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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## FORM N-2

### REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Pre-Effective Amendment No.  
 Post-Effective Amendment No. 3

## Gladstone Capital Corporation

(Exact name of registrant as specified in its charter)

**Maryland**  
(State of Incorporation)

**54-2040781**  
(I.R.S. Employer Identification No.)

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**1616 Anderson Road, Suite 208  
McLean, Virginia 22102  
(703) 286-7000**

(Address and telephone number, including area code, of principal executive offices)

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**David Gladstone  
Chairman and Chief Executive Officer  
Gladstone Capital Corporation  
1616 Anderson Road, Suite 208  
McLean, Virginia 22102**

(Name and address of agent for service)

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*Copies of information to:*  
**Thomas R. Salley, Esq.  
Darren K. DeStefano, Esq.  
Cooley Godward LLP  
One Freedom Square  
Reston Town Center  
11951 Freedom Drive  
Reston, Virginia 20190  
(703) 456-8000**

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Approximate Date of Proposed Public Offering: From time to time after the effective date of the Registration Statement.

If any securities being registered on this form will be offered on a delayed or continuous basis in reliance on Rule 415 under the Securities Act of 1933, other than securities offered in connection with a dividend reinvestment plan, check the following box.

This filing will become effective immediately upon filing pursuant to Rule 462(d) under the Securities Act of 1933.

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### Explanatory Note

This Post-Effective Amendment consists of the following:

1. Facing Sheet of the Registration Statement.
2. Part C of the Registration Statement (including signature page).
3. Exhibits h and 1.2, filed pursuant to Item 24 of the Registration Statement.

Parts A and B of the Registrant's Post-effective Amendment No. 2 to Registration Statement on Form N-2 (No. 333-100385), filed on July 15, 2004, are incorporated by reference herein and this Post-Effective Amendment is being filed for the sole purpose of filing two exhibits, and incorporating by reference one additional exhibit, to this Registration Statement on Form N-2.

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**PART C  
OTHER INFORMATION**

**Item 24. Financial Statements and Exhibits**

**1. Financial Statements**

The following financial statements of Gladstone Capital Corporation (the "Company" or the "Registrant") are included in the registration statement in "Part A: Information Required in a Prospectus":

**Audited Consolidated Financial Statements**

Report of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm  
Report of Ernst & Young LLP, Independent Registered Public Accounting Firm  
Consolidated Balance Sheets as of September 30, 2003 and September 30, 2002  
Consolidated Schedule of Investments as of September 30, 2003  
Consolidated Schedule of Investments as of September 30, 2002  
Consolidated Statements of Operations for the years ended September 30, 2003 and September 30, 2002 and the period from May 30, 2001 (inception) through September 30, 2001  
Consolidated Statements of Stockholders Equity for the years ended September 30, 2003 and September 30, 2002 and the period from May 30, 2001 (inception) through September 30, 2001  
Consolidated Statements of Cash Flows for the years ended September 30, 2003 and September 30, 2002 and the period from May 30, 2001 (inception) through September 30, 2001  
Notes to Financial Statements

**Unaudited Consolidated Financial Statements**

Consolidated Balance Sheets as of March 31, 2004 and September 30, 2003 (audited)  
Schedules of Investments as of March 31, 2004 and September 30, 2003 (audited)  
Consolidated Statements of Operations for the six months ended March 31, 2004 and March 31, 2003  
Consolidated Statements of Operations for the three months ended March 31, 2004 and March 31, 2003  
Consolidated Statements of Stockholders Equity for the six months ended March 31, 2004 and March 31, 2003  
Consolidated Statements of Cash Flows for the six months ended March 31, 2004 and March 31, 2003  
Financial Highlights for the three and six months ended March 31, 2004 and March 31, 2003  
Notes to Financial Statements

**2. Exhibits**

| Exhibit<br>Number | Description   |
|-------------------|---|
| a.1 (1)           | Articles of Incorporation.  |
| a.2 (1)           | Articles of Amendment and Restatement of the Articles of Incorporation.   |
| b.1 (1)           | Bylaws.   |
| b.2 (5)           | Amendment to Bylaws.  |
| c                 | Not applicable.   |
| d.1 (1)           | Form of Direct Registration Transaction Advice for the Company's common stock, par value \$0.001 per share, the rights of holders of which are defined in Exhibits a and b. |
| d.2 (1)           | Specimen Stock Certificate.   |

|          |   |
|----------|---|
| d.3+     | Form of indenture.  |
| e (1)    | Dividend Reinvestment Plan.   |
| f        | Not applicable.   |
| g        | Not applicable.   |
| h*       | Underwriting Agreement dated as of September 27, 2004.  |
| i.1 (1)  | Amended and Restated 2001 Equity Incentive Plan.  |
| i.2 (1)  | Form of Stock Option Agreement.   |
| i.3 (1)  | First Amendment to Amended and Restated 2001 Equity Incentive Plan.   |
| i.4 (1)  | Form of Early Exercise Stock Purchase Agreement.  |
| i.5+     | Second Amendment to Amended and Restated 2001 Equity Incentive Plan.  |
| i.6+     | Third Amendment to Amended and Restated 2001 Equity Incentive Plan.   |
| j (1)    | Custody Agreement with First Union National Bank with respect to safekeeping.                                     |
| k.1 (1)  | Stock Transfer Agency Agreement between the Company and the Bank of New York.                                     |
| k.2 (1)  | Employment Agreement dated June 25, 2001 between the Company and David Gladstone.                                 |
| k.3 (1)  | Employment Agreement dated July 23, 2001 between the Company and Terry Lee Brubaker.                              |
| k.4 (1)  | Amendment to Employment Agreement dated August 8, 2001, between the Company and David Gladstone.                  |
| k.5+     | Employment Agreement dated September 12, 2002 between the Company and George Stelljes III.                        |
| k.6 (2)  | Promissory Note of David Gladstone in favor of the Company, dated August 23, 2001.                                |
| k.7 (2)  | Promissory Note of Terry Brubaker in favor of the Company, dated August 23, 2001.                                 |
| k.8 (2)  | Promissory Note of Harry Brill in favor of the Company, dated August 23, 2001.                                    |
| k.9+     | Facility Service License, dated August 1, 2002, between the Company and Teqcorner, LLC.                           |
| k.10 (3) | Credit Agreement dated as of May 19, 2003 between Gladstone Business Loan LLC and CIBC World Markets Corporation. |
| k.11 (4) | Amendment No. 1 to Credit Agreement dated as of September 17, 2003.   |
| k.12 (6) | Amendment No. 2 to Credit Agreement dated as of February 6, 2004.   |
| k.13 (4) | Facility License Agreement, dated November 1, 2003, between the Company and Teqcorner LLC.                        |
| k.14+    | Second Amendment to Employment Agreement dated July 15, 2003 between the Company and David Gladstone.             |
| k.15+    | Amendment to Employment Agreement dated July 15, 2003 between the Company and Terry Lee Brubaker.                 |
| k.16+    | Amendment to Employment Agreement dated July 15, 2003 between the Company and George Stelljes III.                |
| k.17+    | Third Amendment to Employment Agreement dated April 22, 2004 between the Company and David Gladstone.             |
| k.18+    | Second Amendment to Employment Agreement dated May 6, 2004 between the Company and Terry Lee Brubaker.            |
| k.19+    | Second Amendment to Employment Agreement dated May 6, 2004 between the Company and George Stelljes III.           |
| k.20+    | Loan Agreement dated as of June 22, 2004 between the Company and Branch Banking and Trust Company.                |
| k.21 (7) | Amendment No. 3 to Credit Agreement dated as of May 28, 2004.   |
| l+       | Opinion of Cooley Godward LLP.  |
| l.2*     | Opinion of Cooley Godward LLP.  |
| m        | Not applicable.   |
| n.1+     | Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm.                             |
| n.2+     | Consent of Ernst & Young LLP, independent registered public accounting firm.                                      |

|       |  |
|-------|--|
| n.3+  | Consent of Cooley Godward LLP (included in Exhibit I).   |
| n.4*  | Consent of Cooley Godward LLP (included in Exhibit 1.2). |
| o     | Not applicable.  |
| p (1) | Subscription Agreement dated May 30, 2001.               |
| q     | Not applicable.  |
| r+    | Code of Ethics.  |
| s+    | Powers of Attorney.                                      |

- (1) *Previously filed and incorporated by reference from the Registrant's Registration Statement on Form N-2 (333-63700).*
- (2) *Previously filed and incorporated by reference from the Registrant's Quarterly Report on Form 10-Q for the period ended June 30, 2001, filed October 4, 2001.*
- (3) *Previously filed and incorporated by reference from the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2003, filed August 14, 2003.*
- (4) *Previously filed and incorporated by reference from the Registrant's Annual Report on Form 10-K for the year ended September 30, 2003, filed December 11, 2003.*
- (5) *Previously filed and incorporated by reference from the Registrant's Quarterly Report on Form 10-Q for the quarter ended December 31, 2003, filed February 17, 2004.*
- (6) *Previously filed and incorporated by reference from the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2004, filed May 13, 2004.*
- (7) *Previously filed and incorporated by reference from the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2004, filed August 10, 2004.*
- + *Previously filed as an exhibit to this registration statement.*
- \* *Filed herewith.*

#### **Item 25. Marketing Arrangements**

The information contained under the heading "Plan of Distribution" on page 83 of the prospectus is incorporated herein by reference, and any information concerning any underwriters will be contained in the accompanying prospectus supplement, if any.

#### **Item 26. Other Expenses of Issuance and Distribution**

|  |                   |
|--|-------------------|
| Commission registration fee                    | \$ 6,900          |
| Nasdaq National Market Additional Listing Fee* | 22,500            |
| Accounting fees and expenses*                  | 25,000            |
| Legal fees and expenses*                       | 250,000           |
| Printing and engraving*                        | 50,000            |
| Miscellaneous fees and expenses*               | 10,000            |
|  | <hr/>             |
| <b>Total</b>                                   | <b>\$ 364,400</b> |
|  | <hr/>             |

\* *Estimated for filing purposes.*

All of the expenses set forth above shall be borne by the Company.

**Item 27. Persons Controlled By or Under Common Control**

The Company has two wholly-owned subsidiaries: Gladstone Capital Advisers, Inc., a Delaware corporation ("Advisers") (formerly known as Gladstone Advisers, Inc., a Virginia corporation) and Gladstone Business Loan LLC, a Delaware limited liability company ("Gladstone Business Loan"). The Company owns 100% of the voting securities of Advisers and Gladstone Business Loan. Advisers and Gladstone Business Loan are consolidated with the Company for financial reporting purposes.

**Item 28. Number of Holders of Securities**

The following table sets forth the approximate number of record holders of the Company's common stock at June 30, 2004.

| Title of Class                            | Number of<br>Record Holders |
|---|-----------------------------|
| Common stock, \$0.001 par value per share | 77                          |

**Item 29. Indemnification**

The Annotated Code of Maryland, Corporations and Associations (the "Maryland Law"), Section 2-418 provides that a Maryland corporation may indemnify any director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise or employee benefit plan, made a party to any proceeding by reason of service in that capacity unless it is established that the act or omission of the director was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty; or the director actually received an improper personal benefit in money, property or services; or, in the case of any criminal proceeding, the director had reasonable cause to believe that the act or omission was unlawful. Indemnification may be made against judgments, penalties, fines, settlements, and reasonable expenses actually incurred by the director in connection with the proceeding, but if the proceeding was one by or in the right of the corporation, indemnification may not be made in respect of any proceeding in which the director shall have been adjudged to be liable to the corporation. Such indemnification may not be made unless authorized for a specific proceeding after a determination has been made, in the manner prescribed by the law, that indemnification is permissible in the circumstances because the director has met the applicable standard of conduct. On the other hand, the director must be indemnified for expenses if he or she has been successful in the defense of the proceeding or as otherwise ordered by a court. The law also prescribes the circumstances under which the corporation may advance expenses to, or obtain insurance or similar cover for, directors. The law also provides for comparable indemnification for corporate officers and agents.

The Articles of Incorporation of the Company provide that its directors and officers shall, and its agents in the discretion of the board of directors may, be indemnified to the fullest extent permitted from time to time by the laws of Maryland (with such power to indemnify officers and directors limited to the scope provided for in Section 2-418 as currently in force), provided, however, that such indemnification is limited by the Investment Company Act of 1940 or by any valid rule, regulation or order of the Securities and Exchange Commission thereunder. The Company's Bylaws provide that the Company may not indemnify any director or officer against liability to the Company or its security holders to which he or she might otherwise be subject by reason of such person's willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his or her office unless a determination is made by final decision of a court, by vote of a majority of a quorum of directors who are disinterested, non-party directors or by independent legal counsel that the liability for which indemnification is sought did not arise out of such disabling conduct.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Company pursuant to the provisions described above, or otherwise, the Company has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person in the successful defense of an action, suit or proceeding) is asserted by a director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of the court of the issue.

The Company carries liability insurance for the benefit of its directors and officers on a claims-made basis of up to \$10,000,000, subject to a retention of up to \$200,000 for certain claims.

**Item 30. Business and Other Connections of Investment Adviser**

Not applicable.

**Item 31. Location of Accounts and Records**

The Company maintains at its principal office physical possession of each account, book or other document required to be maintained by Section 31(a) of the 1940 Act and the rules thereunder.

**Item 32. Management Services**

Not applicable.

**Item 33. Undertakings**

The Registrant hereby undertakes:

- (1) to suspend the offering of shares until the prospectus is amended if (1) subsequent to the effective date of this registration statement, its net asset value declines more than ten percent from its net asset value as of the effective date of this registration statement; or (2) the net asset value increases to an amount greater than its net proceeds as stated in the prospectus.
- (2) to file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
  - (ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and
  - (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.
- (3) that, for the purpose of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant under Rule 497(h) under the Securities Act of 1933 shall be deemed to be part of this registration statement as of the time it was declared effective;
- (4) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering;
- (5) that, for the purpose of determining any liabilities under the Securities Act of 1933, each post effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering thereof.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Post-effective Amendment No. 3 to Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the County of Fairfax, in the Commonwealth of Virginia, on the 27th day of September, 2004.

**GLADSTONE CAPITAL CORPORATION**

By: /s/ DAVID GLADSTONE

David Gladstone  
Chairman of the Board and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Post-effective Amendment has been signed by the following persons in the capacities indicated on September 27, 2004.

| <b>Signature</b>    | <b>Title</b>  |
|---------------------|---|
| *                   | Chairman of the Board and Chief Executive Officer (principal executive officer) |
| David Gladstone     |   |
| *                   | Vice Chairman, Chief Operating Officer and Director                             |
| Terry Brubaker      |   |
| *                   | President, Chief Investment Officer and Director                                |
| George Stelljes III |   |
| *                   | Chief Financial Officer (principal financial and accounting officer)            |
| Harry Brill         |   |
| *                   |   |
| David A.R. Dullum   | Director  |
| *                   |   |
| Anthony W. Parker   | Director  |
| *                   |   |
| Michela A. English  | Director  |
| *                   |   |
| Paul W. Adelgren    | Director  |



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Maurice W. Coulon

Director

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John H. Outland

Director

\*By: /s/ DAVID GLADSTONE

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David Gladstone  
*(attorney-in-fact)*

C-7

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**EXHIBIT LIST**

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|-------------------|---|
| a.1 (1)           | Articles of Incorporation.  |
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| c                 | Not applicable.   |
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| f                 | Not applicable.   |
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| h*                | Underwriting Agreement dated as of September 27, 2004.  |
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| l.2*     | Opinion of Cooley Godward LLP.   |
| m        | Not applicable.  |
| n.1+     | Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm.              |
| n.2+     | Consent of Ernst & Young LLP, independent registered public accounting firm.                       |
| n.3+     | Consent of Cooley Godward LLP (included in Exhibit l).   |
| n.4*     | Consent of Cooley Godward LLP (included in Exhibit l.2).   |
| o        | Not applicable.  |
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| q        | Not applicable.  |
| r+       | Code of Ethics.  |
| s+       | Powers of Attorney.  |

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- (6) *Previously filed and incorporated by reference from the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2004, filed May 13, 2004.*
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- + *Previously filed as an exhibit to this registration statement.*
- \* *Filed herewith.*
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## QuickLinks

[Explanatory Note](#)

[PART C OTHER INFORMATION](#)

[SIGNATURES](#)

[EXHIBIT LIST](#)

**GLADSTONE CAPITAL CORPORATION**  
(a Maryland Corporation)

1,000,000 Shares of Common Stock  
Par Value \$.001 per Share

**UNDERWRITING AGREEMENT**

September 27, 2004

Ferris, Baker Watts, Incorporated  
BB&T Capital Markets, a division  
of Scott & Stringfellow, Inc.  
J.J.B. Hilliard, W.L. Lyons, Inc  
Stifel, Nicolaus & Company, Incorporated  
c/o Ferris, Baker Watts, Incorporated  
1700 Pennsylvania Avenue  
Washington, DC 20006

Ladies and Gentlemen:

Gladstone Capital Corporation, a Maryland corporation (the "Company") confirms its agreement with Ferris, Baker Watts, Incorporated ("Ferris Baker"), BB&T Capital Markets, a division of Scott & Stringfellow, Inc., J.J.B. Hilliard, W.L. Lyons, Inc., and Stifel, Nicolaus & Company, Incorporated (collectively, the "Underwriters"), with respect to the issue and sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of the respective number of shares of common stock, par value \$.001 per share of the Company (the "Common Shares") set forth in *Schedule A* hereof, and with respect to the grant by the Company to the Underwriters, acting severally and not jointly, of the option described in Section 2(b) hereof to purchase all or any part of 150,000 additional Common Shares to cover over-allotments, if any. The aforesaid 1,000,000 Common Shares (the "Firm Shares") to be purchased by the Underwriters and all or any part of the 150,000 Common Shares subject to the option described in Section 2(b) hereof (the "Option Shares") are collectively referred to as the "Shares."

The Company understands that the Underwriters propose to make a public offering of the Shares as soon as the Underwriters deem advisable after this Agreement has been executed and delivered.

The Company has filed with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "1933 Act") and the Investment Company Act of 1940, as amended (the "1940 Act") and the rules and regulations promulgated under the 1933 Act and the 1940 Act (the "Rules and Regulations") Post-effective Amendment No. 2 to its registration statement on Form N-2 (File No. 333-100385), which contains a form of prospectus (the "Base Prospectus") to be used in connection with the public offering and sale of certain securities to be issued from time to time by the Company (the "Shelf Registered Securities"), including the Shares. The Company has prepared and will file with the Commission in accordance with Rule 497 a prospectus supplement (the "Prospectus Supplement") supplementing the Base Prospectus in connection with the offer and sale of the Shares. Such registration statement as amended, including the exhibits and schedules thereto, at the time it became effective, including the information, if any, deemed to be part of the registration statement at the time of its effectiveness pursuant to Rule 430A and Rule 497 under the 1933 Act, and any post-effective amendment thereto, is hereinafter referred to as the "Registration Statement." The prospectus (as described in Rule 497 under the 1933 Act) including the Base Prospectus in the form first used to confirm sales of the Shelf Registered Securities, as supplemented

by the Prospectus Supplement, and the prospectus included in the Registration Statement at the time of its effectiveness (including the information, if any, deemed to be a part of the Registration Statement at the time of effectiveness pursuant to Rule 430A and Rule 497 under the 1933 Act) are hereinafter referred to collectively as the "Prospectus."

All references in this Agreement to financial statements and schedules and other information which is "contained," "disclosed," "included," "filed as part of" or "stated" in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which are or are deemed to be incorporated by reference in the Registration Statement or the Prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus shall be deemed to mean and include the filing of any document under the Securities and Exchange Act of 1934, as amended (the "1934 Act") which is or is deemed to be incorporated by reference in the Registration Statement or the Prospectus, as the case may be. All references in this Agreement to the Registration Statement, the Prospectus or any amendments or supplements to any of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("EDGAR").

*Section 1. Representations and Warranties by the Company.*

The Company represents and warrants to each Underwriter as of the date hereof (subject to the limitation in Section 1(o) hereof), as of the Closing Time referred to in Section 2(c) hereof, and as of each Date of Delivery (if any) referred to in Section 2(b) hereof, and agrees with each Underwriter, as follows:

(a) *Compliance with Registration Requirements.*

(i) The Company meets the requirements for use of Form N-2 under the 1933 Act and the Rules and Regulations. The Registration Statement has become effective under the 1933 Act and no stop order suspending the effectiveness of the Registration Statement has been issued under the 1933 Act, and no proceedings for any such purpose, have been instituted or are pending or, to the knowledge of the Company, are contemplated by the Commission, and any request on the part of the Commission for additional information has been complied with.

(ii) At the respective times the Registration Statement, and any post-effective amendment thereto (filed before the Closing Time) became effective and at the Closing Time, as hereinafter defined (and, if any Option Shares are purchased, at the Date of Delivery), the Registration Statement, and all amendments and supplements thereto complied and will comply in all material respects with the requirements of the 1933 Act, the 1940 Act and the Rules and Regulations and did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. Neither the Prospectus nor any amendment or supplement thereto, at the time the Prospectus or any such amendment or supplement was issued and at the Closing Time (and, if any Option Shares are purchased, at the Date of Delivery), included or will include an untrue statement of a material fact or omitted or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement or Prospectus made in reliance upon and in conformity with information furnished to the Company by or on behalf of any Underwriter for use in the Registration Statement or Prospectus.

(iii) The Prospectus when filed, and as of the date of the Prospectus Supplement, complied in all material respects with the 1933 Act, the 1940 Act and the Rules and Regulations, and if filed by electronic transmission pursuant to EDGAR (except as may be permitted by Regulation S-T

under the 1933 Act), will be substantially identical to the copy thereof delivered to the Underwriters for use in connection with this offering.

(b) *Independent Accountants.* Each of PricewaterhouseCoopers LLP and Ernst & Young LLP, who have each expressed their opinion with respect to certain of the financial statements (which term as used in this Agreement includes the related notes thereto) and supporting schedules filed with the Commission as a part of the Registration Statement and included in the Prospectus, is an independent registered public accounting firm as required by the 1933 Act, 1934 Act and the Rules and Regulations.

(c) *Preparation of the Financial Statements.* The financial statements filed with the Commission as a part of the Registration Statement and included in the Prospectus present fairly the consolidated financial position of the Company as of and at the dates indicated and the results of its operations and cash flows for the periods specified. Such financial statements have been prepared in conformity with generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto. No other financial statements or supporting schedules are required to be included in the Registration Statement. The consolidated selected financial data included in the Prospectus presents fairly in all material respects the information shown therein and has been compiled on a basis consistent with the consolidated financial statements included or incorporated by reference in the Registration Statement.

(d) *Internal Control Over Financial Reporting.* The Company maintains a system of internal control over financial reporting sufficient to provide reasonable assurances that financial reporting is reliable and financial statements for external purposes are prepared in accordance with GAAP and includes policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the Company are being made only in accordance with applicable law and the authorizations of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

(e) *No Material Adverse Change.* Except as otherwise disclosed in the Prospectus, subsequent to the respective dates as of which information is given in the Prospectus: (i) there has been no material adverse change, or any development that could reasonably be expected to result in a material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations, whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, considered as one entity (any such change or effect, where the context so requires is called a "Material Adverse Change" or a "Material Adverse Effect"); (ii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business or entered into any material transaction or agreement not in the ordinary course of business; and (iii) except for regular monthly dividends on the Common Shares in amounts per share consistent with past practice, there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other subsidiaries, any of its subsidiaries on any class of capital stock or repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock.

(f) *Good Standing of the Company and its Subsidiaries.* Each of the Company and its subsidiaries that is a corporation has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and, in the case of the Company, to enter into and perform its obligations under this Agreement. Each of the Company and each subsidiary that is a corporation is duly qualified as a foreign corporation to

transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except for such jurisdictions where the failure to so qualify or to be in good standing would not, individually or in the aggregate, result in a Material Adverse Change. All of the issued and outstanding capital stock of each subsidiary that is a corporation has been duly authorized and validly issued, is fully paid and non-assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance or claim.

(g) *Subsidiaries of the Company.* The Company does not own or control, directly or indirectly, any corporation, association or other entity other than entities in which it has an investment (each, a "Portfolio Company" and collectively, the "Portfolio Companies") and the subsidiaries listed in Item 27 of the Registration Statement.

(h) *BDC Election; Regulated Investment Company.* The Company has elected to be regulated as a business development company under the 1940 Act and has filed with the Commission, pursuant to Section 54(a) of the 1940 Act, a duly completed and executed Form N-54A (the "Company BDC Election"); the Company has not filed with the Commission any notice of withdrawal of the Company BDC Election pursuant to Section 54(c) of the 1940 Act; the Company BDC Election remains in full force and effect, and, to the Company's actual knowledge, no order of suspension or revocation of such election under the 1940 Act has been issued or proceedings therefore initiated or threatened by the Commission. The operations of the Company are in compliance in all material respects with the provisions of the 1940 Act applicable to business development companies and the rules and regulations of the Commission thereunder applicable to business development companies.

(i) *Authorization and Description of Common Shares.* The authorized, issued and outstanding capital stock of the Company is as set forth in the Prospectus Supplement as of the date thereof under the caption "Capitalization" (other than for subsequent issuances, if any, pursuant to employee benefit plans described in the Prospectus or upon exercise of outstanding options described in the Prospectus). The Common Shares (including the Shares) conform in all material respects to the description thereof contained in the Prospectus. All issued and outstanding Common Shares of the Company have been duly authorized and validly issued and are fully paid and non-assessable, and have been offered and sold or exchanged by the Company in compliance with all applicable laws (including, without limitation, federal and state securities laws). None of the outstanding Common Shares of the Company was issued in violation of the preemptive or other similar rights of any security holder of the Company. No shares of preferred stock of the Company have been designated, offered, sold or issued and none of such shares of preferred stock are currently outstanding. The description of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Prospectus accurately and fairly presents the information required to be shown with respect to such plans, arrangements, options and rights. The Shares to be purchased by the Underwriters from the Company have been duly authorized for issuance and sale to the Underwriters pursuant to this Agreement and, when issued and delivered by the Company pursuant to this Agreement against payment of the consideration set forth herein, will be validly issued, fully paid and non-assessable.

(j) *Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required.* Neither the Company nor any subsidiary is in violation of or default under its (i) charter, articles or certificate of incorporation, by-laws, or similar organizational documents; (ii) under any indenture, mortgage, loan or credit agreement, note, contract, franchise, lease or other instrument to which the Company or any of its subsidiaries is a party or bound or to which any of the property or assets of the Company or any of its subsidiaries is subject; or (iii) any statute, law, rule, regulation, judgment, order or decree of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or such subsidiary or any of its properties, as applicable, except for such violations or defaults as would not, individually or in the aggregate, have a Material



Adverse Effect. In this Agreement, the term "Material Adverse Effect" means a material adverse change in the condition, financial or otherwise, earnings or operations of the Company, whether or not arising in the ordinary course of business (other than as a result of changes in conditions in the securities and capital markets, generally). The Company's execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and by the Prospectus (i) have been duly authorized by all necessary corporate action and will not result in any violation of the provisions of the charter, articles or certificate of incorporation or by-laws of the Company or similar organizational documents of any subsidiary, (ii) will not conflict with or constitute a breach of, or default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, or require the consent of any other party to, any existing instrument, except for such conflicts, breaches, defaults, liens, charges or encumbrances as would not, individually or in the aggregate, result in a Material Adverse Effect and (iii) will not result in any violation of any law, administrative regulation or administrative or court decree applicable to the Company or any subsidiary. No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental or regulatory authority or agency, is required for the Company's execution, delivery and performance of this Agreement or consummation of the transactions contemplated hereby and by the Prospectus, except such as have already been obtained or made under the 1933 Act, the 1940 Act and the Rules and Regulations and such as may be required under any applicable state securities or blue sky laws or from the National Association of Securities Dealers, Inc. (the "NASD").

(k) *Intellectual Property Rights.* The Company and its subsidiaries own or possess sufficient trademarks, trade names, patent rights, copyrights, domain names, licenses, approvals, trade secrets and other similar rights (collectively, "Intellectual Property Rights") reasonably necessary to conduct their businesses as described in the Prospectus; and the expected expiration of any of such Intellectual Property Rights would not result in a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received any notice of infringement or conflict with asserted Intellectual Property Rights of others, which infringement or conflict, if the subject of an unfavorable decision, would result in a Material Adverse Effect. To the Company's knowledge, none of the technology employed by the Company has been obtained or is being used by the Company in violation of any contractual obligation binding on the Company or any of its officers, directors or employees or otherwise in violation of the rights of any persons.

(l) *Compliance with Environmental Law.* To its knowledge, the Company and its subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("Environmental Laws"); (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, have a Material Adverse Effect.

(m) *All Necessary Permits, etc.* The Company and each subsidiary possess such valid and current certificates, authorizations or permits issued by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct their respective businesses, and the Company has not received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, could result in a Material Adverse Effect.

(n) *Absence of Proceedings.* There is no action, suit, proceeding, inquiry or investigation before or brought by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Company, threatened, against the Company, which is required to be disclosed in the

Registration Statement (other than as disclosed therein), or which might reasonably be expected to result in a Material Adverse Effect, or which might reasonably be expected to materially and adversely affect the consummation of the transactions contemplated in this Agreement or the performance by the Company of its obligations hereunder. The aggregate of all pending legal or governmental proceedings to which the Company is a party or of which any of its property or assets is the subject which are not described in the Registration Statement, including ordinary routine litigation incidental to the business, could not reasonably be expected to result in a Material Adverse Effect.

(o) *Accuracy of Exhibits.* There are no contracts or documents which are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits thereto by the 1933 Act, the 1940 Act or by the Rules and Regulations which have not been so described and filed as required. Notwithstanding the foregoing, as of the date hereof, the Company has not filed certain contracts and documents as exhibits to the Registration Statement, although all such exhibits will be filed by post-effective amendment pursuant to Rule 462(d) under the 1933 Act within twenty-four (24) hours of the execution of this Agreement.

(p) *Advertisements.* Any advertising, sales literature or other promotional material (including "prospectus wrappers," "broker kits," "road show slides" and "road show scripts" and "electronic road show presentations") authorized in writing by or prepared by the Company used in connection with the public offering of the Shares (collectively, "Sales Material") does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein in light of the circumstances under which they were made not misleading. Moreover, all Sales Material complied and will comply in all material respects with the applicable requirements of the 1933 Act, the 1940 Act, the Rules and Regulations and the rules and interpretations of the NASD (except that this representation and warranty does not apply to statements in or omissions from the Sales Material made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company by or on behalf of any Underwriter through you expressly for use therein).

(q) *Subchapter M.* During the past fiscal year, the Company has been organized and operated, and is currently organized and operates, in compliance in all material respects with the requirements to be taxed as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended ("Subchapter M of the Code" and the "Code," respectively). The Company intends to direct the investment of the proceeds of the offering described in the Registration Statement in such a manner as to comply with the requirements of Subchapter M of the Code.

(r) *Tax Law Compliance.* The Company and its subsidiaries have filed all necessary federal, state and foreign income and franchise tax returns and have paid all taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them. The Company has made adequate charges, accruals and reserves in the applicable financial statements referred to in the Prospectus in respect of all federal, state and foreign income and franchise taxes for all periods as to which the tax liability of the Company or any of its subsidiaries has not been finally determined. The Company is not aware of any tax deficiency that has been or might be asserted or threatened against the Company or any subsidiary that could result in a Material Adverse Effect.

(s) *Distribution of Offering Materials.* The Company has not distributed and, prior to the later of (A) the Closing Time and (B) completion of the distribution of the Shares, will not distribute any offering material in connection with the offering and sale of the Shares other than the Registration Statement, a preliminary prospectus, the Prospectus or other materials, if any, permitted by the 1933 Act or the 1940 Act or the Rules and Regulations.

(t) *Registration Rights.* There are no persons with registration rights or other similar rights to have any securities registered pursuant to the Registration Statement or otherwise registered by the Company under the 1933 Act.

(u) *Nasdaq National Market.* The Shares are registered pursuant to Section 12(b) or 12(g) of the 1934 Act and have been approved for quotation on the Nasdaq National Market ("NASDAQ") upon notice of issuance, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Shares under the 1934 Act or delisting the Common Shares from the NASDAQ, nor has the Company received any notification that the Commission or the NASD is contemplating terminating such registration or listing. The Company has continued to satisfy all requirements for listing the Shares for trading on the NASDAQ.

(v) *No Price Stabilization or Manipulation.* The Company has not taken and will not take, directly or indirectly, any action designed to or that might be reasonably expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Common Shares.

(w) *Compliance with the Exchange Act of 1934; Reports Filed.* The documents filed by the Company with the Commission complied and will comply in all material respects with the requirements of the 1934 Act, and, when read together with the other information in the Prospectus, at the time the Registration Statement and any amendments thereto became effective and at the Closing Time or on any Date of Delivery, as the case may be, did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company has filed all reports required to be filed pursuant to the 1933 Act, the 1940 Act and the 1934 Act.

(x) *Related Party Transactions.* There are no business relationships or related-party transactions involving the Company or any other person required to be described in the Prospectus, which have not been described as required.

(y) *No Unlawful Contributions or Other Payments.* Neither the Company nor any of its subsidiaries nor, to the Company's knowledge, any employee or agent of the Company or any subsidiary, has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law or of the character required to be disclosed in the Prospectus.

(z) *No Outstanding Loans or Other Indebtedness.* There are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees or indebtedness by the Company to or for the benefit of any of the officers or directors of the Company or any of the members of any of them, except as disclosed in the Prospectus.

(aa) *Compliance with Laws.* The Company has not been advised, and has no reason to believe, that it and each of its subsidiaries are not conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which it is conducting business, except where failure to be so in compliance would not result, individually or in the aggregate, in a Material Adverse Effect.

(bb) *Compliance with the Sarbanes-Oxley Act of 2002.* There is, and has been, no failure on the part of the Company and its subsidiaries and any of their respective directors or officers in their capacities as such, to comply with any applicable provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated by the Commission and the NASD pursuant thereto.

(cc) Any certificate signed by any officer of the Company delivered to the Underwriters or to counsel for the Underwriters shall be deemed a representation and warranty by the Company, to each Underwriter as to the matters covered thereby.

## *Section 2. Sale and Delivery to Underwriters; Closing.*

(a) *Firm Shares.* On the basis of the representations, warranties and covenants contained herein and subject to the terms and conditions set forth herein, the Company agrees to sell to each

Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, at the price of \$21.6125 per share (representing a public offering price of \$22.75 per share less an underwriting discount of \$1.1375 per share), the number of Firm Shares set forth in *Schedule A* opposite the name of such Underwriter, plus any additional number of Firm Shares which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof.

(b) *Option Shares.* In addition, on the basis of the representations and warranties contained herein and subject to the terms and conditions set forth herein, the Company hereby grants an option to the Underwriters, severally and not jointly, to purchase up to an additional 150,000 Common Shares in the aggregate, at the price per share set forth in Paragraph (a) above, less an amount per share equal to any dividends or distributions declared by the Company and payable on the Firm Shares but not payable on the Option Shares. The option hereby granted will expire 30 days after the date hereof and may be exercised in whole or in part from time to time only for the purpose of covering over-allotments which may be made in connection with the offering and distribution of the Firm Shares upon notice by the Underwriters to the Company setting forth the number of Option Shares as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Shares. Any such time and date of delivery (a "Date of Delivery") shall be determined by the Underwriters, but shall not be later than seven (7) full business days and no earlier than three (3) full business days after the exercise of said option, nor in any event prior to the Closing Time. If the option is exercised as to all or any portion of the Option Shares, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total number of Option Shares then being purchased which the number of Firm Shares set forth in *Schedule A* opposite the name of such Underwriter bears to the total number of Firm Shares, subject in each case to such adjustments as Ferris Baker in its discretion shall make to eliminate any sales or purchases of a fractional number of Option Shares plus any additional number of Option Shares which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof.

(c) *Payment.* Payment of the purchase price for, and delivery of certificates, if any, for the Firm Shares shall be made at the offices of Cooley Godward LLP, 11951 Freedom Drive, Reston, Virginia 20190 or at such other place as shall be agreed upon by the Underwriters and the Company, at 10:00 A.M. (Eastern time) on the third (fourth, if the pricing occurs after 4:30 P.M. (Eastern time) on any given day) business day after the date hereof (unless postponed in accordance with the provisions of Section 10), or such other time not later than ten (10) business days after such date as shall be agreed upon by the Underwriters and the Company (such time and date of payment and delivery being herein called "Closing Time"). In addition, in the event that any or all of the Option Shares are purchased by the Underwriters, payment of the purchase price for such Option Shares shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Underwriters and the Company, on each Date of Delivery as specified in the notice from the Underwriters to the Company.

Payment shall be made to the Company by wire transfer of immediately available funds to a bank account designated by the Company, against delivery to the Underwriters for the respective accounts of the Underwriters of the Shares to be purchased by them. It is understood that each Underwriter has authorized Ferris Baker, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Firm Shares and the Option Shares, if any, which it has agreed to purchase. Ferris Baker, individually and not as representative of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Firm Shares or the Option Shares, if any, to be purchased by any Underwriter whose funds have not been received by the Closing Time or the relevant Date of Delivery, as the case may be, but such payment shall not relieve such Underwriter from its obligations hereunder.

(d) *Denominations; Registration.* Certificates for the Firm Shares and the Option Shares, if any, shall be in such denominations and registered in such names as the Underwriters may request in writing at least three (3) full business days before the Closing Time or the relevant Date of Delivery, as the case may be. The certificates for the Firm Shares and the Option Shares, if the Company determines to issue any such certificates, will be made available for examination and packaging by the Underwriters in the City of New York not later than 10:00 A.M. (Eastern time) on the business day prior to the Closing Time or the relevant Date of Delivery, as the case may be. The Firm Shares and the Option Shares to be purchased hereunder shall be delivered to you at the Closing Time or the relevant Date of Delivery, as the case may be, through the facilities of the Depository Trust Company or another mutually agreeable facility, against payment of the purchase price therefore in immediately available funds to the order of the Company.

*Section 3. Covenants.*

The Company covenants with each Underwriter as follows:

(a) *Compliance with Securities Regulations and Commission Requests.* The Company, subject to Section 3(a)(ii), will comply with the requirements of Rule 497, and will notify the Underwriters as soon as practicable, and, in the cases of Sections 3(a)(ii)-(iv), confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement shall become effective, or any supplement to the Prospectus or any amended Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information, and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of any order preventing or suspending the use of the Prospectus, or of the suspension of the qualification of the Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes. The Company will promptly effect the filings necessary pursuant to Rule 497 and will take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 497 was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Company will make every reasonable effort to prevent the issuance of any stop order suspending the effectiveness of the Registration Statement pursuant to Section 8(d) of the 1933 Act, and, if any such stop order is issued, to obtain the lifting thereof at the earliest possible moment.

(b) *Filing of Amendments.* The Company will give the Underwriters notice of its intention to file or prepare any amendment to the Registration Statement, or any supplement or revision to either the Base Prospectus included in the Registration Statement at the time it became effective or to the Prospectus Supplement, and will furnish the Underwriters with copies of any such documents a reasonable amount of time prior to such proposed filing or use, as the case may be, and will not file or use any such document to which the Underwriters or counsel for the Underwriters shall reasonably object.

(c) *Delivery of Registration Statements.* The Company has furnished or will deliver to the Underwriters and counsel for the Underwriters, without charge, signed copies of the Registration Statement as originally filed and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein) and signed copies of all consents and certificates of experts, and will also deliver to the Underwriters, without charge, a conformed copy of the Registration Statement as originally filed and of each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) *Delivery of Prospectuses.* The Company has delivered to each Underwriter, without charge, as many copies of the Prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, without charge, during the period when the Prospectus is required to be delivered under the 1933 Act or the 1934 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) *Continued Compliance with Securities Laws.* If at any time when a prospectus is required by the 1933 Act to be delivered in connection with sales of the Shares, any event shall occur or condition shall exist as a result of which it is necessary, in the reasonable opinion of counsel for the Underwriters or for the Company, to amend the Registration Statement or amend or supplement the Prospectus in order that the Prospectus will not include any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, or if it shall be necessary, in the opinion of such counsel, at any such time to amend the Registration Statement or amend or supplement the Prospectus in order to comply with the requirements of the 1933 Act or the Rules and Regulations, the Company will promptly prepare and file with the Commission, subject to Section 3(a)(ii), such amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement or the Prospectus comply with such requirements, and the Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request.

(f) *Blue Sky Qualifications.* The Company will use its best efforts, in cooperation with the Underwriters, to qualify the Shares for offering and sale under the applicable securities laws of such states and other jurisdictions of the United States as the Underwriters may designate and to maintain such qualifications in effect so long as required for the distribution of the Shares; provided, however, that the foregoing shall not apply to the extent that the Shares are "covered securities" that are exempt from state regulation of securities offerings pursuant to Section 18 of the 1933 Act; and provided, further, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(g) *Rule 158.* The Company will timely file such reports pursuant to the 1934 Act as are necessary in order to make generally available to its security holders as soon as practicable an earnings statement for the purposes of, and to provide the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act.

(h) *Use of Proceeds.* The Company will use the net proceeds received by it from the sale of the Shares in the manner specified in the Prospectus Supplement under "Use of Proceeds."

(i) *Restriction on Sale of Shares.* During a period of 90 days from the date of the Prospectus Supplement, the Company will not, without the prior written consent of Ferris Baker, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of Common Shares or any securities convertible into or exercisable or exchangeable for Common Shares or file any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Common Shares, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of

Common Shares or such other securities, in cash or otherwise. The foregoing sentence shall not apply to the Shares to be sold hereunder or the Common Shares issued pursuant to any dividend reinvestment plan or Common Shares issues pursuant to the Company's 2001 Amended and Restated Equity Incentive Plan.

(j) *Reporting Requirements.* The Company, during the period when the Prospectus is required to be delivered under the 1933 Act or the 1934 Act, will file all documents required to be filed with the Commission pursuant to the 1940 Act and the 1934 Act within the time periods required by the 1940 Act and the 1934 Act and the rules and regulations of the Commission thereunder, respectively.

(k) *Subchapter M.* The Company will use its best efforts to maintain its qualification as a regulated investment company under Subchapter M of the Code.

(l) *No Manipulation of Market for Shares.* Except for the authorization of actions permitted to be taken by the Underwriters as contemplated herein or in the Prospectus, the Company will not (a) take, directly or indirectly, any action designed to cause or to result in, or that might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares in violation of federal or state securities laws, and (b) until the Closing Time, or the Date of Delivery, if any, (i) except for Share repurchases permitted in accordance with applicable laws and issuances of Shares or purchases of Shares in the open market pursuant to the Company's dividend reinvestment plan, sell, bid for or purchase the Shares or pay any person any compensation for soliciting purchases of the Shares or (ii) pay or agree to pay to any person any compensation for soliciting another to purchase any other securities of the Company.

The Company and Underwriters covenant to one another as follows:

(m) *NASD No Objection Letter.* The Company and the Underwriters agree to use their best efforts to obtain a no objection letter from the NASD regarding the fairness and reasonableness of the underwriting terms and arrangements.

#### *Section 4. Payment of Expenses.*

(a) *Expenses.* The Company will pay all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and of each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of this Agreement, any Agreement among Underwriters and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Shares, (iii) the preparation, issuance and delivery of the certificates for the Shares, if any, to the Underwriters, including any stock or other transfer taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Shares to the Underwriters, (iv) the fees and disbursements of the Company's counsel, accountants and other advisers, (v) the printing and delivery to the Underwriters of copies of each preliminary prospectus, Prospectus and any amendments or supplements thereto, (vi) the fees and expenses of any transfer agent or registrar for the Shares, (vii) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with, the review by the NASD of the terms of the sale of the Shares, (viii) the fees and expenses incurred in connection with the listing of the Shares on the NASDAQ (ix) the printing of any Sales Material and (x) the transportation, lodging, graphics and other expenses of the Company and its officers related to the preparation for and participation by the Company and its officers in the road show.

(b) *Termination of Agreement.* If this Agreement is terminated by the Underwriters in accordance with the provisions of Section 5 or Section 9(a) hereof, the Company shall reimburse, or arrange for an affiliate to reimburse, the Underwriters for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters.

*Section 5. Conditions of Underwriters' Obligations.*

The obligations of the Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company contained in Section 1 hereof or in certificates of any officer of the Company delivered pursuant to the provisions hereof, to the performance by the Company of their covenants and other obligations hereunder, and to the following further conditions:

(a) *Effectiveness of Registration Statement.* The Registration Statement, has become effective and at Closing Time no stop order suspending the effectiveness of the Registration Statement shall have been issued under the 1933 Act, no stop order pursuant to Section 8(d) of the 1933 Act shall have been issued, and no proceedings with respect to either shall have been initiated or, to the Company's knowledge, threatened by the Commission, and any request on the part of the Commission for additional information shall have been complied with to the reasonable satisfaction of counsel to the Underwriters. A prospectus containing the Rule 430A Information shall have been filed with the Commission in accordance with Rule 497 (or a post-effective amendment providing such information shall have been filed and declared effective in accordance with the requirements of Rule 430A).

(b) *Opinions of Counsel for the Company.* At Closing Time, the Underwriters shall have received the opinion, dated as of Closing Time, from Cooley Godward LLP, counsel for the Company as to matters set forth in *Schedule B* hereto and the opinion dated as of Closing Time, from Kirkpatrick & Lockhart LLP, counsel for the Company as to matters set forth in *Schedule C* hereto.

(c) *Opinion of Counsel for Underwriters.* At Closing Time, the Underwriters shall have received the favorable opinion, dated as of Closing Time, from Bass, Berry & Sims PLC, counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters with respect to the Registration Statement, the Prospectus and other related matters as the Underwriters may reasonably require. In giving such opinion such counsel may rely, as to all matters governed by the laws of jurisdictions other than the law of the State of Tennessee and the federal law of the United States.

(d) *Officers' Certificates.* At Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Prospectus, any material adverse change in the condition, financial or otherwise, or in the earnings or business affairs of the Company, whether or not arising in the ordinary course of business, and the Underwriters shall have received a certificate of a duly authorized officer of the Company and of the chief financial or chief accounting officer of the Company, dated as of Closing Time, to the effect that (i) there has been no such material adverse change, (ii) the representations and warranties in Section 1 hereof are true and correct with the same force and effect as though expressly made at and as of Closing Time, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to Closing Time, and (iv) no stop order suspending the effectiveness of the Registration Statement, pursuant to Section 8(d) of the 1933 Act, has been issued and no proceedings for any such purpose have been instituted or, to the knowledge of the Company, are pending or are contemplated by the Commission.

(e) *Accountants' Comfort Letter.* At the time of the execution of this Agreement, the Underwriters shall have received from each of PricewaterhouseCoopers LLP and Ernst & Young LLP a letter, dated such date, in form and substance satisfactory to the Underwriters, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement and the Prospectus.

(f) *Bring-down Comfort Letter.* At Closing Time, the Underwriters shall have received from each of PricewaterhouseCoopers LLP and Ernst & Young LLP a letter, dated as of Closing Time, to the



effect that they reaffirm the statements made in the letter furnished pursuant to Section 5(e) of this Agreement.

(g) *No Objection.* The NASD has confirmed that it has not raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements.

(h) *Conditions to Purchase of Option Shares.* In the event that the Underwriters exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Shares, the representations and warranties of the Company contained herein and the statements in any certificates furnished by the Company hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Underwriters shall have received:

(i) *Officers' Certificates.* Certificates, dated such Date of Delivery, of a duly authorized officer of the Company and of the chief financial or chief accounting officer of the Company confirming that the information contained in the certificate delivered by each of them at the Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Date of Delivery.

(ii) *Opinions of Counsel for the Company.* The opinion of Cooley Godward LLP, counsel for the Company dated such Date of Delivery, relating to the Option Shares to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(b) hereof.

(iii) *Opinion of Counsel for the Underwriters.* The opinion of Bass, Berry & Sims PLC, counsel for the Underwriters, dated such Date of Delivery, relating to the Option Shares to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(c) hereof.

(iv) *Bring-down Comfort Letters.* A letter from each of PricewaterhouseCoopers LLP and Ernst & Young, LLP, in form and substance satisfactory to the Underwriters and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Underwriters pursuant to Section 5(f) hereof.

(i) *Additional Documents.* At Closing Time and at each Date of Delivery, counsel for the Underwriters shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Shares as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions herein contained; and all proceedings taken by the Company in connection with issuance and sale of the Shares as herein contemplated shall be reasonably satisfactory in form and substance to the Underwriters and counsel for the Underwriters.

(j) *Termination of Agreement.* If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Shares, on a Date of Delivery which is after the Closing Time, the obligations of the several Underwriters to purchase the relevant Option Shares, may be terminated by the Underwriters by notice to the Company at any time at or prior to Closing Time or such Date of Delivery, as the case may be, and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Sections 1, 6, 7, 8 and 13 shall survive any such termination and remain in full force and effect.

#### *Section 6. Indemnification.*

(a) *Indemnification of Underwriters.* The Company agrees to indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of Section 15 of

the 1933 Act or Section 20 of the 1934 Act, and any director, officer, employee or affiliate thereof as follows:

- (i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including the Rule 430A Information, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included in any preliminary prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;
- (ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 6(e) below) any such settlement is effected with the written consent of the Company; and
- (iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by Ferris Baker), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above.

Provided, however, that the indemnity agreement set forth in this Section 6(a) shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through Ferris Baker or its counsel expressly for use in the Registration Statement (or any amendment thereto), including the Rule 430A Information or the Prospectus (or any amendment or supplement thereto); and provided further that the Company will not be liable to any Underwriter with respect to any Prospectus to the extent that the Company shall sustain the burden of proving that any such loss, liability, claim, damage or expense resulted from the fact that such Underwriter, in contravention of a requirement of this Agreement or applicable law, sold Shares to a person to whom such Underwriter failed to send or give, at or prior to the Closing Time, a copy of the final Prospectus, as then amended or supplemented if: (i) the Company has previously furnished copies thereof (sufficiently in advance of the Closing Time to allow for distribution by the Closing Time) to the Underwriter and the loss, liability, claim, damage or expense of such Underwriter resulted from an untrue statement or omission of a material fact contained in or omitted from the Prospectus which was corrected in the Prospectus Supplement as, if applicable, amended or supplemented prior to the Closing Time and such final Prospectus was required by law to be delivered at or prior to the written confirmation of sale to such person and (ii) such failure to give or send such final Prospectus by the Closing Time to the party or parties asserting such loss, liability, claim, damage or expense would have constituted a defense to the claim asserted by such person.

(b) *Indemnification of Company, Directors and Officers.* Each Underwriter severally agrees to indemnify and hold harmless the Company, their respective directors, each of the Company's officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act against any and all loss, liability,

claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including the Rule 430A Information, or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Company by such Underwriter through Ferris Baker or its counsel expressly for use in the Registration Statement (or any amendment thereto) or such preliminary prospectus or the Prospectus (or any amendment or supplement thereto).

(c) *Indemnification for Marketing Materials.* In addition to the foregoing indemnification, the Company also agrees to indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 6(a), as limited by the provision set forth therein, with respect to any Sales Material in the form approved by the Company for use by the Underwriters and securities firms to whom the Company shall have disseminated materials in connection with the public offering of the Shares.

(d) *Actions against Parties; Notification.* Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 6(a) above, counsel to the indemnified parties shall be selected by Ferris Baker, and, in the case of parties indemnified pursuant to Section 6(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(e) *Settlement without Consent if Failure to Reimburse.* If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement; provided that an indemnifying party shall not be liable for any such settlement effected without its consent if such indemnifying party, prior to the date of such settlement, (1) reimburses such indemnified party in accordance with such request for the amount of such fees and expenses of counsel as the indemnifying

party believes in good faith to be reasonable, and (2) provides written notice to the indemnified party that the indemnifying party disputes in good faith the reasonableness of the unpaid balance of such fees and expenses.

(f) *Limitations on Indemnification.* Any indemnification by the Company shall be subject to the requirements and limitations of Section 17(i) of the 1940 Act and 1940 Act Release 11330.

*Section 7. Contribution.*

If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other hand from the offering of the Shares pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and of the Underwriters on the other hand in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company on the one hand and the Underwriters on the other hand in connection with the offering of the Shares pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Shares pursuant to this Agreement (before deducting expenses) received by the Company and the total underwriting discount received by the Underwriters (whether from the Company or otherwise), in each case as set forth on the cover of the Prospectus bear to the aggregate public offering price of the Shares as set forth on such cover.

The relative fault of the Company on the one hand and the Underwriters on the other hand shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as such Underwriter, and each director of the Company and each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company, within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the number of Firm Shares set forth opposite their respective names in *Schedule A* hereto and not joint.

Any contribution by the Company shall be subject to the requirements and limitations of Section 17(i) of the 1940 Act and 1940 Act Release 11330.

*Section 8. Representations and Warranties to Survive Delivery.*

All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company submitted pursuant hereto, shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or controlling person, or by or on behalf of the Company, and shall survive delivery of the Shares to the Underwriters.

*Section 9. Termination of Agreement.*

(a) *Termination; General.* The Underwriters may terminate this Agreement, by notice to the Company, at any time at or prior to Closing Time (i) if there has been, since the time of execution of this Agreement or since the date of the Prospectus Supplement, any material adverse change in the condition, financial or otherwise, or in the earnings or business affairs of the Company, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any material outbreak of hostilities or material escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Underwriters, impracticable or inadvisable to market the Shares or to enforce contracts for the sale of the Shares, or (iii) if trading in the Common Shares of the Company has been suspended or materially limited by the Commission or the NASDAQ, or if trading generally on the New York Stock Exchange has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, the NASD or any other governmental authority, or a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States, or (iv) if a banking moratorium has been declared by either Federal or any state authorities.

(b) *Liabilities.* If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that Sections 1, 6, 7, 8, 12, 13 and 14 shall survive such termination and remain in full force and effect.

*Section 10. Default by One or More of the Underwriters.*

(a) If one or more of the Underwriters shall fail at Closing Time or any Date of Delivery to purchase the Shares which it or they are obligated to purchase under this Agreement (the "Defaulted Shares"), the Underwriters shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Shares in such amounts as may be agreed upon and upon the terms herein

set forth; if, however, the Underwriters shall not have completed such arrangements within such 24-hour period, then:

(i) if the number of Defaulted Shares does not exceed 10% of the number of Shares to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(ii) if the number of Defaulted Shares exceeds 10% of the number of Shares to be purchased on such date, this Agreement or, with respect to any Date of Delivery which occurs after the Closing Time, the obligation of the Underwriters to purchase and of the Company to sell the Option Shares to be purchased and sold on such Date of Delivery shall terminate without liability on the part of any non-defaulting Underwriter.

(b) No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

(c) In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Shares, as the case may be, either the Underwriters or the Company shall have the right to postpone Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven (7) days in order to effect any required changes in the Registration Statement or Prospectus or in any other documents or arrangements. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 10.

*Section 11. Tax Disclosure.*

Notwithstanding any other provision of this Agreement, from the commencement of discussions with respect to the transactions contemplated hereby, the Company (and each employee, representative or other agent of the Company) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure (as such terms are used in Sections 6011, 6111 and 6112 of the Code and the Treasury Regulations promulgated thereunder) of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided relating to such tax treatment and tax structure.

*Section 12. Notices.*

All communications hereunder shall be in writing and shall be mailed, hand delivered or telecopied and confirmed to the parties hereto as follows:

If to the Underwriters:

Ferris, Baker Watts, Incorporated  
1700 Pennsylvania Avenue  
Washington, D.C. 20006  
Attention: Steve Shea

with a copy to:

Bass, Berry & Sims PLC  
100 Peabody Place, Suite 900  
Memphis, Tennessee 38103  
Facsimile: (901) 543-5999  
Attention: John A. Good, Esq.

If to the Company:

Gladstone Capital Corporation  
1616 Anderson Road, Suite 208  
McLean, Virginia 22102  
Attention: David Gladstone

with a copy to:

Cooley Godward LLP,  
One Freedom Square, Reston Town Center  
11951 Freedom Drive  
Reston, Virginia 20190  
Attention: Thomas R. Salley, Esq.

Any party hereto may change the address for receipt of communications by giving written notice to the others.

*Section 13. Parties.*

This Agreement shall each inure to the benefit of and be binding upon the Underwriters, the Company and their respective partners and successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters, the Company, and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters, the Company, and their respective partners and successors, and said controlling persons and officers, directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Shares from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

*Section 14. Governing Law and Time.*

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MARYLAND APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN SAID STATE. UNLESS OTHERWISE EXPLICITLY PROVIDED, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

*Section 15. Effect of Headings.*

The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Underwriters and the Company in accordance with its terms.

Very truly yours,

**GLADSTONE CAPITAL CORPORATION**

By: /s/ DAVID GLADSTONE

---

Name: David Gladstone  
Title: Chairman and Chief Executive Officer

**CONFIRMED AND ACCEPTED,**  
as of the date first above written:

Ferris, Baker Watts, Incorporated  
BB&T Capital Markets, a division of Scott & Stringfellow, Inc.  
J.J.B. Hilliard, W.L. Lyons, Inc.  
Stifel, Nicolaus & Company, Incorporated

By: **FERRIS, BAKER WATTS, INCORPORATED**

By: /s/ SAMER S. TAHBOUB

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Authorized Signatory

For itself and on behalf of the other  
Underwriters named in Schedule A hereto.



*SCHEDULE A*

| Name of Underwriter  | Number of Firm Shares |
|--|-----------------------|
| Ferris, Baker Watts, Incorporated                              | 400,000               |
| BB&T Capital Markets, a division of Scott & Stringfellow, Inc. | 400,000               |
| J.J.B. Hilliard, W.L. Lyons, Inc.                              | 100,000               |
| Stifel, Nicolaus & Company, Incorporated                       | 100,000               |
| <b>Total</b>   | <b>1,000,000</b>      |

QuickLinks

[GLADSTONE CAPITAL CORPORATION \(a Maryland Corporation\)](#)  
[SCHEDULE A](#)

# Cooley Godward LLP

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San Diego, CA  
858 550-6000  
San Francisco, CA  
415 693-2000

September 27, 2004

Gladstone Capital Corporation  
1616 Anderson Road, Suite 208  
McLean, Virginia 22102

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the sale by Gladstone Capital Corporation, a Maryland corporation (the "Company"), of up to one million one hundred fifty thousand (1,150,000) shares of the Company's common stock, \$0.001 par value (the "Shares"), including one hundred fifty thousand (150,000) shares that may be sold pursuant to the exercise of an over-allotment option, pursuant to a Registration Statement on Form N-2 (Registration No. 333-100385) (the "Registration Statement"), the related prospectus dated August 5, 2004 (the "Prospectus") and the prospectus supplement dated September 27, 2004 (the "Prospectus Supplement"), each as filed with the Securities and Exchange Commission (the "Commission"). All of the Shares are to be sold by the Company as described in the Registration Statement and related Prospectus and Prospectus Supplement.

In connection with this opinion, we have examined and relied upon the Registration Statement and related Prospectus included therein, the Prospectus Supplement filed with the Commission pursuant to Rule 497 under the Securities Act of 1933, as amended, the Company's Articles of Amendment and Restatement of the Articles of Incorporation and Bylaws, as currently in effect, and the originals or copies certified to our satisfaction of such other records, documents, certificates, memoranda and other instruments as we deem necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness and authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies thereof and the due execution and delivery of all documents where due execution and delivery are a prerequisite to the effectiveness thereof.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold in accordance with the Registration Statement and the related Prospectus and the Prospectus Supplement, will be validly issued, fully paid and nonassessable.

We consent to the reference to our firm under the caption "Legal Matters" in the Prospectus and the Prospectus Supplement included in the Registration Statement and to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

Christian E. Plaza

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