Landlord and Tenant.

**26. SEVERABILITY:**

If any provisions of this Lease shall be determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease, and all other provisions shall remain in full force and effect. If any provision of this Lease is capable of two (2) constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

**27. ESTOPPEL CERTIFICATIONS:**

Promptly at the Landlord's reasonable request, Tenant shall furnish to Landlord (or as the Landlord may direct) Tenant's written and duly signed certification that this Lease is in full force and effect without amendment (or with such changes as may then be effective, which shall be stated in the certificate), any defense, offset, or counterclaim against rent-payment or other obligations hereunder which Tenant may have; the dates to which rent and other charges have been paid; and that neither Landlord nor Tenant is in default under this Lease (or specifying any default of either party in detail in the certificate). Any prospective purchaser or mortgagee may rely on such certifications.

Promptly at Tenant's reasonable request, Landlord will furnish to Tenant (or as the Tenant may direct) Landlord's written and duly signed certification that this Lease is in full force and effect without amendment (or with such changes as may then be effective, which shall be stated in the certificate), any defense, offset, counterclaim or other obligations hereunder which Landlord may have, the dates to which rent and other charges have been paid, and that neither the Landlord nor the Tenant is in default under this Lease (or specifying any default of either party in detail in the certificate). Any prospective purchaser or mortgagee may rely on such certifications.

**28: WAIVER OF SUBROGATION:**

The parties hereto shall procure an appropriate clause in, or endorsement on, any fire or extended coverage insurance policy covering the Leased Premises or the Building or personal property, or fixtures or equipment located thereon or herein, pursuant to which the insurance company providing such insurance waives subrogation or consent to a waiver of right of recovery, and having obtained such clauses or endorsements of waiver of subrogation or consent to a waiver of right of recovery, each party hereby agrees that it shall not make any claim against or seek to recover from the other for any loss or damage to its property or the property of others resulting from fire or other perils covered by such fire and extended coverage insurance. Notwithstanding the foregoing provisions of this Section 28, the party obtaining and paying the premium for such insurance shall not be required to obtain such endorsement or waiver if an additional premium cost is incurred therefor, unless the other party hereto, for whose benefit such endorsement or waiver is obtained, pays such additional premium costs.

**29: NOTICE OF LEASE:**

Landlord and Tenant agree that upon the request of either party, they shall execute a Notice of Lease in recordable form setting forth the relevant terms of this Lease.

**30: MISCELLANEOUS PROVISIONS:**

A: Should Tenant decide to Lease and convert the lower level 3,000 square feet of space into office space, then Tenant's rental rate for this space shall be \$10.00 PSF, storage space \$7.95 PSF or alternatively as a general purpose gymnasium \$8.50 PSF.

Landlord and Tenant shall work together to determine fair allocation of renovation costs associated with Tenant's use for this space.

B: Landlord hereby grants to Tenant the right to reasonably rename this property. Said name shall be subject to Landlord's approval. Landlord's approval shall not be unreasonably withheld or delayed.

C: Tenant at Tenant's expense shall have the right, subject to the City of Malden Sign ordinances, to place on the exterior of this building two signs. It being agreed said right also is subject to the following;

- 1: Landlord's reasonable approval concerning size, style illumination, materials and location. Landlord's approval shall not be unreasonably withheld or delayed.
- 2: Tenant agrees to pay to take down said signs and patch any holes and make any repairs necessary due to these signs made at the termination of this lease.
- 3: Landlord upgrading the lobby directories on or about June 30<sup>th</sup> 2004. If Tenant intends to rename this building and desires to have this new building name fixed on said directories then Tenant must inform Landlord of Tenant's intent concerning these directories no later than May 31<sup>st</sup> 2004 and Tenant shall pay 50.00% of the reasonable cost for these directories and their installation.
- 4: Landlord and Tenant's existing Lease Agreement dated October 31<sup>st</sup> 2000 shall continue in full force and effect with respect to overage operating and real estate charges Tenant owes Landlord through January 31<sup>st</sup> 2004.

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**31: EXECUTION OF LEASE:**

The submission of this Lease shall not bind the Landlord to the terms and conditions hereof until Landlord has executed this Lease in full.

IN WITNESS WHEREOF, the parties hereby accept and agree to abide by the terms, conditions and covenants of this Lease under seal this \_\_\_\_\_ day, of April, 2004.

4/1/04	/s/ PATTY BRENNAN	/s/ EDWARD R. SPADONI
_____	_____	_____
Date	Witness	Edward R. Spadoni as President, TVCM Inc.
4-5-04	/s/ ILLEGIBLE	/s/ STEVEN J. GOLDBERG
_____	_____	_____
Date	Witness	Steven J. Goldberg, Co-Manager, for the Goldberg Brothers Real Estate LLC
4/5/04		/s/ WILLIAM H. GOLDBERG
_____	_____	_____
Date	Witness	William H. Goldberg, Co-Manager, for the Goldberg Brothers Real Estate LLC

**GUARANTY**

FOR VALUE RECEIVED, and in consideration for and as an inducement to Owner (as hereinafter defined) making that certain lease dated March 3, 2004 (the "Lease") with TVCM, Inc. ("Tenant") for that certain leased premises located at 30-40 Eastern Avenue, Malden, Massachusetts, more fully described in the Lease, the undersigned ("Guarantor") guarantees to Owner and Owner's successors and assigns the full performance and observance of all the covenants, conditions and agreements provided in the Lease to be performed and observed by Tenant (the "Obligations"), to the extent such Obligations can be performed and observed by the payment of money. Guarantor acknowledges that no notice of non-payment, non-performance, or non-observance or proof of notice or demand by Owner shall be a condition of Guarantor's performance or otherwise required to charge Guarantor therefor, and Guarantor hereby expressly waives and expressly acknowledges that the validity of this Guaranty and of the obligations of Guarantor hereunder shall not be terminated, affected or impaired by reason of the assertion by Owner against Tenant of any of the rights and remedies reserved to Owner pursuant to *the* provisions of the Lease. Guarantor further covenants and agrees that this Guaranty shall remain and continue in full force and effect as to any renewal, modification or extension of the Lease, and otherwise, during any period when Tenant hereafter occupies the premises demised by the Lease thereafter. As a further inducement to Owner to make the Lease and in consideration thereof, Owner and Guarantor covenant and agree that in any action or proceeding brought by either Owner or Guarantor against the other on any matters whatsoever arising out of, under, or by virtue of the terms of the Lease or this Guaranty, Owner and Guarantor shall and hereby waive any right each may have to a trial by jury.

EXECUTED as an instrument under seal this 1<sup>st</sup> day of April, 2004.

GUARANTOR:

CROSS COUNTRY HEALTHCARE, INC.

By: /s/ EMIL HENSEL

\_\_\_\_\_  
Name: Emil Hensel  
Its: Chief Financial Officer  
Hereunto Duly Authorized

Accepted and Acknowledged:

OWNER:

GOLDBERG BROTHERS TRUST

By: /s/ (NOT LEGIBLE)

\_\_\_\_\_

QuickLinks

[Exhibit 10.2](#)

[LEASE AGREEMENT  
GUARANTY](#)

**Certification**

I, Joseph A. Boshart, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cross Country Healthcare, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons fulfilling the equivalent function):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 10, 2004

/s/ JOSEPH A. BOSHART

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Joseph A. Boshart  
Chief Executive Officer

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QuickLinks

[EXHIBIT 31.1](#)

[Certification](#)

**CERTIFICATION**

I, Emil Hensel, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cross Country Healthcare, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons fulfilling the equivalent function):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 10, 2004

/s/ EMIL HENSEL

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Emil Hensel  
Chief Financial Officer

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QuickLinks

[EXHIBIT 31.2](#)

[CERTIFICATION](#)

**Certification Pursuant To 18 U.S.C. Section 1350**

In connection with the accompanying Quarterly Report on Form 10-Q of Cross Country Healthcare, Inc. (the "Company") for the quarterly period ended March 31, 2004 (the "Periodic Report"), I, Joseph A. Boshart, Chief Executive Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge the Periodic Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

May 10, 2004

/s/ JOSEPH A. BOSHA RT

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Joseph A. Boshart  
Chief Executive Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Cross Country Healthcare and will be retained by Cross Country Healthcare and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is provided solely for purposes of complying with the provisions of Section 906 of the Sarbanes-Oxley Act of 2002. 1

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## QuickLinks

[Exhibit 32.1](#)

[Certification Pursuant To 18 U.S.C. Section 1350](#)

**Certification Pursuant To 18 U.S.C. Section 1350**

In connection with the accompanying Quarterly Report on Form 10-Q of Cross Country Healthcare, Inc. (the "Company") for the quarterly period ended March 31, 2004 (the "Periodic Report"), I, Emil Hensel, Chief Financial Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge the Periodic Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 10, 2004

/s/ EMIL HENSEL

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Emil Hensel  
Chief Financial Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Cross Country Healthcare and will be retained by Cross Country Healthcare and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is provided solely for purposes of complying with the provisions of Section 906 of the Sarbanes-Oxley Act of 2002.

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## QuickLinks

[Exhibit 32.2](#)

[Certification Pursuant To 18 U.S.C. Section 1350](#)