SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended July 31, 2002

Commission file number **0–29230**

TAKE-TWO INTERACTIVE SOFTWARE, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware	**51-0350842**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

622 Broadway, New York, New York 10012
(Address of principal executive offices including zip code)

Registrant's Telephone Number, Including Area Code **(646) 536–2842**

575 Broadway, New York, New York 10012
(Former address, if changed since last report)

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

As of September 9, 2002, there were 39,344,265 shares of the registrant’s common stock outstanding.

TAKE-TWO INTERACTIVE SOFTWARE, INC.
QUARTER ENDED JULY 31, 2002

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PART 1. FINANCIAL INFORMATION

Item 1. Financial Statements

TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES
Consolidated Condensed Balance Sheets
As of July 31, 2002 and October 31, 2001 (unaudited)
(In thousands, except share data)

	July 31, 2002	October 31, 2001
ASSETS		
Current assets		
Cash and cash equivalents	$ 73,898	$ 6,056
Accounts receivable, net of provision for doubtful accounts and sales allowances of $26,595 and $26,106 at July 31, 2002 and October 31, 2001, respectively	64,759	94,950
Inventories, net	49,591	61,937
Prepaid royalties	18,100	21,892
Prepaid expenses and other current assets	21,195	17,925
Investments	448	6,241
Deferred tax asset	17,790	13,873
Total current assets	245,781	222,874
Fixed assets, net	15,091	11,033
Prepaid royalties	12,962	11,097
Capitalized software development costs, net	9,994	9,739
Investments	62	75
Goodwill, net	56,033	56,033
Intangibles, net	58,594	34,337
Deferred tax asset	7,892	7,892
Other assets, net	—	1,917
Total assets	$ 406,409	$ 354,997
LIABILITIES and STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	$ 47,976	$ 60,223
Accrued expenses and other current liabilities	37,005	20,250
Income taxes payable	11,268	—
Lines of credit, current portion	—	54,073
Current portion of capital lease obligation	92	99
Total current liabilities	96,341	134,645
Capital lease obligation, net of current portion	229	291
Total liabilities	96,570	134,936
Stockholders' equity		
Common stock, par value $.01 per share; 50,000,000 shares authorized; 39,019,760 and 36,640,972 shares issued and outstanding	390	366
Additional paid-in capital	251,346	213,908
Deferred compensation	(455)	—
Retained earnings	65,471	16,239
Accumulated other comprehensive loss	(6,913)	(10,452)
Total Stockholders' Equity	309,839	220,061
Total Liabilities and Stockholders' Equity	$ 406,409	$ 354,997

The accompanying notes are an integral part of the unaudited consolidated condensed financial statements.

TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES
Consolidated Condensed Statements of Operations

For the three and nine months ended July 31, 2002 and 2001 (unaudited)
(In thousands, except per share data)

	Three months ended July 31		Nine months ended July 31	
	2002	2001	2002	2001
Net sales	$ 122,461	$ 81,327	$ 575,717	$ 327,097
Cost of sales				
Product costs (includes impairment charge on Internet gaming assets of $3,397 in nine months 2001 period)	62,209	44,568	302,807	194,514
Royalties	12,245	4,181	53,894	13,561
Capitalized software development costs (includes impairment charge on Internet gaming assets of $389 in nine months 2001 period)	2,125	863	6,018	3,193
Total cost of sales	76,579	49,612	362,719	211,268
Gross profit	45,882	31,715	212,998	115,829
Operating expenses				
Selling and marketing (includes impairment charge on Internet gaming assets of $401 in nine months 2001 period)	15,912	12,057	58,429	36,186
General and administrative	17,390	11,297	55,311	30,915
Research and development	1,812	1,984	7,703	4,985
Depreciation and amortization	2,899	3,270	7,687	9,230
Total operating expenses	38,013	28,608	129,130	81,316
Income from operations	7,869	3,107	83,868	34,513
Interest (income) expense, net	(299)	1,964	728	7,249
Gain on sale of subsidiary	—	(651)	—	(651)
(Gain) loss on Internet investments	—	—	(159)	20,754
Class action settlement costs	—	—	1,468	—
Total non-operating (income) expenses	(299)	1,313	2,037	27,352
Income before income taxes, extraordinary loss and cumulative effect of change in accounting principle	8,168	1,794	81,831	7,161
Provision for income taxes	3,402	511	32,599	3,776
Income before extraordinary loss and cumulative effect of change in accounting principle	4,766	1,283	49,232	3,385
Extraordinary loss on early extinguishment of debt, net of taxes of $1,217	—	1,948	—	1,948
Cumulative effect of change in accounting principle, net of taxes of $3,558		—	—	5,337
Net income (loss)	$ 4,766	$ (665)	$ 49,232	$ (3,900)

The accompanying notes are an integral part of the unaudited consolidated condensed financial statements.

TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES
Consolidated Condensed Statements of Operations (continued)
For the three and nine months ended July 31, 2002 and 2001 (unaudited)
(In thousands, except per share data)

	Three months ended July 31		Nine months ended July 31	
	2002	2001	2002	2001
Per share data:				
Basic:				
Weighted average common shares outstanding	38,705	34,293	37,500	33,098
Income before extraordinary loss and cumulative effect of change in accounting principle per share	$ 0.12	$ 0.04	$ 1.31	$ 0.10
Extraordinary loss per share	—	(0.06)	—	(0.06)
Cumulative effect of change in accounting principle per share	—	—	—	(0.16)

Net income (loss) per share – Basic	$ 0.12	$ (0.02)	$ 1.31	$ (0.12)
Diluted:				
Weighted average common shares outstanding	40,231	35,769	38,947	34,285
Income before extraordinary loss and cumulative effect of change in accounting principle per share	$ 0.12	$ 0.03	$ 1.26	$ 0.09
Extraordinary loss per share	—	(0.05)	—	(0.05)
Cumulative effect of change in accounting principle per share	—	—	—	(0.16)
Net income (loss) per share – Diluted	$ 0.12	$ (0.02)	$ 1.26	$ (0.12)

The accompanying notes are an integral part of the unaudited consolidated condensed financial statements.

TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES
Consolidated Condensed Statements of Cash Flows
For the nine months ended July 31, 2002 and 2001 (unaudited)
(In thousands)

	Nine months ended July 31	
	2002	**2001**
Cash flows from operating activities:		
Net income (loss)	$ 49,232	$ (3,900)
Adjustment to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	7,687	9,230
Loss on disposal of fixed assets	122	172
Gain on sale of subsidiary	—	(651)
(Gain) loss on Internet investments	(159)	20,754
Impairment charge on Internet assets	—	4,187
Extraordinary loss on early extinguishment of debt, net of taxes	—	1,948
Change in deferred tax asset	(3,917)	(7,679)
Provision for doubtful accounts and sales allowances	489	4,120
Amortization of various expenses and discounts	3,453	983
Tax benefit from exercise of stock options	4,365	5,783
Issuance of compensatory stock and stock options	2,299	—
Foreign currency transaction loss	148	—
Changes in operating assets and liabilities, net of effects of acquisitions:		
Decrease in accounts receivable	33,175	39,097
Decrease in inventories, net	11,838	2,674
Decrease (increase) in prepaid royalties	2,223	(13,424)
Increase in prepaid expenses and other current assets	(3,526)	(4,593)
Decrease (increase) in capitalized software development costs	324	(1,302)
Increase in other assets	—	(4,326)
Decrease in accounts payable	(10,914)	(23,437)
Increase (decrease) in accrued expenses	9,108	(5,388)
Increase in income taxes payable	12,871	—
Net cash provided by operating activities	118,818	24,248
Cash flows from investing activities:		
Purchase of fixed assets	(8,853)	(5,076)
Proceeds from sale of investments	5,888	—
Acquisition of intangible assets	(10,106)	—
Acquisitions, net of cash acquired	—	(4,069)
Net cash used in investing activities	(13,071)	(9,145)
Cash flows from financing activities:		
Proceeds from private placement	—	20,842
Net repayments under lines of credit	(54,118)	(28,848)
Repayment of loan payable	—	(15,000)
Deferred financing costs	(463)	—
Proceeds from exercise of stock options and warrants	11,346	19,942
Repayment of capital lease obligation	(69)	(49)
Net cash used in financing activities	(43,304)	(3,113)
Effect of foreign exchange rates	5,399	(1,889)
Net increase in cash for the period	67,842	10,101
Cash and cash equivalents, beginning of the period	6,056	5,245

Cash and cash equivalents, end of the period	$ 73,898	$ 15,346

The accompanying notes are an integral part of the unaudited consolidated condensed financial statements.

TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES
Consolidated Condensed Statements of Cash Flows (continued)
For the nine months ended July 31, 2002 and 2001 (unaudited)
(In thousands)

	Nine months ended July 31	
	2002	2001
Supplemental information on intangibles and businesses acquired:		
Fair value of assets acquired		
Cash	$ —	$ 332
Accounts receivables, net	—	9,973
Inventories, net	—	4,213
Prepaid royalties	—	(707)
Prepaid expenses and other assets	—	94
Property and equipment, net	—	769
Intangible asset	28,649	10,381
Goodwill	—	40,288
Less, liabilities assumed		
Lines of credit	—	(13,330)
Accounts payable	—	(13,115)
Accrued expenses	—	(3,078)
Other current liabilities	—	—
Stock issued	(18,543)	(13,952)
Value of asset recorded	—	(17,266)
Direct transaction costs	—	(201)
Cash paid	10,106	4,401
Less cash acquired	—	(332)
Net cash paid	$ 10,106	$ 4,069

The accompanying notes are an integral part of the unaudited consolidated condensed financial statements.

TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES
Consolidated Condensed Statements of Stockholders' Equity
For the year ended October 31, 2001 and the nine months ended July 31, 2002 (unaudited)
(In thousands)

	Common Stock		Additional Paid-in Capital	Deferred Compensation	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total
	Shares	Amount					
Balance, November 1, 2000	31,173	$ 312	$ 157,738	$ (5)	$ 24,819	$ (12,672)	$ 170,192
Foreign currency translation adjustment	—	—	—	—	—	(767)	(767)
Net unrealized income on investments, net of taxes	—	—	—	—	—	2,987	2,987
Net loss	—	—	—	—	(8,580)	—	(8,580)
Comprehensive (loss)							(6,360)
Proceeds from exercise of stock options and warrants	3,266	32	22,582	—	—	—	22,614
Amortization of deferred compensation	—	—	—	5	—	—	5
Issuance of common stock in connection with acquisitions	1,466	14	13,967	—	—	—	13,981
Issuance of common stock in connection with private placements, net of issuance costs	1,300	13	20,879	—	—	—	20,892
Retirement of common stock	(564)	(5)	(7,305)	—	—	—	(7,310)
Tax benefit in connection with the exercise of stock options	—	—	6,047	—	—	—	6,047
Balance, October 31, 2001	36,641	366	213,908	—	16,239	(10,452)	220,061
Foreign currency translation adjustment	—	—	—	—	—	3,585	3,585
Net unrealized income on investments, net of taxes	—	—	—	—	—	(46)	(46)
Net income	—	—	—	—	49,232	—	49,232
Comprehensive income							52,771
Proceeds from exercise of stock options and	1,334	13	11,333	—	—	—	11,346

warrants							
Amortization of deferred compensation	—	—	—	454	—	—	454
Deferred compensation in connection with restricted stock issued	50	1	908	(909)	—	—	—
Issuance of common stock in connection with acquisition of intangible assets	970	10	18,533	—	—	—	18,543
Issuance of compensatory stock and stock options	25	—	2,299	—	—	—	2,299
Tax benefit in connection with the exercise of stock options	—	—	4,365	—	—	—	4,365
Balance, July 31, 2002	**39,020**	**$ 390**	**$ 251,346**	**$ (455)**	**$ 65,471**	**$ (6,913)**	**$ 309,839**

The accompanying notes are an integral part of the unaudited consolidated condensed financial statements.

TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES
Notes to Unaudited Consolidated Condensed Financial Statements
(Dollars in thousands, except per share amounts, unless otherwise noted)

1. Organization

Take-Two Interactive Software, Inc. (the "Company") develops, publishes and distributes interactive software games designed for PCs and video game console platforms.

2. Significant Accounting Policies and Transactions

Basis of Presentation

The unaudited Consolidated Condensed Financial Statements of the Company have been prepared in accordance with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, the financial statements do not include all information and disclosures necessary for a presentation of the Company's financial position, results of operations and cash flows in conformity with generally accepted accounting principles. In the opinion of management, the financial statements reflect all adjustments (consisting only of normal recurring accruals) necessary for a fair presentation of the Company's financial position, results of operations and cash flows. The results of operations for any interim periods are not necessarily indicative of the results for the full year. The financial statements should be read in conjunction with the audited financial statements and notes thereto contained in the Company's Annual Report on Form 10-K/A for the fiscal year ended October 31, 2001.

Risk and Uncertainties

Substantially all of the Company's net sales are derived from software publishing and distribution activities, which are subject to increasing competition, rapid technological change and evolving consumer preferences, often resulting in the frequent introduction of new products and short product lifecycles. Accordingly, the Company's profitability and growth prospects depend upon its ability to continually acquire, develop and market new, commercially successful software products and obtain adequate financing, if required. If the Company is unable to continue to acquire, develop and market commercially successful software products, its operating results and financial condition could be materially adversely affected in the near future.

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of revenues and expenses during the reported periods. The most significant estimates and assumptions relate to the recoverability of prepaid royalties, capitalized software development costs and other intangibles, realization of deferred income taxes, valuation of inventories and the adequacy of allowances for returns, price protection and doubtful accounts. Actual amounts could differ significantly from these estimates.

Revenue Recognition

Publishing revenue is derived from the sale of internally developed interactive software titles or from the sale of titles licensed from third-party developers. Publishing revenue amounted to $86,121 and $46,297 for the three months ended July 31, 2002 and 2001, respectively, and $411,867 and $172,202 for the nine months ended July 31, 2002 and 2001, respectively.

Distribution revenue is derived from the sale of third-party interactive software titles, accessories and hardware. Distribution revenue amounted to $36,340 and $35,030 for the three months ended July 31, 2002 and 2001, respectively and $163,850 and $154,895 for the nine months ended July 31, 2002 and 2001, respectively.

TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES
Notes to Unaudited Consolidated Condensed Financial Statements (continued)
(Dollars in thousands, except per share amounts, unless otherwise noted)

The Company recognizes revenue in accordance with Statement of Position ("SOP") 97-2 "Software Revenue Recognition", as amended by SOP 98-9 "Modification of SOP 97-2 Software Revenue Recognition with respect to Certain Transactions." SOP 97-2 provides guidance on applying generally accepted accounting principles in recognizing revenue on software transactions. SOP 98-9 deals with the determination of vendor specific objective evidence of fair value in multiple element arrangements, such as maintenance agreements sold in conjunction with software packages. The Company's transactions generally include only one element, the interactive software game. The Company recognizes revenue when the price is fixed and determinable, there is persuasive evidence of an arrangement, the fulfillment of its obligations under any such arrangement and determination that collection is probable. Accordingly, revenue is recognized when title and all risks of loss are transferred to the customer, which is generally upon receipt by customer. The Company's payment arrangements with its customers provide primarily 60 day terms and to a limited extent with certain customers 30 or 90 day terms.

The Company's distribution arrangements with customers generally do not give customers the right to return products; however, the Company at its discretion may accept product returns for stock balancing or defective products. In addition, the Company sometimes negotiates accommodations to customers, including price discounts, credits and product returns, when demand for specific products falls below expectations. The Company's publishing arrangements generally require the Company to accept product returns and provide price protection. The Company establishes a reserve for future returns and other allowances based primarily on its return policies, price protection policies and historical return rates. The Company may not have a reliable basis to estimate returns and price protection for certain customers or it may be unable to determine that collection of the receivable is probable. In such circumstances, the Company defers the revenues at the time of the sale and recognizes them when collection of the related receivable becomes probable or cash is received.

Effective November 1, 2000, the Company adopted Staff Accounting Bulletin ("SAB") No. 101, "Revenue Recognition in Financial Statements". Consistent with the guidelines provided in SAB No. 101, the Company changed its revenue recognition policy to recognize revenue as noted above. Prior to the adoption of SAB 101, the Company recognized revenue upon shipment. As a result of adopting SAB 101, net sales and cost of sales of approximately $27,230 and $18,335, respectively, which were originally recognized in the year ended October 31, 2000 were also recognized in the nine months ended July 31, 2001. The cumulative effect of the adoption of SAB 101 for the quarter ended January 31, 2001 was $5,337 of income, net of taxes of $3,558. This adoption had no effect on net income for the nine months ended July 31, 2001.

(Dollars in thousands, except per share amounts, unless otherwise noted)

Prepaid Royalties

The Company's agreements with licensors and developers generally provide it with exclusive publishing rights and require it to make advance royalty payments that are recouped against royalties due to the licensor or developer based on product sales. Prepaid royalties are amortized as cost of sales on a title-by-title basis based on the greater of the proportion of current year sales to total of current and estimated future sales for that title or the contractual royalty rate based on actual net product sales. The Company continually evaluates the recoverability of prepaid royalties and charges to cost of sales the amount that management determines is probable that will not be recouped at the contractual royalty rate in the period in which such determination is made. Prepaid royalties are classified as current and non-current assets based upon estimated net product sales within the next year.

Prepaid royalties were written down by $3,762 and $6,930 for the three and nine months ended July 31, 2002, respectively, to estimated net realizable value. Prepaid royalties were written down by $75 for the nine months ended July 31, 2001 to estimated net realizable value. Amortization of prepaid royalties amounted to $4,042 and $3,770 for the three months ended July 31, 2002 and 2001, respectively. Amortization of prepaid royalties amounted to $27,587 and $12,438, for the nine months ended July 31, 2002 and 2001, respectively.

Capitalized Software Development Costs (Including Production Costs)

The Company capitalizes internal software development costs subsequent to establishing technological feasibility of a title. Capitalized software development costs represent the costs associated with the internal development of the Company's publishing products. Amortization of such costs as a component of cost of sales is recorded on a title-by-title basis based on the greater of the proportion of current year sales to total of current and estimated future sales for the title or the straight-line method over the remaining estimated useful life of the title. The Company continually evaluates the recoverability of capitalized software costs.

The following table provides the details of capitalized software development costs:

	Fiscal 2002	Fiscal 2001
Balance, November 1	$ 9,739	$ 7,668
Additions	1,484	1,009
Amortization	(2,955)	(893)
Reclassification	(1,419)	—
Foreign exchange	(114)	208
Balance, January 31	6,735	7,992
Additions	2,524	1,447
Amortization	(919)	(1,049)
Write down	(19)	(389)
Foreign exchange	133	(193)
Balance, April 30	8,454	7,808
Additions	3,165	1,707
Amortization	(2,125)	(863)
Foreign exchange	500	(71)
Balance, July 31	$ 9,994	$ 8,581

For the three months ended April 30, 2001, capitalized software development costs of $389 were written off as cost of sales – capitalized software development costs, as part of the impairment charge as described in Note 3.

Amounts relating to intellectual property rights for several products and technologies, which were not developed internally, amounting to $2,195, have been reclassified to intangible assets in all periods presented.

Recently Issued Accounting Pronouncements

In November 2001, the Financial Accounting Standards Board ("FASB") Emerging Issues Task Force (EITF) reached a consensus on EITF Issue 01-09, Accounting for Consideration Given by a Vendor to a Customer or Reseller of the Vendor's Products, which is a codification of EITF 00-14, 00-22 and 00-25. This EITF presumes that consideration from a vendor to a customer or reseller of the vendor's products to be a reduction of the selling prices of the vendor's products and, therefore, should be characterized as a reduction of revenue when recognized in the vendor's income statement and could lead to negative revenue under certain circumstances. Revenue reduction is required unless consideration relates to a separate identifiable benefit and the benefit's fair value can be established. The Company has early adopted EITF 01-09 effective November 1, 2001. The adoption of the new standard did not have a material impact on the consolidated condensed financial statements. The prior period financial statements have been reclassified in accordance with this statement and as a result, net sales and selling and marketing expenses have been reduced by $700 for the nine months ended July 31, 2001.

Effective November 1, 2001, the Company adopted Statement of Financial Accounting Standard No. 141, "Business Combinations" ("SFAS 141") and Statement of Financial Accounting Standard No. 142, "Goodwill and Other Intangible Assets" ("SFAS 142"). SFAS 141 requires all business combinations be accounted for using the purchase method of accounting and that certain intangible assets acquired in a business combination be recognized as assets apart from goodwill. SFAS 142 addresses the recognition and measurement of goodwill and other intangible assets subsequent to their acquisition. SFAS 142 also addresses the initial recognition and measurement of intangible assets acquired outside of a business combination whether acquired individually or with a group of other assets. This statement provides that intangible assets with finite useful lives be amortized and that intangible assets with indefinite lives and goodwill not be amortized, but be tested at least annually for impairment. Upon completion of the transitional impairment test, the fair value for each of the Company's reporting units exceeded the reporting unit's carry amount and no impairment was indicated (See Note 11).

In August 2001, the FASB issued Statement of Financial Accounting Standard No. 143, "Accounting for Obligations Associated with the Retirement of Long-Lived Assets" ("SFAS 143"). The objective of SFAS 143 is to provide accounting guidance for legal obligations associated with the retirement of long-lived assets. The retirement obligations included within the scope of this pronouncement are those that an entity cannot avoid as a result of either the acquisition, construction or normal operation of a long-lived asset. Components of

(Dollars in thousands, except per share amounts, unless otherwise noted)

larger systems also fall under this pronouncement, as well as tangible long-lived assets with indeterminable lives. The provisions of SFAS 143 are effective for financial statements issued for fiscal years beginning after June 15, 2002. The Company is currently evaluating the expected impact of the adoption of SFAS 143 on the Company's financial condition, cash flows and results of operations. The Company will adopt the standard in the first quarter of fiscal 2003.

In October 2001, the FASB issued Statement of Financial Accounting Standard No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS 144"). The objectives of SFAS 144 are to address significant issues relating to the implementation of Statement of Financial Accounting Standard No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of" ("SFAS 121") and to develop a single accounting model, based on the framework established in SFAS 121, for the long-lived assets to be disposed of by sale, whether previously held and used or newly acquired. The provisions of SFAS 144 are effective for financial statements issued for fiscal years beginning after December 15, 2001. The Company is currently evaluating the expected impact of the adoption of SFAS 144 on the Company's financial condition and results of operations. The Company will adopt the standard in the first quarter of fiscal 2003.

In April 2002, the FASB issued Statement of Financial Accounting Standard No. 145, "Rescission of FASB Statements No. 4, 44 and 64, Amendment to FASB Statement No. 13, and Technical Corrections" ("SFAS 145"). SFAS 145 eliminates the requirement (in SFAS No. 4) that gains and losses from the extinguishments of debt be aggregated and classified as extraordinary items, net of the related income tax. The rescission of SFAS No. 4 is effective for fiscal years beginning after May 15, 2002, which for the Company would be November 1, 2002. Upon adoption, any gain or loss on extinguishment of debt that was previously classified as an extraordinary item will be reclassified to non-operating expenses. The Company does not expect that the rescission of SFAS No. 4 will have a material impact on the Company's financial condition, cash flows and results of operations.

In July 2002, the FASB issued Statement of Financial Accounting Standard No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" ("SFAS 146"). SFAS 146 requires the recognition of such costs when they are incurred rather than at the date of a commitment to an exit or disposal plan. The provisions of SFAS 146 are to be applied prospectively to exit or disposal activities initiated after December 31, 2002. The Company is currently evaluating the expected impact of the adoption of SFAS 146 on the Company's financial condition and results of operations.

Reclassifications

Certain prior year amounts have been reclassified to conform with current year presentation.

3. 2001 Business Acquisitions

In fiscal 2001, the Company acquired businesses that develop, publish or distribute interactive software games and accessories. The aggregate purchase price, including cash payments and issuance of its common stock was $28,143. The value of the Company's common stock issued in connection with these acquisitions was based on the market price of the Company's common stock at the time such transactions were consummated.

The acquisitions described below have been accounted for as purchase transactions in accordance with APB No. 16 and SFAS 141 (for transactions after July 1, 2001) and, accordingly, the results of operations and financial position of the acquired businesses are included in the Company's consolidated financial statements from the respective dates of acquisition.

In July 2001, the Company acquired all of the outstanding capital stock of Techcorp Limited ("Techcorp"), a Hong Kong based design and engineering firm specializing in video game accessories. In consideration, the Company issued 30,000 shares of the Company's restricted common stock (valued at $572), paid $100 in cash and assumed net liabilities of $2,856. In connection with the acquisition, the Company recorded goodwill of $3,558. In accordance with SFAS 141, the Company is not amortizing the goodwill recorded in connection with this acquisition.

In November 2000, the Company acquired all of the outstanding capital stock of VLM Entertainment Group, Inc. ("VLM"), a company engaged in the distribution of third–party software products. In connection with this transaction, the Company paid the former stockholders of VLM $2,000 in cash and issued 875,000 shares of the Company's common stock (valued at $8,039) and assumed net liabilities of approximately $10,627. In connection with the acquisition, the Company recorded goodwill and intangibles of $20,693.

In connection with the sale of Toga Holdings to Gameplay.com plc ("Gameplay") in October 2000, the Company agreed to acquire Gameplay's game software development and publishing business, Neo Software Productions GMBH ("Neo"). Such acquisition was completed in January of 2001 and the Company assumed net liabilities of $808, in addition to the prepaid purchase price of $17,266. In connection with the acquisition, the Company recorded goodwill and intangibles of $18,183.

The following table sets forth the components of the purchase price of the 2001 acquisitions:

	Neo	VLM	Techcorp	Total
Cost of the acquisition:				
Value of business sold (Prepaid purchase price—Neo)				
Stock issued	$ 17,266	$ 8,039	$ 572	$ 25,877
Cash	—	2,000	100	2,100
Transaction Costs	109	27	30	166
Total	$ 17,375	$ 10,066	$ 702	$ 28,143
Allocation of purchase price:				
Current Assets	$ 2	$ 9,852	$ 894	$ 10,748
Non-Current Assets	71	201	498	770
Liabilities	(881)	(20,680)	(4,248)	(25,809)
Goodwill	8,207	12,416	3,558	24,181
Customer Lists	—	8,277	—	8,277
Technology	8,037	—	—	8,037
Trademarks	1,939	—	—	1,939

Total	$ 17,375	$ 10,066	$ 702	$ 28,143

Certain of Neo's internet-related technology assets were determined to be impaired in April 2001. Accordingly, the Company recorded as cost of sales a non-cash impairment charge of $3,786 consisting of $2,350 relating to server maintenance technologies and $1,047 relating to multiplayer technologies developed by Neo's development studio in connection with Online Pirates and $389 of capitalized software relating to other products to be developed by Neo. In addition, the Company recorded as selling and marketing expenses an impairment charge of $401 related to online sales promotions for Neo's products.

Unaudited pro forma information

The unaudited pro forma data below for the three and nine months ended July 31, 2001 is presented as if these purchase acquisitions had been made as of November 1, 2000. The unaudited pro forma financial information is based on management's estimates and assumptions and does not purport to represent the results that actually would have occurred if the acquisitions had, in fact, been completed on the dates assumed, or which may result in the future. The unaudited pro forma financial information includes purchase acquisitions that are significant to the Company's operations:

	Three Months ended July 31, 2001	Nine Months ended July 31, 2001
Net Sales	$ 81,656	$ 334,706
Income (loss) before extraordinary loss on early extinguishment of debt and cumulative effect of change in accounting principle	$ (283)	$ 925
Net loss	$ (2,231)	$ (6,360)
Net loss per share – Basic	$ (0.06)	$ (0.19)
Net loss per share – Diluted	$ (0.06)	$ (0.19)

4. Business Disposition

In July 2001, the Company sold all of the outstanding capital stock of Jack of All Games UK, a video game distributor, to Jay Two Limited, an unaffiliated third-party controlled by Freightmasters Ltd., for approximately $215. In connection with the sale, the purchaser assumed net liabilities of $436. The Company recorded a non-operating gain of $651. There were no income taxes payable on this gain.

5. Extraordinary Loss on Early Extinguishment of Debt

In July 2001, the Company prepaid in full the outstanding subordinated indebtedness of $15,000 and recorded an extraordinary charge of $1,948, net of taxes, or $0.05 per diluted share related to the deferred financing costs and discount associated with the indebtedness.

6. Private Placement

In July 2001, the Company issued 1,300,000 shares of common stock in a private placement to institutional investors and received net proceeds of $20,842.

7. Net Income Before Extraordinary Loss and Cumulative Effect of Change in Accounting Principle per Share

The following table provides a reconciliation of basic earnings per share to diluted earnings per share for the three and nine months ended July 31, 2002 and 2001:

	Income before extraordinary loss and cumulative effect of change in accounting principle	Shares (in thousands)	Per Share Amount
Three Months Ended July 31, 2002:			
Basic	$ 4,766	38,705	$ 0.12
Effect of dilutive securities—Stock options and warrants	—	1,526	—
Diluted	$ 4,766	40,231	$ 0.12
Three months ended July 31, 2001:			
Basic	$ 1,283	34,293	$ 0.04
Effect of dilutive securities—Stock options and warrants	—	1,476	(0.01)
Diluted	$ 1,283	35,769	$ 0.03
Nine months ended July 31, 2002:			
Basic	$ 49,232	37,500	$ 1.31
Effect of dilutive securities—Stock options and warrants	—	1,447	(0.05)
Diluted	$ 49,232	38,947	$ 1.26

(Dollars in thousands, except per share amounts, unless otherwise noted)

Nine months ended July 31, 2001:			
Basic	$ 3,385	33,098	$ 0.10
Effect of dilutive securities—Stock options and warrants	—	1,187	(0.01)
Diluted	$ 3,385	34,285	$ 0.09

The computation of diluted number of shares excludes 68,000 and 318,000 unexercised stock options for the three and nine months ended July 31, 2002, respectively, which are anti-dilutive. The computation of diluted number of shares excludes 143,000 unexercised stock options for the nine months ended July 31, 2001 which are anti-dilutive.

8. Inventory

As of July 31, 2002 and October 31, 2001, inventories consist of:

	July 31 2002	October 31 2001
Parts and supplies	$ 2,774	$ 1,468
Finished products	46,817	60,469
	$ 49,591	$ 61,937

9. Investments

Investments are comprised of equity securities and are classified as current and non-current assets. Investments are accounted for under the average cost method as "available-for-sale" in accordance with Statement of Financial Standards Board No. 115 "Accounting for Certain Investments in Debt and Equity Securities." Investments are stated at fair value, with unrealized appreciation (loss) reported as a separate component of accumulated other comprehensive income (loss) in stockholders' equity.

During the nine months ended July 31, 2001, the Company recorded an impairment charge of $20,754, principally consisting of $18,448 relating to its investment in Gameplay and $2,000 relating to its investment in eUniverse to reflect other than temporary declines in value.

As of July 31, 2002 and October 31, 2001, investments were summarized as follows:

	July 31, 2002		October 31, 2001	
	Current	Non-Current	Current	Non-Current
Average cost	$ 259	$ 75	$ 5,988	$ 75
Unrealized gains (losses)	189	(13)	253	—
Fair value	$ 448	$ 62	$ 6,241	$ 75

For the nine months ended July 31, 2002, the gross proceeds from the sale of investments were $5,888. The realized gain from these sales totaled $159 for the nine months ended July 31, 2002. The gain on sale of securities is based on the average cost of the individual securities sold.

10. Lines of Credit

In December 1999, the Company entered into a credit agreement, as amended and restated in August 2002, with a group of lenders led by Bank of America, N.A., as agent. The agreement provides for borrowings of up to $40,000 through the expiration of the line of credit on August 28, 2005. Generally, advances under the line of credit are based on a borrowing formula equal to 75% of eligible accounts receivable plus 35% of eligible inventory. Interest accrues on such advances at the bank's prime rate plus 0.25% to 1.25%, or at LIBOR plus 2.25% to 2.75% depending on the consolidated leverage ratio (as defined). Borrowings under the line of credit are collateralized by the Company's accounts receivable, inventory, equipment, general intangibles, securities and other personal property, including the capital stock of the Company's domestic subsidiaries. The loan agreement contains certain financial and other covenants. As of July 31, 2002, the Company is in compliance with such covenants. The loan agreement limits or prohibits the Company from declaring or paying cash dividends, merging or consolidating with another corporation, selling assets (other than in the ordinary course of business), creating liens and incurring additional indebtedness. The Company had no outstanding borrowings under the revolving line of credit as of July 31, 2002.

In February 2001, the Company's United Kingdom subsidiary entered into a credit facility agreement, as amended in March 2002, with Lloyds TSB Bank plc ("Lloyds") under which Lloyds agreed to make available borrowings of up to $19,000. Advances under the credit facility bear interest at the rate of 1.25% per annum over the bank's base rate, and are guaranteed by the Company. The facility expires on March 31, 2004. The Company had no outstanding borrowings under this facility as of July 31, 2002.

11. Intangible Assets

As a result of the adoption of SFAS 142, the Company discontinued the amortization of goodwill effective November 1, 2001. Identifiable intangible assets are amortized under the straight-line method over the period of expected benefit ranging from three to ten years, except for intellectual property, which is amortized based on the shorter of the useful life or expected revenue stream. The Company re-characterized acquired workforce of $925, which is no longer defined as an acquired intangible asset under SFAS 141, as goodwill. Additionally, the estimated useful lives of certain identifiable intangible assets were adjusted in conjunction with the adoption of SFAS 142. The adjustment to the useful lives did not have a significant effect on the results of operations.

(Dollars in thousands, except per share amounts, unless otherwise noted)

Intangible assets consist of trademarks, intellectual property, customer lists, acquired technology and the excess purchase price paid over identified intangible and tangible net assets of acquired companies (goodwill).

In May 2002, the Company acquired all right, title and interest to the *Max Payne* product franchise, including all of the intellectual property rights associated with the brand, and a perpetual, royalty-free license to use the *Max Payne* game engine and related technology. The purchase price consisted of $10,000 in cash and 969,932 shares of restricted common stock. Based on an independent third-party valuation, the fair value of the shares is $18,543. In addition, the Company is contingently liable to make aggregate payments of up to $8,000 in cash upon the timely delivery of the final PC version of *Max Payne 2* and the achievement of certain sales targets for such product. The Company is in the process of obtaining an independent third-party valuation in support of its purchase price allocation for the assets acquired. On a preliminary basis, the *Max Payne* assets acquired have been recorded as intellectual property and included in intangible assets.

The following table sets forth the components of the intangible assets subject to amortization as of July 31, 2002 and October 31, 2001:

		As of July 31, 2002			As of October 31, 2001		
	Range of Useful Life	Gross Carrying Amount	Accumulated Amortization	Net	Gross Carrying Amount	Accumulated Amortization	Net
Trademarks	7-10 years	$ 13,922	$ (3,459)	$ 10,463	$ 13,922	$ (2,312)	$ 11,610
Customer lists and relationships	5-10 years	9,081	(2,031)	7,050	9,081	(1,068)	8,013
Intellectual property	2-6 years	39,371	(1,509)	37,862	10,722	(300)	10,422
Technology	3 years	4,640	(1,421)	3,219	4,640	(348)	4,292
		$ 67,014	$ (8,420)	$ 58,594	$ 38,365	$ (4,028)	$ 34,337

Amounts relating to intellectual property rights for several products and technologies that were not developed internally, amounting to $2,195, have been reclassified from capitalized software development costs to intangible assets for all periods and included in the above table.

Amortization expense (including goodwill for 2001) for the three months ended July 31, 2002 and 2001 amounted to $1,660, and $3,811, respectively and for the nine months ended July 31, 2002 and 2001 amounted to $4,392 and $9,281, respectively.

Estimated amortization expense for the fiscal years ending October 31, are as follows:

2002	$ 4,244
2003	3,826
2004	3,789
2005	3,553
2006	3,475
Total	$ 18,887

The following table provides a reconciliation of net income for exclusion of goodwill amortization:

	Three months ended July 31		Nine months ended July 31	
	2002	2001	2002	2001
Income before extraordinary loss and cumulative effect of change in accounting principle	$ 4,766	$ 1,283	$ 49,232	$ 3,385
Extraordinary loss on early extinguishment of debt	—	(1,948)	—	(1,948)
Cumulative effect of change in accounting principle, net of taxes	—	—	—	(5,337)
Net income (loss) - as reported	4,766	(665)	49,232	(3,900)
Add: Goodwill amortization, net of taxes	—	993	—	3,124
Net income (loss) - as adjusted	$ 4,766	$ 328	$ 49,232	$ (776)
Earnings (loss) per share:				
Income before extraordinary loss and cumulative effect of change in accounting principle per share - basic	$ 0.12	$ 0.04	$ 1.31	$ 0.10
Extraordinary loss on early extinguishment of debt	—	(0.06)	—	(0.06)

(Dollars in thousands, except per share amounts, unless otherwise noted)

Cumulative effect of change in accounting principle per share	—	—	—	(0.16)
Add: Goodwill amortization, net of taxes	—	0.03	—	0.10
Adjusted earnings (loss) per share – basic	$ 0.12	$ 0.01	$ 1.31	$ (0.02)
Income before extraordinary loss and cumulative effect of change in accounting principle per share - diluted	$ 0.12	$ 0.03	$ 1.26	$ 0.09
Extraordinary loss on early extinguishment of debt	—	(0.05)	—	(0.05)
Cumulative effect of change in accounting principle per share	—	—	—	(0.16)
Add: Goodwill amortization, net of taxes	—	0.03	—	0.10
Adjusted earnings (loss) per share – diluted	$ 0.12	$ 0.01	$ 1.26	$ (0.02)

12. Legal and Other Proceedings

Since December 2001, thirteen purported class action lawsuits have been filed in the United States District Court for the Southern District of New York against the Company and certain of its current and former officers and directors. The actions were consolidated in one lawsuit, Gershon Bassman v. Take-Two Interactive Software, Inc., in April 2002. The consolidated complaint includes claims under Sections 10 (b) and 20 (a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated under Section 10 (b), and generally alleges that defendants issued false and misleading public filings, press releases and other statements regarding the Company's financial condition during a class period commencing on February 24, 2001 through December 17, 2001 in a scheme to artificially inflate the value of the Company's common stock.

In June 2002, the Company entered into a definitive agreement with the plaintiffs to settle the consolidated class action lawsuits for $7,500 in cash. During the three months ended April 30, 2002, the Company recorded $1,468 of class action settlement costs, which represents the settlement of $7,500 and related legal fees, net of $6,145 of insurance proceeds. The settlement amount is included in accounts payable at July 31, 2002. The insurance proceeds are included in prepaid expenses and other current assets at July 31, 2002. In July 2002, the United States District Court granted preliminary approval of the settlement agreement.

In July 2002, the Company settled all ordinary course of business litigation with Red Storm Entertainment Inc., a subsidiary of Ubi Soft Entertainment, including certain claims resulting from a distribution agreement. During the three months ended July 31, 2002, the Company recorded $2,248 in cost of sales – product costs and $1,190 in general and administrative costs. During the nine months ended July 31, 2002, the Company recorded $3,064 in cost of sales – product costs and $1,190 in general and administrative costs.

The Securities and Exchange Commission has issued a formal order of investigation into, among other things, certain accounting matters relating to the Company's financial statements, periodic reporting and internal accounting control provisions of the federal securities laws.

The Company is involved in routine litigation arising in the ordinary course of its business. In the opinion of the Company's management, none of the pending routine litigation will have a material adverse effect on the Company's consolidated financial condition, cash flows or results of operations.

13. Commitments and Contingencies

The Company periodically enters into agreements that require the Company to make minimum guaranteed payments. During the nine months ended July 31, 2002, the Company entered into agreements to purchase various software games. These agreements, which expire between April 1 and December 31, 2003, require minimum guaranteed payments of $15,662 at July 31, 2002. One of these agreements is collateralized by a standby letter of credit of $3,167 at July 31, 2002.

In connection with the Company's acquisition of the publishing rights to the franchise of *Duke Nukem* PC and video games in December 2000, the Company is contingently obligated to pay $6,000 in cash upon delivery of the final PC version of *Duke Nukem Forever*. In addition, in connection with the Company's acquisition of the *Max Payne* product franchise, the Company is contingently liable to make aggregate payments of up to $8,000 in cash upon the timely delivery of the final PC version of *Max Payne 2* and the achievement of certain sales targets for such product. The payables will be recorded when the contingencies are resolved.

14. Segment Reporting

The Company has adopted Statement of Financial Accounting Standards No. 131, "Disclosures about Segments of an Enterprise and Related Information" ("SFAS No. 131"), which establishes standards for reporting by public business enterprises of information about product lines, geographic areas and major customers. The method for determining what information to report is based on the way management organizes the Company for making operational decisions and assessment of financial performance. The Company's chief operating decision maker is considered to be the Company's Chief Executive Officer ("CEO"). The CEO reviews financial information presented on a consolidated basis accompanied by disaggregated information about sales by geographic region and by product platforms. The Company's Board of Directors reviews consolidated financial information. The Company's operations employ the same products, cost structures, margins and customers worldwide. The Company's product development, publishing and marketing activities are centralized in the United States under one management team, with distribution activities managed geographically. Accordingly, the Company's operations fall within one reportable segment as defined in SFAS No. 131.

Information about the Company's non-current assets in the United States and international areas as of July 31, 2002 and October 31, 2001 are presented below:

	July 31 2002	October 31 2001
Total Non-current Assets:		

United States	$ 102,309	$ 81,243
International		
United Kingdom	21,367	21,128
All other Europe	18,279	21,405
Other	18,673	8,347
	$ 160,628	$ 132,123

Information about the Company's net sales in the United States and international areas for the three and nine months ended July 31, 2002 and 2001 are presented below (net sales are attributed to geographic areas based on product destination):

	Three months ended July 31		Nine months ended July 31	
	2002	2001	2002	2001
Net Sales:				
United States	$ 91,769	$ 59,875	$ 435,731	$ 237,336
Canada	5,599	4,509	15,121	13,381
International				
United Kingdom	5,486	4,369	39,303	27,865
All other Europe	15,779	9,568	75,142	39,071
Asia Pacific	3,606	2,384	9,500	8,521
Other	222	622	920	923
	$ 122,461	$ 81,327	$ 575,717	$ 327,097

Information about the Company's net sales by product platforms for the three and nine months ended July 31, 2002 and 2001 are presented below:

	Three months ended July 31		Nine months ended July 31	
	2002	2001	2002	2001
Platforms:				
Sony PlayStation 2	$ 51,008	$ 16,423	$ 357,992	$ 78,005
Sony PlayStation	9,372	12,440	48,021	62,671
Microsoft Xbox	5,754	—	42,812	—
PC	36,781	27,145	61,771	77,918
Nintendo GameBoy Color, GameBoy Advance and N64	3,298	9,273	14,665	28,119
Nintendo GameCube	2,327	—	8,821	—
Sega Dreamcast	128	927	1,504	10,165
Accessories	5,991	3,848	18,357	28,909
Hardware	7,802	11,271	21,774	41,310
	$ 122,461	$ 81,327	$ 575,717	$ 327,097

15. Subsequent Events

In August 2002, the Company acquired all of the outstanding capital stock of Barking Dog Studios LTD. ("Barking Dog"), a Canadian-based development studio, for 242,450 shares of restricted common stock and $3,000 in cash. Based on an independent third-party valuation, the fair value of the shares is $3,801. The Company is in the process of obtaining an independent third-party valuation to complete the purchase price allocation. In accordance with SFAS 141, the Company will not amortize the goodwill recorded in connection with this acquisition.

In August 2002, the Company amended and restated its credit agreement. See Note 10.

Critical Accounting Policies

Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of revenues and expenses during the reporting periods. The most significant estimates and assumptions relate to the recoverability of prepaid royalties, capitalized software development costs and other

(Dollars in thousands, except per share amounts, unless otherwise noted)

intangibles, inventories, realization of deferred income taxes and the adequacy of allowances for returns, price protection and doubtful accounts. Actual amounts could differ significantly from these estimates.

Revenue Recognition

The Company's principal sources of revenues are derived from publishing and distribution operations. Publishing revenues are derived from the sale of internally developed software titles or software titles licensed from third parties. Distribution revenues are derived from the sale of third-party software titles, accessories and hardware. Publishing activities generally generate significantly higher margins than distribution activities, with sales of PC software titles resulting in higher margins than sales of CDs or cartridges designed for video game consoles.

Effective November 1, 2000, in accordance with the adoption of SAB 101, "Revenue Recognition in Financial Statements", the Company recognizes revenue net of allowances for returns and price protection when title and risk of loss pass to customers (generally, upon receipt of products by customers). Prior to that date, the Company recognized revenue upon shipment. In accordance with Statement of Position 97-2 "Software Revenue Recognition" the Company recognizes revenue when the price is fixed and determinable, upon persuasive evidence of an agreement, the Company's fulfillment of its obligations under any such agreement and a determination that collection is probable. The Company's payment arrangements with customers provide primarily 60 day terms and to a limited extent with certain customers 30 or 90 day terms. The Company may not have a reliable basis to estimate returns and allowances for certain customers or may be unable to determine that collection of receivables is probable. In such circumstances, the Company defers revenues at the time of sale and recognizes revenues when collection of the related receivable becomes probable or cash is collected.

Returns and Reserves

The Company's arrangements with customers for published titles generally require it to accept returns and provide price protection. The Company establishes a reserve for future returns of published titles and price protection based primarily on historical return rates, return policies and price protection policies, and recognizes revenues net of allowances for returns and price protection. The Company's distribution arrangements with customers generally do not give them the right to return titles or to cancel firm orders. However, the Company sometimes accepts returns for stock balancing and negotiates accommodations to customers, which includes price discounts, credits and returns, when demand for specific titles fall below expectations. The historical product return rate for the Company's distribution business has been substantially less than for its publishing business. If future returns significantly exceed established reserves, the Company's operating results would be adversely affected.

Prepaid Royalties

The Company's agreements with licensors and developers generally provide it with exclusive publishing rights and require it to make advance royalty payments that are recouped against royalties due to the licensor or developer based on product sales. Prepaid royalties are amortized as cost of sales on a title by title basis based on the greater of the proportion of current year sales to total of current and estimated future sales for that title or the contractual royalty rate based on actual net product sales. The Company continually evaluates the recoverability of prepaid royalties and charges to cost of sales the amount that management determines is probable that will not be recouped at the contractual royalty rate in the period in which such determination is made. Prepaid royalties are classified as current and non-current assets based upon estimated net product sales within the next year.

Prepaid royalties were written down by $3,762 and $6,930 for the three and nine months ended July 31, 2002, respectively, to estimated net realizable value. Prepaid royalties were written down by $75 for the nine months ended July 31, 2001 to estimated net realizable value. Amortization of prepaid royalties amounted to $4,042 and $3,770 for the three months ended July 31, 2002 and 2001, respectively. Amortization of prepaid royalties amounted to $27,587 and $12,438 for the nine months ended July 31, 2002 and 2001, respectively.

Capitalized Software Development Costs

The Company capitalizes internal software development costs subsequent to establishing technological feasibility of a title. Capitalized software development costs represent the costs associated with the internal development of the Company's publishing products. Amortization of such costs as a component of cost of sales is recorded on a title-by-title basis based on the greater of the proportion of current year sales to total of current and estimated future sales for the title or the straight-line method over the remaining estimated useful life of the title. The Company continually evaluates the recoverability of capitalized software costs. See Note 2 to Unaudited Consolidated Condensed Financial Statements.

Results of Operations

The following table sets forth for the periods indicated the percentage of net sales represented by certain items reflected in the Company's statement of operations, and sets forth net sales by territory, sales mix, platform and principal products:

	Three months ended July 31		Nine months ended July 31	
	2002	2001	2002	2001
Operating data:				
Net sales	100.0%	100.0%	100.0%	100.0%
Cost of sales				
Product costs	50.8	54.8	52.6	59.5
Royalties	10.0	5.1	9.4	4.1
Capitalized software development costs	1.7	1.1	1.0	1.0
Total cost of sales	62.5	61.0	63.0	64.6
Selling and marketing	13.0	14.8	10.1	11.1
General and administrative	14.2	13.9	9.6	9.5
Research and development	1.5	2.4	1.3	1.5
Depreciation and amortization	2.4	4.0	1.3	2.8
Interest (income) expense, net	(0.2)	2.4	0.1	2.2
Loss on Internet securities	—	—	—	6.3
Provision for income taxes	2.8	0.6	5.7	1.2
Extraordinary loss on early extinguishment of debt	—	(2.4)	—	(0.6)

(Dollars in thousands, except per share amounts, unless otherwise noted)

Net income (loss)	3.9	(0.8)	8.6	(1.2)
Net Sales by Territory:				
North America	79.5%	79.2%	78.3%	76.6%
International	20.5	20.8	21.7	23.4
Net Sales Mix:				
Publishing	70.3%	56.9%	71.5%	52.6%
Distribution	29.7	43.1	28.5	47.4
Platform Mix (publishing):				
Console	60.1%	36.3%	87.3%	52.6%
PC	37.1	55.7	11.0	39.8
Accessories and Hand-held	2.8	8.0	1.7	7.6
Principal Products:				
Grand Theft Auto 3, PS2 (released October 2001)	29.7%	—%	37.2%	—%
Grand Theft Auto 3, PC (released May 2002)	17.5	—	3.7	—
Midnight Club, PS2	3.9	3.8	0.9	4.6
Max Payne, PS2 (released December 2001)	3.2	—	8.7	—
Max Payne, Xbox (released December 2001)	1.6	—	4.0	—
State of Emergency (released February 2002)	—	—	6.1	—
Ten largest titles	62.3	41.0	63.5	26.3

Three Months Ended July 31, 2002 and 2001

Net Sales. Net sales increased by $41,134 or 50.6%, to $122,461 for the three months ended July 31, 2002 from $81,327 for the three months ended July 31, 2001. The increase was primarily attributable to growth in publishing operations.

Publishing revenues increased by $39,824, or 86.0%, to $86,121 for the three months ended July 31, 2002 from $46,297 for the three months ended July 31, 2001. The increase was primarily attributable to the continued strong sales of *Grand Theft Auto 3* for PlayStation 2 and the release of *Grand Theft Auto 3* for the PC. Publishing revenues represented 70.3% and 56.9% of net sales for the three months ended July 31, 2002 and 2001, respectively.

Products designed for video game console platforms accounted for 60.1% of publishing revenues as compared to 36.3% for the comparable period last year, with the increase primarily attributable to the continued sales of *Grand Theft Auto 3* for PlayStation 2. Products designed for PC platforms accounted for 37.1% of publishing revenues as compared to 55.7% for the prior comparable period. The decrease is a result of fewer PC titles released during the current quarter.

Distribution revenues increased by $1,310 or 3.7%, to $36,340 for the three months ended July 31, 2002 from $35,030 for the three months ended July 31, 2001. The increase was primarily attributable to increased sales of software. Distribution revenues represented 29.7% and 43.1% of net sales for the three months ended July 31, 2002 and 2001, respectively.

International operations accounted for approximately $25,093 or 20.5% of net sales for the three months ended July 31, 2002 compared to $16,944 or 20.8% for the three months ended July 31, 2001. The increase in absolute dollars was primarily attributable to expanded publishing operations in Europe.

Cost of Sales. Total cost of sales increased by $26,967, or 54.4%, to $76,579 for the three months ended July 31, 2002 from $49,612 for the three months ended July 31, 2001. Cost of sales as a percentage of net sales increased to 62.5% for the three months ended July 31, 2002 from 61.0% for the prior comparable period.

Product costs increased $17,641, or 39.6%, to $62,209 for the three months ended July 31, 2002 from $44,568 from the comparable quarter in the prior year, but decreased as a percentage of net sales to 50.8% for the three months ended July 31, 2002 from 54.8% for the prior comparable period. The decrease in cost of sales as a percentage of net sales was principally due to lower product costs related to publishing revenues, partly offset by the change in publishing product mix to higher cost console titles from lower cost PC titles. The three months ended July 31, 2002 include $2,248 of Ubi Soft litigation settlement costs.

Royalties increased $8,064, or 192.9%, to $12,245 for the three months ended July 31, 2002 from $4,181 from the comparable quarter in the prior year. Royalties as a percentage of sales for the three months ended July 31, 2002 increased to 10.0% from 5.1% for the comparable period in 2001. The increases were due to higher royalty payments as a result of increased product sales, primarily sales of *Max Payne* and *Midnight Club*, and write-downs of prepaid royalties of $3,762 related to the termination of several projects.

Capitalized software development costs increased $1,262, or 146.2% to $2,125 for the three months ended July 31, 2002 from $863 for the three months ended July 31, 2001. Capitalized software development costs as a percentage of sales for the three months ended July 31, 2002 increased to 1.7% from 1.1% for the comparable period in 2001. The increase was due to higher amortization in the current year resulting from sales of related products.

In future periods, cost of sales may be adversely affected by manufacturing and other costs, price competition and by changes in product and sales mix and distribution channels.

Selling and Marketing. Selling and marketing expenses increased by $3,855, or 32.0%, to $15,912 for the three months ended July 31, 2002 from $12,057 for the three months ended July 31, 2001. The increase was attributable to increased levels of advertising and promotional support for new product launches and existing catalog titles. Selling and marketing expenses as a percentage of net sales for the three months ended July 31, 2002 decreased to 13.0% from 14.8% for the three months ended July 31, 2001.

General and Administrative. General and administrative expenses increased by $6,093, or 53.9%, to $17,390 for the three months ended July 31, 2002 from $11,297 for the three months ended July 31, 2001. General and administrative expenses as a percentage of net sales increased to 14.2% from 13.9% from the prior period. The increase in absolute dollars was attributable to increased personnel expenses, costs related to the settlement of Ubi Soft litigation, legal and professional fees incurred in connection with legal proceedings and regulatory matters, higher insurance costs and expenses related to the relocation of the Company's principal executive offices.

Research and Development. Research and development costs decreased by $172, or 8.7%, to $1,812 for the three months ended July 31, 2002 from $1,984 for the three months ended July 31, 2001. Research and development costs as a percentage of net sales decreased to 1.5% for the three months ended July 31, 2002 from 2.4% for the three months ended July 31, 2001.

Depreciation and Amortization. Depreciation and amortization expense decreased $371, or 11.3%, to $2,899 for the three months ended July 31, 2002 from $3,270 for the prior comparable period due to the Company's adoption of SFAS 142.

Income from Operations. Income from operations increased by $4,762, or 153.3%, to $7,869 for the three months ended July 31, 2002 from $3,107 for the three months ended July 31, 2001, due to the changes referred to above.

Interest (Income) Expense, net. Interest income of $299 during the three months ended July 31, 2002 was attributable to interest earned on the invested cash. Interest expense of $1,964 for the three months ended July 31, 2001 reflected borrowings from the Company's credit facilities which was repaid in early 2002.

Gain on Sale of Subsidiary. The Company recorded a non-operating gain on the sale of its Jack of All Games UK subsidiary during the three months ended July 31, 2001.

Provision for Income Taxes. Income tax expense was $3,402 for the three months ended July 31, 2002 as compared to expense of $511 for the three months ended July 31, 2001. The increase was primarily attributable to increased taxable income. The effective tax rate was 41.7% for the three months ended July 31, 2002, while the tax rate for the 2001 quarter was 28.5%. The effective income tax rate differs from the statutory rate as a result of non-deductible expenses and the mix of foreign taxes as applied to the income.

Extraordinary Loss on Early Extinguishment of Debt. During the three months ended July 31, 2001, the Company incurred an extraordinary charge of $1,948, net of taxes, upon the early repayment of $15,000 of subordinated indebtedness.

Net Income. For the three months ended July 31, 2002, the Company achieved net income of $4,766, as compared to net loss of $665 for the three months ended July 31, 2001.

Nine months Ended July 31, 2002 and 2001

Net Sales. Net sales increased by $248,620, or 76.0%, to $575,717 for the nine months ended July 31, 2002 from $327,097 for the nine months ended July 31, 2001. The increase was primarily attributable to growth in publishing operations. Included in net sales for the nine months ended July 31, 2001 was $27,230 attributable to the adoption of SAB 101.

Publishing revenues increased by $239,665, or 139.2%, to $411,867 for the nine months ended July 31, 2002 from $172,202 for the nine months ended July 31, 2001. The increase was primarily attributable to the continued strong sales of *Grand Theft Auto 3* and the release of *Max Payne* for the PlayStation 2 and Xbox, *State of Emergency* for the PlayStation 2 and *Grand Theft Auto 3* for the PC. Publishing revenues represented 71.5% and 52.6% of net sales for the nine months ended July 31, 2002 and 2001, respectively. The 2001 period included $20,632 attributable to the adoption of SAB 101.

Products designed for video game console platforms accounted for 87.3% of publishing revenues as compared to 52.6% for the prior comparable period. The increase was primarily attributable to the release of *State of Emergency* for PlayStation 2, and *Max Payne* for PlayStation 2 and Xbox and continued sales of *Grand Theft Auto 3* for PlayStation 2. Products designed for PC platforms accounted for approximately 11.0% of publishing revenues as compared to 39.8% for the prior comparable period. The decrease is a result of fewer PC titles released during the current period.

Distribution revenues increased by $8,955 or 5.8% to $163,850 for the nine months ended July 31, 2002 from $154,895 for the nine months ended July 31, 2001. The increase was primarily attributable to the commercial introduction of Xbox and GameCube and the continued rollout of PlayStation 2. Distribution revenue represented 28.5% and 47.4% of net sales for the nine months ended July 31, 2002 and 2001, respectively. The 2001 period included $6,598 attributable to the adoption of SAB 101.

International operations accounted for approximately $124,865 or 21.7% of net sales for the nine months ended July 31, 2002 compared to $76,382 or 23.4% for the nine months ended July 31, 2001. The increase in absolute dollars was primarily attributable to expanded publishing operations in Europe, including the release of *Max Payne* and *State of Emergency* on PlayStation 2, *Grand Theft Auto 3* for the PC and continued sales of *Grand Theft Auto 3* for PlayStation 2. The Company expects that international sales will continue to account for a significant portion of its revenue.

Cost of Sales. Cost of sales increased by $151,451, or 71.7%, to $362,719 for the nine months ended July 31, 2002 from $211,268 for the nine months ended July 31, 2002. Cost of sales as a percentage of net sales decreased to 63.0% for the nine months ended July 31, 2002 from 64.6% for the prior comparable period.

Product costs increased $108,293, or 55.7%, to $302,807 for the nine months ended July 31, 2002 from $194,514 from the comparable period in the prior year, but decreased as a percentage of net sales to 52.6% for the nine months ended July 31, 2002 from 59.5% for the prior comparable period. The decrease in cost of sales as a percentage of net sales was due to lower product costs related to publishing revenues, partly offset by the change in publishing product mix to higher product cost console titles as compared to lower cost PC titles. The 2002 period includes $3,064 of Ubi Soft litigation settlement costs, while the 2001 period includes a non-cash impairment charge of $3,397 relating to a reduction in the value of certain Internet assets. Product costs in 2001 included $18,335 related to the adoption of SAB 101**.**

Royalties increased $40,333, or 297.4%, to $53,894 for the nine months ended July 31, 2002 from $13,561 from the comparable period in the prior year. Royalties as a percentage of sales for the nine months ended July 31, 2002 increased to 9.4% from 4.1% for the comparable period in 2001. The increases were due to higher royalty payments as a result of increased product sales, principally for S*tate of Emergency*, higher amortization of prepaid royalties and $6,855 incremental write-downs of prepaid royalties, principally due to the termination of several projects in 2002.

Capitalized software development costs increased $2,825, or 88.5%, to $6,018 for the nine months ended July 31, 2002 from $3,193 for the nine months ended July 31, 2001. Capitalized software development costs as a percentage of net sales remained constant for the nine months ended July 31, 2002 and 2001. The increase in absolute dollars reflects higher amortization, partly offset by lower write-downs of capitalized costs. The 2001 period write-downs represent an impairment write-down of $389 relating to a reduction in the value of certain Internet assets.

In future periods, cost of sales may be adversely affected by manufacturing and other costs, price competition and by changes in product and sales mix and distribution channels.

Selling and Marketing. Selling and marketing expenses increased by $22,343, or 61.5%, to $58,429 for the nine months ended July 31, 2002 from $36,186 for the nine months ended July 31, 2001. The increase was attributable to increased television and other advertising expenses relating to *Max Payne* and *Grand Theft Auto 3* during the period, partly offset by the 2001 non-cash impairment charge of $401 relating to online sales promotions for the Company's products to be delivered by Neo to Gameplay. Selling and marketing expenses as a percentage of net sales declined to 10.1% for the nine months ended July 31, 2002 from 11.1% in the similar period of 2001.

General and Administrative. General and administrative expenses increased by $24,396, or 78.9%, to $55,311 for the nine months ended July 31, 2002 from $30,915 for the nine months ended July 31, 2001. General and administrative expenses as a percentage of net sales remained constant from the prior period. The increase in absolute dollars was attributable to increased personnel expenses and legal and professional fees incurred in connection with legal proceedings and regulatory matters and costs related to the settlement of the Ubi Soft litigation.

Research and Development. Research and development costs increased by $2,718, or 54.5% to $7,703 for the nine months ended July 31, 2002 from $4,985 for the nine months July 31, 2001. Research and development costs as a percentage of net sales remained relatively constant for the nine months ended July 31, 2002 and 2001.

Depreciation and Amortization. Depreciation and amortization expense of $7,687 for the nine months ended July 31, 2002 decreased $1,543, or 16.7%, from the prior comparable period, due to the Company's adoption of SFAS 142, partly offset by increased costs related to the company-wide implementation of a new accounting software system.

Income from Operations. Income from operations increased by $49,355, or 143.0%, to $83,868 for the nine months ended July 31, 2002 from $34,513 for the nine months ended July 31, 2001, due to the changes referred to above.

Interest (Income) Expense, net. Interest expense decreased by $6,521, or 90.0%, to $728 for the nine months ended July 31, 2002 from $7,249 for the nine months ended July 31, 2001. The decrease was attributable to substantially lower levels of borrowing from the Company's credit facilities and interest income earned on the invested cash balances.

Gain on Sale of Subsidiary. The Company recorded a non-operating gain on the sale of its Jack of All Games UK subsidiary during the nine months ended July 31, 2001.

(Gain) Loss on Internet Investments. For the nine months ended July 31, 2002, the Company recognized a gain of $159 from the sale of marketable securities. During the nine months ended July 31, 2001, the Company incurred a non-recurring non-cash impairment charge of $20,754 relating primarily to its investments in Gameplay and eUniverse to reflect other than temporary declines in the value of these investments.

Class Action Settlement Costs. During the nine months ended July 31, 2002, the Company recorded $1,468 of class action settlement costs, which represents a settlement of $7,500 and related legal fees, net of $6,145 of insurance proceeds.

Provision for Income Taxes. Income tax expense of $32,599 for the nine months ended July 31, 2002 compared to an expense of $3,776 for the nine months ended July 31, 2002. The increase was primarily attributable to increased taxable income. The decrease in the effective rate to 39.8% for the nine months ended July 31, 2002 as compared to 52.7% for the nine months ended July 31, 2001 is the result of state and foreign tax rate differentials and a decrease in non-deductible items, such as goodwill as applied to higher levels of pretax income. Management believes that it is more likely than not that the Company will generate sufficient levels of taxable income in the future to realize the reported net deferred tax assets. Failure to achieve sufficient levels of taxable income from capital transactions might affect the ultimate realization of the capital loss carryforwards. If this were to occur, management is committed to implementing tax planning strategies, such as the sale of net appreciated assets of the Company to the extent required (if any) to generate sufficient taxable income prior to the expiration of these benefits.

Cumulative Effect of Change in Accounting Principle. In connection with the adoption of SAB 101, the Company recognized a cumulative effect of $5,337 net of taxes of $3,558 in 2001.

Extraordinary Loss on Early Extinguishment of Debt. During the three months ended July 31, 2001, the Company incurred an extraordinary charge of $1,948, net of taxes, upon the early repayment of $15,000 of subordinated indebtedness.

Net Income. For the nine months ended July 31, 2002, the Company achieved net income of $49,232, as compared to net loss of $3,900 for the nine months ended July 31, 2001.

Liquidity and Capital Resources

The Company's primary cash requirements have been and will continue to be to fund developing, manufacturing, publishing and distributing its products. The Company has historically satisfied its working capital requirements primarily through cash flow from operations, the issuance of debt and equity securities and bank borrowings. At July 31, 2002, the Company had working capital of $149,440 as compared to working capital of $88,229 at October 31, 2001.

The Company's cash and cash equivalents increased $67,842 to $73,898 at July 31, 2002, from $6,056 at October 31, 2001. The increase is primarily attributable to $118,818 of cash provided by operating activities, partly offset by $13,071 used in investing activities and by $43,304 used in financing activities.

Cash provided by operating activities for the nine months ended July 31, 2002 was $118,818 compared to $24,248 for the nine months ended July 31, 2001 primarily reflecting increased net income.

Net cash used in investing activities for the nine months ended July 31, 2002 was $13,071 as compared to net cash used in investing activities of $9,145 for the nine months ended July 31, 2001. The increase is primarily attributable to the acquisition of the *Max Payne* intangible assets and increased expenditures for fixed assets.

Net cash used in financing activities for the nine months ended July 31, 2002 was $43,304, as compared to net cash used in financing activities of $3,113 for the nine months ended July 31, 2001. The increase in net cash used in financing activities was primarily attributable to the absence of private placement proceeds this year, the repayment of indebtedness and lower proceeds from the exercise of stock options.

In December 1999, the Company entered into a credit agreement, as amended and restated in August 2002, with a group of lenders led by Bank of America, N.A., as agent. The agreement provides for borrowings of up to $40,000 through the expiration of the line of credit on August 28, 2005. Generally, advances under the line of credit are based on a borrowing formula equal to 75% of eligible accounts receivable plus 35% of eligible inventory. Interest accrues on such advances at the bank's prime rate plus 0.25% to 1.25%, or at LIBOR plus 2.25% to 2.75% depending on the consolidated leverage ratio (as defined). Borrowings under the line of credit are collateralized by the Company's accounts receivable, inventory, equipment, general intangibles, securities and other personal property, including the capital stock of the Company's domestic subsidiaries. The loan agreement contains certain financial and other covenants. As of July 31, 2002, the Company is in compliance with such covenants. The loan agreement limits or prohibits the Company from declaring or paying cash dividends, merging or consolidating with another corporation, selling assets (other than in the ordinary course of business), creating liens and incurring additional indebtedness. The Company had no outstanding borrowings under the revolving line of credit as of July 31, 2002.

In February 2001, the Company's United Kingdom subsidiary entered into a credit facility agreement, as amended in March 2002, with Lloyds TSB Bank plc ("Lloyds") under which Lloyds agreed to make available borrowings of up to $19,000. Advances under the credit facility bear interest at the rate of 1.25% per annum over the bank's base rate, and are guaranteed by the Company. The facility expires on March 31, 2004. The Company had no outstanding borrowings under this facility as of July 31, 2002.

For the nine months ended July 31, 2002, the Company received proceeds of $11,346 relating to the exercise of stock options and warrants.

In connection with the Company's acquisition of the publishing rights to the franchise of *Duke Nukem* PC and video games in December 2000, the Company is contingently obligated to pay $6,000 in cash upon delivery of the final PC version of *Duke Nukem Forever*. In addition, in connection with the Company's acquisition of the *Max Payne* product franchise, the Company is contingently liable to make aggregate payments of up to $8,000 in cash upon the timely delivery of the final PC version of *Max Payne 2* and the achievement of certain sales targets for such product. The payables will be recorded when the contingencies are resolved.

The Company's accounts receivable, less an allowance for doubtful accounts, returns and price protection and other discounts at July 31, 2002 was $64,759. Of such receivables, each of three retail customers accounted for more than 10% of the receivable balance (36.0% in the aggregate) at July 31, 2002. Most of the Company's receivables are covered by insurance in the event of a customer's bankruptcy or insolvency and generally, the Company has been able to collect its receivables in the ordinary course of business. The Company does not hold any collateral to secure payment from customers. As a result, the Company is subject to credit risks, particularly in the event that any of the receivables represent a limited number of retailers or are concentrated in foreign markets. If the Company is unable to collect its accounts receivable as they become due and such accounts are not covered by insurance, the Company could be required to increase its allowance for doubtful accounts, which could adversely affect its liquidity and working capital position. The Company had accounts receivable days outstanding of 48 days at July 31, 2002, as compared to 86 days at July 31, 2001. The decrease in days outstanding resulted from the shipments of products earlier in the current quarter.

The Company's offices and warehouse facilities are occupied under non-cancelable operating leases expiring at various times from January 2003 to October 2011. Additionally, the Company has leased certain furniture, equipment and automobiles under non-cancelable leases expiring through July 2005. The Company periodically enters into agreements that require the Company to make minimum guaranteed payments. During the nine months ended July 31, 2002, the Company has entered into agreements to purchase various software games. These agreements, which expire between April 1 and December 31, 2003, require minimum guaranteed payments of $15,662 at July 31, 2002. One of these agreements is collateralized by a standby letter of credit of $3,167 at July 31, 2002.

The Company is in the process of relocating its principal executive offices to 622 Broadway, New York, New York. The Company estimates that it will incur approximately $3.5 million in capital expenditures for renovations and leasehold improvements. In connection with signing a ten year lease, the Company provided a standby letter of credit of $1,560, expiring December 6, 2002. As a result of the relocation, during the three months ended July 31, 2002, the Company recorded expenses of $712 related to lease costs with regard to its former offices. The Company has no other material commitments for capital expenditures.

The Company may incur significant legal, accounting and other professional fees and expenses in connection with pending regulatory matters.

Based on its currently proposed operating plans and assumptions, the Company believes that projected cash flow from operations and available cash resources, including amounts available under its lines of credit, will be sufficient to satisfy its cash requirements for the reasonably foreseeable future.

Fluctuations in Operating Results and Seasonality

The Company has experienced fluctuations in quarterly operating results as a result of the timing of the introduction of new titles; variations in sales of titles developed for particular platforms; market acceptance of the Company's titles; development and promotional expenses relating to the introduction of new titles, sequels or enhancements of existing titles; projected and actual changes in platforms; the timing and success of title introductions by the Company's competitors; product returns; changes in pricing policies by the Company and its competitors; the accuracy of retailers' forecasts of consumer demand; the size and timing of acquisitions; the timing of orders from major customers; and order cancellations and delays in product shipment. Sales of the Company's titles are also seasonal, with peak shipments typically occurring in the fourth calendar quarter (the Company's fourth and first fiscal quarters) as a result of increased demand for titles during the holiday season. Quarterly comparisons of operating results are not necessarily indicative of future operating results.

International Operations

Sales in international markets, principally in the United Kingdom and other countries in Europe, have accounted for a significant portion of the Company's net sales. For the three months ended July 31, 2002, and 2001, sales in international markets accounted for approximately 20.5% and 20.8%, respectively, of the Company's net sales. For the nine months ended July 31, 2002 and 2001, sales in international markets accounted for approximately 21.7% and 23.4%, respectively, of the Company's net sales. The Company is subject to risks inherent in foreign trade, including increased credit risks, tariffs and duties, fluctuations in foreign currency exchange rates, shipping delays and international political, regulatory and economic developments, all of which can have a significant impact on the Company's operating results.

Recently Issued Accounting Pronouncements

In November 2001, the Financial Accounting Standards Board ("FASB") Emerging Issues Task Force (EITF) reached a consensus on EITF Issue 01-09, Accounting for Consideration Given by a Vendor to a Customer or Reseller of the Vendor's Products, which is a codification of EITF 00-14, 00-22 and 00-25. This EITF presumes that consideration from a vendor to a customer or reseller of the vendor's products to be a reduction of the selling prices of the vendor's products and, therefore, should be characterized as a reduction of revenue when recognized in the vendor's income statement and could lead to negative revenue under certain circumstances. Revenue reduction is required unless consideration relates to a separate identifiable benefit and the benefit's fair value can be established. The Company has early adopted EITF 01-09 effective November 1, 2001. The adoption of the new standard did not have a material impact on the consolidated condensed financial statements. The prior period financial statements have been reclassified in accordance with this statement and as a result, net sales and selling and marketing expenses have been reduced by $700 for the nine months ended July 31, 2001.

Effective November 1, 2001, the Company adopted Statement of Financial Accounting Standard No. 141, "Business Combinations" ("SFAS 141") and Statement of Financial Accounting Standard No. 142, "Goodwill and Other Intangible Assets" ("SFAS 142"). SFAS 141 requires all business combinations be accounted for using the purchase method of accounting and that certain intangible assets acquired in a business combination shall be recognized as assets apart from goodwill. SFAS 142 addresses the recognition and measurement of goodwill and other intangible assets subsequent to their acquisition. SFAS 142 also addresses the initial recognition and measurement of intangible assets acquired outside of a business combination whether acquired individually or with a group of other assets. This statement provides that intangible assets with finite useful lives be amortized and that intangible assets with indefinite lives and goodwill not be amortized, but be tested at least annually for impairment. Upon completion of the transitional impairment test, the fair value for each of the Company's reporting units exceeded the reporting unit's carry amount and no impairment was indicated.

In October 2001, the FASB issued Statement of Financial Accounting Standard No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS 144"). The objectives of SFAS 144 are to address significant issues relating to the implementation of Statement of Financial Accounting Standard No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of" ("SFAS 121") and to develop a single accounting model, based on the framework established in SFAS 121, for the long-lived assets to be disposed of by sale, whether previously held and used or newly acquired. The provisions of SFAS 144 are effective for financial statements issued for fiscal years beginning after December 15, 2001. The Company is currently evaluating the expected impact of the adoption of SFAS 144 on the Company's financial condition and results of operations. The Company will adopt the standard in the first quarter of fiscal 2003.

In October 2001, the FASB issued Statement of Financial Accounting Standard No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS 144"). The objectives of SFAS 144 are to address significant issues relating to the implementation of SFAS 121 and to develop a single accounting model, based on the framework established in SFAS 121, for the long-lived assets to be disposed of by sale, whether previously held and used or newly acquired. The provisions of SFAS 144 are effective for financial statements issued for fiscal years beginning after December 15, 2001. The Company is currently evaluating the expected impact of the adoption of SFAS 144 on the Company's financial condition and results of operations. The Company will adopt the standard in the first quarter of fiscal 2003.

In April 2002, the FASB issued Statement of Financial Accounting Standard No. 145, "Rescission of FASB Statements No. 4, 44 and 64, Amendment to FASB Statement No. 13, and Technical Corrections" ("SFAS 145"). SFAS 145 eliminates the requirement (in SFAS No. 4) that gains and losses from the extinguishments of debt be aggregated and classified as extraordinary items, net of the related income tax. The rescission of SFAS No. 4 is effective for fiscal years beginning after May 15, 2002, which for the Company would be November 1, 2002. Upon adoption, any gain or loss on extinguishment of debt that was previously classified as an extraordinary item will be reclassified to non-operating expenses. The Company does not expect that the rescission of SFAS No. 4 will have a material impact on the Company's financial condition, cash flows and results of operations.

In July 2002, the FASB issued Statement of Financial Accounting Standard No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" ("SFAS 146"). SFAS 146 requires the recognition of such costs when they are incurred rather than at the date of a commitment to an exit or disposal plan. The provisions of SFAS 146 are to be applied prospectively to exit or disposal activities initiated after December 31, 2002. The Company is currently evaluating the expected impact of the adoption of SFAS 146 on the Company's financial condition, cash flows and results of operations.

Cautionary Statement and Risk Factors

Safe Harbor Statement under the Securities Litigation Reform Act of 1995: The Company makes statements in this report that are considered forward-looking statements under federal securities laws. Such forward-looking statements are based on the beliefs of management as well as assumptions made by and information currently available to them. The words "expect," "anticipate," "believe," "may," "estimate," "intend" and similar expressions are intended to identify such forward-looking statements. Forward-looking statements involve risks, uncertainties and assumptions including, but not limited to, the following:

The market for interactive entertainment software titles is characterized by short product life cycles. The interactive entertainment software market is characterized by short product life cycles and frequent introduction of new products. New products may not achieve significant market acceptance or achieve sufficient sales to permit the Company to recover development, manufacturing and associated costs. Historically, few interactive entertainment software products have achieved sustained market acceptance. Even the most successful titles remain popular for only limited periods of time, often less than nine months. Because revenues associated with the initial shipments of a new product generally constitute a high percentage of the total revenues associated with the life of a product, any delay in the introduction of one or more new products could harm the Company's operating results. The failure of one or more of the Company's products to achieve market acceptance could result in losses.

A significant portion of the Company's revenues is derived from a limited number of titles. The Company's ten best selling titles accounted for approximately 62.3% and 63.5% of revenues for the three and nine months ended July 31, 2002, respectively, and 31.3% of revenues for the year ended October 31, 2001. Future titles may not be commercially viable. The Company also may not be able to release new titles within scheduled release times or at all. If the Company fails to continue to develop and sell new, commercially successful titles, revenues and profits may decrease substantially and the Company may incur losses.

The Company's quarterly operating results may vary significantly, which could cause its stock price to decline. The Company has experienced and may continue to experience wide fluctuations in quarterly operating results. The interactive entertainment industry is highly seasonal, with sales typically higher during the fourth and first calendar quarters, due primarily to the increased demand for games during and immediately following the holiday buying season. The Company's failure or inability to introduce products on a timely basis to meet seasonal fluctuations in demand could harm the Company's business and operating results. Other factors that cause fluctuations include delays in the introduction of new titles; the size and timing of product and corporate acquisitions; variations in sales of titles designed to operate on particular platforms; development and promotional expenses relating to the introduction of new titles, sequels or enhancements of existing titles; availability of hardware platforms; the timing and success of title introductions by competitors; product returns; the accuracy of retailers' forecasts of consumer demand; and the timing of orders from major customers.

The Company's expense levels are based largely on expectations regarding future sales. Therefore, the Company's operating results would be harmed by a decrease in sales or a failure to meet sales expectations. The uncertainties associated with product development, lengthy manufacturing lead times, production delays and the approval process for products by hardware manufacturers and other licensors make it difficult to predict the quarter in which products will ship and may cause the Company to fail to meet financial expectations. In future quarters operating results may fall below the expectations of securities analysts and investors. In this event, the trading price of the Company's common stock could decline.

The interactive entertainment software industry is cyclical, and is subject to rapidly changing consumer tastes and preferences. The Company's business is subject to all of the risks generally associated with the interactive entertainment software industry, which has been cyclical in nature and has been characterized by periods of significant growth followed by rapid declines. Future operating results depend on numerous factors beyond the Company's control, including the popularity, price and timing of new software and hardware platforms being released and distributed by the Company and its competitors; international, national and regional economic conditions, particularly economic conditions adversely affecting discretionary consumer spending; changes in consumer demographics; the availability of other forms of entertainment; and critical reviews and public tastes and preferences, all of which change rapidly and cannot be predicted.

Rapidly changing technology and platform shifts could hurt the Company's operating results. The interactive entertainment industry in general is associated with rapidly changing technology, which often leads to software and platform obsolescence and significant price erosion over the life of a product. The introduction of new platforms and technologies can render existing software titles obsolete or unmarketable. Obsolescence of software or hardware platforms could leave the Company with increased inventories of unsold titles and limited amounts of new titles to sell to consumers, which would have a material adverse effect on the Company's operating results. A number of the Company's competitors have developed or are currently developing software for use by consumers over the Internet. Future increases in the availability of such software or technological advances in such software or the Internet could result in a decline in platform-based software and impact the Company's sales. Direct sales of software by major manufacturers over the Internet would materially adversely affect the Company's distribution business.

Next-generation hardware platforms may not achieve significant market acceptance. The Company's software development efforts with respect to new hardware platforms may not lead to marketable titles or titles that generate sufficient revenues to recover their development, manufacturing and marketing costs, especially if a new hardware platform does not reach a significant level of market acceptance. This risk may increase in the future as continuing increases in development costs require corresponding increases in revenues in order to maintain profitability. The Company is devoting development resources on products designed for Sony's PlayStation 2, Microsoft's Xbox and Nintendo's GameCube. If fewer than expected units of a new hardware platform are produced or shipped, or if such platforms do not achieve commercial success, the Company may experience lower than expected sales or losses for these platforms.

The Company's business is dependent on licensing and publishing arrangements with third parties. The Company's success depends on its ability to identify and develop new titles on a timely basis. The Company has entered into agreements with third parties to acquire the rights to publish and distribute interactive entertainment software. These agreements typically require the Company to make advance payments, pay royalties and satisfy other conditions. The Company's advance payments may not be sufficient to permit developers to develop new software successfully. In addition, software development costs, promotion and marketing expenses and royalties payable to software developers have increased significantly in recent years and reduce the potential profits derived from sales of the Company's software. Future sales of titles may not be sufficient to recover advances to software developers, and the Company may not have adequate financial and other resources to satisfy its contractual commitments. If the Company fails to satisfy its obligations under these license agreements, the agreements may be terminated or modified in ways that may be burdensome.

Returns of published titles and price protection may adversely affect the Company's operating results. The Company is exposed to the risk of product returns and price protection with respect to its customers. Although distribution arrangements with retailers generally do not give them the right to return titles to the Company or to cancel firm orders, the Company's arrangements with retailers for published titles require it to accept returns. The Company establishes a reserve for future returns and price protection for published titles at the time of sales, based primarily on its return policies, price protection policies and historical return rates. If return rates and price protection for published titles significantly exceed established reserves, revenues will decline and the Company could incur losses.

The interactive entertainment software industry is highly competitive. The Company competes for both licenses to properties and the sale of interactive entertainment software with Sony, Nintendo, Microsoft and Sega, each of which is a large developer and marketer of software for its platforms. Sony and Nintendo currently dominate the industry and have the financial resources to withstand significant price competition and to implement extensive advertising campaigns, particularly for prime-time television spots. These companies may also increase their own software development efforts or focus on developing software products for third-party platforms. The Company also competes with domestic and international companies, large software companies and media companies. Many of these competitors have far greater financial, technical, personnel and other resources than the Company, and many are able to carry larger inventories, adopt more aggressive pricing policies and make higher offers to licensors and developers for commercially desirable properties.

Increased competition for limited shelf space and promotional support from retailers could require the Company to incur greater expenses to market titles. Retailers have limited shelf space and promotional resources, and competition is intense among an increasing number of newly introduced interactive entertainment software titles for adequate levels of shelf space and promotional support. Competition for retail shelf space is expected to increase, which may require the Company to increase its marketing expenditures just to maintain current levels of sales of titles. Competitors with more extensive lines and popular titles frequently have greater bargaining power with retailers. Accordingly, the Company may not be able to achieve the levels of promotional support and shelf space that such competitors receive.

Rating systems for interactive entertainment software, potential legislation and consumer opposition could inhibit sales of the Company's products. Trade organizations within the video game industry require interactive entertainment software publishers to provide consumers with information relating to graphic violence, profanity or sexually explicit material contained in software titles. Certain countries have also established similar rating systems as prerequisites for sales of interactive entertainment software in such countries. In some instances, the Company may be required to modify products to comply with the requirements of such governmental entities, which could delay the release of those products in such countries. The Company recently discontinued making sales of *Grand Theft Auto 3* in Australia for several weeks while it made certain content changes to this title to comply with applicable rating systems. The Company believes that it complies with such rating systems and displays the ratings received for its titles.

Historically, the Company's software titles received a rating of "E" (all ages) or "T" (age 13 and over), although most newer titles (including *Grand Theft Auto 3*, *Max Payne* and *State of Emergency*) have received a rating of "M" (age 17 and over). Certain retailers may decline to sell interactive entertainment software containing graphic violence or sexually explicit material, which may limit the potential market for the Company's "M" rated products. Several proposals have been made for federal legislation to regulate the interactive entertainment software, motion picture and recording industries, including a proposal to adopt a common rating system for interactive entertainment software, television and music containing violence and sexually explicit material and the Federal Trade Commission has adopted rules with respect to the marketing of such material to minors. Consumer advocacy groups have also opposed sales of interactive entertainment software containing graphic violence and sexually explicit material by pressing for legislation in these areas and by engaging in public demonstrations and media campaigns. If any groups were to target the Company's "M" rated titles, it might be required to significantly change or discontinue a particular title, which in the case of the Company's best selling titles could hurt its business. Additionally, in light of the events in September 2001, the Company revised content in certain of its products that the Company deemed inappropriate. Delays in the release of products as a result of content changes could result in lost revenues.

The Company cannot publish console titles without the approval of hardware manufacturers. The Company is required to obtain a license to develop and publish titles for each hardware console platform for which it develops and publishes titles. If any manufacturer chooses not to renew or extend the Company's license agreement at the end of its current term, or if the manufacturer were to terminate the license for any reason, the Company would be unable to publish additional titles for that manufacturer's hardware platform. The Company is dependent upon a license agreement with Sony to publish titles for PlayStation 2. Termination of such agreement would seriously hurt the Company's business.

Sony and Nintendo are the sole manufacturers of the titles published under license from them. Games for the Xbox must be manufactured by pre-approved manufacturers. Each platform license provides that the manufacturer may raise prices for the titles at any time and grants the manufacturer substantial control over the release of new titles.

Each of these manufacturers also publishes software for its own platforms and manufactures titles for all of its other licensees and may choose to give priority to its own titles or those of other publishers if it has insufficient manufacturing capacity or if there is increased demand.

In addition, these manufacturers may not have sufficient production capacity to satisfy the Company's scheduling requirements during any period of sustained demand. If manufacturers do not supply the Company with finished titles on favorable terms without delays, the Company's operations would be materially interrupted, its revenues could decline and it could incur losses.

The Company may not be able to protect its proprietary rights or avoid claims that it infringes on the proprietary rights of others. The Company develops proprietary software and has obtained the rights to publish and distribute software developed by third parties. The Company attempts to protect its software and production techniques under copyright, trademark and trade secret laws as well as through contractual restrictions on disclosure, copying and distribution. Interactive entertainment software is susceptible to unauthorized copying. Unauthorized third parties may be able to copy or to reverse engineer the Company's software that the Company regards as proprietary. From time to time, the Company receives notices from third parties alleging infringement of their proprietary rights. Although the Company believes that its software and technologies and the software and

technologies of third-party developers and publishers with whom its has contractual relations do not and will not infringe or violate proprietary rights of others, it is possible that infringement of proprietary rights of others has or may occur. Any claims of infringement, with or without merit, could be time-consuming, costly and difficult to defend.

The Company is dependent on third-party software developers to complete many of its titles. The Company relies on third-party software developers for the development of a significant number of its titles. Quality third-party developers are continually in high demand. Software developers may not be available to develop software for the Company or may not be able to complete titles on a timely basis or within acceptable quality standards. In addition, the development cycle for new titles is long, typically ranging from twelve to twenty-four months. After development of a product, it may take between six to twelve additional months to develop the product for other hardware platforms. If developers experience financial difficulties, additional costs or unanticipated development delays, the Company may not be able to release titles according to schedule.

The Company's software is susceptible to errors, which can harm the Company's financial results and reputation. The technological advancements of new hardware platforms allow more complex software products. As software products become more complex, the risk of undetected errors in products when first introduced increases. If, despite testing, errors are found in new products or releases after shipments have been made, the Company could experience a loss of or delay in timely market acceptance, product returns, loss of revenues and damage to its reputation.

Gross margins relating to the Company's distribution business have been historically narrow which increases the impact of variations in costs on operating results. As a result of intense price competition in the console hardware and software distribution industry, gross margins in the Company's distribution business have historically been narrow and the Company expects them to continue to be narrow. The Company receives purchase discounts from suppliers based on various factors, including volume purchases. These purchase discounts directly affect gross margins. It may become more difficult for the Company to achieve the percentage growth in sales required to continue to receive volume purchase discounts.

The Company may not be able to adequately adjust its cost structure in a timely fashion in response to a sudden decrease in demand. A significant portion of the Company's selling and general and administrative expense is comprised of personnel, facilities and costs of invested capital. In the event of a significant decline in revenues, the Company may not be able to exit facilities, reduce personnel, or make other significant changes to its cost structure without significant disruption to its operations or without significant termination and exit costs. Management may not be able to implement such actions, if at all, in a timely manner to offset an immediate shortfall in revenues and gross profit.

The Company's distribution business is dependent on suppliers to maintain an adequate supply of products to fulfill customer orders on a timely basis. The Company's ability to obtain particular products in required quantities and to fulfill customer orders on a timely basis is critical to its success. In most cases, the Company has no guaranteed price or delivery agreements with suppliers. In certain product categories, limited price protection or return rights offered by manufacturers may have a bearing on the amount of product the Company may be willing to purchase. The console hardware industry experiences significant product supply shortages from time to time due to the inability of certain manufacturers to supply certain products on a timely basis. As a result, the Company has experienced, and may in the future continue to experience, short-term hardware inventory shortages. In addition, manufacturers who currently distribute their products through the Company may decide to distribute, or to substantially increase their existing distribution, through other distributors, or directly to retailers. In the case of software, alternative means of distribution have emerged, such as electronic distribution.

The Company is subject to the risk that inventory values may decline and protective terms under supplier arrangements may not adequately cover the decline in values. The interactive entertainment software and hardware industry is subject to rapid technological change, new and enhanced generations of products, and evolving industry standards. These changes may cause inventory to decline substantially in value or to become obsolete. The Company is exposed to inventory risk to the extent that supplier price protections are not available on all products or quantities and are subject to time restrictions. In addition, suppliers may become insolvent and unable to fulfill price protection obligations.

A limited number of customers may account for a significant portion of the Company's sales. Sales to the Company's five largest customers accounted for approximately 20.9% of revenues for the year ended October 31, 2001 and 31.7% of revenues for the nine months ended July 31, 2002. Customers may terminate their relationship with the Company at any time. The loss of relationships with principal customers or a decline in sales to principal customers could harm the Company's operating results. Bankruptcies or consolidations of certain large retail customers could also hurt the Company's business.

The Company is subject to credit and collection risks. Sales are typically made on credit, with terms that vary depending upon the customer and the demand for the particular title being sold. The Company does not hold any collateral to secure payment by its customers. As a result, the Company is subject to credit risks, particularly in the event that any of its receivables represent sales to a limited number of retailers or are concentrated in foreign markets. If the Company is unable to collect on accounts receivable as they become due and such accounts are not covered by insurance, it could adversely affect the Company's liquidity and financial condition.

The Company is subject to risks and uncertainties of international trade. Sales in international markets, primarily in the United Kingdom and other countries in Europe and the Pacific Rim, have accounted for a significant portion of revenues. Sales in international markets accounted for approximately 20.5% and 21.7%, of the Company's revenues for the three and nine months ended July 31, 2002, respectively. The Company is subject to risks inherent in foreign trade, including increased credit risks; tariffs and duties; fluctuations in foreign currency exchange rates; shipping delays; and international political, regulatory and economic developments, all of which can have a significant impact on the Company's operating results. International sales are made in local currencies. For the nine months ended July 31, 2002, the Company's foreign currency translation adjustment gain was $3,585. The Company purchases currency forward contracts to a limited extent to seek to minimize the Company's exposure to fluctuations in foreign currency exchange rates.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

The Company is subject to market risks in the ordinary course of its business, primarily risks associated with interest rate and foreign currency fluctuations and possible impairment of the carrying values of the Company's investments.

Historically, fluctuations in interest rates have not had a significant impact on the Company's operating results. At July 31, 2002, the Company had no outstanding variable rate indebtedness.

The Company transacts business in foreign currencies and is exposed to risks resulting from fluctuations in foreign currency exchange rates. Accounts relating to foreign operations are translated into United States dollars using prevailing exchange rates at the relevant fiscal quarter. Translation adjustments are included as a separate component of stockholders' equity. For the nine months ended July 31, 2002, the Company's foreign currency translation adjustment gain was $3,585. A hypothetical 10% change in applicable currency exchange rates at July 31, 2002 would result in a material translation adjustment.

In addition, the Company may be exposed to risk of loss associated with fluctuations in the value of its investments. The Company's investments are stated at fair value, with net unrealized appreciation and loss included as a separate component of stockholders' equity. The Company regularly reviews the carrying values of its investments to identify and record impairment losses when events or circumstances indicate that such investments may be permanently impaired.

At July 31, 2002, the Company held 6,869,407 shares of common stock of Gameplay.com plc with a fair value of approximately $62 and was recorded as a non-current asset. The Company recorded an unrealized loss of $8, net of taxes of $5 as a separate component of accumulated other comprehensive income (loss) in stockholders' equity. For the nine months ended July 31, 2001, the Company recorded a loss of $18,448 to reflect the other than temporary impairment of its investments relating to Gameplay.

At July 31, 2002, the Company held 98,033 shares of eUniverse Inc. with a fair value of approximately $448, all of which was recorded as current assets. The Company recorded an unrealized gain of $117, net of taxes of $72, as a separate component of accumulated other comprehensive income (loss) in stockholders' equity. For the nine months ended July 31, 2001, the Company recorded a loss of approximately $2,000 to reflect the other than temporary impairment of its investment in eUniverse.

Item 4. Controls and Procedures

Not applicable.

PART II - OTHER INFORMATION

Item 1. **Legal Proceedings**

Since December 2001, thirteen purported class action lawsuits have been filed in the United States District Court for the Southern District of New York against the Company and certain of its current and former officers and directors. The actions were consolidated in one lawsuit, Gershon Bassman v. Take-Two Interactive Software, Inc., in April 2002. The consolidated complaint includes claims under Sections 10 (b) and 20 (a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated under Section 10 (b), and generally alleges that defendants issued false and misleading public filings, press releases and other statements regarding the Company's financial condition during a class period commencing on February 24, 2001 through December 17, 2001 in a scheme to artificially inflate the value of the Company's common stock.

In June 2002, the Company entered into a definitive agreement with the plaintiffs to settle the consolidated class action lawsuits for $7,500,000 in cash. During the three months ended April 30, 2002, the Company recorded $1,468,000 of class action settlement costs, which represents the settlement of $7,500,000 and related legal fees, net of $6,145,000 of insurance proceeds. In July 2002, the United States District Court granted preliminary approval of the settlement agreement.

In July 2002, the Company settled all ordinary course of business litigation with Red Storm Entertainment Inc., a subsidiary of Ubi Soft Entertainment, including certain claims resulting from a distribution agreement. During the three months ended July 31, 2002, the Company recorded $2,248,000 in cost of sales - product costs and $1,190,000 in general and administrative costs. During the nine months ended July 31, 2002, the Company recorded $3,064,000 in cost of sales - product costs and $1,190,000 in general and administrative costs.

The Securities and Exchange Commission has issued a formal order of investigation into, among other things, certain accounting matters relating to the Company's financial statements, periodic reporting and internal accounting control provisions of the federal securities laws.

The Company is involved in routine litigation in the ordinary course of business which in management's opinion will not have a material adverse effect on the Company's financial condition, cash flows or results of operations.

Item 2. **Changes in Securities**

During the three months ended July 31, 2002, 766,000 options were granted to employees under the 2002 Stock Option Plan at an average exercise price of $18.34. During this period, 320,000 non-plan options were granted to four employees of the Company's subsidiary, Rockstar North Limited, at an exercise price of $17.91.

In June 2002, the Company issued 969,932 shares of restricted common stock to Apogee Software Limited and Remedy Entertainment Limited in connection with the acquisition of the intellectual property rights associated with Max Payne.

In connection with the above securities issuances, the Company relied on Section 4(2) and/or Regulation D or Regulation S promulgated under the Securities Act of 1933, as amended, as offerings to a limited number of "accredited investors" or Non-US Persons.

Item 4. **Submission of Matters to a Vote of Security Holders**

The Company held its Annual Meeting on June 14, 2002. At the meeting Ryan A. Brant, Kelly Sumner, Paul Eibeler, Oliver Grace, Jr., Robert Flug, Mark Lewis, Todd Emmel and Steven Tisch were elected as directors. Mr. Brant received 30,059,978 votes for and 2,218,448 votes withheld; Mr. Sumner received 27,867,361 votes for and 4,411,057 votes withheld; Mr. Eibeler received 27,942,361 votes for and 4,336,057 votes withheld; Mr. Grace received 31,531,026 votes for and 747,392 votes withheld; Mr. Flug received 31,647,367 votes for and 631,051 votes withheld; Mr. Lewis received 31,666,987 votes for and 611,431 votes withheld; Mr. Emmel received 31,646,867 votes for and 631,551 votes withheld; and Mr. Tisch received 31,666,987 votes for and 611,431 votes withheld.

In addition, the stockholders approved the Company's 2002 Stock Option Plan which provides for 3,000,000 shares of common stock to be reserved for issuance with 19,654,772 votes for, 3,721,867 votes against, 122,088 abstentions and 8,882,595 non-votes.

Item 5. **Other Information**

Ryan A. Brant, Chairman of the Company, and a trust affiliated with Mr. Brant have both entered into a Rule 10b5-1 trading plan to sell 30,000 shares and 5,000 shares, respectively, of the Company's Common Stock.

Item 6. **Exhibits and Reports on Form 8-K**

(a) Exhibits:

10.1 Amended and Restated Credit Agreement, dated August 28, 2002, by and among the Company, certain of its subsidiaries, certain lenders and Bank of America, N.A., as Agent.

10.2 Lease Agreement between the Company and Moklam Enterprises, Inc., dated July 1, 2002.

99.1 Chief Executive Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

99.2 Chief Financial Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(b) Reports on Form 8-K:

On May 7, 2002, the Company filed a Current Report on Form 8-K to unredact certain portions of an agreement and to file an agreement in unredacted form. (Item 5)

On June 5, 2002, the Company filed a Current Report on Form 8-K to report the acquisition of all the intellectual property associated with the interactive software game and franchise known as Max Payne. (Item 2)

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, Take-Two Interactive Software, Inc. has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized on this 16th day of September 2002.

TAKE-TWO INTERACTIVE SOFTWARE, INC.

By: /s/ KELLY SUMNER
Kelly Sumner
Chief Executive Officer

By: /s/ KARL H. WINTERS
Karl H. Winters
Chief Financial Officer
(Principal Financial Officer)

Take-Two Interactive Software, Inc.

Certification of Principal Executive Officer

I, Kelly Sumner, Chief Executive Officer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Take-Two Interactive Software, Inc.;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report.

Date: September 16, 2002

/s/ KELLY SUMNER
Kelly Sumner
Chief Executive Officer
(Principal Executive Officer)

EXPLANATORY NOTE REGARDING CERTIFICATION: Representations 4, 5 and 6 of the Certification as set forth in Form 10-Q have been omitted, consistent with the Transition Provisions of SEC Exchange Act Release No. 34-46427, because this Quarterly Report on Form 10-Q covers a period ending before the Effective Date of Rules 13a-14 and 15d-14.

Take-Two Interactive Software, Inc.

Certification of Principal Financial Officer

I, Karl H. Winters, Chief Financial Officer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Take-Two Interactive Software, Inc.;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report.

Date: September 16, 2002

/s/ KARL H. WINTERS
Karl H. Winters
Chief Financial Officer
(Principal Financial Officer)

EXPLANATORY NOTE REGARDING CERTIFICATION: Representations 4, 5 and 6 of the Certification as set forth in Form 10-Q have been omitted, consistent with the Transition Provisions of SEC Exchange Act Release No. 34-46427, because this Quarterly Report on Form 10-Q covers a period ending before the Effective Date of Rules 13a-14 and 15d-14.

Exhibit 10.1

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of August 28, 2002

among

TAKE-TWO INTERACTIVE SOFTWARE, INC.
as the Borrower,

CERTAIN SUBSIDIARIES OF THE BORROWER,
as Guarantors,

THE LENDERS NAMED HEREIN

AND

BANK OF AMERICA, N.A.,
as Administrative Agent

Arranged by:

BANK OF AMERICA SECURITIES LLC,
as Sole Lead Arranger and Sole Book Manager

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AMENDED AND RESTATED CREDIT AGREEMENT

THIS AMENDED AND RESTATED CREDIT AGREEMENT (the "Credit Agreement") dated as of August 28, 2002 is by and among TAKE-TWO INTERACTIVE SOFTWARE, INC., a Delaware corporation (the "Borrower"), the Guarantors (defined herein), the Lenders (defined herein) and BANK OF AMERICA, N.A., as Administrative Agent (in such capacity, the "Administrative Agent").

W I T N E S S E T H

WHEREAS, the Borrower is a party to that Credit Agreement (as amended, modified, supplemented and increased, the "Existing Credit Agreement") dated as of December 7, 1999 among the Borrower, the guarantors identified therein, the lenders identified therein and Bank of America, N.A., as administrative agent;

WHEREAS, at the request of the Borrower, the Lenders have agreed to amend and restate the Existing Credit Agreement on the terms and conditions set forth herein; and

WHEREAS, this Credit Agreement is given in amendment to, restatement of and substitution for the Existing Credit Agreement, and evidences the same indebtedness and obligations evidenced by, and is secured by the same collateral as, the Existing Credit Agreement.

NOW, THEREFORE, IN CONSIDERATION of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1

DEFINITIONS

1.1 Definitions.

As used in this Credit Agreement, the following terms shall have the meanings specified below unless the context otherwise requires:

"Acquisition" means the purchase or acquisition by any Person of any Capital Stock of another Person or all or any substantial portion of the Property (other than Capital Stock) of another Person, whether or not involving a merger or consolidation with such other Person.

"Adjusted Base Rate" means the Base Rate plus the Applicable Percentage.

"Adjusted Eurodollar Rate" means the Eurodollar Rate plus the Applicable Percentage.

"Administrative Agent" means Bank of America, as referenced in the opening paragraph, and its successors in such capacity.

"Administrative Agent's Fee Letter" means that letter agreement dated as of July 16, 2002 between the Administrative Agent and the Borrower, as amended, modified, supplemented or replaced from time to time.

"Administrative Agent's Office" means the Administrative Agent's address as set forth on Schedule 11.1, or such other address as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"Affiliate" means (a) with respect to any member of the Consolidated Group, any other Person (i) directly or indirectly controlling or controlled by or under direct or indirect common control with such Person or (ii) directly or indirectly owning or holding ten percent (10%) or more of the Capital Stock in such Person, and (b) with respect to any other Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agent-Related Persons" means the Administrative Agent, together with its Affiliates (including, in the case of Bank of America in its capacity as the Administrative Agent, the Arranger), and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

"Agents" means the Administrative Agent and the Collateral Agent.

"Aggregate Revolving Committed Amount" means FORTY MILLION DOLLARS ($40,000,000), as such amount may be increased pursuant to Section 2.6 or reduced from time to time in accordance with the provisions hereof.

"Applicable Lending Office" means, for each Lender, the office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower by written notice as the office by which its Eurodollar Loans are made and maintained.

"Applicable Percentage" means for any day, the rate per annum set forth below opposite the applicable Consolidated Leverage Ratio then in effect, it being understood that the Applicable Percentage for (i) Base Rate Loans shall be the percentage set forth under the column "Base Rate Margin", (ii) Eurodollar Loans shall be the percentage set forth under the column "Eurodollar Margin and Letter of Credit Fee", (iii) the Letter of Credit Fee shall be the percentage set forth under the column "Eurodollar Margin and Letter of Credit Fee", and (iv) the Commitment Fee shall be the percentage set forth under the column "Commitment Fee":

Pricing Level	Consolidated Leverage Ratio	Base Rate Margin	Eurodollar Margin and Letter of Credit Fee	Commitment Fee
I	greater than or equal to 1.75:1.0	1.00%	2.75%	0.50%
II	greater than or equal to 1.50:1.0 but less than 1.75:1.0	0.50%	2.50%	0.50%
III	less than 1.50:1.0	0.25%	2.25%	0.50%

The Applicable Percentage shall be determined and adjusted quarterly on the date (each a "Rate Determination Date") five (5) Business Days after the date by which each annual and quarterly compliance certificates and related financial statements and information are required in accordance with the provisions of Sections 7.1(a), (b) and (c), as appropriate; provided, however, that:

(a) the initial Applicable Percentages shall be based on pricing level III and shall remain in effect at such pricing level until the first Rate Determination Date to occur in connection with the delivery of the quarterly financial statements and appropriate compliance certificate for the fiscal quarter ending October 31, 2002, and

(b) notwithstanding the foregoing, in the event an annual or quarterly compliance certificate and related financial statements and information are not delivered timely to the Administrative Agent by the date required by Section 7.1(a), (b) or (c), as appropriate, the Applicable Percentages shall be based on pricing level I until the date five (5) Business Days after the date by which the appropriate compliance certificate and related financial statements and information are delivered, whereupon the applicable pricing level shall be adjusted based on the information contained in such compliance certificate and related financial statements and information.

Subject to the qualifications set forth above, each Applicable Percentage shall be effective from a Rate Determination Date until the next such Rate Determination Date. The Administrative Agent shall determine the appropriate Applicable Percentages in the pricing matrix promptly upon receipt of and based on the quarterly or annual compliance certificate and related financial information and shall promptly notify the Borrower and the Lenders of any change thereof. Such determinations by the Administrative Agent shall be conclusive absent error. Adjustments in the Applicable Percentages shall be effective as to existing Extensions of Credit as well as new Extensions of Credit made thereafter.

"Appraisals" has the meaning specified in Section 7.10(b).

"Arranger" means Banc of America Securities LLC, in its capacity as sole lead arranger and sole book manager.

"Asset Disposition" means, with respect to any Person, the sale, lease or other disposition of any Property (including the Capital Stock of a Subsidiary) by such Person; but for purposes hereof shall not include, in any event, (A) the sale of inventory in the ordinary course of business, (B) the sale, lease or other disposition of machinery and equipment no longer used or useful in the conduct of business, (C) a sale, lease, transfer or disposition of Property to the Borrower or any Domestic Subsidiary, (D) the assignment of insured Receivables to the insurer in connection with a credit insurance claim for such Receivable and (E) the sale of Receivables that do not constitute Canadian Eligible Receivables or U.S. Eligible Receivables pursuant to a put contract with a third party.

"Assignment and Assumption" means an Assignment and Assumption in substantially the form of Schedule 11.3.

"Auto-Renewal Letter of Credit" has the meaning specified in Section 2.7(c)(iii).

"Bank of America" means Bank of America, N.A., and its successors.

"Bankruptcy Code" means the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

"Bankruptcy Event" means, with respect to any Person, the occurrence of any of the following with respect to such Person: (i) a court or governmental agency having jurisdiction in the premises shall enter a decree or order for relief in respect of such Person in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its Property or ordering the winding up or liquidation of its affairs; or (ii) there shall be commenced against such Person an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or any case, proceeding or other action for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its Property or for the winding up or liquidation of its affairs, and such involuntary case or other case, proceeding or other action shall remain undismissed, undischarged or unbonded for a period of sixty (60) consecutive days; or (iii) such Person shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its Property or make any general assignment for the benefit of creditors; or (iv) such Person shall be unable to, or shall admit in writing its inability to, pay its debts generally as they become due.

"Base Rate" means, for any day, the rate per annum equal to the higher of (a) the Federal Funds Rate for such day plus one-half of one percent (0.5%) and (b) the Prime Rate for such day. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall be effective on the effective date of such change in the Prime Rate or Federal Funds Rate.

"Base Rate Loan" means any Loan bearing interest at a rate determined by reference to the Base Rate.

"Borrower" means Take-Two Interactive Software, Inc., a Delaware corporation, as referenced in the opening paragraph, and its successors and permitted assigns.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in Charlotte, North Carolina or New York, New York are authorized or required by law to close, except that, when used in connection with a Eurodollar Loan, such day shall also be a day on which dealings between banks are carried on in Dollar deposits in London, England.

"Canadian Eligible Inventory" means, as of any date of determination, the aggregate book value based on an average cost valuation (as shown on the books and records of the Canadian Subsidiaries) of all inventory owned by the Canadian Subsidiaries on a consolidated basis after deducting allowances or reserves relating thereto, but excluding in any event (without duplication) (a) inventory which is subject to any other Lien that is not a Permitted Lien, (b) inventory which is not in good condition or fails to meet standards for sale or use imposed by governmental agencies, departments or divisions having regulatory authority over such goods, (c) inventory which is leased or on consignment, (d) displays and packaging supplies, (e) inventory in possession of a Person other than a Canadian Subsidiary, and (f) inventory which fails to meet such other specifications and requirements as may from time to time be established by the Administrative Agent in its reasonable discretion.

"Canadian Eligible Receivables" means, as of any date of determination, the aggregate book value of all Receivables owned by or owing to any of the Canadian Subsidiaries on a consolidated basis after deducting retainage and allowances or reserves relating thereto, as shown on the books and records of the Canadian Subsidiaries, but excluding in any event (without duplication) (a) Receivables owing by an account debtor which is not solvent or is subject to any bankruptcy or insolvency proceeding of any kind, (b) any Receivable which is subject to any Lien that is not a Permitted Lien, (c) any insured Receivable which is more than 60 days past due or any uninsured Receivable which is more than 90 days past invoice date (in each case net of reserves for bad debts in connection with any such Receivables), (d) any Receivable not otherwise excluded by clause (c) above if more than 50% of the other Receivables owing from the applicable account debtor are excluded by clause (c) above, (e) the sum of all credit balances carried on Receivables that are more than 90 days past due, (f) Receivables that are more than 90 days past the original invoice date but that have been re-aged as a result of a dispute by the account debtor, (g) Receivables for which any Subsidiary or any Affiliate of a member of the Consolidated Group is the account debtor, (h) any Receivable if and to the extent the amount of such Receivable, together with all other Receivables of the applicable account debtor, exceeds an amount equal to 25% of all Receivables owned by or owing to the members of the North American Group, (i) Receivables owing by an account debtor located outside of the United States or Canada (unless payment for the goods shipped is secured by an irrevocable letter of credit in a form and from an institution acceptable to the Administrative Agent), and (j) Receivables which fail to meet such other specifications and requirements as may from time to time be established by the Administrative Agent in its reasonable discretion.

"Canadian Subsidiary" means any Subsidiary that is incorporated or organized under the laws of Canada or any province thereof.

"Capital Lease" means, as applied to any Person, any lease of any Property by that Person as lessee which, in accordance with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"Capital Stock" means (i) in the case of a corporation, capital stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (iii) in the case of a partnership, partnership interests (whether general or limited) and (iv) in the case of a limited liability company, membership interests.

"Cash Collateralize" has the meaning specified in Section 2.7(h).

"Cash Equivalents" means (a) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition, (b) Dollar denominated time deposits and certificates of deposit of (i) any Lender, (ii) any domestic commercial bank of recognized standing having capital and surplus in excess of $500,000,000 or (iii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof (any such bank being an "Approved Bank"), in each case with maturities of not more than 270 days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable rate notes issued by, or guaranteed by, any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody's and maturing within six months of the date of acquisition, (d) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of $500,000,000 for direct obligations issued by or fully guaranteed by the United States in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations and (e) Investments, classified in accordance with GAAP as current assets, in money market investment programs registered under the Investment Company Act of 1940, as amended, which are administered by reputable financial institutions having capital of at least $500,000,000 and the portfolios of which are limited to Investments of the character described in the foregoing subdivisions (a) through (d).

"Change of Control" means the occurrence of any of the following events after the Closing Date: (i) any Person or two or more Persons acting in concert shall have acquired beneficial ownership, directly or indirectly, of, or shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of or control over, Voting Stock of the Borrower (or other securities convertible into such Voting Stock) representing 25% or more of the combined voting power of all Voting Stock of the Borrower or (ii) during any period of up to 24 consecutive months, commencing after the Closing Date, individuals who at the beginning of such 24 month period were directors of the Borrower (together with any new director whose election by the Borrower's board of directors or whose nomination for election by the Borrower's shareholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the directors of the Borrower then in office. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act.

"Closing Date" means the date hereof.

"Collateral" means a collective reference to the collateral that is identified in, and at any time is covered by, the Collateral Documents.

"Collateral Agent" means Bank of America, together with its successors in such capacity.

"Collateral Documents" means a collective reference to the Security Agreement, the Pledge Agreement and such other documents executed and delivered in connection with the attachment and perfection of the security interests and liens arising thereunder, including without limitation, UCC financing statements and patent and trademark filings.

"Commitment Fee" shall have the meaning provided in Section 3.5(a).

"Commitment Period" means the period from and including the Closing Date to but not including the earlier of (i) the Termination Date or (ii) the date on which the Commitments terminate in accordance with the provisions of this Credit Agreement.

"Commitments" means the Revolving Commitment, the LOC Commitment and the Swingline Commitment.

"Committed Amount" means any of the Revolving Committed Amount, the LOC Committed Amount and/or the Swingline Committed Amount.

"Consolidated Adjusted EBITDA" means, for any period for the Consolidated Group, the sum of (i) Consolidated EBITDA minus (iii) cash taxes paid, in each case on a consolidated basis in accordance with GAAP.

"Consolidated EBITDA" means, for any period for the Consolidated Group, the sum of Consolidated Net Income, plus, to the extent deducted in determining Consolidated Net Income, the sum of (i) Consolidated Interest Expense, (ii) all provisions for federal, state and local income taxes, (iii) depreciation and amortization, and (iv) one-time non-cash charges approved by the Administrative Agent in its sole discretion, in each case on a consolidated basis in accordance with GAAP.

"Consolidated Fixed Charge Coverage Ratio" means, as of the last day of each fiscal quarter, the ratio of Consolidated Adjusted EBITDA for the period of four consecutive fiscal quarters then ending to Consolidated Fixed Charges for the period of four consecutive fiscal quarters then ending.

"Consolidated Fixed Charges" means, for any period for the Consolidated Group, the sum of (i) the cash portion of Consolidated Interest Expense, plus (ii) current maturities of Consolidated Funded Debt (including, for purposes hereof, current scheduled reductions in commitments), plus (iii) lease and rent expense, in each case on a consolidated basis in accordance with GAAP.

"Consolidated Funded Debt" means Funded Debt of the Consolidated Group on a consolidated basis in accordance with GAAP.

"Consolidated Group" means the Borrower and its Subsidiaries as determined in accordance with GAAP.

"Consolidated Interest Expense" means, for any period for members of the Consolidated Group, all interest expense, including the amortization of debt discount and premium, the interest component under capital leases and the implied interest component under Securitization Transactions (without deduction or reduction for interest income), on a consolidated basis in accordance with GAAP.

"Consolidated Leverage Ratio" means, as of the last day of each fiscal quarter, the ratio of (i) Consolidated Funded Debt on such day to (ii) Consolidated EBITDA for the period of four consecutive fiscal quarters ending as of such day.

"Consolidated Net Income" means, for any period for the Consolidated Group, net income (or loss) determined on a consolidated basis in accordance with GAAP, but excluding for purposes of determining the Consolidated Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio any extraordinary gains or losses and related tax effects thereon.

"Consolidated Net Worth" means, as of any day, shareholders' equity or net worth of the Consolidated Group determined in accordance with GAAP.

"Contractual Obligation" means, as to any Person, any material provision of any security issued by such Person or of any material provision of any material agreement, instrument or undertaking to which such Person is a party or by which it or any of its property is bound.

"Credit Documents" means, collectively, this Credit Agreement, the Notes, the LOC Documents, the Collateral Documents, each Joinder Agreement, the Administrative Agent's Fee Letter, and all other related agreements and documents issued or delivered hereunder or thereunder or pursuant hereto or thereto.

"Credit Party" means any of Borrower and the Guarantors.

"Default" means any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

"Defaulting Lender" means, at any time, any Lender that (a) has failed to make a Loan or purchase a Participation Interest required pursuant to the terms of this Credit Agreement within one Business Day of when due, (b) other than as set forth in (a) above, has failed to pay to the Administrative Agent or any Lender an amount owed by such Lender pursuant to the terms of this Credit Agreement within one Business Day of when due, unless such amount is subject to a good faith dispute or (c) has been deemed insolvent or has become subject to a bankruptcy or insolvency proceeding or with respect to which (or with respect to any of the assets of which) a receiver, trustee or similar official has been appointed.

"Dollars" and "$" means lawful currency of the United States of America.

"Domestic Credit Party" means any Credit Party which is incorporated or organized under the laws of any State of the United States or the District of Columbia.

"Domestic Subsidiary" means any Subsidiary which is incorporated or organized under the laws of any State of the United States or the District of Columbia.

"Environmental Laws" means any and all lawful and applicable federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to the environment or to emissions, discharges, releases or threatened releases of Materials of Environmental Concern into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Materials of Environmental Concern.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Materials of Environmental Concern, (c) exposure to any Materials of Environmental Concern, (d) the release or threatened release of any Materials of Environmental Concern into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Transaction" means, with respect to any member of the Consolidated Group, any issuance of shares of its capital stock or other equity interest, other than an issuance (i) to a member of the Consolidated Group, (ii) in connection with a conversion of debt securities to equity, (iii) in connection with exercise by a present or former employee, officer, director or other eligible participant under a stock incentive plan, stock option plan or other equity-based compensation plan or arrangement, (iv) in connection with the exercise by any Person of stock options or warrants issued to such Person as consideration for the licensing or acquisition of intellectual property rights, or (v) of the capital stock of the Borrower in connection with an Acquisition permitted hereunder.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto, as interpreted by the rules and regulations thereunder, all as the same may be in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

"ERISA Affiliate" means an entity which is under common control with any member of the Consolidated Group within the meaning of Section 4001(a)(14) of ERISA, or is a member of a group which includes any member of the Consolidated Group and which is treated as a single employer under Sections 414(b) or (c) of the Internal Revenue Code.

"ERISA Event" means (i) with respect to any Plan, the occurrence of a Reportable Event or the substantial cessation of operations (within the meaning of Section 4062(e) of ERISA); (ii) the withdrawal by any member of the Consolidated Group or any ERISA Affiliate from a Multiple Employer Plan during a plan year in which it was a substantial employer (as such term is defined in Section 4001(a)(2) of ERISA), or the termination of a Multiple Employer Plan; (iii) the distribution of a notice of intent to terminate or the actual termination of a Plan pursuant to Section 4041(a)(2) or 4041A of ERISA; (iv) the institution of proceedings to terminate or the actual termination of a Plan by the PBGC under Section 4042 of ERISA; (v) any event or condition which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (vi) the complete or partial withdrawal of any member of the Consolidated Group or any ERISA Affiliate from a Multiemployer Plan; (vii) the conditions for imposition of a lien under Section 302(f) of ERISA exist with respect to any Plan; or (viii) the adoption of an amendment to any Plan requiring the provision of security to such Plan pursuant to Section 307 of ERISA.

"Eurodollar Loan" means any Loan that bears interest at a rate based upon the Eurodollar Rate.

"Eurodollar Rate" means, for any Eurodollar Loan for any Interest Period therefor, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) determined by the Administrative Agent to be equal to the quotient obtained by dividing (a) the Interbank Offered Rate for such Eurodollar Loan for such Interest Period by (b) 1 minus the Eurodollar Reserve Requirement for such Eurodollar Loan for such Interest Period.

"Eurodollar Reserve Requirement" means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the Board of Governors of the Federal Reserve System of the United States for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as "Eurocurrency liabilities"). The Eurodollar Rate for each outstanding Eurodollar Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Requirement.

"Event of Default" shall have the meaning assigned to such term in Section 9.1.

"Excluded Property" means, with respect to any member of the Consolidated Group, including any Person joined as a Credit Party pursuant to Section 7.12,

(i) any Property which, subject to the terms of Section 8.11 and Section 8.14, is subject to a Lien of the type described in clause (viii) of the definition of "Permitted Liens" pursuant to documents which prohibit such member of the Consolidated Group from granting any other Liens in such Property; and

(ii) any Contract (including any license or use agreement), any Trademark License for which a Grantor is licensee or any Copyright License for which a Grantor is licensee if the terms thereof prohibit the assignment thereof or grant of a security interest or lien therein and the violation of such terms would constitute a default thereunder, provided that such prohibition could not be rendered ineffective pursuant to the UCC or any other applicable law (including the Bankruptcy Code) or principles of equity; and

(iii) any Property (including any Trademark, Copyright or Work) subject to a Contract (including any license or use agreement), Trademark License for which a Grantor is licensee or Copyright License for which a Grantor is licensee if the terms thereof prohibit the assignment of such Property or grant of a security interest or lien in such Property and the violation of such terms would constitute a default thereunder, provided that such prohibition could not be rendered ineffective pursuant to the UCC or any other applicable law (including the Bankruptcy Code) or principles of equity.

"Executive Officer" of any Person means any of the chief executive officer, chief operating officer, president, vice president, chief financial officer or treasurer of such Person.

"Existing Credit Agreement" has the meaning set forth in the recitals hereto.

"Existing Letters of Credit" means those Letters of Credit outstanding on the Closing Date and identified on Schedule 2.7(b).

"Extension of Credit" means, as to any Lender, the making of, or participation in, a Loan by such Lender (including continuations and conversions thereof) or the issuance or extension of, or participation in, a Letter of Credit by such Lender.

"Federal Funds Rate" means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to Bank of America (in its individual capacity) on such day on such transactions as determined by the Administrative Agent.

"Fees" means all fees payable pursuant to Section 3.5.

"Foreign Lender" shall have the meaning given to such term in Section 3.11(d).

"Foreign Subsidiary" means a Subsidiary which is not a Domestic Subsidiary.

"Funded Debt" means, with respect to any Person, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, or upon which interest payments are customarily made, (iii) all purchase money Indebtedness (including for purposes hereof, indebtedness and obligations in respect of conditional sale or title retention arrangements described in clause (c) of the definition of "Indebtedness" and obligations in respect of the deferred purchase price of property or services described in clause (d) of the definition of "Indebtedness") of such Person, including without limitation the principal portion of all obligations of such Person under Capital Leases, (iv) all Support Obligations of such Person with respect to Funded Debt of another Person, (v) the maximum available amount of all standby letters of credit or acceptances issued or created for the account of such Person, (vi) all Funded Debt of another Person secured by a Lien on any Property of such Person, whether or not such Funded Debt has been assumed, provided that for purposes hereof the amount of such Funded Debt shall be limited to the amount of such Funded Debt as to which there is recourse to such Person or the fair market value of the property which is subject to the Lien, if less, (vii) the outstanding attributed principal amount under any Securitization Transaction, and (viii) the principal balance outstanding under Synthetic Leases. The Funded Debt of any Person shall include the Funded Debt of any partnership or joint venture in which such Person is a general partner or joint venturer, but only to the extent to which there is recourse to such Person for the payment of such Funded Debt.

"GAAP" means generally accepted accounting principles in the United States applied on a consistent basis and subject to the terms of Section 1.3.

"Governmental Authority" means any Federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

"Guaranteed Obligations" means, without duplication, (i) all obligations of the Borrower (including interest accruing after a Bankruptcy Event regardless of whether such interest is allowed as a claim under the Bankruptcy Code) to the Lenders and the Agents, whenever arising, under this Credit Agreement, the Notes or the other Credit Documents, and (ii) all liabilities and obligations, whenever arising, under any Hedging Agreement between a Lender, or an Affiliate of a Lender, and a Credit Party relating to the Obligations.

"Guarantors" means (i) the Subsidiaries identified as Guarantors on the signature pages hereto and (ii) any other Persons which may hereafter join this Credit Agreement as a Guarantor.

"Hedging Agreements" means any interest rate protection agreement or foreign currency exchange or option agreement.

"Honor Date" has the meaning specified in Section 2.7(d)(i).

"Indebtedness" means, with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, or upon which interest payments are customarily made, (c) all obligations of such Person under conditional sale or other title retention agreements relating to Property purchased by such Person (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business), (d) all obligations of such Person issued or assumed as the deferred purchase price of Property or services purchased by such Person (other than trade debt incurred in the ordinary course of business and due within six months of the incurrence thereof) which would appear as liabilities on a balance sheet of such Person, (e) all obligations of such Person under take-or-pay or similar arrangements or under commodities agreements, (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, Property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (g) all Support Obligations of such Person with respect to Indebtedness of another Person, (h) the principal portion of all obligations of such Person under Capital Leases, (i) all obligations of such Person under Hedging Agreements, (j) the maximum amount of all standby letters of credit issued or bankers' acceptances facilities created for the account of such Person and, without duplication, all drafts drawn thereunder (to the extent unreimbursed), (k) all preferred Capital Stock issued by such Person and which by the terms thereof would be (at the request of the holders thereof or otherwise) subject to mandatory sinking fund payments, redemption or other acceleration (other than as a result of a Change of Control or an Asset Disposition that does not in fact result in a redemption of such preferred Capital Stock) at any time during the term of the Credit Agreement, (l) the principal portion of all obligations of such Person under Synthetic Leases, and (m) with respect to any member of the Consolidated Group, the outstanding attributed principal amount under any Securitization Transaction. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or joint venturer, but only to the extent to which there is recourse to such Person for the payment of such Indebtedness.

"Interbank Offered Rate" means, for such Interest Period:

(a) the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate that appears on the page of the Telerate screen (or any successor thereto) that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, or

(b) if the rate referenced in the preceding clause (a) does not appear on such page or service or such page or service shall not be available, the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate on such other page or other service that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, or

(c) if the rates referenced in the preceding clauses (a) and (b) are not available, the rate per annum determined by the Administrative Agent as the rate of interest at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at approximately 4:00 p.m. (London time) two Business Days prior to the first day of such Interest Period.

"Interest Payment Date" means (i) as to any Base Rate Loan and any Swingline Loan, the last day of each March, June, September and December, and the Termination Date, and (ii) as to any Eurodollar Loan, the last day of each Interest Period for such Loan, the date of repayment of principal of such Loan and the Termination Date, and in addition where the applicable Interest Period is more than three months, then also on the date three months from the beginning of the Interest Period, and each three months thereafter. If an Interest Payment Date falls on a date that is not a Business Day, such Interest Payment Date shall be deemed to be the next succeeding Business Day.

"Interest Period" means a period of one, two, three or six months' duration, as the Borrower may elect, commencing in each case on the date of the borrowing (including conversions, continuations and renewals), commencing in each case on the date of borrowing; provided, however, (A) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day (except where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (B) no Interest Period shall extend beyond the Termination Date, and (C) where an Interest Period begins on a day for which there is no numerically corresponding day in the calendar month in which the Interest Period is to end, such Interest Period shall end on the last day of such calendar month.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, and any successor statute thereto, as interpreted by the rules and regulations issued thereunder, in each case as in effect from time to time. References to sections of the Internal Revenue Code shall be construed also to refer to any successor sections.

"Investment" in any Person means (a) the acquisition (whether for cash, property, services, assumption of Indebtedness, securities or otherwise) of Capital Stock, bonds, notes, debentures, partnership, joint ventures or other ownership interests or other securities of such other Person, (b) any deposit with, or advance, loan or other extension of credit to, such Person (other than deposits made in connection with the purchase of equipment or other assets in the ordinary course of business) or (c) any other capital contribution to or investment in such Person, including, without limitation, any Support Obligations (including any support for a letter of credit issued on behalf of such Person) incurred for the benefit of such Person, but excluding any Restricted Payment to such Person.

"Issuing Lender" means Bank of America and its successors in such capacity.

"Joinder Agreement" means a joinder agreement substantially in the form of Schedule 7.12 hereto, in each case executed and delivered by a Subsidiary in accordance with the provisions of Section 7.12.

"Lenders" means each of the Persons identified as a "Lender" on the signature pages hereto, and their successors and assigns.

"L/C Advance" means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Revolving Commitment Percentage.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit that has not been reimbursed on the date when made or refinanced as a Revolving Loan.

"Letter of Credit" means any Existing Letter of Credit and any standby letter of credit issued by the Issuing Lender for the account of the Borrower in accordance with the terms of Section 2.1(b).

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the Issuing Lender.

"Letter of Credit Expiration Date" means the day that is seven days prior to the Termination Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" shall have the meaning assigned such term in Section 3.5(b)(i).

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise), preference, priority or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the Uniform Commercial Code as adopted and in effect in the relevant jurisdiction or other similar recording or notice statute, and any lease in the nature thereof).

"Loans" means the Revolving Loans and the Swingline Loans, and the Base Rate Loans, Eurodollar Loans and Quoted Rate Swingline Loans comprising the Revolving Loans and the Swingline Loans.

"LOC Commitment" means, with respect to the Issuing Lender, the commitment of the Issuing Lender to issue, and to honor payment obligations under, Letters of Credit and, with respect to each Lender, the commitment of such Lender to purchase participation interests in the Letters of Credit up to such Lender's LOC Committed Amount.

"LOC Committed Amount" shall have the meaning assigned to such term in Section 2.1(b).

"LOC Documents" means, with respect to any Letter of Credit, such Letter of Credit, any amendments thereto, any documents delivered in connection therewith, any application therefor, and any agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (i) the rights and obligations of the parties concerned or at risk or (ii) any collateral security for such obligations.

"LOC Obligations" means, at any time, the sum of (i) the maximum amount which is, or at any time thereafter may become, available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referred to in such Letters of Credit plus (ii) the aggregate amount of all drawings under Letters of Credit honored by the Issuing Lender but not theretofore reimbursed.

"Material Adverse Effect" means a material adverse effect on (i) the condition (financial or otherwise), operations, business, assets or liabilities of the Consolidated Group taken as a whole, (ii) the ability of the Credit Parties taken as a whole to perform any material obligation under the Credit Documents, (iii) the material rights and remedies of the Agents and the Lenders under the Credit Documents, or (iv) the perfection or priority of any Lien granted under, or in connection with, any of the Credit Documents.

"Materials of Environmental Concern" means any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Laws, including, without limitation, asbestos, polychlorinated biphenyls and urea-formaldehyde insulation.

"Moody's" means Moody's Investors Service, Inc., or any successor or assignee of the business of such company in the business of rating securities.

"Multiemployer Plan" means a Plan which is a "multiemployer plan" as defined in Sections 3(37) or 4001(a)(3) of ERISA.

"Multiple Employer Plan" means a Plan (other than a Multiemployer Plan) which any member of the Consolidated Group or any ERISA Affiliate and at least one employer other than the members of the Consolidated Group or any ERISA Affiliate are contributing sponsors.

"Nonrenewal Notice Date" has the meaning specified in Section 2.7(c)(iii).

"North American Borrowing Base" means the sum of:

(a) the sum of seventy-five percent (75%) of U.S. Eligible Receivables plus thirty-five percent (35%) of U.S. Eligible Inventory, plus

(b) the lesser of (i) $5,000,000 and (ii) the sum of (A) seventy-five percent (75%) of Canadian Eligible Receivables plus (B) thirty-five percent (35%) of Canadian Eligible Inventory;

in each case as set forth in the most recent of North American Borrowing Base Certificate delivered to the Administrative Agent and the Lenders in accordance with the terms of Section 7.1(d), provided, however, that (1) the advance rates for U.S. Eligible Receivables, U.S. Eligible Inventory, Canadian Eligible Receivables and Canadian Eligible Inventory may be modified by the Administrative Agent after the Closing Date (but in no event to an advance rate higher than those set forth above) if the Administrative Agent reasonably determines that such modification is appropriate based on the results of one or more Appraisals or Field Exams, and (2) for purposes of calculating the North American Borrowing Base, the sum of (x) fifty percent (50%) of U.S. Eligible Inventory plus (y) fifty percent (50%) of Canadian Eligible Inventory shall not at any time comprise more than an amount equal to thirty percent (30%) of the North American Borrowing Base.

"North American Borrowing Base Certificate" shall have the meaning assigned to such term in Section 7.1(d).

"North American Group" means, collectively, the Borrower, its Domestic Subsidiaries and its Canadian Subsidiaries.

"North American Subsidiaries" means, collectively, the Domestic Subsidiaries of the Borrower and the Canadian Subsidiaries of the Borrower.

"Notes" means the Revolving Notes.

"Notice of Borrowing" means a written notice of borrowing in substantially the form of Schedule 2.2(a).

"Notice of Continuation/Conversion" means the written notice of continuation or conversion in substantially the form of Schedule 3.2.

"Obligations" means, collectively, the Revolving Loans, the LOC Obligations and the Swingline Loans.

"Operating Lease" means, as applied to any Person, any lease (including, without limitation, leases which may be terminated by the lessee at any time) of any Property which is not a Capital Lease other than any such lease in which that Person is the lessor.

"Original Closing Date" means the date of the closing of the Existing Credit Agreement, being December 7, 1999.

"Other Taxes" shall have the meaning assigned to such term in Section 3.11.

"Participation Interest" means the purchase by a Lender of a participation in LOC Obligations as provided in Section 2.7(b), in Swingline Loans as provided in Section 2.8 and in Loans as provided in Section 3.16.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA and any successor thereof.

"Permitted Acquisition" means any Acquisition by a member of the North American Group, provided (i) in the case of an Acquisition of Capital Stock, the Person which is the subject of such Acquisition shall be in the same or similar line of business as that of any member of the Consolidated Group or otherwise consistent with its strategic objectives, (ii) in the case of a merger or consolidation, and in other cases where appropriate, the board of directors or other governing body of the other Person which is the subject of the transaction of merger or consolidation shall have approved such Acquisition, (iii) no Default or Event of Default shall exist immediately after giving effect to such Acquisition, (iv) the Borrower shall have delivered to the Administrative Agent a Pro Forma Compliance Certificate demonstrating that, upon giving effect to such Acquisition on a Pro Forma Basis, the Credit Parties shall be in compliance with all of the covenants set forth in Section 7.11, (v) if the Acquisition involves an interest in a partnership and a requirement that a member of the North American Group be a general partner, the general partner shall be a newly formed special purpose Subsidiary of the Borrower, (vi) if the Acquisition involves acquisition of more than 50% of the Capital Stock of a Person, the Credit Parties shall, and shall cause the party which is the subject of the Acquisition, to execute and deliver such joinder and pledge agreements and take such other action as may be necessary for compliance with the provisions of Sections 7.12 and 7.13, and (vii) the aggregate consideration (including cash, Indebtedness assumed, deferred purchase price obligations and obligations to make contingent payments based on performance, but excluding any Capital Stock of the Borrower issued to the seller) paid shall not exceed $10 million in any instance (or series of related transactions) or $20 million in the aggregate in any twelve month period beginning on or after the Closing Date.

"Permitted Investments" means Investments which are (i) cash and Cash Equivalents; (ii) accounts receivable created, acquired or made in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; (iii) Investments consisting of Capital Stock, obligations, securities or other Property received in settlement of accounts receivable (created in the ordinary course of business) from bankrupt obligors; (iv) Investments existing as of the Closing Date and set forth in Schedule 8.6; (v) advances or loans to directors, officers and employees that do not exceed $1,000,000 in the aggregate at any one time outstanding; (vi) Investments consisting of Capital Stock of developers in an amount not to exceed in the aggregate an amount equal to ten percent (10%) of Consolidated Net Worth as of the end of the immediately preceding fiscal year, (vii) advances to customers and suppliers in the ordinary course of business that do not exceed $1,000,000 in the aggregate at any one time outstanding; (viii) recoupable advances, guarantees or payments made to third parties in the ordinary course of business with respect to the licensing or acquisition of intellectual property rights or for development services for specific titles, (ix) Investments made prior to the Closing Date by members of the North American Group in their Subsidiaries and Affiliates, (x) Investments by Domestic Credit Parties in and to other Domestic Credit Parties, (xi) Investments (including loans and advances) in Canadian Subsidiaries of up to $5,000,000 outstanding at any time; (xii) Investments (including loans and advances) by members of the North American Group in UK Subsidiaries, provided that the sum of (A) the aggregate amounts outstanding under the UK Subsidiary Credit Facility plus (B) the aggregate amount of Investments in UK Subsidiaries does not exceed the UK Borrowing Base; (xiii) Investments which constitute Permitted Acquisitions and (xiv) Investments of a nature not contemplated in the foregoing subsections in an amount not to exceed $5,000,000 in the aggregate at any time outstanding.

"Permitted Liens" means:

(i) Liens in favor of the Administrative Agent granted under the Collateral Documents;

(ii) Liens in favor of a Lender or an Affiliate of a Lender pursuant to a Hedging Agreement permitted hereunder, but only (A) to the extent such Liens secure obligations under such agreements permitted under Section 8.1, (B) to the extent such Liens are on the same collateral as to which the Lenders hereunder also have a Lien, and (C) so long as the obligations under such Hedging Agreement and the loans and obligations hereunder and under the other Credit Documents shall share pari passu in the collateral subject to such Liens;

(iii) Liens (other than Liens created or imposed under ERISA) for taxes, assessments or governmental charges or levies not yet due or Liens for taxes being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the Property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof);

(iv) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and suppliers and other Liens imposed by law or pursuant to customary reservations or retentions of title arising in the ordinary course of business, provided that such Liens secure only amounts not yet due and payable or, if due and payable, are unfiled and no other action has been taken to enforce the same or are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the Property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof);

(v) Liens (other than Liens created or imposed under ERISA) incurred or deposits made by any member of the Consolidated Group in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money);

(vi) Liens in connection with attachments or judgments (including judgment or appeal bonds) provided that the judgments secured shall, within 45 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall have been discharged within 45 days after the expiration of any such stay;

(vii) easements, rights-of-way, restrictions (including zoning restrictions), minor defects or irregularities in title and other similar charges or encumbrances not, in any material respect, impairing the use of the encumbered Property for its intended purposes;

(viii) Liens on Property of any Person securing purchase money Indebtedness (including Capital Leases and Synthetic Leases) of such Person to the extent permitted under Section 8.1(c), provided that any such Lien attaches only to the Property financed or leased and such Lien attaches concurrently with or within 90 days after the acquisition thereof;

(ix) leases or subleases granted to others not interfering in any material respect with the business of any member of the Consolidated Group;

(x) any interest or title of a lessor under, and Liens arising from UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, leases permitted by this Credit Agreement;

(xi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(xii) Liens deemed to exist in connection with Investments in repurchase agreements which constitute Permitted Investments;

(xiii) normal and customary rights of setoff upon deposits of cash in favor of banks or other depository institutions;

(xiv) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection;

(xv) Liens on all Property of Jack of All Games, Inc. to secure obligations of Jack of All Games, Inc. under the floor planning line of credit for Nintendo inventory described in Section 8.1(g);

(xvi) Liens on Property of the UK Subsidiaries securing the UK Subsidiary Credit Facility referenced in Section 8.1(f); and

(xvii) Liens existing as of the Closing Date and set forth on Schedule 6.8; provided that no such Lien shall at any time be extended to or cover any Property other than the Property subject thereto on the Closing Date.

"Person" means any individual, partnership, joint venture, firm, corporation, limited liability company, association, trust or other enterprise (whether or not incorporated) or any Governmental Authority.

"Plan" means any employee benefit plan (as defined in Section 3(3) of ERISA) which is covered by ERISA and with respect to which any member of the Consolidated Group or any ERISA Affiliate is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an "employer" within the meaning of Section 3(5) of ERISA.

"Pledge Agreement" means the Amended and Restated Pledge Agreement dated as of the Closing Date given by the Borrower and certain other Credit Parties identified therein to the Collateral Agent to secure the obligations of the Credit Parties under the Credit Documents, as such Amended and Restated Pledge Agreement may be amended and modified from time to time.

"Prime Rate" means, for any day, the rate of interest per annum in effect for such day as publicly announced from time to time by Bank of America as its "prime rate". Such rate is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"Pro Forma Basis" means that any Asset Disposition, Acquisition or Restricted Payment (as used in this definition, each a "Transaction") shall be deemed to have occurred as of the first day of the most recent four fiscal quarter period preceding the date of such Transaction for which the Administrative Agent has received the Required Financial Information. In connection with the foregoing, (a) with respect to any Asset Disposition, income statement items (whether positive or negative) attributable to the Property disposed of shall be excluded to the extent relating to any period occurring prior to the date of such transaction and (b) with respect to any Acquisition, (i) income statement items attributable to the Person or Property acquired shall, to the extent not otherwise included in such income statement items for the members of the Consolidated Group in accordance with GAAP or in accordance with any defined terms set forth in Section 1.1, be included to the extent (A) relating to any period applicable in such calculations and (B) evidenced by financial information reasonably satisfactory to the Administrative Agent, and (ii) pro forma adjustments may be included to the extent that such adjustments would be permitted under GAAP and give effect to items that are (A) directly attributable to such transaction, (B) expected to have a continuing impact on the Consolidated Group and (C) factually supportable.

"Pro Forma Compliance Certificate" means a certificate of an Executive Officer of the Borrower containing reasonably detailed calculations of the financial covenants set forth in Section 7.11 as of the most recent fiscal quarter end for which the Administrative Agent shall have received the Required Financial Information after giving effect to the applicable transaction on a Pro Forma Basis.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Quoted Rate" means, with respect to a Quoted Rate Swingline Loan, the fixed or floating percentage rate per annum, if any, offered by the Swingline Lender and accepted by the Borrower in accordance with the provisions hereof.

"Quoted Rate Swingline Loan" means a Swingline Loan bearing interest at the Quoted Rate.

"Rate Determination Date" shall have the meaning assigned to such term in the definition of "Applicable Percentage".

"Receivables" means all accounts, accounts receivable, receivables, and obligations for payment created or arising from the sale of inventory or the rendering of services in the ordinary course of business.

"Register" shall have the meaning given such term in Section 11.3(c)(i).

"Regulation D, T, U, or X" means Regulation D, T, U or X, respectively, of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the notice requirement has been waived by regulation.

"Required Financial Information" means the annual and quarterly compliance certificates and related financial statements and information required by the provisions of Sections 7.1(a), (b) and (c), as referenced in the definition of "Applicable Percentage".

"Required Lenders" means, at any time, Lenders having at least sixty-six and two-thirds percent (66-2/3%) of the Commitments, or if the Commitments have been terminated, Lenders having at least sixty-six and two-thirds percent (66-2/3%) of the aggregate principal amount of the Obligations outstanding (taking into account in each case Participation Interests or obligation to participate therein); provided that the Commitments of, and outstanding principal amount of Obligations (taking into account Participation Interests therein) owing to, a Defaulting Lender shall be excluded for purposes hereof in making a determination of Required Lenders.

"Requirement of Law" means, as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule, regulation or ordinance (including, without limitation, Environmental Laws) or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or to which any of its material Property is subject.

"Restated Financial Statements" means the restatement of the Borrower's financial statements for each fiscal quarter of 2000 and the first three fiscal quarters of 2001, as filed with the Securities and Exchange Commission on February 12, 2002

"Restricted Payment" means (a) any dividend or other payment or distribution, direct or indirect, on account of any shares of any class of Capital Stock of any member of the North American Group, now or hereafter outstanding (including without limitation any payment in connection with any dissolution, merger, consolidation or disposition involving any member of the North American Group), or to the holders, in their capacity as such, of any shares of any class of Capital Stock of any member of the North American Group, now or hereafter outstanding (other than (i) dividends or distributions payable in Capital Stock, or options in respect thereof, of the applicable Person, (ii) distributions of rights to purchase Capital Stock as part of an anti-takeover plan, or (iii) dividends or distributions payable to any Credit Party (directly or indirectly through Subsidiaries)), (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of any member of the North American Group, now or hereafter outstanding, (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of any member of the North American Group, now or hereafter outstanding.

"Revolving Commitment" means, with respect to each Lender, the commitment of such Lender to make Revolving Loans in an aggregate principal amount at any time outstanding of up to such Lender's Revolving Commitment Percentage of the Aggregate Revolving Committed Amount, as such amount may be reduced from time to time in accordance with the provisions hereof.

"Revolving Commitment Percentage" means, with respect to each Lender, a fraction (expressed as a percentage) the numerator of which is the Revolving Committed Amount of such Lender at such time and the denominator of which is the Aggregate Revolving Committed Amount at such time. The initial Revolving Commitment Percentage of each Lender is set forth on Schedule 2.1.

"Revolving Committed Amount" means, with respect to each Lender, the amount of each Lender's Revolving Commitment, as such amount may be reduced from time to time in accordance with the provisions hereof. The initial Revolving Committed Amount of each Lender is set forth on Schedule 2.1.

"Revolving Loans" shall have the meaning assigned to such term in Section 2.1(a).

"Revolving Note" or "Revolving Notes" means the promissory notes of the Borrower in favor of each of the Lenders evidencing the Revolving Loans and the Swingline Loans in substantially the form attached as Schedule 2.5, individually or collectively, as appropriate, as such promissory notes may be amended, modified, supplemented, extended, renewed or replaced from time to time.

"S&P" means Standard & Poor's Ratings Group, a division of The McGraw Hill Companies, Inc., or any successor or assignee of the business of such division in the business of rating securities.

"Sale and Leaseback Transaction" means any arrangement pursuant to which any member of the North American Group, directly or indirectly, becomes liable as lessee, guarantor or other surety with respect to any lease, whether an Operating Lease or a Capital Lease, of any Property (a) which such member of the North American Group has sold or transferred (or is to sell or transfer) to a Person which is not a member of the North American Group or (b) which such member of the North American Group intends to use for substantially the same purpose as any other Property which has been sold or transferred (or is to be sold or transferred) by such member of the North American Group to another Person which is not a member of the North American Group in connection with such lease.

"Securities Exchange Act" means the Securities Exchange Act of 1934.

"Securitization Transaction" means any financing transaction or series of financing transactions that have been or may be entered into by a member of the Consolidated Group pursuant to which such member of the Consolidated Group may sell, convey or otherwise transfer to (i) a Subsidiary or affiliate (a "Securitization Subsidiary"), or (ii) any other Person, or may grant a security interest in, any accounts receivable, notes receivable, rights to future lease payments or residuals or other similar rights to payment (the "Securitization Receivables") (whether such Securitization Receivables are then existing or arising in the future) of such member of the Consolidated Group, and any assets related thereto, including without limitation, all security interests in merchandise or services financed thereby, the proceeds of such Securitization Receivables, and other assets which are customarily sold or in respect of which security interests are customarily granted in connection with securitization transactions involving such assets.

"Security Agreement" means the Amended and Restated Security Agreement dated as of the Closing Date given by the Credit Parties to the Collateral Agent to secure the obligations of the Credit Parties under the Credit Documents, as such Amended and Restated Security Agreement may be amended and modified from time to time.

"Shareholder Litigation" means each of the lawsuits filed by shareholders of the Borrower regarding the Restated Financial Statements and settled prior to the Closing Date by the Borrower and the other parties thereto.

"Single Employer Plan" means any Plan which is covered by Title IV of ERISA, but which is not a Multiemployer Plan or a Multiple Employer Plan.

"Subsidiary" means, as to any Person at any time, (a) any corporation more than 50% of whose Capital Stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at such time, any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at such time owned by such Person directly or indirectly through Subsidiaries, and (b) any partnership, association, joint venture or other entity of which such Person directly or indirectly through Subsidiaries owns at such time more than 50% of the Capital Stock. Except as expressly provided otherwise, references to "Subsidiary" and "Subsidiaries" shall be deemed to mean Subsidiaries of the Borrower.

"Support Obligations" means, with respect to any Person, without duplication, any obligations of such Person (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing or intended to guarantee any Indebtedness of any other Person in any manner, whether direct or indirect, and including without limitation any obligation, whether or not contingent, (i) to purchase any such Indebtedness or any Property constituting security therefor, (ii) to advance or provide funds or other support for the payment or purchase of any such Indebtedness or to maintain working capital, solvency or other balance sheet condition of such other Person (including without limitation keep well agreements, maintenance agreements, comfort letters or similar agreements or arrangements) for the benefit of any holder of Indebtedness of such other Person, (iii) to lease or purchase Property, securities or services primarily for the purpose of assuring the holder of such Indebtedness, or (iv) to otherwise assure or hold harmless the holder of such Indebtedness against loss in respect thereof. The amount of any Support Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness in respect of which such Support Obligation is made.

"Swingline Commitment" means, with respect to the Swingline Lender, the commitment of the Swingline Lender to make Swingline Loans in an aggregate principal amount at any time outstanding up to the Swingline Committed Amount and, with respect to each Lender, the commitment of such Lender to purchase participation interests in the Swingline Loans up to such Lender's Revolving Commitment Percentage of the Swingline Committed Amount.

"Swingline Committed Amount" shall have the meaning specified in Section 2.1(c).

"Swingline Lender" means Bank of America and its successors in such capacity.

"Swingline Loan" shall have the meaning specified in Section 2.1(c).

"Synthetic Lease" means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an Operating Lease under GAAP.

"Taxes" shall have the meaning assigned to such term in Section 3.11.

"Termination Date" means August 28, 2005, or such later date as to which all of the Lenders may in their sole discretion by written consent agree.

"UK Borrowing Base" means an amount equal to eighty percent (80%) of the aggregate book value of all Receivables owed or owing to the UK Subsidiaries on a consolidated basis as shown on the books and records of the UK Subsidiaries, as set forth in the most recent UK Borrowing Base Certificate delivered to the Administrative Agent in accordance with the terms of Section 7.1(e).

"UK Borrowing Base Certificate" shall have the meaning assigned to such term in Section 7.1(e).

"UK Subsidiary" means any Subsidiary which is incorporated or organized under the laws of the United Kingdom or its member states.

"Unreimbursed Amount" has the meaning specified in Section 2.7(d)(i).

"U.S. Eligible Inventory" means, as of any date of determination, the aggregate book value based on an average cost valuation as shown on the books and records of the Borrower and its Domestic Subsidiaries of all inventory owned by the Borrower and its Domestic Subsidiaries on a consolidated basis after deducting allowances or reserves relating thereto, but excluding in any event (without duplication) (a) inventory which is (i) not subject to a perfected, first priority Lien in favor of the Collateral Agent to secure the obligations under the Security Agreement (including, without limitation, inventory which constitutes Excluded Property), or (ii) subject to any other Lien that is not a Permitted Lien, (b) inventory which is not in good condition or fails to meet standards for sale or use imposed by governmental agencies, departments or divisions having regulatory authority over such goods, (c) inventory which is leased or on consignment, (d) displays and packaging supplies, (e) inventory located outside of the United States, (f) inventory in possession of a Person other than the Borrower or any of its Domestic Subsidiaries, (g) inventory located at a location not owned by the Borrower or any other Credit Party with respect to which the Administrative Agent shall not have received a landlord's, warehousemen's, bailee's or appropriate waiver satisfactory to the Administrative Agent, and (h) inventory which fails to meet such other specifications and requirements as may from time to time be established by the Administrative Agent in its reasonable discretion.

"U.S. Eligible Receivables" means, as of any date of determination, the aggregate book value as shown on the books and records of the Borrower and its Domestic Subsidiaries of all Receivables owned by or owing to the Borrower and its Domestic Subsidiaries on a consolidated basis after deducting retainage and allowances or reserves relating thereto, but excluding in any event (without duplication) (a) Receivables owing by an account debtor which is not solvent or is subject to any bankruptcy or insolvency proceeding of any kind, (b) any Receivable which is (i) not subject to a perfected, first priority Lien in favor of the Collateral Agent to secure the obligations under the Security Agreement, or (ii) subject to any other Lien that is not a Permitted Lien, (c) any insured Receivable which is more than 60 days past due or any uninsured Receivable which is more than 90 days past invoice date (in each case net of reserves for bad debts in connection with any such Receivables), (d) any Receivable not otherwise excluded by clause (c) above if more than 50% of the other Receivables owing from the applicable account debtor are excluded by clause (c) above, (e) the sum of all credit balances carried on Receivables that are more than 90 days past due, (f) Receivables that are more than 90 days past the original invoice date but that have been re-aged as a result of a dispute by the account debtor, (g) Receivables for which any Subsidiary or any Affiliate is the account debtor, (h) any Receivable if and to the extent the amount of such Receivable, together with all other Receivables of the applicable account debtor, exceeds an amount equal to 25% of all Receivables owned by or owing to the members of the North American Group, (i) Receivables owing by an account debtor located outside of the United States or Canada (unless payment for the goods shipped is secured by an irrevocable letter of credit in a form and from an institution acceptable to the Administrative Agent), and (j) Receivables which fail to meet such other specifications and requirements as may from time to time be established by the Administrative Agent in its reasonable discretion.

"Voting Stock" means, with respect to any Person, Capital Stock issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

"Wholly Owned Subsidiary" of any Person means any Subsidiary 100% of whose Voting Stock is at the time owned by such Person directly or indirectly through other Wholly Owned Subsidiaries.

1.2 Computation of Time Periods.

For purposes of computation of periods of time hereunder, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding."

1.3 Accounting Terms.

Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Lenders hereunder shall be prepared, in accordance with GAAP applied on a consistent basis. All calculations made for the purposes of determining compliance with this Credit Agreement shall (except as otherwise expressly provided herein) be made by application of GAAP applied on a basis consistent with the most recent annual or quarterly financial statements delivered pursuant to Section 7.1 (or, prior to the delivery of the first financial statements pursuant to Section 7.1, consistent with the annual audited financial statements referenced in Section 6.1(i)); provided, however, if (a) the Borrower shall object to determining such compliance on such basis at the time of delivery of such financial statements due to any change in GAAP or the rules promulgated with respect thereto or (b) the Administrative Agent or the Required Lenders shall so object in writing within 60 days after delivery of such financial statements, then such calculations shall be made on a basis consistent with the most recent financial statements delivered by the Borrower to the Lenders as to which no such objection shall have been made.

Notwithstanding the above, the parties hereto acknowledge and agree that all calculations of the financial covenants set forth in Section 7.11 (including, without limitation, for purposes of determining compliance with such financial covenants and determining the Applicable Percentage) shall be made on a Pro Forma Basis.

1.4 Rounding.

Any financial ratios required to be maintained by the Borrower pursuant to this Credit Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.5 Letter of Credit Amounts.

Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all increases and reductions thereof contemplated by such Letter of Credit or the Letter of Credit Application therefor, whether or not such maximum face amount is in effect at such time.

SECTION 2

CREDIT FACILITIES

2.1 Commitments.

(a) Revolving Commitment. During the Commitment Period, subject to the terms and conditions hereof, each Lender severally agrees to make revolving credit loans (the "Revolving Loans") to the Borrower in Dollars from time to time in the amount of such Lender's Revolving Commitment Percentage of such Revolving Loans for the purposes hereinafter set forth; provided that no Lender shall be obligated to make any Revolving Loan if after giving effect to thereto (i) with regard to the Lenders collectively, the aggregate principal amount of Obligations outstanding would exceed the lesser of (A) the Aggregate Revolving Committed Amount or (B) the North American Borrowing Base, and (ii) with regard to each Lender individually, such Lender's Revolving Commitment Percentage of Obligations outstanding would exceed the lesser of (A) such Lender's Revolving Committed Amount or (B) an amount equal to such Lender's Revolving Commitment Percentage of the North American Borrowing Base. Revolving Loans may consist of Base Rate Loans or Eurodollar Loans, or a combination thereof, as the Borrower may request, and may be repaid and reborrowed in accordance with the provisions hereof.

(b) Letter of Credit Commitment. Subject to the terms and conditions set forth herein (i) the Issuing Lender agrees, in reliance upon the agreements of the Lenders set forth in Section 2.7, (A) from time to time on any Business Day during the period from the Closing Date to the Letter of Credit Expiration Date to issue Letters of Credit for the account of the Borrower or its Subsidiaries and to amend or renew Letters of Credit previously issued by it in accordance with Section 2.7 and (B) to honor drafts under the Letters of Credit; and (ii) the Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower or its Subsidiaries; provided that the Issuing Lender shall not be obligated to issue or renew any Letter of Credit and no Lender shall be obligated to participate in any Letter of Credit if after giving effect thereto, (A) the aggregate amount of LOC Obligations would exceed TWENTY MILLION DOLLARS ($20,000,000) (as such amount may be reduced from time to time in accordance with the provisions hereof, the "LOC Committed Amount"), (B) with regard to the Lenders collectively, the aggregate principal amount of Obligations outstanding would exceed the lesser of (x) the Aggregate Revolving Committed Amount or (y) the North American Borrowing Base, and (C) with regard to each Lender individually, such Lender's Revolving Commitment Percentage of Obligations outstanding would exceed the lesser of (x) such Lender's Revolving Committed Amount or (y) an amount equal to such Lender's Revolving Commitment Percentage of the North American Borrowing Base. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(c) Swingline Commitment. During the Commitment Period, subject to the terms and conditions hereof, the Swingline Lender agrees to make certain revolving credit loans (the "Swingline Loans") to the Borrower in Dollars from time to time for the purposes hereinafter set forth; provided that the Swingline Lender shall not be obligated to make any Swingline Loan if after giving effect thereto (i) the aggregate principal amount of Swingline Loans would exceed FIVE MILLION DOLLARS ($5,000,000) (as such amount may be reduced from time to time in accordance with the provisions hereof, the "Swingline Committed Amount"), and (ii) with regard to the Lenders collectively, the aggregate principal amount of Obligations outstanding would exceed the lesser of (A) the Aggregate Revolving Committed Amount or (B) the North American Borrowing Base. Swingline Loans may consist of Base Rate Loans or Quoted Rate Swingline Loans, or a combination thereof, as the Borrower may request, and may be repaid and reborrowed in accordance with the provisions hereof.

2.2 Borrowing Procedures for Loans.

(a) Notice of Borrowing. The Borrower shall request a Revolving Loan or Swingline Loan by written notice (or telephonic notice promptly confirmed in writing) as follows:

(i) Revolving Loans. In the case of Revolving Loans, by the Borrower to the Administrative Agent not later than 11:00 A.M. (Charlotte, North Carolina time) on the Business Day of the requested borrowing in the case of Base Rate Loans, and on the third Business Day prior to the date of the requested borrowing in the case of Eurodollar Loans. Each such request for borrowing shall be irrevocable, shall be in substantially the form of Schedule 2.2(a)(i) and shall specify (A) that a Revolving Loan is requested, (B) the date of the requested borrowing (which shall be a Business Day), (C) the aggregate principal amount to be borrowed, and (D) whether the borrowing shall be comprised of Base Rate Loans, Eurodollar Loans or a combination thereof, and if Eurodollar Loans are requested, the Interest Period(s) therefor. The Administrative Agent shall give notice to each Lender promptly upon receipt of each Notice of Borrowing pursuant to this Section 2.2(a)(i), the contents thereof and each Lender's share of any borrowing to be made pursuant thereto.

(ii) Swingline Loans. In the case of Swingline Loans, by the Borrower to the Swingline Lender with a copy to the Administrative Agent not later than 11:00 A.M. (Charlotte, North Carolina time) on the Business Day of the requested borrowing. Each such request for borrowing shall be irrevocable, shall be in substantially the form of Schedule 2.2(a)(ii) and shall specify (A) that a Swingline Loan is requested, (B) the date of the requested borrowing (which shall be a Business Day), (C) the aggregate principal amount to be borrowed, and (D) the interest rate option and maturity requested therefor. Notwithstanding the foregoing, however, in the event that an "auto borrow" or "zero balance" or similar arrangement shall then be in place with the Swingline Lender, the Borrower shall request Swingline Loans pursuant to such alternative notice arrangements, if any, provided thereunder or in connection therewith. Each Swingline Loan shall have a maturity date as the Borrower may request and the Swingline Lender may agree.

(b) Minimum Amounts. Each Revolving Loan advance shall be in a minimum principal amount of $5,000,000, in the case of Eurodollar Loans, or $1,000,000 (or, if less, the unused amount of the Aggregate Revolving Committed Amount), in the case of Base Rate Loans, and integral multiples of $250,000 in excess thereof. Each Swingline Loan advance shall be in a minimum principal amount of $500,000 and integral multiples of $100,000 in excess thereof (or, if less, the unused amount of the Swingline Committed Amount) provided that in the event that an "auto borrow" or "zero balance" or similar arrangement shall then be in place with the Swingline Lender, each Swingline Loans advance shall be in such minimum amounts, if any, provided by such agreement.

(c) Information Not Provided. If in connection with any request for a Revolving Loan, the Borrower shall fail to specify (x) an applicable Interest Period in the case of a Eurodollar Loan, the Borrower shall be deemed to have requested an Interest Period of one month, or (y) the type of Loan requested in the case of a Revolving Loan or a Swingline Loan, the Borrower shall be deemed to have requested a Base Rate Loan.

(d) Maximum Number of Eurodollar Loans. In connection with any request for a Revolving Loan, Revolving Loans may be comprised of no more than five (5) Eurodollar Loans outstanding at any time. For purposes hereof, Eurodollar Loans with separate or different Interest Periods will be considered as separate Eurodollar Loans even if their Interest Periods expire on the same date.

2.3 Interest.

Subject to Section 3.1, the Loans hereunder shall bear interest at a per annum rate, payable in arrears on each applicable Interest Payment Date (or at such other times as may be specified herein), as follows:

(a) Base Rate Loans. During such periods as the Loans shall be comprised of Base Rate Loans, the Adjusted Base Rate;

(b) Eurodollar Loans. During such periods as the Loans shall be comprised of Eurodollar Loans, the Adjusted Eurodollar Rate; and

(c) Quoted Rate Swingline Loans. During such periods as the Swingline Loans shall be comprised of Quoted Rate Swingline Loans, the Quoted Rate.

2.4 Repayment.

(a) Revolving Loans. The principal amount of all Revolving Loans shall be due and payable in full on the Termination Date.

(b) Swingline Loans. The principal amount of all Swingline Loans shall be due and payable on the earlier of (A) the maturity date agreed to by the Swingline Lender and the Borrower with respect to such Loan, or (B) the Termination Date.

2.5 Notes.

The Revolving Loans and the Swingline Loans shall be evidenced by the Revolving Notes.

2.6 Increase in Revolving Commitments.

The Borrower may at any time upon prior written notice to the Administrative Agent increase the Aggregate Revolving Committed Amount by up to TEN MILLION DOLLARS ($10,000,000) with additional Revolving Commitments from any existing Lender or new Revolving Commitments from any other Person reasonably acceptable to the Administrative Agent; provided that:

(a) any such increase shall be in a minimum principal amount of $5 million and integral multiples of $1 million in excess thereof;

(b) if any Eurodollar Loans are outstanding on the date of any such increase, the Borrower shall prepay the Eurodollar Loans (together with any amounts owing under Section 3.12 in connection therewith) on such date in such amounts as are necessary to cause each Lender to hold its Revolving Commitment Percentage of each Eurodollar Loan;

(c) the conditions precedent set forth in Sections 5.2(a) and (b) shall be satisfied on the date of any such increase;

(d) no existing Lender shall be under any obligation to increase its Revolving Commitment and any such increase shall be in such Lender's sole and absolute discretion;

(e) any new Lender shall join this Credit Agreement by executing such joinder agreements and/or other agreements reasonably acceptable to the Administrative Agent; and

(f) the Borrower shall deliver to the Administrative Agent such supporting resolutions, legal opinions, promissory notes and other items as may be reasonably requested by the Administrative Agent and the Lenders in connection therewith.

In connection with any such increase in the Revolving Commitments, Schedule 2.1 shall be revised to reflect the Revolving Committed Amount and Revolving Commitment Percentage of each Lender.

2.7 Additional Provisions relating to Letters of Credit.

(a) The Issuing Lender shall be under no obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender from issuing such Letter of Credit, or any Law applicable to the Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Lender in good faith deems material to it;

(ii) subject to Section 2.06(c)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal, unless the Required Lenders have approved such expiry date;

(iii) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date;

(iv) the issuance of such Letter of Credit would violate one or more policies of the Issuing Lender that are applicable to borrowers generally; or

(v) such Letter of Credit is in an initial amount less than $500,000 or is to be denominated in a currency other than Dollars.

(b) The Issuing Lender shall be under no obligation to amend any Letter of Credit if (i) the Issuing Lender would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (ii) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(c) Procedures for Issuance and Amendment of Letters of Credit; Auto-Renewal Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the Issuing Lender (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by an Executive Officer of the Borrower. Such Letter of Credit Application must be received by the Issuing Lender and the Administrative Agent not later than 11:00 a.m. (Charlotte, North Carolina) at least two Business Days (or such later date and time as the Issuing Lender may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Issuing Lender: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the Issuing Lender may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Issuing Lender (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the Issuing Lender may require.

(ii) Promptly after receipt of any Letter of Credit Application, the Issuing Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the Issuing Lender will provide the Administrative Agent with a copy thereof. Upon receipt by the Issuing Lender of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, the Issuing Lender shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the Issuing Lender's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Issuing Lender a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Pro Rata Share times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the Issuing Lender may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic renewal provisions (each, an "Auto-Renewal Letter of Credit"); provided that any such Auto-Renewal Letter of Credit must permit the Issuing Lender to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Nonrenewal Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Issuing Lender, the Borrower shall not be required to make a specific request to the Issuing Lender for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the Issuing Lender to permit the renewal of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the Issuing Lender shall not permit any such renewal if (A) the Issuing Lender has determined that it would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof (by reason of the provisions of Section 2.7(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is two Business Days before the Nonrenewal Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such renewal or (2) from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 5.2 is not then satisfied.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Issuing Lender will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(d) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the Issuing Lender shall notify the Borrower and the Administrative Agent thereof. Not later than 11:00 a.m. (Charlotte, North Carolina time) on the date of any payment by the Issuing Lender under a Letter of Credit (each such date, an "Honor Date"), the Borrower shall reimburse the Issuing Lender through the Administrative Agent in an amount equal to the amount of such drawing. If the Borrower fails to so reimburse the Issuing Lender by such time, the Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Lender's Revolving Commitment Percentage thereof. In such event, the Borrower shall be deemed to have requested a Revolving Loan bearing interest at the Base Rate to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.2 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Revolving Committed Amount and the conditions set forth in Section 5.2 (other than the delivery of a Notice of Borrowing). Any notice given by the Issuing Lender or the Administrative Agent pursuant to this Section 2.7(d)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender (including the Lender acting as Issuing Lender) shall upon any notice pursuant to Section 2.7(d)(i) make funds available to the Administrative Agent for the account of the Issuing Lender at the Administrative Agent's Office in an amount equal to its Revolving Commitment Percentage of the Unreimbursed Amount not later than 1:00 p.m. (Charlotte, North Carolina time) on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.7(d)(iii), each Lender that so makes funds available shall be deemed to have made a Revolving Loan bearing interest at the Base Rate to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Issuing Lender.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Loan because the conditions set forth in Section 5.2 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the Issuing Lender an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender's payment to the Administrative Agent for the account of the Issuing Lender pursuant to Section 2.7(d)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.7.

(iv) Until each Lender funds its Committed Loan or L/C Advance pursuant to this Section 2.7(d) to reimburse the Issuing Lender for any amount drawn under any Letter of Credit, interest in respect of such Lender's Revolving Commitment Percentage of such amount shall be solely for the account of the Issuing Lender.

(v) Each Lender's obligation to make Revolving Loans or L/C Advances to reimburse the Issuing Lender for amounts drawn under Letters of Credit, as contemplated by this Section 2.7(d), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Revolving Loans pursuant to this Section 2.7(d) is subject to the conditions set forth in Section 5.2 (other than delivery by the Borrower of a Notice of Borrowing). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the Issuing Lender for the amount of any payment made by the Issuing Lender under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of the Issuing Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.7(d) by the time specified in Section 2.7(d)(ii), the Issuing Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Issuing Lender at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the Issuing Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(e) Repayment of Participations.

(i) At any time after the Issuing Lender has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.7(c), if the Administrative Agent receives for the account of the Issuing Lender any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Revolving Commitment Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the Issuing Lender pursuant to Section 2.7(d)(i) is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under the Bankruptcy Code or otherwise, each Lender shall pay to the Administrative Agent for the account of the Issuing Lender its Revolving Commitment Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect.

(f) Obligations Absolute. The obligation of the Borrower to reimburse the Issuing Lender for each drawing under each Letter of Credit and to repay each L/C Borrowing shall, notwithstanding the following, be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, set-off, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Issuing Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the Issuing Lender under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the Issuing Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under the Bankruptcy Code; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

The Borrower shall promptly examine a copy of each Letter of Credit, each amendment thereto and the accompanying documents that are delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will promptly notify the Issuing Lender. The Borrower shall be conclusively deemed to have waived any such claim against the Issuing Lender and its correspondents unless such notice is given as aforesaid.

(g) Role of Issuing Lender. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the Issuing Lender shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Issuing Lender, any Agent-Related Person nor any of the respective correspondents, participants or assignees of the Issuing Lender shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Issuing Lender, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of the Issuing Lender, shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.7(f); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the Issuing Lender, and the Issuing Lender may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the Issuing Lender's willful misconduct or gross negligence or the Issuing Lender's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the Issuing Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Issuing Lender shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(h) Cash Collateral. Upon the request of the Administrative Agent, (i) if the Issuing Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) if, as of the Letter of Credit Expiration Date, any Letter of Credit may for any reason remain outstanding and partially or wholly undrawn, the Borrower shall immediately Cash Collateralize the then outstanding amount of all LOC Obligations (in an amount equal to such outstanding amount determined as of the date of such L/C Borrowing or the Letter of Credit Expiration Date, as the case may be). For purposes hereof, "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Issuing Lender and the Lenders, as collateral for the LOC Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Administrative Agent and the Issuing Lender (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the Issuing Lender and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America.

(i) Applicability of ISP98 and UCP. Unless otherwise expressly agreed by the Issuing Lender and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce (the "ICC") at the time of issuance (including the ICC decision published by the Commission on Banking Technique and Practice on April 6, 1998 regarding the European single currency (euro)) shall apply to each commercial Letter of Credit.

(j) Conflict with Letter of Credit Application. In the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

2.8 Additional Provisions relating to Swingline Loans.

The Swingline Lender may, at any time, in its sole discretion, by written notice to the Borrower and the Lenders, demand repayment of its Swingline Loans by way of a Revolving Loan advance, in which case the Borrower shall be deemed to have requested a Revolving Loan advance comprised solely of Base Rate Loans in the amount of such Swingline Loans; provided, however, that any such demand shall be deemed to have been given one Business Day prior to the Termination Date and on the date of the occurrence of any Event of Default described in Section 9.1 and upon acceleration of the indebtedness hereunder and the exercise of remedies in accordance with the provisions of Section 9.2. Each Lender hereby irrevocably agrees to make its Revolving Commitment Percentage of each such Revolving Loan in the amount, in the manner and on the date specified in the preceding sentence notwithstanding (I) the amount of such borrowing may not comply with the minimum amount for advances of Revolving Loans otherwise required hereunder, (II) whether any conditions specified in Section 5.2 are then satisfied, (III) whether a Default or an Event of Default then exists, (IV) failure of any such request or deemed request for Revolving Loan to be made by the time otherwise required hereunder, (V) whether the date of such borrowing is a date on which Revolving Loans are otherwise permitted to be made hereunder or (VI) any termination of the Commitments relating thereto immediately prior to or contemporaneously with such borrowing. In the event that any Revolving Loan cannot for any reason be made on the date otherwise required above (including, without limitation, as a result of the commencement of a proceeding under the Bankruptcy Code with respect to the Borrower or any other Credit Party), then each Lender hereby agrees that it shall forthwith purchase (as of the date such borrowing would otherwise have occurred, but adjusted for any payments received from the Borrower on or after such date and prior to such purchase) from the Swingline Lender such Participation Interests in the outstanding Swingline Loans as shall be necessary to cause each such Lender to share in such Swingline Loans ratably based upon its Revolving Commitment Percentage, provided that (A) all interest payable on the Swingline Loans shall be for the account of the Swingline Lender until the date as of which the respective Participation Interest is funded and (B) at the time any purchase of Participation Interests pursuant to this sentence is actually made, the purchasing Lender shall be required to pay to the Swingline Lender, to the extent not paid to the Swingline Lender by the Borrower in accordance with the terms of Section 2.4(b), interest on the principal amount of Participation Interests purchased for each day from and including the day upon which such borrowing would otherwise have occurred to but excluding the date of payment by such lender for such Participation Interests, at the rate equal to the Federal Funds Rate.

SECTION 3

OTHER PROVISIONS RELATING TO CREDIT FACILITIES

3.1 Default Rate.

Upon the occurrence, and during the continuance, of an Event of Default, (i) the principal of and, to the extent permitted by law, interest on the Loans and any other amounts owing hereunder or under the other Credit Documents shall bear interest, payable on demand, at a per annum rate 2% greater than the rate which would otherwise be applicable (or if no rate is applicable, whether in respect of interest, fees or other amounts, then the Adjusted Base Rate plus 2%) and (ii) the Letter of Credit Fee shall accrue at a per annum rate 2% greater than the rate which would otherwise be applicable.

3.2 Extension and Conversion.

The Borrower shall have the option, on any Business Day, to extend existing Loans into a subsequent permissible Interest Period or to convert Loans into Loans of another interest rate type; provided, however, that (i) except as provided in Section 3.8, Eurodollar Loans may be converted into Base Rate Loans or extended as Eurodollar Loans for new Interest Periods only on the last day of the Interest Period applicable thereto, (ii) Eurodollar Loans may be extended, and Base Rate Loans may be converted into Eurodollar Loans, only if the conditions precedent set forth in Section 5.2 are satisfied on the date of continuation or conversion, (iii) Loans extended as, or converted into, Eurodollar Loans shall be subject to the terms of the definition of "Interest Period" and shall be in such minimum amounts as provided in Section 2.2(b) and (iv) any request for continuation or conversion of a Eurodollar Loan which shall fail to specify an Interest Period shall be deemed to be a request for an Interest Period of one month. Each such continuation or conversion shall be effected by the applicable Borrower by giving a Notice of Extension/Conversion (or telephonic notice promptly confirmed in writing) to the office of the Administrative Agent specified in Section 11.1, or at such other office as the Administrative Agent may designate in writing, prior to 11:00 A.M. (Charlotte, North Carolina time), on the Business Day of, in the case of the conversion of a Eurodollar Loan into a Base Rate Loan, and on the third Business Day prior to, in the case of the continuation of a Eurodollar Loan as, or conversion of a Base Rate Loan into, a Eurodollar Loan, the date of the proposed continuation or conversion, the Loans to be so extended or converted, the types of Loans into which such Loans are to be converted and, if appropriate, the applicable Interest Periods with respect thereto. Each request for continuation or conversion shall be irrevocable and shall constitute a representation and warranty by the applicable Borrower of the matters specified in Section 5.2. In the event the applicable Borrower fails to request continuation or conversion of any Eurodollar Loan in accordance with this Section, or any such conversion or continuation is not permitted or required by this Section, then such Eurodollar Loan shall be automatically converted into a Base Rate Loan at the end of the Interest Period applicable thereto. The Administrative Agent shall give each Lender notice as promptly as practicable of any such proposed continuation or conversion affecting any Revolving Loan.

3.3 Prepayments.

(a) Voluntary Prepayments. The Loans may be repaid in whole or in part without premium or penalty; provided that (i) Eurodollar Loans may be prepaid only upon three (3) Business Days' prior written notice to the Administrative Agent and must be accompanied by payment of any amounts owing under Section 3.12, and (ii) partial prepayments shall be minimum principal amounts of (A) in the case of Revolving Loans which are Eurodollar Loans, a minimum aggregate principal amount of $1,000,000 and integral multiples of $250,000 in excess thereof, (B) in the case of Revolving Loans which are Base Rate Loans, a minimum aggregate principal amount of $1,000,000 and integral multiples of $250,000 in excess thereof, and (C) in the case of Swingline Loans, a minimum aggregate principal amount of $1,000,000 and integral multiples of $100,000 in excess thereof, provided that in the event that an "auto borrow" or "zero balance" or other similar arrangement shall then be in place with the Swingline Lender, Swingline Loans may be prepaid in such other minimum amounts, if any, provided under such arrangement.

(b) Mandatory Prepayments. If at any time, (i) the aggregate principal amount of Obligations shall exceed the lesser of (A) the Aggregate Revolving Committed Amount or (B) the North American Borrowing Base, (ii) the aggregate principal amount of LOC Obligations shall exceed the LOC Committed Amount, or (iii) the aggregate principal amount of Swingline Loans shall exceed the Swingline Committed Amount, the Borrower shall immediately make payment on the Revolving Loans, the Swingline Loans and/or to a cash collateral account in respect of the LOC Obligations, in the amount of the difference.

(c) Application. Unless otherwise specified by the applicable Borrower, prepayments on the Obligations shall be applied first to Swingline Loans, then to Revolving Loans which are Base Rate Loans, then to Revolving Loans which are Eurodollar Loans in direct order of Interest Period maturities, and then to a cash collateral account to secure LOC Obligations.

3.4 Reduction and Termination of Commitments.

(a) Voluntary Reduction of Commitments. The Commitments may be terminated or permanently reduced in whole or in part by the Borrower upon three (3) Business Days' prior written notice by the Borrower to the Administrative Agent (and the Administrative Agent shall promptly notify the Lenders), provided that after giving effect to any voluntary reduction in the Revolving Commitments, the aggregate principal amount of Obligations shall not exceed the Aggregate Revolving Committed Amount, as reduced, and (ii) partial reductions shall be in a minimum aggregate principal amount of in the case of Aggregate Revolving Committed Amount, $5,000,000 and integral multiples of $1,000,000 in excess thereof.

(b) Termination of Commitments. The Commitments shall terminate on the Termination Date.

3.5 Fees.

(a) Commitment Fee. In consideration of the Revolving Commitments, the Borrower agrees to pay to the Administrative Agent for the ratable benefit of the Lenders a commitment fee (the "Commitment Fee") equal to the Applicable Percentage per annum on the average daily unused amount of the Aggregate Revolving Committed Amount for the applicable period. The Commitment Fee shall be payable quarterly in arrears on the last Business Day of each March, June, September and December for the immediately preceding quarter (or a portion thereof) (and on the Termination Date). For purposes of computation of the Commitment Fee, (A) Swingline Loans shall not be counted toward or considered usage of the Aggregate Revolving Committed Amount and (B) LOC Obligations shall be counted toward and considered usage of the Aggregate Revolving Committed Amount.

(b) Letter of Credit Fees.

(i) Letter of Credit Issuance Fee. In consideration of the issuance of Letters of Credit, the Borrower promises to pay to the Administrative Agent for the account of each Lender a fee (the "Letter of Credit Fee") on such Lender's Revolving Commitment Percentage of the average daily maximum amount available to be drawn under each such Letter of Credit computed at a per annum rate for each day from the date of issuance to the date of expiration equal to the Applicable Percentage. The Letter of Credit Fee shall be payable quarterly in arrears on the last Business Day of each March, June, September and December for the immediately preceding quarter (or a portion thereof) (and on the Termination Date).

(ii) Issuing Lender Fees. In addition to the Letter of Credit Fee, the Borrower promises to pay to the Administrative Agent for the account of the Issuing Lender without sharing by the other Lenders (i) a letter of credit fronting fee of one-eighth of one percent (0.125%) on the average daily maximum amount available to be drawn under each Letter of Credit computed at a per annum rate for each day from the date of issuance to the date of expiration and (ii) the customary charges from time to time of the Issuing Lender with respect to the issuance, amendment, transfer, administration, cancellation and conversion of, and drawings under, such Letters of Credit. The fronting fee shall be payable quarterly in arrears on the last Business Day of each March, June, September and December for the immediately preceding quarter (or a portion thereof) (and on the Termination Date) and the customary charges shall be payable on demand.

(c) Administrative Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, the fees referred to in the Administrative Agent's Fee Letter (the "Administrative Agent's Fees").

3.6 Capital Adequacy.

If any Lender has reasonably determined, after the date hereof, that the adoption or the becoming effective of, or any change in, or any change by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof in the interpretation or administration of, any applicable law, rule or regulation regarding capital adequacy, or compliance by such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Lender's (including, for purposes hereof, the parent company of such Lender) capital or assets as a consequence of its commitments or obligations hereunder to a level below that which such Lender would have achieved but for such adoption, effectiveness, change or compliance (taking into consideration such Lender's policies with respect to capital adequacy), then, upon notice from such Lender to the Borrower, the Borrower shall be obligated to pay to such Lender such additional amount or amounts as will compensate such Lender for such reduction. Each determination by any such Lender of amounts owing under this Section shall, absent manifest error, be conclusive and binding on the parties hereto. If any Lender requests compensation by the Borrower under this Section 3.6, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Eurodollar Loans, or to convert Base Rate Loans into Eurodollar Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.10 shall be applicable); provided that such suspension shall not affect the right of such Lender to receive the compensation so requested.

3.7 Limitation on Eurodollar Loans.

If on or prior to the first day of any Interest Period for any Eurodollar Loan:

(a) the Administrative Agent reasonably determines (which determination shall be conclusive absent manifest error) that by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period; or

(b) the Required Lenders reasonably determine (which determination shall be conclusive absent manifest error) and notify the Administrative Agent that the Eurodollar Rate will not adequately and fairly reflect the cost to the Lenders of funding Eurodollar Loans for such Interest Period;

then the Administrative Agent shall give the Borrower prompt notice thereof, and so long as such condition remains in effect, the Lenders shall be under no obligation to make additional Eurodollar Loans, continue Eurodollar Loans, or to convert Base Rate Loans into Eurodollar Loans with respect to the affected currency.

3.8 Illegality.

Notwithstanding any other provision of this Credit Agreement, in the event that it becomes unlawful for any Lender (or its Applicable Lending Office) to make, maintain, or fund Eurodollar Loans hereunder, then such Lender shall promptly notify the Borrower thereof and such Lender's obligation to make or continue Eurodollar Loans and to convert Base Rate Loans into Eurodollar Loans shall be suspended until such time as such Lender may again make, maintain, and fund Eurodollar Loans (in which case the provisions of Section 3.10 shall be applicable).

3.9 Requirements of Law.

If, after the date hereof, the adoption of any applicable law, rule, or regulation, or any change in any applicable law, rule, or regulation, or any change in the interpretation or administration thereof by any Governmental Authority, central bank, or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its Applicable Lending Office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank, or comparable agency:

(i) shall subject such Lender (or its Applicable Lending Office) to any additional tax, duty, or other charge with respect to any Eurodollar Loans, its Notes, or its obligation to make Eurodollar Loans, or change the basis of taxation of any amounts payable to such Lender (or its Applicable Lending Office) under this Credit Agreement or its Notes in respect of any Eurodollar Loans (other than taxes imposed on the overall net income of such Lender by the jurisdiction in which such Lender has its principal office or such Applicable Lending Office);

(ii) shall impose, modify, or deem applicable any reserve, special deposit, assessment, or similar requirement (other than the Eurodollar Reserve Requirement utilized in the determination of the Adjusted Eurodollar Rate) relating to any extensions of credit or other assets of, or any deposits with or other liabilities or commitments of, such Lender (or its Applicable Lending Office), including the Commitment of such Lender hereunder; or

(iii) shall impose on such Lender (or its Applicable Lending Office) or the London interbank market any other condition affecting this Credit Agreement or its Notes or any of such extensions of credit or liabilities or commitments;

and the result of any of the foregoing is to increase the cost to such Lender (or its Applicable Lending Office) of making, converting into, continuing, or maintaining any Eurodollar Loans or to reduce any sum received or receivable by such Lender (or its Applicable Lending Office) under this Credit Agreement or its Notes with respect to any Eurodollar Loans, then the Borrower shall pay to such Lender on demand such amount or amounts as will compensate such Lender for such increased cost or reduction. If any Lender requests compensation by the Borrower under this Section 3.9, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Eurodollar Loans, or to convert Base Rate Loans into Eurodollar Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.10 shall be applicable); provided that such suspension shall not affect the right of such Lender to receive the compensation so requested. Each Lender shall promptly notify the Borrower and the Administrative Agent of any event of which it has knowledge, occurring after the date hereof, which will entitle such Lender to compensation pursuant to this Section 3.9 and will designate a different Applicable Lending Office if such designation will avoid the need for, or reduce the amount of, such compensation and will not, in the judgment of such Lender, be otherwise disadvantageous to it. Any Lender claiming compensation under this Section 3.9 shall furnish to the Borrower and the Administrative Agent a statement setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Lender may use any reasonable averaging and attribution methods.

3.10 Treatment of Affected Loans.

If the obligation of any Lender to make any Eurodollar Loan or to continue, or to convert Base Rate Loans into, Eurodollar Loans shall be suspended pursuant to Section 3.6, 3.8 or 3.9 hereof, such Lender's Eurodollar Loans shall be automatically converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for such Eurodollar Loans (or, in the case of a conversion required by Section 3.8 hereof, on such earlier date as such Lender may specify to the Borrower with a copy to the Administrative Agent) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.6, 3.8 or 3.9 hereof that gave rise to such conversion no longer exist:

(a) to the extent that such Lender's Eurodollar Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's Eurodollar Loans shall be applied instead to its Base Rate Loans; and

(b) all Loans that would otherwise be made or continued by such Lender as Eurodollar Loans shall be made or continued instead as Base Rate Loans, and all Base Rate Loans of such Lender that would otherwise be converted into Eurodollar Loans shall remain as Base Rate Loans.

If such Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.6, 3.8 or 3.9 hereof that gave rise to the conversion of such Lender's Eurodollar Loans pursuant to this Section 3.10 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurodollar Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurodollar Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments.

3.11 Taxes.

(a) Any and all payments by any Credit Party to or for the account of any Lender or the Administrative Agent hereunder or under any other Credit Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Lender and the Administrative Agent, taxes imposed on its income, and franchise taxes imposed on it, by the jurisdiction under the laws of which such Lender (or its Applicable Lending Office) or the Administrative Agent (as the case may be) is organized or does business or any political subdivision thereof (all such non-excluded taxes, duties, levies, imposts, deductions, charges, withholdings, and liabilities being hereinafter referred to as "Taxes"). If any Credit Party shall be required by law to deduct or withhold any Taxes from or in respect of any sum payable under this Credit Agreement or any other Credit Document to any Lender or the Administrative Agent, (i) the sum payable shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 3.11) such Lender or the Administrative Agent receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Credit Party shall make such deductions and withholdings, (iii) such Credit Party shall pay the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with applicable law, and (iv) such Credit Party shall furnish to the Administrative Agent, at its address referred to in Section 11.1, the original or a certified copy of a receipt evidencing payment thereof.

(b) In addition, the Borrower agrees to pay any and all present or future stamp or documentary taxes and any other excise or property taxes or charges or similar levies which arise from any payment made under this Credit Agreement or any other Credit Document or from the execution or delivery of, or otherwise with respect to, this Credit Agreement or any other Credit Document (hereinafter referred to as "Other Taxes").

(c) The Borrower agrees to indemnify each Lender and the Administrative Agent for the full amount of Taxes and Other Taxes (including, without limitation, any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 3.11) paid by such Lender or the Administrative Agent (as the case may be) and any liability (including penalties, interest, and expenses) arising therefrom or with respect thereto.

(d) Each Lender that is not a United States person under Section 7701(a)(30) of the Internal Revenue Code (each a "Foreign Lender"), on or prior to the date of its execution and delivery of this Credit Agreement in the case of each Lender listed on the signature pages hereof and on or prior to the date on which it becomes a Lender in the case of each other Lender, and from time to time thereafter if requested in writing by the Borrower or the Administrative Agent (but only so long as such Lender remains lawfully able to do so), shall provide the Borrower and the Administrative Agent with (i) Internal Revenue Service Form W-8 BEN or W-8 ECI, as appropriate, or any successor form prescribed by the Internal Revenue Service, certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party which reduces to zero the rate of withholding tax on payments of interest or certifying that the income receivable pursuant to this Credit Agreement is effectively connected with the conduct of a trade or business in the United States, (ii) Internal Revenue Service Form W-8 or W-9, as appropriate, or any successor form prescribed by the Internal Revenue Service, and/or (iii) any other form or certificate required by any taxing authority (including any certificate required by Sections 871(h) and 881(c) of the Internal Revenue Code), certifying that such Lender is entitled to an exemption from tax on payments pursuant to this Credit Agreement or any of the other Credit Documents.

(e) For any period with respect to which a Lender has failed to provide the Borrower and the Administrative Agent with the appropriate form pursuant to Section 3.11(d) (unless such failure is due to a change in treaty, law, or regulation occurring subsequent to the date on which a form originally was required to be provided), such Lender shall not be entitled to indemnification under Section 3.11(a) or 3.11(b) with respect to Taxes imposed by the United States; provided, however, that should a Lender, which is otherwise exempt from or subject to a reduced rate of withholding tax, become subject to Taxes because of its failure to deliver a form required hereunder, the Borrower shall take such steps as such Lender shall reasonably request to assist such Lender to recover such Taxes.

(f) If any Credit Party is required to pay additional amounts to or for the account of any Lender pursuant to this Section 3.11, then such Lender will agree to use reasonable efforts to change the jurisdiction of its Applicable Lending Office so as to eliminate or reduce any such additional payment which may thereafter accrue if such change, in the judgment of such Lender, is not otherwise disadvantageous to such Lender.

(g) Within thirty (30) days after the date of any payment of Taxes, the applicable Credit Party shall furnish to the Administrative Agent the original or a certified copy of a receipt evidencing such payment.

(h) Without prejudice to the survival of any other agreement of the Credit Parties hereunder, the agreements and obligations of the Credit Parties contained in this Section 3.11 shall survive the repayment of the Loans, LOC Obligations and other obligations under the Credit Documents and the termination of the Commitments hereunder.

3.12 Funding Losses.

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower;

including any loss or expense (but excluding any loss of anticipated profits) arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. For purposes of calculating amounts payable by the Borrower to the Banks under this Section 3.12, each Lender shall be deemed to have funded each Eurodollar Loan made by it at the Interbank Offered Rate for such Loan by a matching deposit or other borrowing in the applicable offshore Dollar interbank market for a comparable amount and for a comparable period, whether or not such Eurodollar Loan was in fact so funded.

3.13 Pro Rata Treatment.

Except to the extent otherwise provided herein:

(a) Obligations. Each Revolving Loan advance, each payment or prepayment of principal of any Revolving Loan, each payment of interest on any Revolving Loan, each payment on or in respect of the LOC Obligations and each payment of interest thereon, each payment of the Commitment Fee, each payment of the Letter of Credit Fee, each reduction of aggregate Revolving Committed Amounts, and each conversion or extension of Revolving Loan shall be allocated pro rata among the Lenders according to the respective Revolving Commitment Percentages of the Lenders.

(b) Advances.

(i) The obligations of the Lenders hereunder to make Loans and to fund participations in Letters of Credit and Swingline Loans are several and not joint. The failure of any Lender to make any Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(ii) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in immediately available funds, then:

(A) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in immediately available funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in immediately available funds at the Federal Funds Rate from time to time in effect; and

(B) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in immediately available funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "Compensation Period") at a rate per annum equal to the Federal Funds Rate from time to time in effect. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable borrowing.

Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights that the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder. A notice of the Administrative Agent to any Lender with respect to any amount owing under this subsection (d) shall be conclusive, absent manifest error.

3.14 Sharing of Payments.

(a) Lenders. The Lenders agree that, in the event that any Lender shall obtain payment in respect of any Revolving Loan, LOC Obligation or any other obligation owing to such Lender under this Credit Agreement through the exercise of a right of setoff, banker's lien or counterclaim, or pursuant to a secured claim under Section 506 of the Bankruptcy Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, in excess of its pro rata share of such payment as provided for in this Credit Agreement, such Lender shall promptly purchase from the other Lenders a participation in such Revolving Loan, LOC Obligation and other obligations in such amounts, and make such other adjustments from time to time, as shall be equitable to the end that all such Lenders share such payment in accordance with the respective Revolving Commitment Percentages of such Lenders, as provided for in this Credit Agreement. The Lenders further agree that if payment to any such Lender obtained by such Lender through the exercise of a right of setoff, banker's lien, counterclaim or other event as aforesaid shall be rescinded or must otherwise be restored, each Lender which shall have shared the benefit of such payment shall, by repurchase of a participation theretofore sold, return its share of that benefit (together with its share of any accrued interest payable with respect thereto) to each such Lender whose payment shall have been rescinded or otherwise restored. The Borrower agrees that any Lender so purchasing such a participation may, to the fullest extent permitted by law, exercise all rights of payment, including setoff, banker's lien or counterclaim, with respect to such participation as fully as if such Lender were a holder of such Revolving Loan, LOC Obligation or other obligation in the amount of such participation. If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section 3.16 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders under this Section 3.16 to share in the benefits of any recovery on such secured claim.

(b) Lenders and Agents. Except as otherwise expressly provided in this Credit Agreement, if any Lender or the Administrative Agent shall fail to remit to the Administrative Agent or any other Lender an amount payable by such Lender or the Administrative Agent to the Administrative Agent or such other Lender pursuant to this Credit Agreement on the date when such amount is due, such payments shall be made together with interest thereon for each date from the date such amount is due until the date such amount is paid to the Administrative Agent or such other Lender at a rate per annum equal to the Federal Funds Rate.

3.15 Payments, Computations, Etc.

(a) Generally. Except as otherwise specifically provided herein, all payments of principal, interest and fees shall be made to the Administrative Agent in Dollars in immediately available funds, without condition or deduction for any counterclaim, defense, recoupment or setoff, at the Administrative Agent's office specified in Section 11.1 not later than 2:00 P.M. (Charlotte, North Carolina time) on the date when due. Payments received after such time shall be deemed to have been received on the next succeeding Business Day. The Administrative Agent may (but shall not be obligated to) debit the amount of any such payment which is not made by such time to any ordinary deposit account of the Borrower maintained with the Administrative Agent (with notice to the Borrower). The Borrower shall, at the time it makes any payment under this Credit Agreement, specify to the Administrative Agent the Loans, LOC Obligations, Fees, interest or other amounts payable by the Borrower hereunder to which such payment is to be applied (and in the event that it fails so to specify, or if such application would be inconsistent with the terms hereof, the Administrative Agent shall distribute such payment to the relevant Lenders in such manner as the Administrative Agent may determine to be appropriate in respect of obligations owing by the Borrower hereunder, subject to the terms of Section 3.15(a) and Section 3.17). The Administrative Agent will distribute such payments to the applicable Lenders if any such payment is received prior to 2:00 P.M. (Charlotte, North Carolina time or London time, as appropriate) on a Business Day in like funds as received prior to the end of such Business Day and otherwise the Administrative Agent will distribute such payment to such Lenders entitled thereto on the next succeeding Business Day. Whenever any payment hereunder shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day (subject to accrual of interest and Fees for the period of such extension). Except as expressly provided otherwise herein, all computations of interest and fees shall be made on the basis of the actual number of days elapsed over a year of 360 days, except with respect to computation of interest on Base Rate Loans determined by reference to the Prime Rate which shall be calculated based on a year of 365 or 366 days, as appropriate. Interest shall accrue from and include the date of borrowing, but exclude the date of payment.

(b) Allocation of Payments After Event of Default. Notwithstanding any other provisions of this Credit Agreement to the contrary, after the occurrence and during the continuance of an Event of Default, all amounts collected or received on or in respect of the Obligations (or other amounts owing under the Credit Documents in connection therewith) shall be paid over or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including without limitation reasonable attorneys' fees) of the Collateral Agent actually incurred in connection with the execution of its duties as Collateral Agent in exercising or attempting to exercise rights and remedies in respect of the collateral and all protective advances made with respect thereto;

SECOND, to the payment of all reasonable out-of-pocket costs and expenses (including without limitation reasonable attorneys' fees) of the Administrative Agent in connection with enforcing the rights and remedies of the Lenders under the Credit Documents and any protective advances made with respect thereto;

THIRD, to payment of any fees owed to the Administrative Agent;

FOURTH, to the payment of all reasonable out-of-pocket costs and expenses (including without limitation, reasonable attorneys' fees) of each of the Lenders hereunder in connection with enforcing its rights under the Credit Documents or otherwise with respect to the Obligations owing to such Lender;

FIFTH, to the payment of all accrued interest and fees on or in respect of the Obligations;

SIXTH, to the payment of the outstanding principal amount of the Obligations hereunder (including the payment or cash collateralization of the outstanding LOC Obligations);

SEVENTH, to all other Obligations hereunder and other obligations which shall have become due and payable under the Credit Documents otherwise and not repaid pursuant to clauses "FIRST" through "SIXTH" above; and

EIGHTH, to the payment of the surplus, if any, to the Borrower and/or whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; and (ii) except as otherwise provided, the Lenders shall receive amounts ratably in accordance with their respective pro rata share (based on the proportion that the then outstanding Obligations held by such Lenders bears to the aggregate amount of Obligations then outstanding) of amounts available to be applied pursuant to clauses "FOURTH", "FIFTH", "SIXTH" and "SEVENTH" above; and (iii) to the extent that any amounts available for distribution pursuant to clause "SIXTH" above are attributable to the issued but undrawn amount of outstanding Letters of Credit, such amounts shall be held by the Administrative Agent in a cash collateral account and applied (A) first, to reimburse the Issuing Lender for any drawings under such Letters of Credit and (B) then, following the expiration of all Letters of Credit, to all other obligations of the types described in clauses "FIFTH" and "SIXTH" above in the manner provided in this Section 3.15(b).

3.16 Certain Limitations.

The provisions of Sections 3.6, 3.8, 3.9 and 3.11 shall be subject to the following:

(a) If any Lender demands compensation or indemnification from the Borrower under Section 3.6, 3.9 or 3.11, then such Lender will agree to use reasonable efforts to change the jurisdiction of its applicable lending office so as to eliminate or reduce any such additional payment which may thereafter accrue if such change, in the judgment of such Lender, is not otherwise disadvantageous to such Lender.

(b) If any Lender determines that it has recovered or used as a credit any amount withheld on its account pursuant to Section 3.6, 3.9 or Section 3.11, it shall reimburse (without any interest) the Borrower to the extent of such amount so determined to have been recovered (to the extent of any tax benefit actually received) or used as a credit, provided that nothing in this clause (b) shall require any Lender to make available its tax returns (or any other information relating to its taxes which it deems to be confidential).

(c) If any Lender demands compensation or indemnification from the Borrower under Section 3.6, 3.9 or 3.11, such Lender shall be entitled to compensation or indemnification only for increased costs or other amounts (i) incurred during the period of ninety (90) days preceding the date of such Lender's demand therefor and (ii) which such Lender charges to similarly situated borrowers.

(d) If any Lender notifies the Borrower that it demands compensation or indemnification from the Borrower under Section 3.6, 3.9 or 3.11, or if that it has become unlawful for any Lender to make, maintain, or fund Eurodollar Loans under Section 3.8, the Borrower may, at its option, so long as no Event of Default shall have occurred and be continuing, obtain, at the Borrower's expense, a replacement Lender for the affected Lender. If the Borrower elects to obtain a replacement Lender for the affected Lender, the Borrower shall within thirty (30) after the date of such notification from such affected Lender, notify the Administrative Agent and such affected Lender of its intention to replace the affected Lender. If the Borrower obtains a replacement Lender (which replacement Lender shall be acceptable to the Administrative Agent in its reasonable discretion) within ninety (90) days following notice of its intention to do so, the affected Lender must sell and assign its Loans and Commitments to such replacement Lender pursuant to Section 11.6(b), for an amount equal to the principal balance of all Revolving Loans held by the affected Lender and all accrued interest and Fees with respect thereto through the date of such sale, provided that the Borrower shall have paid to such affected Lender the compensation or indemnification that it is entitled to receive under Section 3.6, 3.9 or 3.11 through the date of such sale and assignment. Notwithstanding the foregoing, if the Borrower shall fail to give the Administrative Agent and the affected Lender notice of its intention to replace the affected Lender or if the Borrower timely gives notice to the Administrative Agent and an affected Lender of its intention to replace such affected Lender and does not so replace such affected Lender within ninety (90) days following such notice, then, in either case, the Borrower's rights under this Section 3.16 to replace such Lender for the particular circumstances shall terminate.

3.17 Evidence of Debt.

(a) Each Lender shall maintain an account or accounts evidencing each Revolving Loan made by such Lender to the Borrower from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Credit Agreement. Each Lender will make reasonable efforts to maintain the accuracy of its account or accounts and to promptly update its account or accounts from time to time, as necessary.

(b) The Administrative Agent shall maintain the Register pursuant to Section 11.3(c)(i), and a subaccount for each Lender, in which Register and subaccounts (taken together) shall be recorded (A) the amount, type and Interest Period of each such Revolving Loan hereunder, (B) the amount of any principal or interest due and payable or to become due and payable to each Lender hereunder and (C) the amount of any sum received by the Administrative Agent hereunder from or for the account of the Borrower and each Lender's share thereof. The Administrative Agent will make reasonable efforts to maintain the accuracy of the respective subaccounts referred to in the preceding sentences and to promptly update such subaccounts from time to time, as necessary.

(c) The entries made in the accounts, Register and subaccounts maintained pursuant to subsection (b) of this Section 3.17 (and, if consistent with the entries of the Administrative Agent, subsection (a)) shall be prima facie evidence of the existence and amounts of the obligations of the Credit Parties therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to maintain any such account, such Register or such subaccount, as applicable, or any error therein, shall not in any manner affect the obligation of the Credit Parties to repay the loans and obligations owing to such Lender.

SECTION 4

GUARANTY

4.1 The Guaranty.

(a) Each of the Guarantors hereby jointly and severally guarantees to each Lender, to each Lender and each Affiliate of a Lender that enters into a Hedging Agreement with a Credit Party relating to the Obligations and to the Agents, as hereinafter provided, the prompt payment of the Guaranteed Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Guaranteed Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal.

(b) Notwithstanding any provision to the contrary contained herein or in any other of the Credit Documents or Hedging Agreements, to the extent the obligations of a Guarantor shall be adjudicated to be invalid or unenforceable for any reason (including, without limitation, because of any applicable state, provincial or federal law relating to fraudulent conveyances or transfers or the granting of financial assistance) then the obligations of each Guarantor hereunder shall be limited to the maximum amount that is permissible under applicable law (whether federal, state or provincial and including, without limitation, the Bankruptcy Code). In such case or otherwise at the request of an Agent, each Credit Party shall take such action and shall execute and deliver all such further documents required by such Agent to cause the obligations of such Guarantor to be enforceable to the extent required by this Credit Agreement.

4.2 Obligations Unconditional.

The obligations of all of the Guarantors under Section 4.1 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Credit Documents or Hedging Agreements, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 4.2 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrower or any other Guarantor for amounts paid under this Section 4 until such time as the Lenders (and any Affiliates of Lenders entering into Hedging Agreements relating to the Obligations to the extent permitted hereunder) have been paid in full in respect of all Guaranteed Obligations, all Commitments under this Credit Agreement have been terminated and no Person or Governmental Authority shall have any right to request any return or reimbursement of funds from the Lenders in connection with monies received under the Credit Documents or Hedging Agreements between any Credit Party and any Lender, or any Affiliate of a Lender. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of any of the Credit Documents, any Hedging Agreement between any Credit Party and any Lender or any Affiliate of a Lender, or any other agreement or instrument referred to in the Credit Documents or such Hedging Agreements shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Credit Documents, any Hedging Agreement between any Credit Party and any Lender or any Affiliate of a Lender, or any other agreement or instrument referred to in the Credit Documents or such Hedging Agreements shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, any Agent or any Lender or Lenders as security for any of the Guaranteed Obligations shall fail to attach or be perfected; or

(e) any of the Guaranteed Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that any Agent or any Lender exhaust any right, power or remedy or proceed against any Person under any of the Credit Documents, any Hedging Agreement between any Credit Party and any Lender, or any Affiliate of a Lender, or any other agreement or instrument referred to in the Credit Documents or such Hedging Agreements, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations.

4.3 Reinstatement.

The obligations of the Guarantors under this Section 4 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify the Agents and each Lender on demand for all reasonable costs and expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by the Agents or such Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

4.4 Certain Additional Waivers.

Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Guaranteed Obligations, except through the exercise of rights of subrogation pursuant to Section 4.2 and through the exercise of rights of contribution pursuant to Section 4.6.

4.5 Remedies.

The Guarantors agree that, to the fullest extent permitted by law, as between the Guarantors, on the one hand, and the Agents and the Lenders, on the other hand, the Guaranteed Obligations may be declared to be forthwith due and payable as provided in Section 9.2 (and shall be deemed to have become automatically due and payable in the circumstances provided in said Section 9.2) for purposes of Section 4.1 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Guaranteed Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Guaranteed Obligations being deemed to have become automatically due and payable), the Guaranteed Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 4.1. The Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the Lenders may exercise their remedies thereunder in accordance with the terms thereof.

4.6 Rights of Contribution.

The Guarantors hereby agree, as among themselves, that if any Guarantor shall become an Excess Funding Guarantor (as defined below), each other Guarantor shall, on demand of such Excess Funding Guarantor (but subject to the succeeding provisions of this Section 4.6), pay to such Excess Funding Guarantor an amount equal to such Guarantor's Pro Rata Share (as defined below and determined, for this purpose, without reference to the properties, assets, liabilities and debts of such Excess Funding Guarantor) of such Excess Payment (as defined below). The payment obligation of any Guarantor to any Excess Funding Guarantor under this Section 4.6 shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Guarantor under the other provisions of this Section 4, and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such obligations. For purposes hereof, (a) "Excess Funding Guarantor" shall mean, in respect of any obligations arising under the other provisions of this Section 4 (hereafter, the "Guarantied Obligations"), a Guarantor that has paid an amount in excess of its Pro Rata Share of the Guarantied Obligations; (b) "Excess Payment" shall mean, in respect of any Guarantied Obligations, the amount paid by an Excess Funding Guarantor in excess of its Pro Rata Share of such Guarantied Obligations; and (c) "Pro Rata Share", for the purposes of this Section 4.6, shall mean, for any Guarantor, the ratio (expressed as a percentage) of (i) the amount by which the aggregate present fair saleable value of all of its assets and properties exceeds the amount of all debts and liabilities of such Guarantor (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder) to (ii) the amount by which the aggregate present fair saleable value of all assets and other properties of the Borrower and all of the Guarantors exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of the Borrower and the Guarantors hereunder) of the Borrower and all of the Guarantors, all as of the Closing Date (in each case, if any Guarantor becomes a party hereto subsequent to the Closing Date, then for the purposes of this Section 4.6 such subsequent Guarantor shall be deemed to have been a Guarantor as of the Closing Date and the information pertaining to, and only pertaining to, such Guarantor as of the date such Guarantor became a Guarantor shall be deemed true as of the Closing Date).

4.7 Guarantee of Payment; Continuing Guarantee.

The guarantee in this Section 4 is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

SECTION 5

CONDITIONS

5.1 Closing Conditions.

The obligation of the Lenders to enter into this Credit Agreement and to make the initial Extensions of Credit shall be subject to satisfaction of the following conditions (in form and substance acceptable to the Lenders):

(a) Executed Credit Documents. Receipt by the Administrative Agent of (i) multiple counterparts of this Credit Agreement, (ii) a Revolving Note for each Lender, and (iii) multiple counterparts of the Collateral Documents, in each case executed by a duly authorized officer of each party thereto and in each case conforming to the requirements of this Credit Agreement.

(b) Legal Opinions. Receipt by the Administrative Agent of multiple counterparts of opinions of counsel for the Credit Parties relating to the Credit Documents and the transactions contemplated therein, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders, and including, among other things, opinions regarding enforceability of the Credit Documents and the perfection of the security interests created thereby.

(c) Financial Information. Receipt by the Lenders of such financial information regarding the members of the Consolidated Group as may be requested by, and in each case in form and substance reasonably satisfactory to, the Administrative Agent and the Lenders.

(d) Collateral. Receipt by the Administrative Agent of satisfactory evidence that the Collateral Agent (on behalf of the Lenders) holds a perfected, first priority lien in all of the Collateral, subject to no other liens except for Permitted Liens, including, without limitation, (i) Lien searches, (ii) such filings, recordations and certificates as the Collateral Agent reasonably deems necessary to perfect its Liens in the Collateral and (ii) landlord lien waivers with respect to Collateral held on leased premises to the extent reasonably required by the Administrative Agent.

(e) Evidence of Insurance. Receipt by the Administrative Agent of insurance certificates or policies evidencing casualty insurance (including builders' risk and all-risk permanent policies), credit insurance and liability conforming to the requirements of this Credit Agreement and the other Credit Documents, showing the Collateral Agent as sole loss payee with respect to casualty insurance and credit insurance and as additional insured with respect to liability insurance, in each case together with evidence of payment of premiums thereon.

(f) Absence of Legal Proceedings. There shall not exist any action, suit, investigation or proceeding pending or threatened in any court or before any arbitrator or Governmental Authority which would reasonably be expected to have a Material Adverse Effect.

(g) No Material Adverse Change. There shall not have occurred a material adverse change since October 31, 2001 in the business, assets, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries taken as a whole, other than (i) the Restated Financial Statement and (ii) the lawsuits comprising the Shareholder Litigation.

(h) Corporate Documents. Receipt by the Administrative Agent of the following (or their equivalent) for each of the Credit Parties:

(i) Charter Documents. Copies of the articles or certificates of incorporation or other charter documents of such Credit Party certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation and certified by a secretary or assistant secretary of such Credit Party to be true and correct as of the Closing Date.

(ii) Bylaws. A copy of the bylaws, operating agreement or equivalent of such Credit Party certified by a secretary or assistant secretary of such Credit Party to be true and correct and in force and effect as of the Closing Date.

(iii) Resolutions. Copies of resolutions of the board of directors of such Credit Party approving and adopting the Credit Documents to which it is a party, the transactions contemplated therein and authorizing execution and delivery thereof, certified by a secretary or assistant secretary of such Credit Party to be true and correct and in force and effect as of the Closing Date.

(iv) Good Standing. (A) certificates of good standing, existence or its equivalent certified as of a recent date by the appropriate governmental authorities of the state of incorporation and the state in which the principal place of business is located and (B) certificates indicating payment of all corporate franchise taxes certified as of a recent date by the appropriate governmental taxing authorities of the state of incorporation and the state in which the principal place of business is located.

(v) Officer's Certificate. An officer's certificate for each of the Credit Parties dated as of the Closing Date substantially in the form of Schedule 5.1 with appropriate insertions and attachments.

(i) Closing Certificate. A certificate signed by an Executive Officer of the Borrower certifying that the conditions specified in Section 5.01(f), 5.01(g), 5.02(a) and 5.02(b) have been satisfied.

(j) Fees and Expenses. Payment by the Credit Parties of all fees and expenses owed by them to the Lenders and the Administrative Agent, including, without limitation, payment to the Administrative Agent of the fees set forth in the Administrative Agent's Fee Letter.

5.2 Conditions to all Extensions of Credit.

The obligation of each Lender to make any Extension of Credit hereunder (including the initial Extension of Credit to be made hereunder) is subject to the satisfaction of the following conditions precedent on the date of making such Extension of Credit:

(a) Representations and Warranties. The representations and warranties made by the Credit Parties herein and in the other Credit Documents and which are contained in any certificate furnished at any time under or in connection herewith shall be true and correct in all material respects on and as of the date of such Extension of Credit as if made on and as of such date (except for those which expressly relate to an earlier date).

(b) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the Extension of Credit to be made on such date unless such Default or Event of Default shall have been waived in accordance with this Credit Agreement.

(c) Additional Conditions. The conditions set forth in Section 2 (or, in the case of an extension or conversion of a Loan, Section 3.2) shall have been satisfied.

Each request for an Extension of Credit (including continuations and conversions) and each acceptance by the applicable Borrower of an Extension of Credit (including continuations and conversions) shall be deemed to constitute a representation and warranty by the applicable Borrower as of the date of such Extension of Credit that the applicable conditions in paragraphs (a) and (b) of this Section 5.2 have been satisfied.

SECTION 6

REPRESENTATIONS AND WARRANTIES

To induce the Lenders to enter into this Credit Agreement and to make the Extensions of Credit hereunder, each of the Credit Parties hereby represents and warrants to the Administrative Agent and to each Lender that:

6.1 Financial Condition.

Each of the financial statements described below (copies of which have heretofore been provided to the Administrative Agent for distribution to the Lenders) have been prepared in accordance with GAAP consistently applied throughout the periods covered thereby and, except as set forth in the Restated Financial Statements, are complete and correct in all material respects and present fairly the financial condition (including disclosure of all material liabilities, contingent or otherwise) and results from operations of the entities and for the periods specified, subject in the case of interim company-prepared statements to normal year-end adjustments and the absence of footnotes:

(i) the audited consolidated balance sheets of the Borrower and its consolidated subsidiaries dated as of October 31, 1999, October 31, 2000 and October 31, 2001, together with the related audited statements of income, stockholders' equity and cash flows for the respective fiscal years then ended, certified by PriceWaterhouseCoopers, LLP, certified public accountants;

(ii) the unaudited, company-prepared balance sheets of the Borrower and its consolidated subsidiaries as at April 30, 2002 and the related unaudited, company-prepared statements of income, stockholders' equity and cash flows for the fiscal quarter then ended; and

(iii) after the Closing Date, the annual and quarterly financial statements provided in accordance with Sections 7.1(a) and (b).

6.2 No Changes or Restricted Payments.

Since October 31, 2001,

(i) except as set forth on Schedule 6.2, for the period to the Closing Date, except as previously disclosed in writing to the Administrative Agent and the Lenders, (A) there have been no material sales, transfers or other dispositions of any material part of the business or property of the members of the Consolidated Group (except for sales of inventory in the ordinary course of business), nor have there been any material purchases or other acquisitions of any business or property (including the Capital Stock of any other person) by the members of the Consolidated Group, which are not reflected in the annual audited or company-prepared quarterly financial statements referenced in Section 6.1(i) and (ii) hereof, and (B) no Restricted Payments have been declared or paid by members of the Consolidated Group; and

(ii) there has been no circumstance, development or event relating to or affecting the members of the Consolidated Group which has had or would reasonably be expected to have a Material Adverse Effect other than (A) the Restated Financial Statement and (B) the lawsuits comprising the Shareholder Litigation other than any such lawsuit for which the court having jurisdiction thereof does not approve the settlement agreed to prior to the Closing Date by the Borrower and the other parties thereto.

6.3 Organization; Existence; Compliance with Law.

Each of the members of the North American Group (a) is duly organized, validly existing in good standing under the laws of the jurisdiction of its incorporation or organization, (b) has the corporate power and authority, and the legal right, to own and operate its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign entity and in good standing under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification, other than in such jurisdictions where the failure to be so qualified and in good standing would not, in the aggregate, have a Material Adverse Effect, and (d) is in compliance with all Requirements of Law, except to the extent that the failure to comply therewith would not, in the aggregate, be reasonably expected to have a Material Adverse Effect.

6.4 Power; Authorization; Enforceable Obligations.

Each Credit Party has the corporate power and authority, and the legal right, to make, deliver and perform the Credit Documents to which it is a party and has taken all necessary corporate or other action to authorize the execution, delivery and performance by it of the Credit Documents to which it is a party. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with acceptance of Extensions of Credit or the making of the guaranties hereunder or with the execution, delivery or performance of any Credit Documents by the Credit Parties (other than those which have been obtained, such filings as are required by the Securities and Exchange Commission and to fulfill other reporting requirements with Governmental Authorities) or with the validity or enforceability of any Credit Document against the Credit Parties (except such filings as are necessary in connection with the perfection of the Liens created by such Credit Documents). Each Credit Document constitutes a legal, valid and binding obligation of each Credit Party party thereto enforceable against such Credit Party in accordance with its respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

6.5 No Legal Bar.

The execution, delivery and performance of the Credit Documents, the borrowings hereunder and the use of the Extensions of Credit will not violate any Requirement of Law or any Contractual Obligation of any member of the North American Group (except those as to which (a) waivers or consents have been obtained and (b) the violation of which would not be reasonably expected to have a Material Adverse Effect), and will not result in, or require, the creation or imposition of any Lien on any of its respective properties or revenues pursuant to any Requirement of Law or Contractual Obligation other than the Liens arising under or contemplated in connection with the Credit Documents.

6.6 No Material Litigation and Disputes.

(a) No claim, litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Credit Parties, threatened by or against, any members of the Consolidated Group or against any of their respective properties or revenues which (i) relate to the Credit Documents or any of the transactions contemplated hereby or thereby or (ii) would reasonably be expected to have a Material Adverse Effect.

(b) No default exists and, to the knowledge of the Credit Parties, no default has been asserted, under any Contractual Obligations to which any members of the Consolidated Group are party which individually or in the aggregate would reasonably be expected to have a Material Adverse Effect.

6.7 No Defaults.

No Default or Event of Default exists and is continuing.

6.8 Ownership and Operation of Property.

Each of the members of the North American Group (i) has valid and marketable title to, or a valid leasehold interest in, all its material real property, and valid title to, or a valid leasehold interest in, all its other material property, and none of such property is subject to any Lien, except for Permitted Liens, and (ii) except to the extent that the failure to do so would not be reasonably expected to have a Material Adverse Effect, has obtained all licenses, permits, franchises or other certifications, consents, approvals and authorizations, governmental or private, necessary to the ownership of its Property and to the conduct of its business.

6.9 Intellectual Property.

(a) Each of the members of the North American Group owns, or has the legal right to use, all United States trademarks, tradenames, copyrights, patents, technology, know-how and processes, if any, necessary for each of them to conduct its business as currently conducted (the "Intellectual Property") except for those the failure to own or have such legal right to use would not be reasonably expected to have a Material Adverse Effect. Set forth on Schedule 6.9 is a list of (A) all Trademarks (as defined in the Security Agreement) owned by a Credit Party in its own name as of the Closing Date and (B) all Copyrights, Copyright Licenses, Patents, Patent Licenses and Trademark Licenses (each as defined in the Security Agreement) owned by a Credit Party in its own name as of the Closing Date the loss of which would reasonably be expected to have a Material Adverse Effect. No claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property, nor does any Credit Party know of any such claim, and the use of any Intellectual Property by the members of the North American Group does not infringe on the rights of any Person, except for such claims and infringements that, in the aggregate, would not be reasonably expected to have a Material Adverse Effect.

(b) No member of the North American Group owns any Intellectual Property the loss of which would have a Material Adverse Effect except for the trademark "Grand Theft Auto".

(c) To the extent any member of the North American Group licenses trademarks from third parties, either (i) such licenses permit the disposition by such member of the North American Group, or its successors in interest, of the inventory bearing such trademarks or (ii) the inventory bearing such licensed trademarks is not material to the business of the members of the North American Group.

(d) The members of the North American Group hold copyright, patent, and/or software licenses from numerous third parties, which permit the members of the North American Group to carry on their respective business. To the knowledge of the Credit Parties, except with respect to publishing rights granted under License from Sony Computer Entertainment America, Nintendo of America, Inc. and Sega Enterprises, Inc., there are substitute sources for equivalent intellectual property rights on equivalent financial terms for all such licenses, and the loss of even a material number of such licenses (except with respect to publishing rights granted under License from Sony Computer Entertainment America, Nintendo of America, Inc. and Sega Enterprises, Inc.) would not be reasonably expected to have a Material Adverse Effect.

6.10 Taxes.

Each of the members of the North American Group has filed or caused to be filed all income tax returns (federal, state, local and foreign) and all other material tax returns which are required to be filed and has paid (i) all amounts shown therein to be due (including interest and penalties) and (ii) all other taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing, except for such taxes which are not yet delinquent or as are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established unless the failure to make any such payment could give rise to an immediate right to foreclose on a Lien securing such amounts. No tax claim or assessment has been asserted against members of the Consolidated which if adversely determined would reasonably be expected to have a Material Adverse Effect.

6.11 ERISA

Except as would not reasonably be expected to have a Material Adverse Effect:

(a) During the five-year period prior to the date on which this representation is made or deemed made: (i) no ERISA Event has occurred, and, to the knowledge of the Credit Parties, no event or condition has occurred or exists as a result of which any ERISA Event could reasonably be expected to occur, with respect to any Plan; (ii) no "accumulated funding deficiency," as such term is defined in Section 302 of ERISA and Section 412 of the Internal Revenue Code, whether or not waived, has occurred with respect to any Plan; (iii) each Plan has been maintained, operated, and funded in compliance with its own terms and in material compliance with the provisions of ERISA, the Internal Revenue Code, and any other applicable federal or state laws; and (iv) no lien in favor of the PBGC or a Plan has arisen or is reasonably likely to arise on account of any Plan.

(b) The actuarial present value of all "benefit liabilities" (as defined in Section 4001(a)(16) of ERISA), whether or not vested, under each Single Employer Plan, as of the last annual valuation date prior to the date on which this representation is made or deemed made (determined, in each case, in accordance with Financial Accounting Standards Board Statement 87, utilizing the actuarial assumptions used in such Plan's most recent actuarial valuation report), did not exceed as of such valuation date the fair market value of the assets of such Plan.

(c) No member of the Consolidated Group nor any ERISA Affiliate has incurred, or, to the knowledge of the Credit Parties, could be reasonably expected to incur, any withdrawal liability under ERISA to any Multiemployer Plan or Multiple Employer Plan. No member of the Consolidated Group nor any ERISA Affiliate would become subject to any withdrawal liability under ERISA if any member of the Consolidated Group or any ERISA Affiliate were to withdraw completely from all Multiemployer Plans and Multiple Employer Plans as of the valuation date most closely preceding the date on which this representation is made or deemed made. No member of the Consolidated Group nor any ERISA Affiliate has received any notification that any Multiemployer Plan is in reorganization (within the meaning of Section 4241 of ERISA), is insolvent (within the meaning of Section 4245 of ERISA), or has been terminated (within the meaning of Title IV of ERISA), and no Multiemployer Plan is, to the knowledge of the Credit Parties, reasonably expected to be in reorganization, insolvent, or terminated.

(d) No prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Internal Revenue Code) or breach of fiduciary responsibility has occurred with respect to a Plan which has subjected or may subject any member of the Consolidated Group or any ERISA Affiliate to any liability under Sections 406, 409, 502(i), or 502(l) of ERISA or Section 4975 of the Internal Revenue Code, or under any agreement or other instrument pursuant to which any member of the Consolidated Group or any ERISA Affiliate has agreed or is required to indemnify any person against any such liability.

(e) No member of the Consolidated Group nor any ERISA Affiliates has any material liability with respect to "expected post-retirement benefit obligations" within the meaning of the Financial Accounting Standards Board Statement 106. Each Plan which is a welfare plan (as defined in Section 3(1) of ERISA) to which Sections 601-609 of ERISA and Section 4980B of the Internal Revenue Code apply has been administered in compliance in all material respects of such sections.

(f) Neither the execution and delivery of this Credit Agreement nor the consummation of the financing transactions contemplated thereunder will involve any transaction which is subject to the prohibitions of Sections 404, 406 or 407 of ERISA or in connection with which a tax could be imposed pursuant to Section 4975 of the Internal Revenue Code. The representation by the Credit Parties in the preceding sentence is made in reliance upon and subject to the accuracy of the Lenders' representation in Section 11.15 with respect to their source of funds and is subject, in the event that the source of the funds used by the Lenders in connection with this transaction is an insurance company's general asset account, to the application of Prohibited Transaction Class Exemption 95-60, 60 Fed. Reg. 35,925 (1995), compliance with the regulations issued under Section 401(c)(1)(A) of ERISA, or the issuance of any other prohibited transaction exemption or similar relief, to the effect that assets in an insurance company's general asset account do not constitute assets of an "employee benefit plan" within the meaning of Section 3(3) of ERISA of a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code.

6.12 Governmental Regulations, Etc.

(a) No part of the proceeds of the Extensions of Credit hereunder will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" within the meaning of Regulation U, or for the purpose of purchasing or carrying or trading in any other securities. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form U-1 referred to in said Regulation U. No indebtedness being reduced or retired out of the proceeds of the Extensions of Credit hereunder was or will be incurred for the purpose of purchasing or carrying any margin stock within the meaning of Regulation U or any "margin security" within the meaning of Regulation T. "Margin stock" within the meanings of Regulation U does not constitute more than 25% of the value of the consolidated assets of the Borrower and its Subsidiaries. None of the transactions contemplated by this Credit Agreement (including, without limitation, the direct or indirect use of the proceeds of the Loans) will violate or result in a violation of Regulation T, U or X.

(b) None of the members of the Consolidated Group is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act or the Investment Company Act of 1940, each as amended. In addition, none of the members of the Consolidated Group is (i) an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended, and is not controlled by such a company, or (ii) a "holding company", or a "subsidiary company" of a "holding company", or an "affiliate" of a "holding company" or of a "subsidiary" of a "holding company", within the meaning of the Public Utility Holding Company Act of 1935, as amended.

6.13 Subsidiaries.

Set forth on Schedule 6.13 are all the North American Subsidiaries as of the Closing Date, including the classes of Capital Stock (including options, warrants, rights of subscription, conversion and exchangeability and other similar rights), ownership and ownership percentages thereof. The Capital Stock of the North American Subsidiaries is validly issued, fully paid and are non-assessable and owned free of Liens other than Permitted Liens and is not subject to any buy-sell, voting trust or other shareholder agreement.

6.14 Purpose of Extensions of Credit.

The Loans will be used solely to finance working capital, capital expenditures and other lawful corporate purposes (including, but not limited to, Permitted Acquisitions).

6.15 Environmental Matters.

Except as would not reasonably be expected to have a Material Adverse Effect:

(a) To the knowledge of the Credit Parties, each of the facilities and properties owned, leased or operated by the members of the Consolidated Group (the "Subject Properties") and all operations at the Subject Properties are in compliance with all applicable Environmental Laws, and there is no violation of any Environmental Law with respect to the Subject Properties or the businesses operated by the members of the Consolidated Group (the "Businesses"), and there are no conditions relating to the Businesses or Subject Properties that could give rise to liability under any applicable Environmental Laws.

(b) To the knowledge of the Credit Parties, none of the Subject Properties contains, or has previously contained, any Materials of Environmental Concern at, on or under the Subject Properties in amounts or concentrations that constitute or constituted a violation of, or could give rise to liability under, Environmental Laws.

(c) None of the members of the Consolidated Group has received any written or verbal notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Subject Properties or the Businesses, nor does any member of the Consolidated Group have knowledge or reason to believe that any such notice will be received or is being threatened.

(d) To the knowledge of the Credit Parties, Materials of Environmental Concern have not been transported or disposed of from the Subject Properties, or generated, treated, stored or disposed of at, on or under any of the Subject Properties or any other location, in each case by or on behalf any members of the Consolidated Group in violation of, or in a manner that would be reasonably likely to give rise to liability under, any applicable Environmental Law.

(e) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of any Credit Party, threatened, under any Environmental Law to which any member of the Consolidated Group is or will be named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to any member of the Consolidated Group, the Subject Properties or the Businesses.

(f) To the knowledge of the Credit Parties, there has been no release or, threat of release of Materials of Environmental Concern at or from the Subject Properties, or arising from or related to the operations (including, without limitation, disposal) of any member of the Consolidated Group in connection with the Subject Properties or otherwise in connection with the Businesses, in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws.

6.16 No Material Misstatements.

None of the written information, reports, financial statements, exhibits or schedules, taken as a whole, furnished by or on behalf of any member of the Consolidated Group to the Administrative Agent or any Lender in connection with the negotiation of the Credit Documents or included therein or delivered pursuant thereto contained or contains any misstatement of material fact or omitted or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were, are or will be made, not materially misleading, provided that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection (statistical and numerical information furnished by third parties (or, if disclosed to the Administrative Agent and the Lenders in writing, derived from such information) to the Administrative Agent or any Lender on behalf of any member of the Consolidated Group shall constitute a forecast or projection), each of the Credit Parties represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule.

6.17 Labor Matters.

(a) There are no strikes or lockouts against any member of the North American Group pending or, to the knowledge of the Credit Parties, threatened.

(b) The hours worked by and payments made to employees of the members of the North American Group have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, local or foreign law dealing with such matters in any case where a Material Adverse Effect would reasonably be expected to occur as a result of the violation thereof.

(c) All payments due from members of the North American Group, or for which any claim may be made against a member of the North American Group, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the respective members of the North American Group.

(d) None of the members of the North American Group is party to a collective bargaining agreement.

6.18 Collateral Documents.

(a) Security Agreement. The Security Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the holders of the Secured Obligations identified therein, a legal valid and enforceable security interest in the Collateral (as defined in the Security Agreement) and, when financing statements in appropriate form are filed in the appropriate offices for the locations specified in Schedule 2 to the Security Agreement, the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in such Collateral that may be perfected by filing, recording or registering a financing statement under the Uniform Commercial Code as in effect, in each case prior and superior in right to any other Lien on any Collateral other than Permitted Liens.

(b) Pledge Agreements. The Pledge Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the holders of the Secured Obligations identified therein, a legal valid and enforceable security interest in the Collateral (as defined in the Pledge Agreement) and, when such Collateral is delivered to the Collateral Agent, the Pledge Agreement shall constitute a fully perfected first priority Lien on, and security interest in, all right, title and interest of the pledgors thereunder in such Collateral, in each case prior and superior in right to any other Lien.

(c) Intellectual Property. The Security Agreement together with the Notice of Grant of Security Interest in Trademarks and the Notice of Grant of Security Interest in Patents filed with the United States Patent and Trademark Office, and the Notice of Grant of Security Interest in Copyrights filed with the United States Copyright Office will constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in all Patents and Patent Licenses, Trademarks and Trademark Licenses and Copyrights and Copyright Licenses (each as defined in the Security Agreement) and in which a security interest may be perfected by filing, recording or registration of a Notice in the United States Patent and Trademark Office and the United States Copyright Office, in each case prior and superior in right to any other Lien other than Permitted Liens.

6.19 Collateral Matters.

Set forth on Schedule 6.19(a) is a complete and correct list of all real property located in the United States and owned or leased by any Credit Party as of the Closing Date with street address and state where located. Set forth on Schedule 6.19(b) is a list of all locations where any tangible personal property of any Credit Party is located as of the Closing Date, including street address and state where located (other than locations set forth on Schedule 6.19(a)). Set forth on Schedule 6.19(c) is the legal name, state of formation and chief executive office of each Credit Party as of the Closing Date.

6.20 Solvency.

Immediately after giving effect to the initial Extensions of Credit made on the Closing Date, (i) the fair value of the assets of each Credit Party will exceed its debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of each Credit Party will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and mature; and (iii) each Credit Party will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date.

6.21 No Other Broker's Fees.

None of the members of the Consolidated Group owes to any Person other than the Lenders and their affiliates, or otherwise has any obligation in respect of any finder's, broker's, investment banker's or other similar fee in connection with the transactions contemplated in the Credit Agreement and the other Credit Documents.

SECTION 7

AFFIRMATIVE COVENANTS

Each Credit Party hereby covenants and agrees that so long as this Credit Agreement is in effect or any amounts payable hereunder or under any other Credit Document shall remain outstanding or any Letter of Credit is outstanding, and until all of the Commitments hereunder shall have terminated:

7.1 Information Covenants.

The Credit Parties will furnish, or cause to be furnished, to the Administrative Agent and each of the Lenders:

(a) Annual Financial Statements. As soon as available, and in any event within 90 days (or, if the SEC grants a 15 day extension for filing the Borrower's Form 10K for such fiscal year, 105 days) after the close of each fiscal year of the members of the Consolidated Group, audited consolidated and unaudited company-prepared consolidating balance sheet and income statement of the members of the Consolidated Group as of the end of such fiscal year, together with related audited consolidated and unaudited company-prepared consolidating statements of operations and retained earnings and of cash flows for such fiscal year, in each case setting forth in comparative form consolidated and consolidating figures for the preceding fiscal year, all such financial information described above to be in reasonable form and detail and audited by PriceWaterhouseCoopers LLP or other independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent and the Required Lenders and whose opinion shall be to the effect that such financial statements have been prepared in accordance with GAAP (except for changes with which such accountants concur) and shall not be limited as to the scope of the audit or qualified as to the status of the members of the Consolidated Group as a going concern or any other material qualifications or exceptions.

(b) Quarterly Financial Statements. As soon as available, and in any event within 45 days (or, if the SEC grants a 5 day extension for filing the Borrower's Form 10Q for such fiscal quarter, 50 days) after the close of each fiscal quarter of the Consolidated Group (other than the fourth fiscal quarter, in which case together with the annual financial statements required by Section 7.1(a)) a consolidated and consolidating balance sheet and income statement of the Consolidated Group as of the end of such fiscal quarter, together with related consolidated and consolidating statements of operations and retained earnings and of cash flows for such fiscal quarter, in each case setting forth in comparative form consolidated and consolidating figures for the corresponding period of the preceding fiscal year, all such financial information described above to be in reasonable form and detail and reasonably acceptable to the Administrative Agent, and accompanied by a certificate of an Executive Officer of the Borrower to the effect that such quarterly financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Consolidated Group and have been prepared in accordance with GAAP, subject to changes resulting from audit and normal year-end audit adjustments and absence of footnotes.

(b-1) Monthly Financial Statements. As soon as available, and in any event within thirty (30) days after the end of each month, a consolidated and consolidating balance sheet, statement of operations and statement of cash flows indicating the financial performance of the Consolidated Group for the month then ending and the financial position of the Consolidated Group as of the end of such month.

(c) Officer's Certificate. At the time of delivery of the financial statements provided for in Sections 7.1(a) and 7.1(b) above, a certificate of an Executive Officer of the Borrower substantially in the form of Schedule 7.1(c), (i) demonstrating compliance with the financial covenants contained in Section 7.11 by calculation thereof as of the end of each such fiscal period and (ii) stating that no Default or Event of Default exists, or if any Default or Event of Default does exist, specifying the nature and extent thereof and what action the Credit Parties propose to take with respect thereto.

(d) North American Borrowing Base Certificate. (i) By no later than the 15th day of each calendar month, a statement of the North American Borrowing Base and its components as of the last day of the immediately preceding calendar month and (ii) by no later than the last day of each calendar month, a statement of the North American Borrowing Base and its components as of the 15th day of such calendar month, in each case in form and content satisfactory to the Administrative Agent and certified by the chief financial officer of the Borrower to be true and correct as of the date thereof (the "North American Borrowing Base Certificate").

(e) UK Borrowing Base Certificate. Upon request of the Administrative Agent, within 15 days after the end of each calendar month, a statement of the UK Borrowing Base and its components as of the end of such calendar month, in form and content satisfactory to the Administrative Agent and certified by the chief financial officer of the Borrower to be true and correct as of the date thereof (the "UK Borrowing Base Certificate").

(f) Update of Intellectual Property. At the time of delivery of the financial statements provided for in Sections 7.1(a) and 7.1(b) above, a certificate of an Executive Officer of the Borrower setting forth (i) all applications made, and all issuances of registrations on existing applications received, for Trademarks since the date of the prior certificate (or, in the case of the first such certificate, the Closing Date), (ii) all applications made, and all issuances of registrations and letters on existing applications received, for Patents and Copyrights since the date of the prior certificate (or, in the case of the first such certificate, the Closing Date) the loss of which would reasonably be expected to have a Material Adverse Effect, and (iii) all Trademark Licenses, Copyright Licenses and Patent Licenses entered into since the date of the prior certificate (or, in the case of the first such certificate, the Closing Date) the loss of which would reasonably be expected to have a Material Adverse Effect.

(g) Annual Business Plan and Budgets. At least 30 days prior to the end of each fiscal year of the Borrower, beginning with the fiscal year ending October 31, 2000, an annual business plan and budget of the Consolidated Group containing, among other things, pro forma financial statements for the next fiscal year.

(h) Accountant's Certificate. Within the period for delivery of the annual financial statements provided in Section 7.1(a), a certificate of the accountants conducting the annual audit stating that they have reviewed this Credit Agreement and stating further whether, in the course of their audit, they have become aware of any Default or Event of Default and, if any such Default or Event of Default exists, specifying the nature and extent thereof.

(i) Auditor's Reports. Promptly upon receipt thereof, a copy of any other report or "management letter" submitted by independent accountants to any member of the Consolidated Group in connection with any annual, interim or special audit of the books of such Person.

(j) Reports. Promptly upon transmission or receipt thereof, (i) copies of any filings and registrations with, and reports to or from, the Securities and Exchange Commission, or any successor agency, and copies of all financial statements, proxy statements, notices and reports as any member of the Consolidated Group shall send to its shareholders or to a holder of any Indebtedness owed by any member of the Consolidated Group in its capacity as such a holder and (ii) upon the request of the Administrative Agent, all reports and written information to and from the United States Environmental Protection Agency, or any state or local agency responsible for environmental matters, the United States Occupational Health and Safety Administration, or any state or local agency responsible for health and safety matters, or any successor agencies or authorities concerning environmental, health or safety matters.

(k) Notices. Upon any Executive Officer of a Credit Party obtaining knowledge thereof, the Credit Parties will give written notice to the Administrative Agent immediately of (i) the occurrence of an event or condition constituting a Default or Event of Default, specifying the nature and existence thereof and what action the Credit Parties propose to take with respect thereto, and (ii) the occurrence of any of the following with respect to any member of the Consolidated Group (A) the pendency or commencement of any litigation, arbitral or governmental proceeding against such Person which if adversely determined would reasonably be expected to have a Material Adverse Effect or (B) the institution of any proceedings against such Person with respect to, or the receipt of notice by such Person of potential liability or responsibility for violation, or alleged violation of any federal, state or local law, rule or regulation, including but not limited to, Environmental Laws, the violation of which would reasonably be expected to have a Material Adverse Effect.

(l) ERISA. Upon any Executive Officer of a Credit Party obtaining knowledge thereof, the Credit Parties will give written notice to the Administrative Agent promptly (and in any event within five Business Days) of: (i) any event or condition, including, but not limited to, any Reportable Event, that constitutes, or would reasonably be expected to lead to, an ERISA Event; (ii) with respect to any Multiemployer Plan, the receipt of notice as prescribed in ERISA or otherwise of any withdrawal liability assessed against the Credit Parties or any ERISA Affiliates, or of a determination that any Multiemployer Plan is in reorganization or insolvent (both within the meaning of Title IV of ERISA); (iii) the failure to make full payment on or before the due date (including extensions) thereof of all amounts which any member of the Consolidated Group or any ERISA Affiliate is required to contribute to each Plan pursuant to its terms and as required to meet the minimum funding standard set forth in ERISA and the Internal Revenue Code with respect thereto; or (iv) any change in the funding status of any Plan that would reasonably be expected to have a Material Adverse Effect, together with a description of any such event or condition or a copy of any such notice and a statement by an Executive Officer of the Borrower briefly setting forth the details regarding such event, condition, or notice, and the action, if any, which has been or is being taken or is proposed to be taken by the Credit Parties with respect thereto. Promptly upon request, the Credit Parties shall furnish the Administrative Agent and the Lenders with such additional information concerning any Plan as may be reasonably requested, including, but not limited to, copies of each annual report/return (Form 5500 series), as well as all schedules and attachments thereto required to be filed with the Department of Labor and/or the Internal Revenue Service pursuant to ERISA and the Internal Revenue Code, respectively, for each "plan year" (within the meaning of Section 3(39) of ERISA).

(m) Environmental.

(i) Upon the reasonable written request of the Administrative Agent following the occurrence of any event or the discovery of any condition which the Administrative Agent or the Required Lenders reasonably believe has caused (or would be reasonably expected to cause) the representations and warranties set forth in Section 6.16 to be untrue in any material respect, the Credit Parties will furnish or cause to be furnished to the Administrative Agent, at the Credit Parties' expense, a report of an environmental assessment of reasonable scope, form and depth, (including, where appropriate, invasive soil or groundwater sampling) by a consultant reasonably acceptable to the Administrative Agent as to the nature and extent of the presence of any Materials of Environmental Concern on any Subject Properties (as defined in Section 6.16) and as to the compliance by any member of the Consolidated Group with Environmental Laws at such Subject Properties. If the Credit Parties fail to deliver such an environmental report within seventy-five (75) days after receipt of such written request then the Administrative Agent may arrange for same, and the members of the Consolidated Group hereby grant to the Administrative Agent and their representatives access to the Subject Properties to reasonably undertake such an assessment (including, where appropriate, invasive soil or groundwater sampling). The reasonable cost of any assessment arranged for by the Administrative Agent pursuant to this provision will be payable by the Credit Parties on demand and added to the obligations secured by the Collateral Documents.

(ii) The members of the Consolidated Group will conduct and complete all investigations, studies, sampling, and testing and all remedial, removal, and other actions necessary to address all Materials of Environmental Concern on, from or affecting any of the Subject Properties to the extent necessary to be in compliance with all Environmental Laws and with the validly issued orders and directives of all Governmental Authorities with jurisdiction over such Subject Properties to the extent any failure could have a Material Adverse Effect.

(n) Other Information. With reasonable promptness upon any such request, such other information regarding the business, properties or financial condition of any member of the Consolidated Group as the Administrative Agent or any Lender may reasonably request.

7.2 Preservation of Existence and Franchises.

Except as a result of or in connection with a dissolution, merger or disposition of a Subsidiary permitted under Section 8.4 or Section 8.5, each Credit Party will, and will cause each of its Subsidiaries to, do all things necessary to preserve and keep in full force and effect its existence, rights, franchises and authority.

7.3 Books and Records.

Each Credit Party will, and will cause each of its Subsidiaries to, keep complete and accurate books and records of its transactions in accordance with good accounting practices on the basis of GAAP (including the establishment and maintenance of appropriate reserves).

7.4 Compliance with Law.

Each Credit Party will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders, and all applicable restrictions imposed by all Governmental Authorities, applicable to it and its Property if noncompliance with any such law, rule, regulation, order or restriction could have a Material Adverse Effect.

7.5 Payment of Taxes and Other Indebtedness.

Each Credit Party will, and will cause each of its Subsidiaries to, pay and discharge (a) all taxes, assessments and governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties, before they shall become delinquent, (b) all lawful claims (including claims for labor, materials and supplies) which, if unpaid, would give rise to a Lien upon any of its properties, and (c) except as prohibited hereunder, all of its other Indebtedness as it shall become due; provided, however, that no member of the Consolidated Group shall be required to pay any such tax, assessment, charge, levy, claim or Indebtedness which is being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established, unless the failure to make any such payment (i) would give rise to an immediate right to foreclose on a Lien securing such amounts or (ii) would reasonably be expected to have a Material Adverse Effect.

7.6 Insurance.

Each Credit Party will, and will cause each of its Subsidiaries to, at all times maintain in full force and effect insurance (including worker's compensation insurance, liability insurance, casualty insurance and business interruption insurance) in such amounts, covering such risks and liabilities and with such deductibles or self-insurance retentions as are in accordance with normal industry practice (or as otherwise required by the Collateral Documents). The Collateral Agent shall be named as loss payee or mortgagee, as its interest may appear, and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Agent, that it will give the Collateral Agent thirty (30) days prior written notice before any such policy or policies shall be altered or canceled, and that no act or default of any member of the Consolidated Group or any other Person shall affect the rights of the Collateral Agent or the Lenders under such policy or policies.

7.7 Maintenance of Property.

Each Credit Party will, and will cause each of its Subsidiaries to, maintain and preserve its properties and equipment material to the conduct of its business in good repair, working order and condition, normal wear and tear and casualty and condemnation excepted, and will make, or cause to be made, in such properties and equipment from time to time all repairs, renewals, replacements, extensions, additions, betterments and improvements thereto as may be needed or proper, to the extent and in the manner customary for companies in similar businesses.

7.8 Performance of Obligations.

Each Credit Party will, and will cause each of its Subsidiaries to, perform in all material respects all of its obligations under the terms of all material agreements, indentures, mortgages, security agreements and other debt instruments to which it is a party or by which it is bound.

7.9 Use of Proceeds.

The Borrower will use the proceeds of Extensions of Credit solely for the purposes set forth in Section 6.14.

7.10 Audits; Field Exams; Appraisals.

(a) Upon reasonable notice and during normal business hours, each Credit Party will, and will cause each of its North American Subsidiaries to, permit representatives appointed by the Administrative Agent, including, without limitation, independent accountants, agents, attorneys, and appraisers to visit and inspect its property, including its books and records, its accounts receivable and inventory, its facilities and its other business assets, and to make photocopies or photographs thereof and to write down and record any information such representative obtains and shall permit the Administrative Agent or its representatives to investigate and verify the accuracy of information provided to the Lenders and to discuss all such matters with the officers, employees and representatives of such Person.

(b) Each Credit Party shall, and shall cause its Subsidiaries to, permit the Administrative Agent or its agents to conduct periodic field exams (the "Field Exams") of the inventory and Receivables of the members of the North American Group. The Field Exams shall be at the expense of the Credit Parties. Each Credit Party shall, and shall cause its Subsidiaries to, to cooperate fully with the Administrative Agent and its agents in the conduct of the Field Exams, providing reasonable access to all personnel, books and records, and facilities of the members of the North American Group necessary for the conduct of the Field Exams. The Administrative Agent and/or its agents shall be limited to no more than two Field Exams during any twelve month period following the Closing Date; provided, however, after the occurrence and during the continuation of an Event of Default, the Administrative Agent and/or its agents may make Field Exams as often as the Administrative Agent reasonably deems necessary at the expense of the Credit Parties.

(c) Each Credit Party shall, and shall cause its Subsidiaries to, permit the Administrative Agent or any third party appraiser engaged by the Administrative Agent to make periodic appraisals (the "Appraisals") of the Collateral comprising the Borrowing Base. The Appraisals shall be at the expense of the Credit Parties, shall be prepared on a basis satisfactory to the Agent and shall include, without limitation, information required by applicable law. Each Credit Party shall, and shall cause its Subsidiaries to, to cooperate fully with the Administrative Agent and its agents in the conduct of the Appraisals, providing reasonable access to all personnel, books and records, and facilities of the members of the North American Group necessary for the conduct of the Appraisals. The Administrative Agent and/or third party appraisers engaged by the Administrative Agent shall be limited to no more than four Appraisals during any twelve month period following the Closing Date; provided, however, after the occurrence and during the continuation of an Event of Default, the Administrative Agent and/or third party appraisers engaged by the Administrative Agent may make Appraisals as often as the Administrative Agent reasonably deems necessary at the expense of the Credit Parties.

7.11 Financial Covenants.

(a) Consolidated Net Worth. As of the end of each fiscal quarter, Consolidated Net Worth shall be not less than the sum of $235 million, plus on the last day of each fiscal quarter to end after the Closing Date, an amount equal to seventy-five percent (75%) of Consolidated Net Income for the fiscal quarter then ending (but not less than zero), such increases to be cumulative, plus an amount equal to one hundred percent (100%) of the net proceeds received from any Equity Transactions occurring after the Closing Date.

(b) Consolidated Leverage Ratio. As of the end of each fiscal quarter ending during the periods set forth below, the Consolidated Leverage Ratio shall not be greater than (a) during the period from the Closing Date through (and including) January 31, 2003, 2.0:1.0, and (b) February 1, 2003 and thereafter, 1.75:1.0.

(c) Consolidated Fixed Charge Coverage Ratio. As of the end of each fiscal quarter, the Consolidated Fixed Charge Coverage Ratio shall be not less than 2.0:1.0.

7.12 Additional Guarantors.

(a) Domestic Subsidiaries. Where Domestic Subsidiaries which are not Guarantors (the "Non-Guarantor Domestic Subsidiaries") shall at any time (the "Domestic Threshold Requirement"):

(i) in any instance for any such Non-Guarantor Domestic Subsidiary, constitute more than five percent (5%) of consolidated assets for the Consolidated Group as of the end of the immediately preceding fiscal quarter or generate more than five percent (5%) of consolidated revenues for the Consolidated Group for the period of four consecutive fiscal quarters ending as of the end of the immediately preceding fiscal quarter, or

(ii) in the aggregate for all such Non-Guarantor Domestic Subsidiaries, constitute more than ten percent (10%) of consolidated assets for the Consolidated Group as of the end of the immediately preceding fiscal quarter or generate more than ten percent (10%) of consolidated revenues for the Consolidated Group for the period of four consecutive fiscal quarters ending as of the end of the immediately preceding fiscal quarter,

then the Borrower shall (i) notify the Administrative Agent thereof within 10 days after a Responsible Officer has knowledge thereof, and (ii) within 45 days thereafter, (A) cause each such Domestic Subsidiary to become a Guarantor by execution of a Joinder Agreement such that immediately after joinder as a Guarantor, the remaining Non-Guarantor Domestic Subsidiaries shall not in any instance, or collectively, exceed the Domestic Threshold Requirement, (B) deliver with the Joinder Agreement such supporting resolutions, incumbency certificates, corporate formation and organizational documentation and opinions of counsel as the Administrative Agent may reasonably request, and (C) deliver stock certificates and related pledge agreements or pledge joinder agreements evidencing the pledge of 100% of the capital stock of each Domestic Subsidiary (whether or not it is a Guarantor) of the Borrower and 66% (or such greater percentage which would not result in material adverse tax consequences) of the issued and outstanding capital stock entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Capital Stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of each Canadian Subsidiary directly owned by each such Domestic Subsidiary to secure the obligations of the Credit Parties under the Credit Documents, together with undated stock transfer powers executed in blank.

(b) Foreign Subsidiaries. At any time that Foreign Subsidiaries (other than Canadian Subsidiaries) shall in the aggregate generate more than ten percent (10%) of consolidated revenues for the Consolidated Group for the period of four consecutive fiscal quarters ending as of the end of the immediately preceding fiscal quarter or more than ten percent (10%) of Consolidated EBITDA for the period of four consecutive fiscal quarters ending as of the end of the immediately preceding fiscal quarter, then the Borrower shall (a) notify the Administrative Agent thereof within 10 days after a Responsible Officer has knowledge thereof, and (b) if the Capital Stock of such Foreign Subsidiaries is not required (or reasonably expected to be required) to be pledged to secure the UK Subsidiary Credit Facility, cause, within 45 days thereafter, (i) delivery of supporting resolutions, incumbency certificates, corporation formation and organizational documentation and opinions of counsel as the Administrative Agent may reasonably request, and (ii) delivery of stock certificates (where required for perfection under local law) and a related pledge agreement or pledge joinder agreement evidencing the pledge of 66% (or such greater percentage which would not result in material adverse tax consequences) of the issued and outstanding capital stock entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Capital Stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of each Foreign Subsidiary (other than Canadian Subsidiaries) directly owned by the Borrower or any Domestic Subsidiary of the Borrower to secure the obligations of the Credit Parties under the Credit Documents.

7.13 Pledged Assets.

Each Credit Party will cause all of its owned personal property located in the United States other than Excluded Property to be subject at all times to first priority, perfected Liens in favor of the Administrative Agent to secure the loans and obligations owing hereunder pursuant to the terms and conditions of the Collateral Documents or, with respect to any such Property acquired subsequent to the Closing Date, such other additional security documents as the Administrative Agent shall reasonably request, subject in any case to Permitted Liens. Without limiting the generality of the above, the Credit Parties will cause (i) 100% of the issued and outstanding Capital Stock of each Domestic Subsidiary and (ii) 66% (or such greater percentage which would not result in material adverse tax consequences) of the issued and outstanding Capital Stock entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Capital Stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of each Canadian Subsidiary directly owned by the Borrower or any Domestic Subsidiary of the Borrower to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent pursuant to the terms and conditions of the Collateral Documents or such other security documents as the Administrative Agent shall reasonably request.

If, subsequent to the Closing Date, a Credit Party shall acquire any Property required to be pledged to the Administrative Agent as Collateral by this Section 7.13 or by any of the Collateral Documents, the Credit Parties shall promptly notify the Administrative Agent of the same and each Credit Party shall, and shall cause each of its Domestic Subsidiaries to, take such action (including but not limited to the actions set forth in Sections 5.1(d) and (e)) at its own expense as requested by the Administrative Agent to ensure that the Administrative Agent has a first priority, perfected Lien to secure the obligations of the Credit Parties under the Credit Documents in all owned personal property of the Credit Parties located in the United States other than Excluded Property, subject in each case only to Permitted Liens. Each Credit Party shall, and shall cause each of its Subsidiaries to, adhere to the covenants regarding the location of personal property as set forth in the Security Agreement.

SECTION 8

NEGATIVE COVENANTS

Each Credit Party hereby covenants and agrees that so long as this Credit Agreement is in effect or any amounts payable hereunder or under any other Credit Document shall remain outstanding or any Letter of Credit is outstanding, and until all of the Commitments hereunder shall have terminated:

8.1 Indebtedness.

The Credit Parties will not permit any member of the Consolidated Group to contract, create, incur, assume or permit to exist any Indebtedness, except:

(a) Indebtedness existing or arising under this Credit Agreement or the other Credit Documents;

(b) Indebtedness existing on the Closing Date and set forth on Schedule 8.1 and any renewals, refinancings, refundings and extensions thereof, provided that (i) the amount of such Indebtedness is not increased at the time of such renewal, refinancing, refundings or extension and (ii) the terms and conditions no less favorable to such Person than such existing Indebtedness;

(c) purchase money Indebtedness (including obligations in respect of Capital Leases or Synthetic Leases) hereafter incurred by the Borrower or any of its Subsidiaries to finance the purchase of fixed assets, provided that (i) the total of all such Indebtedness for the Borrower and its Subsidiaries taken together shall not exceed an aggregate principal amount of $3,000,000 at any one time outstanding; (ii) such Indebtedness when incurred shall not exceed the purchase price of the asset(s) financed; and (iii) no such Indebtedness shall be refinanced for a principal amount in excess of the principal balance outstanding thereon at the time of such refinancing;

(d) obligations owing under interest rate, commodities and foreign currency exchange protection agreements entered into in the ordinary course of business to manage existing or anticipated risks and not for speculative purposes;

(e) unsecured intercompany Indebtedness owing to another member of the Consolidated Group (subject, however, to the limitations of Section 8.6 in the case of the member of the Consolidated Group extending the loan, advance or credit);

(f) secured Funded Debt of the UK Subsidiaries (the "UK Subsidiary Credit Facility") in an aggregate principal amount not to exceed an amount equal to the sum of (i) the UK Borrowing Base minus (ii) the aggregate amount of Investments (including loans and advances) made by the members of the North American Group in the UK Subsidiaries.

(g) unsecured Funded Debt assumed by the Borrower and its Subsidiaries in connection with Acquisitions permitted hereunder;

(h) secured Funded Debt of Jack of All Games, Inc. under the floor planning line of credit for Nintendo inventory in an aggregate principal amount not to exceed $5,000,000 at any time outstanding;

(i) other unsecured Funded Debt of the Borrower and its Subsidiaries in an aggregate outstanding principal amount of up to $2,000,000 at any time; and

(j) Support Obligations of any Credit Party with respect to any Indebtedness permitted under this Section 8.1.

8.2 Liens.

The Credit Parties will not permit any member of the Consolidated Group to contract, create, incur, assume or permit to exist any Lien with respect to any of its Property, whether now owned or after acquired, except for Permitted Liens.

8.3 Nature of Business.

The Credit Parties will not permit any member of the Consolidated Group to substantively alter the character or conduct of the business conducted by such Person as of the Closing Date.

8.4 Merger and Consolidation, Dissolution and Acquisitions.

(a) No member of the North American Group will enter into any transaction of merger or consolidation, or dissolve, liquidate or wind up its affairs, except that:

(i) the Borrower may be party to a transaction of merger or consolidation with another member of the Consolidated Group, provided that the Borrower shall be the surviving entity;

(ii) a North American Subsidiary may be party to a transaction of merger or consolidation with another Subsidiary, provided that if (A) a Domestic Subsidiary is a party to such transaction, a Domestic Subsidiary shall be the surviving entity and (B) if a Canadian Subsidiary is a party to such transaction and a Domestic Subsidiary is not a party to such transaction, a Canadian Subsidiary shall be the surviving entity;

(iii) the Borrower may be a party to a transaction of merger or consolidation with a Person other than a member of the Consolidated Group, provided that (A) the Borrower shall be the surviving entity and (B) the transaction shall otherwise constitute a Permitted Acquisition;

(iv) a North American Subsidiary may be a party to a transaction of merger or consolidation with a Person other than a member of the Consolidated Group, provided that (A) if a Domestic Subsidiary is a party to such transaction, a Domestic Subsidiary shall be the surviving entity, (B) if a Canadian Subsidiary is a party to such transaction and a Domestic Subsidiary is not a party to such transaction, a Canadian Subsidiary shall be the surviving entity and (C) the transaction shall otherwise constitute a Permitted Acquisition;

(v) a North American Subsidiary may enter into a transaction of merger or consolidation in connection with an Asset Disposition permitted under Section 8.5; and

(vi) a North American Subsidiary that is a Wholly Owned Subsidiary may dissolve, liquidate or wind up its affairs if no Material Adverse Effect shall result on account thereof.

(b) No member of the North American Group shall make any Acquisition, unless:

(i) in the case of an acquisition of Capital Stock of another Person,

(A) if, after giving effect to such Acquisition, such other Person would not be a Subsidiary, such Acquisition would constitute a Permitted Investment; and

(B) if, after giving effect to such Acquisition, such other Person would be a Subsidiary, such Acquisition would constitute a Permitted Acquisition;

(ii) in the case of an Acquisition of all or any substantial portion of the Property (other than Capital Stock) of another Person, such Acquisition shall constitute a Permitted Acquisition.

8.5 Asset Dispositions.

The Credit Parties will not permit any member of the North American Group to make any Asset Disposition (including, without limitation, any Sale and Leaseback Transaction), unless

(a) if the subject transaction is a Sale and Leaseback Transaction, such transaction shall be permitted by Section 8.13;

(b) if the subject transaction involves Capital Stock of a Subsidiary, the subject transaction is of a controlling interest in such Subsidiary;

(c) the aggregate net book value of all assets sold, leased or otherwise disposed of in any fiscal year of the Borrower shall not exceed an amount equal to the lesser of (A) ten percent (10%) of consolidated assets for the Borrower and its Domestic Subsidiaries as of the end of the immediately preceding fiscal year or (B) assets producing ten percent (10%) of Consolidated EBITDA;

(d) no Default or Event of Default shall exist immediately after giving effect thereto;

(e) the Borrower shall have delivered to the Administrative Agent a Pro Forma Compliance Certificate demonstrating that, upon giving effect to such Asset Disposition on a Pro Forma Basis, the Credit Parties shall be in compliance with all of the covenants set forth in Section 7.11; and

(f) in the case of an Asset Disposition involving Property exceeding $2 million, the Borrower shall have given written notice to the Administrative Agent at least 30 days in advance of the prospective disposition, and the terms thereof, in sufficient detail as to the book value and consideration to be paid, terms of disposition, and net proceeds expected therefrom and intended application thereof.

The Administrative Agent will promptly deliver to the Borrower upon request, at the Borrower's expense, such release documentation (including delivery of applicable stock certificates and UCC-3 terminations) as may be reasonably requested to give effect to the release of subject Property from the security interests securing the obligations hereunder in connection with Asset Dispositions permitted hereunder.

8.6 Investments.

The Credit Parties will not permit any member of the North American Group to make or permit to exist Investments in or to any Person, except for Permitted Investments.

8.7 Restricted Payments.

The Credit Parties will not make, or permit any member of the North American Group to make, any Restricted Payment, unless:

(a) the Consolidated Leverage Ratio shall be less than 1.50:1.0 on a Pro Forma Basis after giving effect to the Restricted Payment (and any Funded Debt incurred in connection therewith);

(b) the aggregate amount of Restricted Payments in any fiscal year shall not exceed $5,000,000;

(c) no Default or Event of Default shall then exist or would exist immediately after giving effect thereto; and

(d) the Borrower shall have delivered to the Administrative Agent a Pro Forma Compliance Certificate demonstrating that, upon giving effect to such Restricted Payment on a Pro Forma Basis, the Credit Parties shall be in compliance with all of the covenants set forth in Section 7.11.

8.8 Modifications and Payments in respect of Funded Debt.

None of the members of the Consolidated Group will

(a) After the issuance thereof, amend or modify (or permit the amendment or modification of) the terms of any Funded Debt in a manner adverse to the interests of the Lenders (including specifically shortening any maturity or average life to maturity or requiring any payment sooner than previously scheduled or increasing the interest rate or fees applicable thereto);

(b) Except in connection with a refinancing or refunding permitted hereunder, make any prepayment, redemption, defeasance or acquisition for value of (including without limitation, by way of depositing money or securities with the trustee with respect thereto before due for the purpose of paying when due), or refund, refinance or exchange of, any Funded Debt (other than the Indebtedness under the Credit Documents and intercompany Indebtedness permitted hereunder) other than regularly scheduled payments of principal and interest on such Funded Debt.

8.9 Transactions with Affiliates.

The Credit Parties will not permit any member of the Consolidated Group to enter into or permit to exist any transaction or series of transactions with any officer, director, shareholder, Subsidiary or Affiliate of such Person other than (a) advances of working capital to any Domestic Credit Party, (b) transfers of cash and assets to any Domestic Credit Party, (c) transactions permitted by Section 8.1, Section 8.4, Section 8.5, Section 8.6, or Section 8.7, (d) normal compensation and reimbursement of expenses of officers and directors and (e) except as otherwise specifically limited in this Credit Agreement, other transactions which are entered into in the ordinary course of such Person's business on terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arms-length transaction with a Person other than an officer, director, shareholder, Subsidiary or Affiliate.

8.10 Fiscal Year; Organizational Documents; Legal Name; State of Formation; Form of Organization.

The Credit Parties will not permit any member of the Consolidated Group to:

(a) change its fiscal year;

(b) amend, modify or change its articles of incorporation (or corporate charter or other similar organizational document) or bylaws (or other similar document) in a manner adverse to the interests of the Lenders without the prior written consent of the Required Lenders (which consent shall not be unreasonably withheld);

(c) without providing ten (10) days prior written notice to the Collateral Agent, change its name, state of formation or form of organization.

8.11 Limitation on Restricted Actions.

The Credit Parties will not permit any member of the Consolidated Group to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any such Person to (a) pay dividends or make any other distributions on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, (b) pay any Indebtedness or other obligation, (c) make loans, advances or capital contributions, (d) sell, lease or otherwise transfer any of its Property, (e) provide any Support Obligation (including a guaranty of the obligations hereunder) or (f) grant a Lien upon any its Property, in each case except for such encumbrances or restrictions existing under or by reason of (i) this Credit Agreement and the other Credit Documents, (ii) pursuant to the terms of any purchase money Indebtedness permitted by Section 8.1(c) to the extent such limitations relate only to the Property which is the subject of such financing, (iii) pursuant to the terms of any licensing or use agreement to the extent such agreements prohibit the assignment of, or the grant of a security interest in, such agreement or the Property subject thereto and (iv) with respect to the UK Subsidiaries only, the loan doocuments governing the UK Subsidiary Credit Facility.

8.12 Ownership of Subsidiaries.

Notwithstanding any other provisions of this Credit Agreement to the contrary, the Credit Parties will not, and will not permit any member of the North American Group to, (i) permit any Person (other than the Borrower or any Wholly Owned Subsidiary of the Borrower) to own any Capital Stock of any North American Subsidiary, except (A) to qualify directors where required by applicable law or to satisfy other requirements of applicable law with respect to the ownership of Capital Stock of North American Subsidiaries or (B) as a result of or in connection with a dissolution, merger, consolidation or disposition of a North American Subsidiary permitted under Section 8.4 or Section 8.5, (ii) permit any Subsidiary of the Borrower to issue any shares of preferred Capital Stock or (iii) permit, create, incur, assume or suffer to exist any Lien on any Capital Stock of any Subsidiary of the Borrower, except for Permitted Liens.

8.13 Sale Leasebacks.

The Credit Parties will not permit any member of the North American Group to enter into any Sale and Leaseback Transaction unless such Sale and Leaseback Transaction constitutes purchase money Indebtedness permitted by Section 8.1(c).

SECTION 9

EVENTS OF DEFAULT

9.1 Events of Default.

An Event of Default shall exist upon the occurrence of any of the following specified events (each an "Event of Default"):

(a) Payment. Any Credit Party shall

(i) default in the payment when due of any principal of any of the Loans or of any reimbursement obligations arising from drawings under Letters of Credit, or

(ii) default, and such default shall continue for three (3) or more Business Days, in the payment when due of any interest on the Loans or on any reimbursement obligations arising from drawings under Letters of Credit, or of any Fees or other amounts owing hereunder, under any of the other Credit Documents or in connection herewith or therewith; or

(b) Representations. Any representation or warranty made or deemed to be made by any Credit Party herein, in any of the other Credit Documents or in any written statement or certificate delivered or required to be delivered pursuant hereto or thereto shall prove untrue in any material respect on the date as of which it was deemed to have been made; or

(c) Covenants. Any Credit Party shall

(i) default in the due performance or observance of any term, covenant or agreement contained in Sections 7.2, 7.9, 7.11, 7.12, 7.13 or 8.1 through 8.13, inclusive;

(ii) default in the due performance or observance of any term, covenant or agreement contained in Sections 7.1(a), (b), (c) or (d) and such default shall continue unremedied for a period of at least 5 days after the earlier of an Executive Officer of a Credit Party becoming aware of such default or notice thereof by the Administrative Agent; or

(iii) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in subsections (a), (b), (c)(i) or (c)(ii) of this Section 9.1) contained in this Credit Agreement or any other Credit Document and such default shall continue unremedied for a period of at least 30 days after the earlier of an Executive Officer of a Credit Party becoming aware of such default or notice thereof by the Administrative Agent; or

(d) Other Credit Documents. Except as a result of or in connection with a dissolution, merger or disposition of a Subsidiary permitted under Section 8.4 or Section 8.5, any Credit Document shall fail to be in full force and effect or to give the Administrative Agent and/or the Lenders the Liens, rights, powers and privileges purported to be created thereby, or any Credit Party shall so state in writing; or

(e) Guaranties. Except as the result of or in connection with a dissolution, merger or disposition of a Subsidiary permitted under Section 8.4 or Section 8.5, the guaranty given by any Guarantor (including any Person which becomes a Guarantor after the Closing Date in accordance with Section 7.12) or any provision thereof shall cease to be in full force and effect, or any Guarantor (including any Person which becomes a Guarantor after the Closing Date in accordance with Section 7.12) or any Person acting by or on behalf of such Guarantor shall deny or disaffirm such Guarantor's obligations under such guaranty, or any Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to any guaranty; or

(f) Bankruptcy, etc. Any Bankruptcy Event shall occur with respect to any member of the Consolidated Group; or

(g) Defaults under Other Agreements. With respect to any Funded Debt (other than Funded Debt outstanding under this Credit Agreement) in excess of $2,500,000 in the aggregate for the members of the Consolidated Group taken as a whole, (i) any member of the Consolidated Group shall (A) default in any payment (beyond the applicable grace period with respect thereto, if any) with respect to any such Funded Debt, or (B) the occurrence and continuance of a default in the observance or performance relating to such Funded Debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event or condition shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit, the holder or holders of such Funded Debt (or trustee or agent on behalf of such holders) to cause (determined without regard to whether any notice or lapse of time is required), any such Funded Debt to become due prior to its stated maturity; or (ii) any such Funded Debt shall be declared due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof; or

(h) Judgments. One or more judgments or decrees shall be entered against one or more of the members of the Consolidated Group involving a liability of $2,500,000 or more in the aggregate (to the extent not paid or fully covered by insurance provided by a carrier who has acknowledged coverage and has the ability to perform) and any such judgments or decrees shall not have been vacated, discharged or stayed or bonded pending appeal within 45 days from the entry thereof; or

(i) ERISA. Any of the following events or conditions, if such event or condition could involve possible taxes, penalties, and other liabilities in an aggregate amount which would have a Material Adverse Effect: (i) any "accumulated funding deficiency," as such term is defined in Section 302 of ERISA and Section 412 of the Internal Revenue Code, whether or not waived, shall exist with respect to any Plan, or any lien shall arise on the assets of any member of the Consolidated Group or any ERISA Affiliate in favor of the PBGC or a Plan; (ii) an ERISA Event shall occur with respect to a Single Employer Plan, which is, in the reasonable opinion of the Administrative Agent, likely to result in the termination of such Plan for purposes of Title IV of ERISA; (iii) an ERISA Event shall occur with respect to a Multiemployer Plan or Multiple Employer Plan, which is, in the reasonable opinion of the Administrative Agent, likely to result in (A) the termination of such Plan for purposes of Title IV of ERISA, or (B) any member of the Consolidated Group or any ERISA Affiliate incurring any liability in connection with a withdrawal from, reorganization of (within the meaning of Section 4241 of ERISA), or insolvency (within the meaning of Section 4245 of ERISA) of such Plan; or (iv) any prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Internal Revenue Code) or breach of fiduciary responsibility shall occur which may subject any member of the Consolidated Group or any ERISA Affiliate to any liability under Sections 406, 409, 502(i), or 502(l) of ERISA or Section 4975 of the Internal Revenue Code, or under any agreement or other instrument pursuant to which any member of the Consolidated Group or any ERISA Affiliate has agreed or is required to indemnify any person against any such liability; or

(j) Ownership. There shall occur a Change of Control.

9.2 Acceleration; Remedies.

Upon the occurrence of an Event of Default, and at any time thereafter unless and until such Event of Default has been waived by the requisite Lenders (pursuant to the voting requirements in Section 11.6) or cured to the satisfaction of the requisite Lenders (pursuant to the voting requirement in Section 11.6), the Agents shall, upon the request and direction of the Required Lenders, by written notice to the Credit Parties take any of the following actions:

(a) Termination of Commitments. Declare the Commitments terminated whereupon the Commitments shall be immediately terminated.

(b) Acceleration. Declare the unpaid principal of and any accrued interest in respect of all Loans, any reimbursement obligations arising from drawings under Letters of Credit and any and all other indebtedness or obligations of any and every kind owing by the Credit Parties to the Agents and any of the Lenders hereunder to be due whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Credit Parties.

(c) Cash Collateral. Direct the Credit Parties to pay (and the Credit Parties agree that upon receipt of such notice, or upon the occurrence of an Event of Default under Section 9.1(f), they will immediately pay) to the Administrative Agent additional cash, to be held by the Administrative Agent, for the benefit of the Lenders, in a cash collateral account as additional security for the LOC Obligations in respect of subsequent drawings under all then outstanding Letters of Credit in an amount equal to the maximum aggregate amount which may be drawn under all Letters of Credits then outstanding.

(d) Enforcement of Rights. Enforce any and all rights and interests created and existing under the Credit Documents or applicable law, including, without limitation, all rights and remedies existing under the Collateral Documents, all rights and remedies against a Guarantor and all rights of set-off.

Notwithstanding the foregoing, if an Event of Default specified in Section 9.1(f) shall occur with respect to the Borrower, then the Commitments shall automatically terminate and all Loans, all reimbursement obligations arising from drawings under Letters of Credit, all accrued interest in respect thereof, all accrued and unpaid Fees and other indebtedness or obligations owing to the Agents and/or any of the Lenders hereunder automatically shall immediately become due and payable without the giving of any notice or other action by the Agents or the Lenders.

SECTION 10

AGENCY PROVISIONS

10.1 Appointment and Authorization of Agents.

(a) Each Lender hereby irrevocably appoints, designates and authorizes each Agent to take such action on its behalf under the provisions of this Credit Agreement and each other Credit Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Credit Agreement or any other Credit Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Credit Document, the Agents shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Agents have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Credit Agreement or any other Credit Document or otherwise exist against the Agents. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Credit Documents with reference to the Agents is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The Issuing Lender shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith and the Issuing Lender shall have all of the benefits and immunities (i) provided to the Agents in this Section 10 with respect to any acts taken or omissions suffered by the Issuing Lender in connection with Letters of Credit issued by it or proposed to be issued by it and the application and agreements for letters of credit pertaining to the Letters of Credit as fully as if the term "Agent" as used in this Section 10 included the Issuing Lender with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the Issuing Lender.

10.2 Delegation of Duties.

Each Agent may execute any of its duties under this Credit Agreement or any other Credit Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

10.3 Reliance by Agents.

(a) The Agents shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Credit Party), independent accountants and other experts selected by the Agents. Each Agent shall be fully justified in failing or refusing to take any action under any Credit Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agents shall in all cases be fully protected in acting, or in refraining from acting, under this Credit Agreement or any other Credit Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereunder in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and participants.

(b) For purposes of determining compliance with the conditions specified in Section 5.1, each Lender that has signed this Credit Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

10.4 Notice of Default.

No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to such Agent for the account of the Lenders, unless such Agent shall have received written notice from a Lender or the Borrower referring to this Credit Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." Each Agent will notify the Banks of its receipt of any such notice. Each Agent shall take such action with respect to such Default or Event of Default as may be directed by the Required Lenders in accordance with Section 9; provided, however, that unless and until such Agent has received any such direction, such Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Lenders.

10.5 Agent in its Individual Capacity.

Bank of America and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with each of the Credit Parties and their respective Affiliates as though Bank of America were not the Administrative Agent, Collateral Agent or Issuing Lender hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, Bank of America or its Affiliates may receive information regarding any Credit Party or its Affiliates (including information that may be subject to confidentiality obligations in favor of such Credit Party or such Affiliate) and acknowledge that Bank of America, in its capacity as Administrative Agent, Collateral Agent, Issuing Lender or otherwise, shall be under no obligation to provide such information to them. With respect to its Commitment and Loans, Bank of America shall have the same rights and powers under this Credit Agreement and the other Credit Documents as any other Lender and may exercise such rights and powers as though it were not the Administrative Agent, Collateral Agent or Issuing Lender, and the terms "Lender" and "Lenders" include Bank of America in its individual capacity.

10.6 Liability of Agents.

No Agent-Related Person shall be (a) liable for any action taken or omitted to be taken by any of them under or in connection with this Credit Agreement or any other Credit Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set forth herein), or (b) responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by any Credit Party or any officer thereof, contained herein or in any other Credit Document, or in any certificate, report, statement or other document referred to or provided for in, or received by any Agent under or in connection with, this Credit Agreement or any other Credit Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Credit Agreement or any other Credit Document, or for any failure of any Credit Party or any other party to any Credit Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Credit Agreement or any other Credit Document, or to inspect the properties, books or records of any Credit Party or any Affiliate thereof.

10.7 Indemnification of Agent.

Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Credit Party and without limiting the obligation of any Credit Party to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence or willful misconduct; provided, however, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limitation of the foregoing, each Lender shall reimburse the Agents upon demand for its ratable share of any costs or out-of-pocket expenses (including reasonable fees and expenses of counsel) incurred by the Agents in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Credit Agreement, any other Credit Document, or any document contemplated by or referred to herein, to the extent that the Agents are not reimbursed for such expenses by or on behalf of the Borrower. The undertaking in this Section shall survive termination of the Commitments, the payment of all Obligations and the resignation of any Agent.

10.8 Credit Decision; Disclosure of Information by Agent.

Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Credit Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to the Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties and their respective Subsidiaries and Affiliates, and all applicable Lender or other regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Credit Agreement and to extend credit to the Borrower and the other Credit Parties hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Credit Agreement and the other Credit Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties and their respective Subsidiaries and Affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Agent herein, no Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Credit Parties or any of their respective Subsidiaries and Affiliates which may come into the possession of any Agent-Related Person.

10.9 Successor Agents.

The Administrative Agent may resign as Administrative Agent and the Collateral Agent may at resign as Collateral Agent in each case upon thirty (30) days' notice to the Lenders and the Borrower; provided that any resignation by Bank of America as Administrative Agent shall also constitute its resignation as Issuing Lender and Swingline Lender. Upon the resignation of any Agent, the Required Lenders shall appoint a successor Agent, which successor Agent shall be consented to by the Borrower at all times other than during the existence of an Event of Default (which consent shall not be unreasonably withheld or delayed)). If no successor Agent is appointed prior to the effective date of the resignation of the resigning Agent, the resigning Agent may appoint, after consulting with the Lenders and the Borrower, a successor Agent from among the Lenders. Upon the acceptance of its appointment as successor Agent hereunder by a successor, the Person acting as such successor Agent shall succeed to all the rights, powers and duties of the resigning Agent (and, in the case of the resignation of the Administrative Agent, shall succeed to all the rights, powers and duties of the resigning Issuing Lender and the resigning Swingline Lender) and the respective terms "Collateral Agent" and/or "Administrative Agent" (and, in the case of the resignation of the Administrative Agent, "Issuing Lender" and "Swingline Lender"), as applicable, shall mean such successor Collateral Agent and/or Administrative Agent (and, in the case of the resignation of the Administrative Agent, Issuing Lender and Swingline Lender), and the resigning Agent's appointment, powers and duties shall be terminated and, if the Issuing Lender and Swingline Lender are also resigning as provided above, the resigning Issuing Lender's and Swingline Lender's rights, powers and duties as such shall be terminated, without any other or further act or deed on the part of such retiring Issuing Lender or Swingline Lender or any other Lender, other than the obligation of the successor Issuing Lender to issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or to make other arrangements satisfactory to the resigning Issuing Lender to effectively assume the obligations of the resigning Issuing Lender with respect to such Letters of Credit. After any resigning Agent's resignation hereunder as Agent, the provisions of this Section 10 and Sections 11.5 and 11.9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent. If no Person has accepted appointment as successor Agent by the date which is thirty (30) days following a resigning Agent's notice of resignation, the resigning Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the resigning Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above.

10.10 Administrative Agent May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or LOC Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LOC Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Agents under Section 3.5 and Section 11.5(a)) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Agents under Section 3.5 and Section 11.5(a).

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

10.11 Collateral and Guaranty Matters.

(a) The Lenders irrevocably authorize the Collateral Agent, at its option and in its discretion, to release any Lien on any Property granted to or held by the Collateral Agent under any Credit Document (i) upon termination of the Commitments and payment in full of all Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Credit Document, or (iii) subject to Section 11.6, if approved, authorized or ratified in writing by the Required Lenders;

(b) The Lenders irrevocably authorize the Collateral Agent, at its option and in its discretion, to subordinate any Lien on any Property granted to or held by the Collateral Agent under any Credit Document to the holder of any Lien on such Property that is permitted by clause (viii) of the definition of "Permitted Liens"; and

(c) The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion, to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by any Agent at any time, the Required Lenders will confirm in writing such Agent's authority, in the case of the Collateral Agent, to release or subordinate its interest in particular types or items of property, or, in the case of the Administrative Agent, to release any Guarantor from its obligations under the Guaranty pursuant to this Section 10.11.

10.12 Other Agents; Managers and Arrangers.

None of the Lenders or other Persons identified on the facing page or signature pages of this Credit Agreement as a "syndication agent," "documentation agent," "co-agent," "book manager," "lead manager," "arranger," "lead arranger" or "co-arranger" shall have any right, power, obligation, liability, responsibility or duty under this Credit Agreement other than, in the case of such Lenders, those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Credit Agreement or in taking or not taking action hereunder.

SECTION 11

MISCELLANEOUS

11.1 Notices.

Except as otherwise expressly provided herein, all notices and other communications shall have been duly given and shall be effective (a) when delivered, (b) when transmitted via facsimile, (c) the Business Day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service, or (d) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case to the respective parties at the facsimile or address set forth on Schedule 11.1, or at such other facsimile or address as such party may specify by written notice to the other parties hereto.

11.2 Right of Set-Off; Adjustments.

Upon the occurrence and during the continuance of any Event of Default, each Lender (and each of its domestic Affiliates) is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender (or any of its domestic Affiliates) to or for the credit or the account of any Credit Party against any and all of the obligations of such Person now or hereafter existing under this Credit Agreement, under the Notes, under any other Credit Document or otherwise, irrespective of whether such Lender shall have made any demand under hereunder or thereunder and although such obligations may be unmatured. Each Lender agrees promptly to notify any affected Credit Party after any such set-off and application made by such Lender; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender under this Section 11.2 are in addition to other rights and remedies (including, without limitation, other rights of set-off) that such Lender may have.

11.3 Successors and Assigns.

(a) The provisions of this Credit Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Credit Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in LOC Obligations and in Swingline Loans) at the time owing to it); provided that (i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund (as defined in subsection (g) of this Section) with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Credit Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to rights in respect of Swingline Loans; (iii) any assignment of a Commitment must be approved by the Administrative Agent, the Issuing Lender and the Swingline Lender unless the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and (iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500. Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Credit Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Credit Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Credit Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.6, 3.9, 3.11, 3.12, 11.4 and 11.5 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Credit Agreement that does not comply with this subsection shall be treated for purposes of this Credit Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and LOC Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agents and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than (i) a natural person, (ii) the Borrower, (iii) any of the Borrower's Affiliates or Subsidiaries or (iv) without the consent of the Borrower, any Person in the same or similar line of business as the Borrower and its Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Credit Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in LOC Obligations and/or Swingline Loans) owing to it); provided that (i) such Lender's obligations under this Credit Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Credit Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Credit Agreement and to approve any amendment, modification or waiver of any provision of this Credit Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.6 that directly affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.6, 3.9, 3.11 and 3.12 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.2 as though it were a Lender, provided such Participant agrees to be subject to Section 3.11 as though it were a Lender.

(e) A Participant shall not be entitled to receive any greater payment under Section 3.6, 3.9 or 3.11 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.11 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.11 as though it were a Lender.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Credit Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) As used herein, the following terms have the following meanings:

"Eligible Assignee" means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a natural person) approved by (i) the Administrative Agent, the Issuing Lender and the Swingline Lender, and (ii) unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include the Borrower or any of the Borrower's Affiliates or Subsidiaries.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(h) Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to subsection (b) above, Bank of America may, (i) upon 30 days' notice to the Borrower and the Lenders, resign as Issuing and/or (ii) upon 30 days' notice to the Borrower, resign as Swingline Lender. In the event of any such resignation as Issuing Lender or Swingline Lender, the Borrower shall be entitled to appoint from among the Lenders a successor Issuing Lender or Swingline Lender hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America as Issuing Lender or Swingline Lender, as the case may be. If Bank of America resigns as Issuing Lender, it shall retain all the rights and obligations of the Issuing Lender hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Issuing Lender and all LOC Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations pursuant to Section 2.7). If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations pursuant to Section 2.8.

11.4 No Waiver; Remedies Cumulative.

No failure or delay on the part of either Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between either Agent or any Lender and any of the Credit Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies which either Agent or any Lender would otherwise have. No notice to or demand on any Credit Party in any case shall entitle the Credit Parties to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Agents or the Lenders to any other or further action in any circumstances without notice or demand.

11.5 Expenses; Indemnification.

(a) The Borrower agrees (a) to pay or reimburse the Agents for all costs and expenses incurred in connection with the development, preparation, negotiation and execution of this Credit Agreement and the other Credit Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated hereby or thereby are consummated), and the consummation and administration of the transactions (including assignments pursuant to Section 11.3) contemplated hereby and thereby, including all reasonable fees and expenses of counsel, and (b) to pay or reimburse the Agents and each Lender for all costs and expenses incurred in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies under this Credit Agreement or the other Credit Documents (including all such costs and expenses incurred during any "workout" or restructuring in respect of the Loans and Letters of Credit and during any legal proceeding, including any proceeding under any the Bankruptcy Code), including all reasonable fees and expenses of counsel. The foregoing costs and expenses shall include all search, filing, recording, title insurance and appraisal charges and fees and taxes related thereto, and other out-of-pocket expenses incurred by the Agents and the cost of independent public accountants and other outside experts retained by the Agents or any Lender.

(b) Whether or not the transactions contemplated hereby are consummated, the Borrower agrees to indemnify and hold harmless each Agent-Related Person, each Lender and their respective Affiliates, directors, officers, employees, counsel, agents and attorneys-in-fact (collectively the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including reasonable fees and expenses of counsel) of any kind and nature whatsoever which may at any time be imposed on, incurred by or asserted against any Indemnitee in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby; (ii) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Materials of Environmental Concern on or from any property currently or formerly owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "Indemnified Liabilities"); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, nor shall any Indemnitee have any liability for any indirect or consequential damages relating to this Credit Agreement or any other Credit Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date).

(b) All amounts due under this Section 11.5 shall be payable within ten Business Days after demand therefor. The agreements in this Section 11.5 shall survive the resignation of any Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the Obligations.

11.6 Amendments, Waivers and Consents.

Neither this Credit Agreement nor any other Credit Document nor any of the terms hereof or thereof may be amended, changed, waived, discharged or terminated unless such amendment, change, waiver, discharge or termination is in writing entered into by, or approved in writing by, the Required Lenders and the Borrower, provided, however, that:

(a) without the consent of each Lender affected thereby, neither this Credit Agreement nor any other Credit Document may be amended to

(i) extend the final maturity of any Loan or of any reimbursement obligation, or any portion thereof, arising from drawings under Letters of Credit,

(ii) reduce the rate or extend the time of payment of interest (other than as a result of waiving the applicability of any post-default increase in interest rates) thereon or fees hereunder,

(iii) reduce or waive the principal amount of any Loan or of any reimbursement obligation, or any portion thereof, arising from drawings under Letters of Credit,

(iv) increase the Commitment of a Lender over the amount thereof in effect (it being understood and agreed that a waiver of any Default or Event of Default or mandatory reduction in the Commitments shall not constitute a change in the terms of any Commitment of any Lender),

(v) except as the result of or in connection with a dissolution, merger or disposition of a member of the North American Group permitted under Section 8.3, release the Borrower or substantially all of the Guarantors from its or their obligations under the Credit Documents,

(vi) except as the result of or in connection with an Asset Disposition permitted under Section 8.3(b), release all or substantially all of the Collateral,

(vii) amend, modify or waive any provision of this Section 11.6 or Section 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.14, 3.15, 9.1(a), 11.2, 11.3, 11.5 or 11.9,

(viii) reduce any percentage specified in, or otherwise modify, the definition of Required Lenders, or

(ix) consent to the assignment or transfer by the Borrower or all or substantially all of the other Credit Parties of any of its or their rights and obligations under (or in respect of) the Credit Documents except as permitted thereby;

(b) without the consent of the Agents, no provision of Section 10 may be amended; and

(c) without the consent of the Issuing Lender, no provision of Section 2.2 may be amended.

Notwithstanding the fact that the consent of all the Lenders is required in certain circumstances as set forth above, (x) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein and (y) the Required Lenders may consent to allow a Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding.

11.7 Counterparts.

This Credit Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Credit Agreement to produce or account for more than one such counterpart for each of the parties hereto. Delivery by facsimile by any of the parties hereto of an executed counterpart of this Credit Agreement shall be as effective as an original executed counterpart hereof and shall be deemed a representation that an original executed counterpart hereof will be delivered.

11.8 Headings.

The headings of the sections and subsections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Credit Agreement.

11.9 Survival.

(a) All indemnities set forth herein, including, without limitation, in Section 2.7(h), 3.11, 3.12, 10.7 or 11.5 shall survive the execution and delivery of this Credit Agreement, the making of the Loans, the issuance of the Letters of Credit, the repayment of the Loans, LOC Obligations and other obligations under the Credit Documents and the termination of the Commitments hereunder.

(b) All representations and warranties made hereunder and in any other Credit Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Agents and each Lender, regardless of any investigation made by the Agents or any Lender or on their behalf and notwithstanding that the Agents or any Lender may have had notice or knowledge of any Default at the time of any Extension of Credit, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

11.10 Governing Law; Submission to Jurisdiction; Venue.

(a) THIS CREDIT AGREEMENT AND, UNLESS OTHERWISE EXPRESSLY PROVIDED THEREIN, THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. Any legal action or proceeding with respect to this Credit Agreement or any other Credit Document may be brought in the State or Federal courts located in New York, New York, and, by execution and delivery of this Credit Agreement, each of the Credit Parties hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the nonexclusive jurisdiction of such courts. Each of the Credit Parties further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at the address set out for notices pursuant to Section 11.1, such service to become effective three (3) Business Days after such mailing. Nothing herein shall affect the right of the Administrative Agent or any Lender to serve process in any other manner permitted by law or to commence legal proceedings or to otherwise proceed against any Credit Party in any other jurisdiction.

(b) Each of the Credit Parties hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Credit Agreement or any other Credit Document brought in the courts referred to in subsection (a) above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

(c) EACH PARTY TO THIS CREDIT AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY CREDIT DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY CREDIT DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS CREDIT AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

11.11 Severability.

If any provision of any of the Credit Documents is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

11.12 Entirety.

This Credit Agreement together with the other Credit Documents represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, if any, including any commitment letters or correspondence relating to the Credit Documents or the transactions contemplated herein and therein.

11.13 Binding Effect; Termination.

(a) This Credit Agreement shall become effective at such time on or after the Closing Date when it shall have been executed by each Credit Party and the Administrative Agent, and the Administrative Agent and each Lender shall have received copies hereof (telefaxed or otherwise) which, when taken together, bear the signatures of each Lender, and thereafter this Credit Agreement shall be binding upon and inure to the benefit of each Credit Party, the Administrative Agent and each Lender and their respective successors and assigns.

(b) The term of this Credit Agreement shall be until no Loans, LOC Obligations or any other amounts payable hereunder or under any of the other Credit Documents shall remain outstanding (other than contingent indemnity obligations), no Letters of Credit shall be outstanding, all of the Credit Party Obligations have been irrevocably satisfied in full and all of the Commitments hereunder shall have expired or been terminated.

11.14 Confidentiality.

Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any regulatory authority; (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; (d) to any other party to this Credit Agreement; (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Credit Agreement or the enforcement of rights hereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Credit Agreement or (ii) any direct or indirect contractual counterparty or prospective counterparty (or such contractual counterparty's or prospective counterparty's professional advisor) to any credit derivative transaction relating to obligations of the Credit Parties; (g) with the consent of the Borrower; (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to any Agent or any Lender on a nonconfidential basis from a source other than the Borrower; or (i) to the National Association of Insurance Commissioners or any other similar organization. In addition, the Administrative Agent and the Lenders may disclose the existence of this Credit Agreement and information about this Credit Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Administrative Agent and the Lenders in connection with the administration and management of this Credit Agreement, the other Credit Documents, the Commitments, and the Extensions of Credit. For the purposes of this Section, "Information" means all information received from any Credit Party relating to any Credit Party or its business, other than any such information that is available to the any Agent or any Lender on a nonconfidential basis prior to disclosure by any Credit Party; provided that, in the case of information received from a Credit Party after the date hereof, such information is clearly identified in writing at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

11.15 Source of Funds.

Each of the Lenders hereby represents and warrants to the Borrower that at least one of the following statements is an accurate representation as to the source of funds to be used by such Lender in connection with the financing hereunder:

(a) no part of such funds constitutes assets allocated to any separate account maintained by such Lender in which any employee benefit plan (or its related trust) has any interest;

(b) to the extent that any part of such funds constitutes assets allocated to any separate account maintained by such Lender, such Lender has disclosed to the Borrower the name of each employee benefit plan whose assets in such account exceed 10% of the total assets of such account as of the date of such purchase (and, for purposes of this subsection (b), all employee benefit plans maintained by the same employer or employee organization are deemed to be a single plan);

(c) to the extent that any part of such funds constitutes assets of an insurance company's general account, such insurance company has complied with all of the requirements of the regulations issued under Section 401(c)(1)(A) of ERISA; or

(d) such funds constitute assets of one or more specific benefit plans which such Lender has identified in writing to the Borrower.

As used in this Section 11.15, the terms "employee benefit plan" and "separate account" shall have the respective meanings assigned to such terms in Section 3 of ERISA.

11.16 Conflict.

To the extent that there is a conflict or inconsistency between any provision hereof, on the one hand, and any provision of any Credit Document, on the other hand, this Credit Agreement shall control.

[Signature Pages to Follow]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Credit Agreement to be duly executed and delivered as of the date first above written.

BORROWER: TAKE-TWO INTERACTIVE SOFTWARE, INC.,
a Delaware Corporation

By: /s/ Barry Rutcofsky

Name: Barry Rutcofsky
Title: Executive Vice President

GUARANTORS: JACK OF ALL GAMES, INC.,
a New York corporation
POPTOP SOFTWARE, INC.,
a Missouri corporation
TALONSOFT, INC.,
a Delaware corporation
VLM ENTERTAINMENT GROUP, INC.,
a Delaware corporation
ROCKSTAR GAMES, INC.,
a Delaware corporation
T2 DEVELOPER, INC.,
a Delaware corporation
INVENTORY MANAGEMENT SYSTEMS, INC.,
a Delaware corporation
GATHERING OF DEVELOPERS, INC.,
a Texas corporation

By: /s/ Barry Rutcofsky

Name: Barry Rutcofsky
Title: Executive Vice President

[Signature Pages Continue]

ADMINISTRATIVE AGENT:

BANK OF AMERICA, N.A.,
in its capacity as Administrative Agent

By: /s/ Michael Brashler

Name: Michael Brashler
Title: Agency Officer

LENDERS:

BANK OF AMERICA, N.A.,
in its capacity as a Lender

By: /s/ Robert M. Searson

Name: Robert M. Searson
Title: Senior Vice President

COMERICA BANK

By: /s/ Paul J. Durosko

Name: Paul J. Durosko
Title: Vice President

SUMMIT BUSINESS CAPITAL CORP.

By: /s/ Robert Munns

Name: Robert Munns
Title: Vice President

Exhibit 10.2

STANDARD FORM OF LOFT LEASE
The Real Estate
Board of New York, Inc.

Agreement of Lease, made as of the 1st day of July, 2002, between MOKLAM ENTERPRISES, INC., a New York corporation with an address at c/o Yuco Management, Inc., 475 Fifth Avenue, 19" Floor, New York, New York 10017, party of the first part, hereinafter referred to as OWNER, and TAKE-TWO INTERACTIVE SOFTWARE, INC., a Delaware corporation with an address at 575 Broadway, New York, New York, 10012, party of the second part, hereinafter referred to as TENANT,

Witnesseth:: Owner hereby leases to Tenant and Tenant hereby hires from Owner the entire fourth, fifth and sixth floors and the roof deck (as more specifically provided in Section 42.1 below) (the "demised premises" or "Premises") in the building known as 622 Broadway, in the Borough of New York, City and State of New York, (the "Building") for the term of ten (10) years and six (6) months (or until such term shall sooner cease and expire as hereinafter provided) to commence on July 1, 2002 and to end on December 31, 2012, both dates inclusive, at an annual rental rate as set forth in Article 63 of the rider annexed hereto and made a part hereof, which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments in advance on the first day of each month during said tern, at the office of Owner or such other place as Owner may designate, without any set off or deduction whatsoever (except as may be otherwise specifically set forth in this lease), except that Tenant shall pay the first monthly installment on the execution hereof.

In the event that, at the commencement of the term of this lease, or thereafter, Tenant shall be in default in the payment of rent to Owner pursuant to the terms of another lease with Owner or with Owner's predecessor in interest, Owner may at Owner's option and without notice to Tenant add the amount of such arrears to any monthly installment of rent payable hereunder and the same shall be payable to Owner as additional rent.

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representatives, successors and assigns, hereby covenant as follows:

Rent: 1. Tenant shall pay the rent as above and as hereinafter provided.
Occupancy: 2. Tenant shall use and occupy demised premises for general and executive offices only ...

and for no other purpose whatsoever.

Alterations: 3. Tenant shall make no changes in or to the demised premises of any nature without Owner's prior written consent. Subject to the prior written consent of Owner, and to the provisions of this article, Tenant, at Tenant's expense, may make alterations, installations, additions or improvements which are nonstructural and which do not affect utility services or plumbing and electrical lines, in or to the interior of the demised premises using contractors or mechanics first approved in each instance by Owner. Tenant shall, at its expense, before making any alterations, additions, installations, or improvements obtain all permits, approval and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Owner. Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such workman's compensation, general liability, personal and property damage insurance as Owner may require. If any mechanic's lien is filed against the demised premises, or the building of which the same forms a part, for work claimed to have been done for, or materials furnished to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within thirty days thereafter, at Tenant's expense, by payment or filing the bond required by law or otherwise. All fixtures and all paneling, partitions, railings and like installations, installed in the premises at any time, either by Tenant or by Owner on Tenant's behalf, shall, upon installation, become the property of Owner and shall remain upon and be surrendered with the demised premises [1]. Nothing in this Article shall be construed to give Owner title to or to prevent Tenant's removal of trade fixtures, moveable office furniture and equipment, but upon removal of any such from the premises or upon removal of other installations as may be required by Owner, Tenant shall immediately and at its expense, repair and restore the premises to the condition existing prior to installation and repair any damage to the demised premises or the building due to such removal. All property permitted or required to be removed by Tenant at the end of the term remaining in the premises after Tenant's removal shall be deemed abandoned and may, at the election of Owner, either be retained as Owner's property or removed from the premises by Owner, at Tenant's expense.

Repairs: 4. Owner shall maintain and repair the exterior of and the public portions of the building [1a]. Tenant shall, throughout the term of this lease, take good care of the demised premises including the bathrooms and lavatory facilities (if the demised premises encompass the entire floor of the building) and the windows and window frames and, the fixtures and appurtenances therein and at Tenant's sole cost and expense promptly make all repairs thereto and to the building, whether structural or non-structural in nature, caused by or resulting from the carelessness, omission, neglect or improper conduct of Tenant, Tenant's servants, employees, invitees or licensees [1b], and whether or not arising from such Tenant conduct or omission, when required by other provisions of this lease, including Article 6. Tenant shall also repair all damage to the building and the demised premises cause by the moving of Tenant's fixtures, furniture or equipment. All the aforesaid repairs shall be of quality of class equal to the original work or construction. If Tenant fails, after ten days notice, to proceed with due diligence to make repairs required to be made by Tenant, the same may be made by the Owner at the expense of Tenant, and the expenses thereof incurred by Owner shall be collectible, as additional rent, after rendition of a bill statement therefore [1c]. If the demised premises be or become infested with vermin, Tenant shall, at its expense, cause the same to be exterminated. Tenant shall give Owner prompt notice of any defective condition in any plumbing, heating system or electrical lines located in the demised premises an following such notice. Owner shall remedy the condition with due diligence, but at the expense of Tenant, if repairs are necessitated by damage or injury attributable to Tenant, Tenant's servants, agents, employees, invitees or licensees as aforesaid. Except as specifically provided in Article 9 or elsewhere in this lease, there shall be no allowance to the Tenant for a diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner, Tenant or others making or failing to make any repairs, alterations, additions or improvements in or to any portion of the building or the demised premises or in and to the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall not be entitled to any set off or reduction of rent by reason of any failure of Owner to comply with the covenants of this or any other article of this lease [1d]. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of any action for damages for breach of contract. The provisions of this Article 4 with respect to the making of repairs shall not apply in the case of fire or other casualty with regard to which Article 9 hereof shall apply. [2]

Window
Cleaning: 5. Tenant will not clean or require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the New York State Labor Law or any other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

Requirements
of Law,
Fire Insurance: 6. Prior to the commencement of the lease term, if Tenant is then in possession, and at all times thereafter Tenant shall, at Tenant's sole cost and expense, promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer pursuant to law, and all orders, rules and regulations of the New York Board of Fire Underwriters, or the Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Owner or Tenant with respect to the demised premises, if arising out of Tenant's [2a]. Except as provided in Article 30 hereof, nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has, by its manner of use of the demised premises or methods of operation therein, violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. Tenant shall not do or permit any actor or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner. Tenant shall not keep anything in the demised premises except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction, and then only in such manner and such quantity so as not to increase the rate for fir insurance applicable to the building, nor use the premises in a manner which will increase the insurance rate for the building or any property located therein over that in effect prior to the commencement of Tenant's occupancy. If by reason of failure to comply with the foregoing the fire insurance rate shall, at the beginning of this lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make=up" or rate for the building or demised premises issued by a body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rates then applicable to said premises. Tenant shall not place a load upon any floor of the demised premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Owner reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installation shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient, in Owner's [3] judgment, to absorb and prevent vibration, noise and annoyance.[3a]

Subordination: 7. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which demised premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument or subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease or the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall from time to time execute promptly any certificate that Owner may [3b] request.

Tenant's Liability
Insurance Property
Loss, Damage
Indemnity: 8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the [4] of Owner, its agents, servants [5] or employees; Owner or its agents shall not be liable for any damage caused by other tenants or persons in, upon or about said building or caused by operations in connection of any private, public or quasi public work. If at any time any windows of the demised premises are temporarily ed, darkened or bricked up (or permanently closed, darkened or bricked up, if required by law) for any reason whatsoever including, but not limited to Owner's own acts, Owner shall not be liable for any damage Tenant may sustain thereby and Tenant shall not be entitled to any compensation therefore nor abatement or diminution of rent nor shall the same release Tenant from its obligations hereunder nor constitute an eviction. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorney's fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agents, contractors, employees, invitees, or licensees, of any covenant or condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any sub-tenant, and any agent, contractor, employee, invitee or licensee of any sub-tenant. In case any action proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.[6]

Destruction,
Fire and
Other
Casualty: 9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises or access thereto are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner and the rent and other items of additional rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises or access thereto are totally damaged or rendered wholly unusable [6a] by fire or other casualty, then the rent and other items of additional rent as hereinafter expressly provided shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the premises shall have been repaired and restored [6b] by Owner (or sooner reoccupied in part by Tenant then rent shall be apportioned as provided in subsection (b) above), subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant, given within 90 days after such fire or casualty, or 30 days after adjustment of the insurance claim for such fire or casualty, whichever is sooner, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Owner's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition, subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume ___ days after written notice from Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained herein-above shall relive Tenant from liability that ay exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, including Owner's obligation to restore under subparagraph (b) above, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or

damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Owner and Tenant each hereby releases and waives all right of recovery with respect to subparagraphs (b), (d) and (e) above, against the other or any one claiming through or under each of them by way of subrogation or otherwise. The release and waiver herein referred to shall be deemed t include any loss or damage to the demises premises and/or to any personal property, equipment, trade fixtures, goods and merchandise located therein. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. If, and to the extent, that such waiver can be obtained only by the payment of additional premiums, then the party benefiting from the waiver shall pay such premium within ten days after written demand or shall be deemed to have agreed that the party obtaining insurance coverage shall be free of any further obligation under the provisions hereof with respect to waiver of subrogation. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.[8]

Eminent
Domain: 10. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease. Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's moving expenses and personal property, trade fixtures and equipment, provided Tenant is entitled pursuant to the terms of the lease to remove such property, trade fixtures and equipment at the end of the term and provided further such claim does not reduce Owner's award.

Assignment,
Mortgage,
Etc.: 11. Tenant, for itself, its heirs, distributees, executors, and administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance. Transfer of the majority of the stock of a corporate Tenant or the majority partnership interest of a partnership Tenant shall be deemed an assignment. If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, under-tenant or occupant as tenant, or release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

Electric
Current: 12. Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of existing feeders to the building or the risers or wiring installation and Tenant may not use any electrical equipment which, I Owner's opinion, reasonably exercised, will overload such installations or interfere with the use thereof by other tenants of the building. The change at anytime of the character of electric service shall in no wise make Owner liable or responsible to Tenant, for any loss, damages or expenses which Tenant may sustain.

Access to
Premises: 13. Owner or Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time, and, at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to any portion of the building or which Owner may elect to perform in the premises after Tenant's failure to make repairs or perform any work which Tenant is obligated to perform under this lease, or for the purpose of complying with laws, regulations and other directions of governmental authorities. [9] Tenant shall permit Owner to use and maintain and replace pipes and conduits in and through the demised premises and to erect new pipes and conduits therein provided, wherever possible, they are within walls or otherwise concealed. Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction nor shall the Tenant be entitled to any abatement of rent while such work is in progress nor to any damages by reason of loss or interruption of business or otherwise. [9a] Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the same to prospective purchasers or mortgagees of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants. If Tenant is not present to open and permit an entry into the demised premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefore, nor in any event shall the obligations of Tenant hereunder be affected. [10] If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom. Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligation hereunder.

Vault
Vault Space,
Area: 14. No Vaults, vault space or area, whether or not enclosed or covered, not within the property line of the building is leased hereunder anything contained in or indicated on any sketch, blue print or plan, or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the building. All vaults and vault space and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, of if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or action eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant, if used by Tenant, whether or not specifically leased hereunder.

Occupancy: 15. Tenant will not at any time use or occupy the demised premises in violation of the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the premises and accepts them as is, subject to the riders annexed hereto with respect to Owner's work, if any. In any event, Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violations, whether or not of record. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business, Tenant shall be responsible for and shall procure and maintain such license or permit.[10a]

Bankruptcy: 16. (a) Anything elsewhere in this lease to be contrary notwithstanding, this lease may be cancelled by Owner by sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor, or (2) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease.

(b) It is stipulated and agreed that in the event of the termination of this lease pursuant to (a) hereof, Owner shall forthwith, notwithstanding any other provisions of this lease to the contrary, be entitled to recover from Tenant as and for liquidated damages an amount equal to the difference between the rental reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the demised premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per annum. If such premises or any part thereof be relet by the Owner for the unexpired term of said lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value for the part or the whole of the premises so relet during the term of the reletting. Nothing herein contained shall limit or prejudice the right of the Owner to prove for and obtain as liquidated damages by reason of such termination, amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

Default: 17. (1) If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants of the payment of rent or additional rents; or if the demised premises becomes [10b] or deserted or if this lease be rejected under ss.235 of Title 11 of the U.S. Code (bankruptcy code);" or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if Tenant shall make default with respect to any other lease between Owner and Tenant; or if Tenant shall have failed, after ten (10) days written notice, to redeposit with Owner any portion of the security deposited hereunder which Owner has applied to the payment of any rent and additional rent due and payable hereunder or failed to take possession of the premises within thirty (30) days after the commencement of the term of this lease, of which fact Owner shall be the sole judge; then in any one or more of such events, upon Owner serving a written fifteen (15) days notice upon Tenant specifying the nature of said default and upon the expiration of said fifteen (15) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said fifteen (15) day period, and if Tenant shall not have diligently commenced during such default within such fifteen (15) day period, and shall not thereafter with reasonable diligence and in good faith, proceed to remedy or cure such default, then Owner may serve a written five (5) days' notice of cancellation of this lease upon Tenant, and upon the expiration of said five (5) days this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day herein definitely fixed for the end and expiration

of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

(2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end. If Tenant shall make default hereunder prior to the date fixed as the commencement of any renewal or extension of this lease, Owner may cancel and terminate such renewal or extension agreement by written notice.

Remedies of Owner and Waiver of Redemption: 18. In case of any such default, re-entry, expiration and/or dispossess by summary proceedings or other wise, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossess and/or expiration, (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less that or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease, (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, reasonable attorneys' fees, brokerage, advertising and for keeping the demises premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Owner to collect the deficiency for any subsequent month by a similar proceeding. Owner, in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgment, considers advisable and necessary for the purpose of re-letting the demised premises and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rents collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Owner shall have the right of injunctions and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws.

Fees and Expenses: 19. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, after notice if required and upon expiration of any applicable grace period if any, (except in an emergency), then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and without notice perform the obligation of Tenant thereunder [11]. If Owner, in connection with the foregoing or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to reasonable attorney's fees, in instituting, prosecuting or defending any action or proceedings, and prevails in any such action or proceeding, then Tenant will reimburse Owner for such sums so paid or obligations incurred with interest and costs. The foregoing expenses incurred with interest and costs. The foregoing expenses incurred by reason of Tenant's default shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within ten (10) days of rendition of any bill or statement to Tenant to therefore. If Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages.

Building Alterations and Management: 20. Owner shall have the right at any time without the same constituting an eviction and without incurring liability to Tenant therefore to change the arrangement and or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets or other public pars of the building and to change the name, number or designation by which the building may be known. [11a] There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or other Tenant making any repairs in the building or any such alterations, additions and improvements. [9a] Furthermore, Tenant shall not have any claim against Owner by reason of Owner's imposition of any controls of the manner of access to the building by Tenant's social or business visitors as the Owner may deem necessary for the security of the building and its occupants.

No Repre-sentations by Owner: 21. Neither Owner or Owner's agents have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or the demised premises, the rents, leases, expenses of

operation or any other matter or thing affecting or relating to the demised premises or the building except as herein expressly set forth and no rights, assessments or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition and agrees to take the same "as is" on the date possession is tendered and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence with the said premises and the building of which the same form a part were in good and satisfactory condition at the time such possession was so taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in the contract, which alone fully and completely expresses the agreement between Owner and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

End of
Term: 22. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to order and condition, ordinary wear and damages which Tenant is not required to repair as provided elsewhere in this lease excepted, and Tenant shall remove all its property from the demised premises. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this Lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

Quiet
Enjoyment: 23. Owner covenants and agrees with Tenant that upon Tenant paying the rend and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to Article 34 hereof and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

Failure
to Give
Possession: 24. If Owner is unable to give possession of the demised premises on the date of the commencements of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupants or if the demised premises are located in a building being constructed, because such building has not been sufficiently completed to make the premises ready for occupancy or because of the fact that a certificate of occupancy has not been procured or if the Owner has not completed any work required to be performed by Owner, or for any other reason, Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for Owner's inability to obtain possession or complete any work required) until after Owner shall have given Tenant notice that Owner is able to deliver possession in the condition required by this lease. If permission is given to Tenant to enter into the possession of the demised premises or to occupy premises other than the demised premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such possession and/or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this lease, except the obligation to pay the fixed annual rent set forth in page one of this lease. The provisions of this article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.

No Waiver: 25. The failure of [12] to seek redress for violation of, or [13] to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations, set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulation shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. All checks tendered to Owner as and for the rent of the demised premises shall be deemed payments for the account of Tenant. Acceptance by Owner of rent from anyone other than Tenant shall not be deemed to operate as an attornment to Owner by the payor of such rent or as a consent by Owner to an assignment or subletting by Tenant of the demised premises to such payor, or as a modification of the provisions of this lease. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed an acceptance of a surrender of said premises and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agents shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the premises.

Waiver of
Trial by Jury: 26. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matter whatsoever arising out of or in any way connected with this lease, the relationship of Owner and Tenant, Tenant's use of or occupancy of said premises, and any emergency statutory or any other statutory remedy, is further mutually agreed that in the event Owner commences any proceeding or action for possession including a summary proceeding for possession of the premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding including a counterclaim under Article 4[13a].

Inability to
Perform: 27. This Lease and the obligation of Tenant to pay rent hereunder and

perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment, fixtures or other materials if Owner is prevented or delayed from doing so by reason of strike or labor troubles or any cause whatsoever beyond Owner's sole control including, but not limited to, government preemption or restrictions or by reason of any rule, order or regulation or any department or subdivision thereof of any government agency or by reason of the condition which have been or are affected, either directly or indirectly, by war or other emergency.

Bills and
Notices: 28. Except as otherwise in this lease provided, a bill statement, notice or communication which Owner my desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the demised premises form a part or at the last known residence address or business address of Tenant or loft at any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed at the time when the same is delivered to Tenant, mailed or left at the premises herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice.

Water
Charges: 29. If Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory purposes (of which fact Tenant constitutes Owner to be the sole judge) Owner may install a water meter and thereby measure Tenant's water consumption of all purposes. Tenant shall pay Owner for the cost of the meter and the cost of the installation, thereof and throughout the duration of Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense in default of which Owner may cause such meter and equipment to be replaced or repaired and collect the cost thereof from Tenant, as additional rent. Tenant agrees to pay for water consumed, as shown on said meter as and when bills are rendered, and on default in making such payment Owner may pay such charges and collect the same from Tenant, as additional rent. Tenant covenants and agrees to pay, as additional rent, the sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is assessed, imposed or a lien upon the demised premises or the realty of which they are part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewage connection or system. Independently of an in addition to any of the remedies reserved to Owner hereinabove or elsewhere in this lease, Owner may sue for and collect any monies to be paid by Tenant or paid by Owner for any of the reasons or purposes hereinabove set forth.

Sprinklers: 30. Anything elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the New York Fire Insurance Exchange or any bureau, department or official of the federal, state or city government recommend or require the installation of a sprinkler system or that any changes, modifications, alterations or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures or other contents of the demises premises, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as required whether the work involved shall be structural or non-structural in nature.

Elevators,
Heat,
Cleaning: 31. As long as Tenant is not in default under any the covenants of this lease beyond the applicable grace period provided in this lease for the curing of such defaults, Owner shall: (a) provide necessary passenger elevator facilities on business days from 8 a.m. to 6 p.m. and on Saturdays from 8 a.m. to 1 p.m.; (b) if freight elevator service is provided, same shall be provided only on regular business days Monday through Friday inclusive, and on those days only between the hours of; (c) furnish heat, water and other services supplied by Owner to the demised premises, when and as required by law, on business days from 8 a.m. to 6 p.m. and on Saturdays from 8 a.m. to 1 p.m.; (d) clean the public halls and public portions of the building which are used in common by all tenants. Tenant shall, at Tenant's keep the demised premises, including the windows, clean and in order to the reasonable satisfaction of Owner, and for that purpose shall employ the person or persons, or corporation approved by Owner. Owner reserves the right to stop service of the heating, elevator, plumbing and electric systems, when necessary, by reason of accident, or emergency, or for repairs, alterations, replacements or improvements, in the judgment of Owner, desirable or necessary to be made, until said repairs, alterations, replacements or improvements shall have been completed. If the building of which the demised premises are a part supplies manually operated elevator service, Owner may proceed diligently with alterations necessary to substitute automatic control elevator service without in any way affecting the obligations of Tenant hereunder. See Rider.

Security: 32. Tenant has deposited with Owner the sum of $* as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including, but not limited to, any damages or deficiency in the reletting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. [14] In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and

after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises from a part, Owner shall thereupon be released by Tenant from all liability for the return of such security; and Tenant agrees to look to the new Owner solely for the return of said security, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.
* See Rider.

Captions: 33. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provision thereof.

Definitions: 34. The term "Owner" as used in this lease means only the owner of the fee or of the leasehold of the building, or the mortgagee in possession, for the time being of the land and building (or the owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sales of said land and building or of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner hereunder. [14a] The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "rent" includes the annual rental rate whether so expressed or expressed in monthly installments, and "additional rent." "Additional rent" means all sums which shall be due to Owner from Tenant under this lease, in addition to the annual rental rate. The term "business day" as used in this lease shall exclude Saturdays, Sundays and all days observed by the State or Federal Government as legal holidays and those designated as holidays by the applicable building service upon employees service contract or by the applicable Operating Engineers contract with respect to HVAC service. Wherever it is expressly provided in this lease that consent shall not be unreasonably withheld, such consent shall not be unreasonably [15] delayed.

Adjacent
Excavation-
Shoring: 35. If an excavation shall be made upon land adjacent to the demised premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation license to enter upon the demised premises for the purpose of doing such work as said person shall deem necessary to preserve the wall or the building of which demised premises form a part from injury or damages and to support the same by proper foundations without any claim for damages or indemnify against Owner, or diminution or abatement of rent.

Rules and
Regulations: 36. Tenant and Tenant's servants, employees, agents, visitors and licensees shall observe faithfully and comply strictly with the Rules and Regulations annexed hereto and such other and further Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such matter as Owner may elect. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner's agents, the parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing upon Owner within fifteen (15) days after the giving of notice thereof. Nothing in this lease contained shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other tenant and Owner shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors of licenses.[15a]

Glass: 37. Owner shall replace, at the expense of the Tenant, any and all plate and other glass damaged or broken from any cause whatsoever in and about the demised premises. [15b] Owner may insure and keep insured, at Tenant's expense, all plate and other glass in the demised premises for and in the name of Owner. Bills for the premiums therefore shall be rendered by Owner to Tenant at such times as Owner may elect, and shall be due from, and payable by, Tenant when rendered, and the amount thereof shall be deemed to be, and be paid, as additional rent.

Estoppel
Certificate: 38. Tenant, at any time, and from time to time, upon at least 10 days' prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statements certifying that this Lease is unmodified in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates to which the rent and additional rent have been paid, and stating whether or not there exists any default by Owner under this Lease, and, if so, specifying each such default.

Directory
Board Listing;
Successors
and Assigns: 39. If, at the request of and as accommodation to Tenant, Owner shall place upon the directory board in the lobby of the building, one or more names of persons other than Tenant, such directory board listing shall not be construed as the consent by Owner to an assignment or subletting by Tenant to such person or persons. The covenants, conditions and agreements contained in this lease shall be bind and inure to the benefit of Owner and Tenant and their respective heirs, distributes, executors, administrators, successors, and except as otherwise provided in this lease, their assigns. Tenant shall look only to Owner's estate and interest in the land and building for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) against Owner in the event of any default by Owner hereunder, and no other property or assets of such Owner (or any partner, member, officer or director thereof, disclosed or undisclosed), shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this lease, the relationship of Owner and Tenant hereunder, or Tenant's use and occupancy of the demised premises.

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See Rider annexed hereto and made a part hereof.

In Witness Whereof, Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written.

Witness for Owner:

/s/ Lloyd Shor
- ----------

Moklam Enterprises, Inc., Owner

By: /s/ Raymond H. Yu [L.S]

Raymond H. Yu, President

Witness for Tenant

Take-Two Interactive Software, Inc.

/s/ Lloyd Shor
- ----------

By: /s/ Don Leeds [L.S]

Don Leeds, Executive Vice President

ACKNOWLEDGEMENTS

CORPORATE TENANT
STATE OF NEW YORK, ss.:
County of

On this day of , 19 , before me personally came , to me known, who being by my duly sworn, did depose and say that he resides in that he is the of the corporation described in and which executed the foregoing instrument, as TENANT, that he knows the seal of said corporation; that the seal is affixed to said instrument is such, corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

INDIVIDUAL TENANT
STATE OF NEW YORK, ss.:
County of

On this day of , 19 , before me personally came , to be known and known t me to be the individual described in and who, as TENANT, executed the foregoing instrument and acknowledged to me that he executed the same.

IMPORTANT - PLEASE READ

RULES AND REGULATIONS ATTACHED TO AND MADE A PART OF THIS LEASE IN ACCORDANCE WITH ARTICLE 36.

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than for ingress or egress from the demised premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Owner. There shall not be used in any space, or in the public hall of the building, either by any Tenant or by jobbers or others in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires and sideguards. If said premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalk and curb in front of said premises clean and free from ice, snow, dirt and rubbish.

2. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed and no sweepings, rubbish, rags, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose clerks, agents, employees or visitors, shall have caused it.

3. No carpet, rug or other article shall be hung or shaken out of any window of the building; and no Tenant shall sweep or throw or permit to be swept or thrown from the demised premises any dirt or other substances into any of the corridors of halls, elevators or out of the doors or windows or stairways of the building and Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the demised premises, or permit or suffer the demised premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the buildings by reason of noise, odors, and or vibrations, or interfere in any way, with other Tenants or those having business therein, nor shall any bicycles, vehicles, animals, fish, or birds be kept in or about the building. Smoking or carrying lighted cigars or cigarettes in the elevators of the building is prohibited.

4. No awnings or other projections shall be attached to the outside walls of the building without the prior written consent of Owner.

5. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the demised premises or the building or on the inside of the demised premises if the same is visible from the outside of the demised premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises. In the vent of the violation of the foregoing by any Tenant, Owner may remove same without any liability and may charge the expense incurred by such removal to Tenant or Tenants violating this rule. Interior signs on doors and directory tablet shall be inscribed, painted or affixed for each Tenant by Owner at the expense of such Tenant, and shall be of a size, color and style acceptable to Owner.

6. See Rider

7. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any changes be made in existing locks or mechanism thereof.[16] Each Tenant must, upon the termination of his

Tenancy, restore to Owner all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such Tenant, and in the event of the loss of any keys, so furnished, such Tenant shall pay to Owner the cost thereof.

8. Freight, furniture, business equipment, merchandise and bulky mater of any description shall be delivered to and removed from the premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Owner. Owner reserves the right to inspect all freight to be brought into the building and to exclude from the building all freight which violates any of these Rules and Regulations of the lease of which these Rules and Regulations are a part.

9. Canvassing, soliciting and peddling in the building is prohibited and each Tenant shall cooperate to prevent the same. See Rider

10. Owner reserves the right to exclude from the building all persons who do not present a pass to the building signed by Owner. Owner will furnish passes to persons for whom any Tenant requests same in writing. Each Tenant shall be responsible for all persons for whom he request such pass and shall be liable to Owner for all acts of such persons. Tenant shall no have a claim against Owner by reason of Owner excluding from the building any person who does not present such pass.

11. Owner shall have the right to prohibit any advertising by any Tenant which in Owner's opinion, tends to impair the reputation of the building or its desirability as a loft building, and upon written notice from Owner, Tenant shall refrain from or discontinue such advertising. See Rider

12. Tenant shall not bring or permit to be brought or kept in or on the demised premises, any inflammable, combustible, or explosive, or hazardous fluid, material, chemical or substance, or cause or permit any odors of cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the demised premises. See Rider

13. Tenant shall not use the demised premises in a manner which disturbs or interferes with other Tenants in the beneficial use of their premises.

See additional rules and regulations in Rider.

Address 622 Broadway
New York, New York
Premises Entire Fourth, Fifth and Sixth Floors

Moklam Enterprises, Inc.

TO

Take Two Interactive
Software, Inc.

STANDARD FORM OF

LOFT
LEASE

Dated July 1, 2002

Inserts to Printed Portion of Lease

Owner:	Moklam Enterprises, Inc.
Tenant:	Take-Two Interactive Software, Inc.
Premises:	Entire Fourth, Fifth and Sixth Floors 622 Broadway New York, New York
Date of Lease:	July 1, 2002

1. Notwithstanding anything to the contrary in this Lease, (a) without limitation of the provisions of Section 49.8 and 49.9 below, Owner shall have the right, exercisable by notice given to Tenant no later than twenty (20) days prior to the date of expiration or termination of this lease, to require Tenant to remove any fixtures, paneling, partitions, railings or other installations installed in the Premises at any time, either by Tenant or by Owner on Tenant's behalf, which (i) are not readily usable for an ordinary office tenancy or (ii) which are required to be removed by Tenant pursuant to any specific provision of this Lease including, without limitation, the provisions of Article 49 below. Any removal and/or restoration obligations of Tenant under or pursuant to this Lease shall be satisfied by Tenant paying to Owner, as Additional Rent, the actual cost of such removal and/or restoration work as incurred by Owner (if Owner or any other party shall actually perform any such removal and/or restoration work) or otherwise in accordance with the provisions of Section 49.9 below.

1a. , except that Tenant shall be responsible for the repair and maintenance of the roof deck.

1b. (except if and to the extent caused by the negligence or willful misconduct of Owner or its agents or employees.

1c. Notwithstanding anything herein to the contrary, Tenant shall not be required to make any repairs (whether structural or non-structural) if and to the extent same are necessitated solely by the negligence or willful misconduct of Owner or its agents or employees.

1d. except as may be otherwise specifically set forth in this Lease.

2. Notwithstanding anything to the contrary set forth in this Lease, if all or at least 8,000 rentable square feet of the Premises shall become untenantable at one time for a period exceeding ten (10) consecutive business days due solely to (a) Owner's default under this Lease or (b) Owner's performance of repairs, alterations, additions or improvements to the Building other than (i) emergency repairs, (ii) work required to restore the Building after a casualty or (iii) other work required by applicable law or otherwise necessitated by reasons outside of Owner's control, then provided that Tenant is not in default under any provision of the Lease (after notice and the expiration of any applicable cure period which are specifically provided for in this Lease with respect to such default, if any), Tenant will be entitled to a pro-rata abatement of Fixed Rent (as such term is hereinafter defined) (based upon the relative rentable square footage area of the portion of the Premises rendered untenantable) commencing on the day after the expiration of the aforementioned ten (10) business day period until such time as the Premises shall again become tenantable. However, in no event will the aforementioned abatement in Fixed Rent be applicable if any repairs, alterations, additions or improvements performed by Owner arise out of Tenant's breach of its repair or other obligations under this lease.

2a. (i) particular use of the demised premises (in contradiction merely to Tenant's particular manner of use of the demised premises) and/or (ii) default under any of the provisions of this Lease.

3. reasonable.

3a. Except as hereinafter set forth, Tenant shall be required to perform, at Tenant's sole cost and expense, any improvements, repairs, additions, alterations or change required to be made to the demised premises or the building by reason of any departmental or governmental regulation, order or law, including, but not limited to, disabilities laws and regulations, if the same are required by reason of Tenant's permitted use of the demised premises or if same arise out of Tenant's negligence, willful misconduct or tortious acts or omissions or out of Tenant's breach of any of the provisions of this lease or of applicable laws, codes, rules or regulations. However, Tenant shall not be liable for any increase in insurance premiums so long as Tenant properly utilizes the demised premises in accordance with the permitted use of the demised premises pursuant to this lease and otherwise in accordance with all applicable laws, codes, rules and regulations.

3b. reasonably

4. negligence, willful misconduct and tortious acts or omissions

5. , contractors

6. Tenant shall not be obligated to indemnify Owner against any injury to persons or property, or any loss or damage, arising solely from the willful misconduct, tortious acts or omissions or negligence of Owner or Owner's agents, contractors, or employees.

6a. or inaccessible

6b. (or access restored)

7. fifteen (15)

8. If the demised premises or the building is damaged and the demised premises are rendered untenantable by fire or other casualty, and Building repairs sufficient to make the Premises tenantable cannot be (as shall be reasonably determined by Owner), or are not, substantially completed within a period of ten (10) months after the date of such casualty, subject to delays by reason of Tenant Delay (hereinafter defined), or in the event that the demised premises are substantially damaged and rendered untenantable within the last year of the term and Building repairs sufficient to make the demised premises tenantable are not substantially completed within a period of thirty (30) days after the date of such casualty, subject to delays by reason of Tenant Delay or force majeure, then and in either of such events only, Tenant shall have the right to terminate this lease by written notice (registered or certified mail, return receipt requested) given to Owner given no later than fifteen (15) days after either (i) the date of Owner's determination of the inability to make such repairs or (ii) the expiration of the aforementioned periods of ten (10) months or thirty (30) days, as the case may be, time being of the essence, specifying a date not less than thirty (30) days therefrom for the expiration of the term of this lease. In the event of such termination of this lease, all Fixed Rent and Additional Rent (as hereinafter defined) shall be paid up to the date of such casualty. If Tenant disputes Owner's determination, such dispute shall be submitted to and determined by an independent structural engineer. The fees and expenses of the engineer shall be borne by the party against whom a determination shall be rendered.

9. Except in the event of an emergency and except as otherwise provided in Article 52 and Section 92.15 below, (i) Owner will provide Tenant with reasonable notice (which may be telephonic) and (ii) Owner's access to the demised premises shall be limited to normal business hours accompanied by a representative of Tenant (if such a representative is available).

9a. Except in an emergency, in connection with work performed by Owner pursuant to Articles 4, 13 and 20, if any, Owner shall use commercially reasonable efforts to avoid unreasonable interference with Tenant's use and occupancy of the demised premises and its access thereto, to the extent practicable. Owner shall perform its work with reasonable diligence [subject to Tenant Delay (hereinafter defined) and force majeure] and in a good, workmanlike manner. However, nothing contained in this insert or elsewhere in this Lease shall obligate Owner to use overtime labor or incur any other additional cost, expense or liability to perform any work, Upon the completion of such work, the usable area of the demised premises shall not have been reduced (except to an immaterial extent) and. to the extent reasonably practicable, Owner shall restore the portions of the demised premises affected by such work to substantially the condition they were in immediately prior to the performance of such work. Owner shall not make any additions, alterations or improvements to the demised premises that are not necessary but merely desirable, unless the same are desired by Owner in order to improve the functioning or appearance of the Building and/or any building systems or to reduce the cost of operation thereof.

10. In the event of an emergency, Owner will endeavor to call Tenant's emergency contact (to the extent Owner has been previously notified in writing of such contact) if a representative of Tenant is not available to permit entry into the Premises; provided, however, that Owner's failure to call such emergency contact shall not be deemed a breach by Owner under this lease.

10a. Owner represents that a true copy of the certificate of occupancy for the Building is annexed hereto.

10b. abandoned

11. if, in each instance, such default has not been cured by Tenant within the applicable cure period, if any, specifically provided for in this lease with regard to such default.

11a. Unless required by applicable laws, codes, ordinances, rules or regulations or the requirements of any governmental or municipal agency, Owner agrees that Owner's right to change the arrangement and/or location of the foregoing shall not decrease the usable area of the demised premises other than to an immaterial extent or unreasonably impair Tenant's ingress to or egress from the demised premises.

12. either Owner or Tenant

13. the failure of Owner

13a. unless Tenant's failure to impose such counterclaim would result in a waiver of Tenant's right to assert same.

14. Owner shall not apply the cash security deposit (if any), or draw down or apply the proceeds of the letter of credit to be posted by Tenant, to cure any default unless Tenant has failed to cure such default within the applicable cure period which is specifically provided for in this lease with respect to such default, if any.

14a. Owner shall not be relieved of liability for any bona fide claim properly asserted by Tenant against Owner arising out of this Lease before the date of such sale if the purchaser shall have no liability to Tenant with respect to such claim, either contractually or as a matter of law.

15. conditioned or

15a. All rules and regulations shall be enforced by Owner in a non-discriminatory manner, and in the event of any conflict between the rules and regulations and the substantive provisions of this lease, the substantive provisions of this lease shall control.

15b. If Tenant shall fail to do so,

16. unless Owner is given a master key thereto.

RIDER TO LEASE DATED AS OF JULY l, 2002
BETWEEN MOKLAM ENTERPRISES, INC., OWNER,
AND TAKE-TWO INTERACTIVE SOFTWARE, INC., TENANT,
IN RESPECT OF THE ENTIRE FOURTH, FIFTH AND SIXTH FLOORS
IN THE BUILDING KNOWN AS 622 BROADWAY, NEW YORK, NEW YORK

40. Provisions of Rider

If any of the provisions of this rider conflict or are otherwise inconsistent with any of the printed provisions of this Lease, or with any of the rules and regulations appended to this Lease, the provisions of this rider shall prevail and be binding. Any capitalized term contained in this rider shall have the definition assigned to such term in this Lease, unless otherwise indicated.

41. Binding Effect

Submission by Owner of the within Lease for execution by Tenant shall confer no rights nor impose any obligations on either party unless and until both Owner and Tenant shall have executed this Lease and duplicate originals thereof shall have been delivered to the respective parties or their respective attorneys.

42. Certain Definitions

For purposes of this Lease, unless the context otherwise requires, the terms defined below shall have the meanings hereinafter specified, whenever such terms are utilized in this Lease:

42.1. The term "Premises" shall refer to the demised premises. The Premises shall also include the roof deck, as more particularly described in Exhibit C annexed hereto and made a part hereof. Except for the roof deck, in no event shall the Premises be deemed to include any exterior portion of the Building (including, without limitation, the flagpole on the Broadway side of the Building) or any interior area in the Building other than the interior fourth, fifth and sixth floor areas of the Building.

42.2. The term "Building" shall refer to the building of which the Premises form a part and, for the purposes of Article 74, shall include the land ("Land") on which the Building is situated.

42.3. The term "Fixed Rent" shall mean rent at the annual rental rate provided for in Article 63 of this rider.

42.4. The term "Additional Rent" shall mean all sums of money, other than Fixed Rent, as shall become due and payable from Tenant to Owner hereunder or under or pursuant to any other agreement or understanding between Owner and Tenant relating to the Premises, and Owner shall have the same remedies for the nonpayment thereof as for the nonpayment of Fixed Rent. Unless otherwise specified herein, Additional Rent shall be due and payable to Owner on the date which shall be fifteen (15) days after Tenant shall have been billed therefor.

42.5. The term "Rent" or "Rents" shall mean Fixed Rent and Additional Rent.

42.6. The term "Commencement Date" shall mean July 1, 2002.

42.7. The term "Tenant Delay", and words of like import, means any delay which Owner may encounter in the performance of Owner's obligations hereunder by reason of any act or o mission of any nature of Tenant, its employees, agents or contractors, including, without limitation, delays by Tenant in submission of information or giving authorizations or approvals and delays by Tenant in performing Tenant's work.

42.8. The term "obligations of this Lease" and words of like import, shall mean the covenants to pay Fixed Rent and Additional Rent under this Lease and all of the other covenants and conditions contained in this Lease. Reference to "performance" of Tenant's obligations under this Lease shall be construed as "performance and observance".

42.9. Reference to Tenant being "in default hereunder", and words of like import, shall mean that Tenant is in default in the performance of one or more of Tenant's obligations hereunder, or that a condition of the character described in Article 17 has occurred and is continuing. Wherever in this Lease (i) Tenant's right to exercise any option, right or privilege or (ii) any limitation on Owner's right to Recapture is conditioned upon Tenant's not being in default under this Lease after notice and the expiration of any applicable cure period which are specifically provided for in this Lease with respect to such default, if any, then solely for purposes of such provision only, Tenant shall not be deemed to be in default in the payment of Fixed Rent or Additional Rent unless Owner shall have given Tenant a notice of such default and Tenant shall not have cured such default within five (5) days after the date such notice shall be given. However, in no event shall the provisions of the immediately preceding sentence be applicable or effective for any other purpose(s) under this Lease including, without limitation, (i) the provisions of Articles 17, 18 and 51 of this Lease or any provisions of applicable law relating to Owner's rights and remedies in the event of Tenant's failure to timely pay any Fixed Rent or Additional Rent under this Lease and (ii) the provisions of Section 63.4 of this Lease.

42.10. The words "include", "including" and" such as" shall each be construed as if followed by the phrase "without being limited to".

42.11. The words "herein", "hereof', "hereby", "hereunder" and words of similar import shall be construed to refer to this Lease as a whole and not to any particular Article or subdivision thereof unless expressly so stated.

42.12. The word "alterations" shall refer to alterations, installations, additions, improvements, demolition and other work as set forth in Articles 3 and 44 and elsewhere in this Lease.

42.13. The terms "Owner" and "Landlord" may be used interchangeably in this Lease.

42.14. Words and phrases used in the singular shall be deemed to include the plural and vice versa and nouns and pronouns used in any particular gender shall be deemed to include any other gender if the context so requires.

42.15. The rule of "ejusdem generis" shall not be applicable in the construction of this Lease to limit a general statement following or referable to an enumeration of specific matters, to matters similar to the matters specifically mentioned.

42.16. If Tenant is comprised of more than one party, then each of the parties constituting Tenant under this Lease shall be jointly and severally liable for the observance and performance of all of Tenant's covenants and other obligations under and/or pursuant to this Lease.

42.17. All references in this Lease to numbered Articles and lettered Exhibits and Schedules are references to Articles of this Lease and Exhibits and Schedules annexed to (and thereby made part of) this Lease, as the case may be, unless expressly otherwise designated in the context.

43. Occupancy (Supplementing Article 2)

43.1. Tenant shall be permitted to use and occupy the Premises solely for general and executive offices only and for no other purpose whatsoever. Tenant's use of the Premises shall at all times be strictly in accordance with the terms of this Lease. The use of the Premises for the purposes specified in Article 2 and this Article 43 shall not in any event be deemed to include, and Tenant shall not use, or permit the use of, the Premises or any part thereof for (a) any activity which might, in Owner's reasonable opinion, damage the Premises or the Building or unreasonably annoy, interfere with or disrupt other tenants or occupants of the Building; (b) the sale of any merchandise, except solely for wholesale sales of Tenant's products to the trade only, conducted principally by means of telephone, computer or other electronic media and not by means of walk-ins; (c) the sale, storage, handling or furnishing of any materials which are flammable or explosive or the storage of which would cause the rate of insurance for the Building to be increased; (d) a shared health facility, clinic or center, drug or other substance rehabilitation facility, clinic or center or a commercial laboratory; (e) for any improper or immoral purposes including, without limitation, the display or sale of any items which are or may be regarded as obscene or pornographic and Tenant shall not bring or permit any obscene or pornographic material on the Premises; provided, however, that with regard solely to the original named Tenant under this Lease (i.e., Take-Two Interactive Software, Inc.) and any of its affiliates and successors as referred to in Section 49.2 below, the provisions of this clause (e) shall only be applicable to items or material which shall be illegal under any current or future federal, state or local laws, codes, ordinances, rules or regulations; (f) the providing of massages or other types of physical therapy; (g) filming, recording or otherwise creating any video, audio, television, cable or any other type of commercials, programs, shows, films or recordings, whether on video, film, tape, compact disc, DVD or any form of computer or other media, for general public or private viewing, or any other rehearsal or studio use; provided, however, that the restrictions set forth in this clause (g) shall not be applicable to the original named Tenant under this Lease (i.e., Take-Two Interactive Software, Inc.) or any of its affiliates or successors as referred to in Section 49.2 below, but only if and so long as such party's activities described in this clause (g) are conducted solely on the fifth and/or sixth floors of the Premises (except that software development can be conducted by the original named Tenant and any of its affiliates and successors as referred to in Section 49.2, on the fourth, fifth and sixth floors) and shall not cause annoyance or disturbance to any other tenants or occupants of the Building; (h) any parties, recitals, benefits, shows, functions, seminars, openings or social gatherings, except solely that, subject to the terms and conditions set forth in Section 43.7 below, Tenant shall be permitted to conduct parties in the Premises; (i) aerobics, skating (with roller skates, roller blades or any other form of skating), exercise or dance classes of any kind, or any similar activity; (j) a restaurant, bar, cabaret, nightclub, social club, fast food establishment, delicatessen, coffee bar, coffee shop or any other type of food and/or drink establishment (however, as an incidental permitted use of the Premises, Tenant shall be permitted to serve its employees and clients food and beverages in the Premises from time to time as is customary for office tenants in the New York metropolitan area); (k) any use which shall involve the handling, generation, storage or disposal of any quantity of medical waste or hazardous materials of any nature; or (1) residential use or occupancy.

43.2. Owner shall have the absolute right to prohibit the continued use by Tenant of any unethical, unfair or improper method of advertising or display which is visible from outside of the Premises if, in Owner's reasonable opinion, the continued use thereof would impair the reputation of the Building or is otherwise out of harmony with the general character thereof, and, upon notice from Owner, Tenant shall forthwith refrain from or discontinue such activities. Furthermore, Tenant agrees not to (a) use or permit to be used the sidewalks or other space outside of the Premises or the Building for any display, sale or similar undertaking or storage or (b) use or permit to be used any loudspeaker, phonograph, or other sound system which may be heard outside the Premises, (c) perform or permit any live music of any nature whatsoever to be played or performed within the Premises, except solely as an incidental use in connection with Tenant's recording activities pursuant to and subject to the provisions of Section 43.1(g), or (d) distribute or permit to be distributed handbills or other matter to persons on either side of Broadway between Bleecker street and Houston Street.

43.3. This Lease is subject to all of the terms, conditions and requirements of the certificate of occupancy for the Building, a copy of which is annexed hereto as Exhibit C-2. Tenant hereby assumes and shall perform, at Tenant's sole cost and expense, all of the terms, conditions and requirements under such certificate of occupancy, with respect to the Premises. Owner has made no representation that the use to be made of the Premises, as specified herein, is consistent with those uses permitted under such certificate of occupancy. If such use is inconsistent with said certificate of occupancy, Tenant shall indemnify and hold Owner harmless from and against any and all claims, damages, losses, actions, violations, penalties, costs and expenses (including attorneys' fees) arising out of such inconsistent use. Further, if the Department of Buildings or other governmental or municipal agency having or asserting jurisdiction issues a violation or order based on such inconsistent use, then, at Owner's option, Tenant shall forthwith take such action, at Tenant's sole cost and expense, but subject in all respects to Owner's reasonable prior written approval, as may be necessary to secure an amended certificate of occupancy conforming with Tenant's use of the Premises.

43.4. Tenant shall conduct Tenant's business using special care and precaution so as not to cause annoyance, discomfort and/or injury to the other occupants and users of the Building and shall not do or omit to do anything which would adversely affect the proper operation or appearance of the Building. Tenant will not permit any garbage or refuse to accumulate within the Premises or within any other portion of the Building or be kept in other than sealed containers or be placed on the sidewalk in front of (the Broadway side) or at the rear (the Crosby Street side) of the Building at any time of the day or night. Owner shall have the right to establish additional non-discriminatory rules and regulations concerning the storage and removal of Tenant's garbage and refuse effective upon notice thereof to Tenant. Tenant, at its sole cost and expense, shall comply with all present and future laws, orders and regulations of all federal, state, municipal and local governments, departments, commissions and boards regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash. Tenant, at Tenant's sole cost and expense, shall sort and separate such waste products, garbage, refuse and trash into such categories and cause same to be placed in separate receptacles as provided by law. Tenant shall have all of its garbage and refuse properly collected, sorted, bagged and separated in proper receptacles and placed next to the freight elevator on the Crosby Street side of the Building on each floor of the Premises or, with respect to the roof deck, the freight elevator on the Crosby Street side of the Building on the sixth floor of the Premises (or such other location(s) as shall hereafter be designated by Owner) by no later than 6:45 P.M. on each business day. Such garbage and refuse shall be removed from the Premises between the hours of approximately 7:00 P.M. to 11:00 P.M. of each business day by Building personnel at Tenant's expense (to be billed to Tenant monthly as Additional Rent). In that regard, Tenant shall pay on a monthly basis, as Additional Rent, an amount equal to Owner's actual cost of carting or otherwise disposing of garbage and refuse for the Premises. However, notwithstanding the foregoing, the removal of any garbage or refuse generated by Tenant other than ordinary quantities of typical office refuse, such as, without limitation, construction debris, medical or other hazardous waste, furniture or equipment, and garbage and refuse removal other than at the times indicated above, shall be at Tenant's sole cost and expense, at rates to be determined by Owner. Owner shall have the right to establish revised and/or reasonable additional rules and regulations concerning the storage, bagging, sorting and removal of Tenant's garbage and refuse in Owner's reasonable discretion, effective upon notice thereof to Tenant. Tenant, at Tenant's sole cost and expense, shall, if reasonably deemed necessary by Owner, employ a permanent, scheduled and effective exterminating service for the Premises.

43.5. Tenant, at its sole cost and expense, shall fully and timely comply with the following (hereinafter sometimes collectively referred to as "Legal Requirements"): (i) all laws, statutes and ordinances (including, without limitation, building codes, zoning regulations a nd ordinances, environmental laws and ordinances [e.g., New York City Local Law 76, as amended], disabled persons/handicapped access laws and ordinances [e.g., Americans with Disabilities Act, as amended, and New York City Local Law 58, as amended]) and the orders, rules, regulations, directives and requirements of all federal, state, county, municipal, city and borough departments, bureaus, boards, agencies, offices, commissions and other subdivisions thereof, or of any official thereof, or of any other governmental, public or quasi-public authorities, whether now or hereafter in force, which may be applicable to Tenant's particular use of the Premises or any alterations therein; and (ii) all requirements, obligations and conditions of all instruments of record on the date of this Lease. However, Tenant shall not be obligated to comply with any provision of any mortgage or other document of record (other than any subordination, non-disturbance and attornment agreement, or any similar or related agreement, to which Tenant is or shall hereafter become a party) if it is inconsistent with the comparable provision set forth in this Lease, if any.

43.6. During the term of this Lease, Tenant shall not: (a) conduct or permit any fire, bankruptcy, auction or "going out of business sale" (whether real or fictitious) in the Premises; (b) use, or permit to be used, the sidewalk adjacent to, or any other space outside the Premises for display, sale or any other similar undertaking; (c) use or permit to be used, any advertising medium, and/or loud speaker, and/or sound amplifier, and/or radio or television broadcast which may be heard outside the Premises; (d) use the plumbing facilities for any purpose other than that for which they were constructed, or dispose of any garbage or other foreign substance therein, whether through the utilization of so-called "disposal" or similar units or otherwise; (e) perform any act or carry on any practice which may damage, mar or deface the Premises or any other part of the Building; (f) operate on the Premises or in any part of the Building any vending machine (other than for food, beverages or candy) or similar device (including, without limitation, pay telephones, pay lockers, pay toilets, scales (except for postage scales) and machines for the sale or dispensing of cigarettes); (g) install any awnings in or on the Premises which are visible to public view outside the Premises, without Owner's prior written approval; (h) install, operate or maintain in the Premises any electrical equipment which will overload the electrical system therein, or otherwise suffer, allow or permit the same to constitute a nuisance or otherwise interfere with the safety, comfort or convenience of Owner or any of the other occupants of the Building or their customers, agents or invitees; (i) suffer, allow or permit the erection or display in, on or from the Premises of any exhibits, banners, decorations, flags, bunting or any other similar kind or form of description or display without Owner's prior written consent in each instance, except solely that Tenant may display exhibits, banners and decorations within the Premises that are not visible to public view from the exterior of the Building; (j) permit any business to be operated in or from the Premises by any

concessionaire or licensee without the prior written consent of Owner in each instance except in accordance with the applicable provisions of Article 49 below; (k) permit any bottled water or other supplies to be delivered to or removed from the Premises by any means other than by the freight elevator; and (1) subject any fixtures or equipment in or on the Premises which are affixed to the realty, to any mortgages, liens, conditional sales agreements, security interests or encumbrances.

43.7. The following terms and conditions shall apply to each office party permitted by clause (h) of Section 43.1 above: (a) Tenant shall furnish Owner with not less than five (5) business days' prior notice of such party; (b) Tenant's scheduling of the party shall not conflict with any party(s) or other event(s) which shall have been previously scheduled by any other tenant of the Building; (c) Tenant shall provide adequate security for such party to Owner's reasonable satisfaction; (d) Tenant shall not be permitted to conduct more than one (1) party during any calendar month; and (e) without limitation of the provisions of clause (c) above, if the party shall be attended by more than fifty (50) persons (other than Tenant's full-time employees), Tenant shall be obligated to provide at least one (1) bonded and insured security guard for each floor of the Premises in which such party shall be conducted. If Tenant so requests, Owner may, at its discretion, furnish such security guard()s) at Tenant's expense, in an amount reasonably established by Owner. In such event, any security guard(s) provided by Owner at tenant's request shall be provided by Owner during such time(s) and at such location(s) as Owner shall determine; provided, however, that Owner shall have no liability whatsoever relating to the security of the Premises or the Building, as more particularly set forth in Article 53 below.

43.8. Tenant shall take whatever actions are necessary so that sound generated from the Premises shall not disturb other tenants or occupants of the Building. In the event that any lessee or occupant of the Building reasonably objects to any sound or noise generated from the Premises, then Tenant, at its sole cost and expense, shall immediately take whatever actions are necessary, at Tenant's sole cost and expense, to effectively remediate such disturbing or objectionable sound or noise, including, without limitation, performing any necessary alterations to the Premises (subject to and in compliance with the provisions of Articles 3 and 44 of this Lease and all other applicable provisions of this Lease). Tenant shall defend, indemnify and hold Owner harmless from and against any and all claims, losses, liabilities, damages, demands, actions, causes of action, judgments, costs and expenses, including, without limitation, reasonable attorneys' fees, disbursements and court costs, arising from or in connection with any reasonable objection from any other lessee or occupant of the Building to any sound or noise generated from the Premises.

43.9. Tenant shall fully comply with the Rules and Regulations set forth in the printed portion of this Lease as well as with the Additional Rules and Regulations annexed as Exhibit B to this Lease and by this reference hereby made a part hereof.

43.10. Tenant acknowledges and agrees that if Tenant shall breach any of the provisions of this Article 43, Owner shall have no adequate remedy at law, and consequently, among other remedies for such breach permitted by law or the provisions of this Lease, Owner shall be entitled to enjoin Tenant from any violation of said provisions.

44. Alterations (Supplementing Article 3)

44.1. (a) Subject to the provisions of this Article 44 set forth below, if Tenant desires to perform any renovations, decorations, additions, installations, improvements and/or alterations of any kind or nature in the Premises during the term of this Lease (hereinafter called "Tenant's Work"), Tenant shall submit to Owner final and complete dimensioned and detailed plans and specifications therefor (hereinafter sometimes referred to as "Tenant's Plans") for Owner's prior written approval. Without limitation of the provisions of this Article 44 or any other provisions of this Lease, Tenant's Plans shall, at a minimum, contain all of the information referred to in and shall otherwise fully comply with the provisions set forth in Annex I which is annexed to this Lease and by this reference made a part hereof. Owner shall provide Tenant with its comments on the proposed work as set forth in Tenant's Plans submitted to Owner within approximately ten (10) business days after Owner's receipt of Tenant's Plans, and Tenant shall provide Owner with revised Tenant's Plans at least three (3) business days prior to the commencement of Tenant's Work incorporating all of Owner's comments. Tenant acknowledges and agrees that any review or approval by Owner of Tenant's Plans shall be solely for Owner's benefit, and that such review and approval shall be without any representation, warranty or liability whatsoever to Tenant or any other person with respect to the adequacy, correctness or sufficiency of Tenant's Plans, or whether Tenant's Plans are in compliance with all applicable laws, codes, ordinances, rules and regulations, or otherwise. Tenant shall not commence any of Tenant's Work unless and until Tenant shall have received Owner's final written approval of Tenant's Plans with all of Owner's reasonable comments to Tenant's Plans incorporated therein. Tenant shall pay to Owner, as Additional Rent and within fifteen (15) days after being billed therefor, any out-of-pocket charges or expenses Owner may reasonably incur in reviewing Tenant's plans and/or ensuring compliance therewith.

(b) Owner shall not unreasonably withhold, delay or condition its consent to any proposed items of Tenant's Work (except for Tenant's Work which shall affect the exterior of the Building or any portion of the Building other than the Premises), and, except as otherwise specifically provided in this Lease, Owner's consent shall not be required for any purely cosmetic Tenant's Work (such as painting and wallpapering) performed subsequent to the performance of Tenant's Initial Work of which Owner has received not less than ten (10) days' advance notice from Tenant. Floor coverings (other than rugs) shall not be deemed to be cosmetic and shall require Owner's prior written consent as aforesaid. Owner's consent to floor coverings may be conditioned upon Tenant's undertaking to remove the floor covering and restore the floor to Owner's reasonable satisfaction prior to the expiration or earlier termination of the term of this Lease.

(c) If Owner and Tenant cannot agree on the scope, nature or manner of Tenant's Work or any other matter relating to Tenant's Work or Tenant's Plans, the reasonable determination of Owner shall prevail. However, if Tenant shall nevertheless elect to dispute or challenge any such determination by Owner as being unreasonable, Tenant's sole and exclusive remedy shall be to elect to submit such dispute to an independent structural engineering firm to be selected by Owner from the list set forth on Annex II which is annexed to this Lease (the "Independent Structural Engineer"). The Independent Structural Engineer selected by Owner shall not then be under retention by Owner. Such election by Tenant must be made by notice given to Owner within fifteen (15) days after the date of Owner's determination, time being; of the essence, failing which Tenant shall have no other or further right to dispute or challenge such determination by Owner. If Tenant shall timely and properly make such election, then the issue as to whether Owner's determination was reasonable or unreasonable shall be submitted to the Independent Structural Engineer, who shall be requested to render a determination within thirty (30) days thereafter. If the Independent Structural Engineer shall determine that Owner's determination as to the item of Tenant's Work in issue was reasonable, then all of the fees, costs and expenses charged by the Independent Structural Engineer in connection with making such determination shall be borne and paid for solely by Tenant. If the Independent Structural Engineer shall determine that Owner's determination as to the matter in issue was unreasonable, then all of the fees, costs and expenses charged by the Independent Structural Engineer shall be borne and paid for solely by Owner. Any advance payment or deposit required by the Independent Structural Engineer shall be paid in advance equally by Owner and Tenant, subject to the foregoing. The determination of the Independent Structural Engineer shall be conclusive and binding on both Owner and Tenant.

(d) Following compliance by Tenant with its obligations under this Section 44.1, Tenant shall commence Tenant's Work and diligently proceed to complete same, within a reasonable period of time, in a good and workerlike manner, strictly in compliance with Tenant's Plans as finally approved by Owner and using only first-class materials.

44.2. Tenant shall not commence any Tenant's Work unless and until Tenant's Plans covering such Tenant's Work shall have been submitted to and finally approved by Owner in writing pursuant to the provisions of Section 44.1 above. Additionally, before commencement of Tenant's Work, Tenant shall:

44.2.1 Obtain and deliver copies to Owner of all necessary approvals, consents, authorizations, permits and licenses relating to Tenant's Work from any and all federal, state and/or municipal agencies, departments and authorities having or asserting jurisdiction over Tenant's Work, the Building and/or the Premises;

44.2.2 Furnish to Owner a certificate or certificates of Worker's Compensation Insurance covering all persons who will perform Tenant's Work for Tenant or for any contractor, subcontractor or other person; and

44.2.3 Furnish to Owner an original policy of comprehensive general public liability and property damage insurance covering Owner with a broad form contractual liability endorsement with a minimum combined single limit of liability with respect to each occurrence and in the aggregate in an amount of not less than five million ($5,000,000.00) dollars for injuries and/or deaths and for property damage. Each insurance company issuing such insurance shall be responsible, authorized to issue the relevant insurance coverage, authorized to do business in New York and have a policyholder's rating of no less than "A+10" in the most current edition of A.M. Best's Insurance Reports or its successor. Such policy shall be maintained at all times during the progress of Tenant's Work and until a date no earlier than thirty (30) days after final completion thereof, and shall provide that no cancellation shall be effective unless thirty (30) days' prior written notice shall have been given to Owner by certified mail, return receipt requested.

44.3. The following provisions shall also apply to Tenant's Work and to Tenant's

44.3.1 The cost of Tenant's Work shall be paid by Tenant so that the Premises and the Building shall at all times be free of liens for labor and materials supplied or claimed to have been supplied. Tenant agrees to indemnify and save Owner harmless from and against: any and all bills for labor performed for, and equipment, fixtures and materials furnished to, Tenant; any and all liens, bills or claims therefor against Owner or against the Premises or the Building; and all losses, damages, liabilities, costs, expenses (including attorneys' fees), suits and claims whatsoever in connection with Tenant's Work.

44.3.2 Tenant's Work shall be performed strictly in accordance with Tenant's Plans, as same shall have been approved by Owner, as well as in accordance with all applicable laws, codes, rules, regulations and ordinances, and the approvals, authorizations, consents, permits and licenses required to be obtained. The contractor or other person(s) performing Tenant's Work shall look solely to Tenant for payment and shall hold Owner and its officers, directors, principals, shareholders, agents and employees, the holder(s) of any superior mortgages or superior leases, the Premises and the Building free from all liens and claims of all persons furnishing labor or materials therefor, or both. Partial waivers of the right to file mechanic's liens shall be delivered by each general contractor or construction manager performing Tenant's Work simultaneously with each progress payment made to such party. Notwithstanding anything to the contrary contained in this Article 44 or elsewhere in this Lease, nothing herein contained shall be construed to be a consent by Owner to any lien against the fee interest in the Premises or the Building.

44.3.3 At all times during the performance of Tenant's Work during the term of this Lease, Tenant, at its sole cost and expense, shall comply with all Legal Requirements as well as with all rules and regulations promulgated or adopted by Owner.

44.3.4 If the performance of Tenant's Work shall unreasonably interfere with the comfort and/or convenience of other tenants or occupants of the Building or adjacent buildings, Tenant, upon Owner's demand, shall immediately discontinue, remedy or remove the condition or conditions reasonably complained of. Tenant shall not take any action or perform any act, or permit the same by any other party, which will violate any of Owner's union contracts affecting the Building, if any, or create any work stoppage, picketing, labor disruption or dispute which will interfere with the operation of the Building. Tenant shall comply with any reasonable work schedule, rules and regulations proposed by Owner, its agents or employees. Tenant further covenants and agrees to indemnify and save Owner and its officers, directors, shareholders, principals, agents and employees harmless from and against any and all claims, losses, damages, liabilities, penalties, costs, expenses, suits and claims whatsoever made or asserted against Owner or its officers, directors, shareholders, principals, agents and employees by reason of the foregoing.

44.3.5 Tenant shall indemnify, defend and save Owner and its officers, directors, shareholders, principals, agents and employees harmless from and against any and all losses, damages, liabilities, penalties, costs, expenses, suits and claims whatsoever incurred by Owner and/or its officers, directors, shareholders, principals, agents and employees or asserted or imposed against the Premises or the Building in connection with Tenant's Work, including bills, claims or liens for labor performed and equipment, fixtures and materials furnished to Tenant.

44.3.6 Intentionally Deleted.

44.3.7 Any changes as may be required by any governmental authority or department affecting any Tenant's Work including, without limitation, the New York City Landmarks Preservation Commission (the "Landmarks Commission"), shall be accepted by and complied with by Tenant, at Tenant's sole cost and expense. However, Tenant shall have the right to contest any such governmentally required changes (except for changes required by the Landmarks Commission) subject to the terms and conditions set forth in Article 90 below.

44.3.8 Any architect or designer acting for or on behalf of Tenant shall be deemed an agent of Tenant duly authorized to bind and act for Tenant in all respects with respect to Tenant's Work.

44.3.9 Owner shall not be liable for any failure, diminution or suspension of any Building systems or services arising out of Tenant's Work, notwithstanding Owner's consent thereto, and Tenant shall promptly correct any faulty or improper items of Tenant's Work and repair any damage caused thereby. Upon Tenant's failure to make such corrections and repairs promptly following such notice as is appropriate in the circumstances (which, for purposes of this Section, may be oral notice), or without notice in the event of an emergency or major disruption, Owner may make such corrections and repairs and charge Tenant for the cost thereof. Such charge shall be deemed Additional Rent and shall be paid by Tenant within fifteen (15) days after written notice to Tenant of the amount thereof. Owner shall have the right at all times during any period Tenant's Work is being performed to have its representatives enter the areas of the Premises in which Tenant's Work is being performed, for the purpose of inspection.

44.3.10 During and/or after completion of Tenant's Work, Tenant shall promptly complete, execute and deliver, and Tenant shall use Tenant's best efforts to cause Tenant's contractors, subcontractors and materialmen to promptly complete, execute and deliver, any and all documents which shall be requested by Owner in connection with any federal, state or local tax, governmental, municipal or administrative programs relating to the Building, including, without limitation, the "ICIP" real estate tax benefit program administered by the New York City Department of Finance. Upon substantial completion of Tenant's Work, Tenant shall, at Tenant's sole cost and expense, furnish Owner with copies of all appropriate municipal and governmental "sign-offs" as to all aspects of Tenant's Work and cause two (2) complete sets of "as-built" Tenant's Plans to be prepared and delivered to Owner in both "CAD" and print formats.

44.3.11 Tenant hereby acknowledges having been notified by Owner that the Building is situated in a district which has been designated as an historic district by the Landmarks Commission. In accordance with Sections 25-305, 25-306, 25-309 or 25310 of the New York City Administrative Code, and without limitation of the provisions of Article 3, this Article 44 or any other provisions contained in this Lease, Tenant must obtain a permit from the Landmarks Commission prior to commencing any Tenant's Work, except for ordinary repair and maintenance as such term is defined in subdivision (r) of Section 25302 of the New York City Administrative Code. Such permit, as well as any and all other approvals or consents as may now or hereafter be required from the Landmarks Commission, shall be obtained by Tenant at Tenant's sole cost and expense.

44.4. Notwithstanding anything to the contrary set forth in this Lease, Owner shall not under any circumstances be liable to pay for any work, labor or services rendered or materials furnished to or for the account of Tenant upon or in connection with any Tenant's Work (including, without limitation, Tenant's Initial Work), and no mechanic's or other liens for work, labor or services rendered or materials furnished to or for the account of Tenant shall, under any circumstances, attach to or affect the reversionary or other estate or interest of Owner in or to the Premises or the Building or in and to any alterations, repairs or improvements erected or made thereon or therein. Without limitation of the foregoing, Tenant acknowledges and agrees that the performance of any Tenant's Work shall be for the sole and exclusive benefit of Tenant and that any review or supervision by Owner or Owner's representatives of Tenant's Plans or Tenant's Work is solely for the benefit of Tenant. During the term of this Lease, Tenant shall not suffer or permit any mechanic's or other liens affecting the Premises or the Building for work, labor, services or materials rendered or furnished to or for the account of Tenant upon or in connection with work performed in or to the Premises. Without limitation of the foregoing, Tenant shall indemnify and hold Owner harmless from and against all liens or other charges, of whatsoever nature or description, arising from, or in consequence of, any alterations or improvements that Tenant shall make, or cause to be made, in or upon the Premises.

44.5. Without limitation of the provisions of Section 44.4 above or any other provisions contained in this Lease, if a notice of mechanic's lien shall be filed against the Premises or the Building for labor or materials alleged to have been furnished or to be furnished at the Premises or the Building to or for Tenant or to or for any party claiming under Tenant, Tenant shall cause such lien to be discharged or bonded within twenty-five (25) days after the date of filing of such notice of lien, time being of the essence. If Tenant shall fail to take such action as shall cause such lien to be discharged or bonded within twenty-five (25) days after the date of filing of such notice of lien, time being, of the essence, then without limitation of Owner's other rights and remedies, Owner may, but shall not be obligated to, pay the amount of such lien or discharge such lien of record by deposit or by bonding proceeding, and in the event of such deposit or bonding proceeding, Owner may, but shall not be required to, require the lienor to prosecute an appropriate action to enforce the lienor's claim. In such case, Owner may pay any judgment recovered on such claim. Any amount paid or expense incurred or sum of money paid by Owner by reason of the failure of Tenant to comply with any provision of this Article, or in defending any such action, shall be payable by Tenant to Owner as Additional Rent which shall be due and payable by Tenant to Owner fifteen (15) days after Tenant shall have been billed therefor.

44.6. Tenant acknowledges and agrees that under no circumstances may any brick walls be painted by Tenant, nor shall Tenant drill into or otherwise perform any work upon the brick walls, without first obtaining Owner's written consent.

44.7. If Owner shall elect to relinquish Owner's rights to Tenant's installations as provided for in Article 3 above, or if Tenant shall be obligated to remove any of Tenant's installations and restore the Premises pursuant to the provisions of Article 49 below or any other applicable provisions of this Lease, and if in either event Tenant shall fail to remove such installations and perform such restoration, at Tenant's sole cost and expense, in a good, workerlike fashion prior to the expiration or earlier termination of the term of this Lease (or any sublease, as the case may be) and otherwise in accordance with the provisions of Article 3 and this Article, then without limitation of Owner's other rights and remedies, Tenant shall be liable to Owner for the cost of removal of such installations and restoration, as such cost shall be reasonably estimated by Owner after consultation with any of the architects referred to in Annex IV annexed hereto which shall not then be under retention by Owner, and such cost shall be deemed to constitute Additional Rent and may be deducted from the security deposit. Owner's right to require Tenant to remove such installations and to restore the Premises may, at Owner's option, be exercised with regard only to such of Tenant's installations as to which Owner shall have the right to require Tenant to remove pursuant to the provisions of Article 3 above, Article 49 below or any other provisions of this Lease. After Tenant's removal of such installations, Tenant, at Tenant's sole cost and expense, shall cause the Premises to be restored, as near as practicable, to the condition the Premises were in prior to such installations, reasonable wear and tear excepted. Notwithstanding the provisions of Article 3 or this Section 44.7 or anything else to the contrary set forth in this Lease, if Owner shall fail to provide Tenant with notice of Owner's election to require Tenant to remove any of Tenant's installations and perform the necessary restoration by the date referred to in Article 3 above, such failure shall not constitute a waiver of such right by Owner; provided, however, that Owner so notifies Tenant not later than thirty (30) days after the fixed date of expiration of the term of this Lease, in which event Tenant shall have a period of not less than ten (10) days after such notification to complete such removal and restoration. The provisions of this Section 44.7 shall survive the expiration or earlier termination of the term of this Lease.

44.8. (a) Without limitation of the other provisions of Article 6 above, this Article 44 and all other applicable provisions of this Lease, if Local Law 5 (hereinafter defined) shall now or hereafter be applicable to the Premises, then Tenant's Work (and any work performed by Owner at Tenant's request and expense in and to the Premises) shall be done in a fashion such that the Premises and the Building shall be in compliance with the requirements of Local Law 5 of 1973 of The City of New York, as heretofore and hereafter amended ("Local Law 5"). The foregoing shall include, without limitation, (i) compliance with the compartmentalization requirements of Local Law 5, (ii) relocation of existing fire detection devices, alarm signals and/or communication devices necessitated by the alteration of the Premises, and (iii) installation of such additional fire control or detection devices as may be required by applicable governmental or quasi-governmental rules, regulations or requirements (including, without limitation, any requirements of the New York Board of Fire Underwriters) as a result of Tenant's particular use of the Premises. Throughout the term of this Lease, Tenant shall comply with the Fire Warden sign in requirements of Local Law 5.

(b) Owner shall not be responsible for any damage to Tenant's fire control or detection devices nor shall Owner have any responsibility for the maintenance or replacement thereof, except for any damage caused by the negligence or illegal conduct of Owner. Tenant shall indemnify Owner from and against all loss, damage, cost, liability or expense (including, without limitation, reasonable attorneys' fees and disbursements) suffered or incurred by Owner by reason of Tenant's installation and/or operation of any such devices.

(c) The fact that Owner shall have heretofore consented to any items of Tenant's Work shall not relieve Tenant of its obligations pursuant to this Section 44.8 with respect to such items of Tenant's Work.

(d) If any utility company or governmental or quasi-governmental authority requires any work, installation or improvement to be made to the Building in connection with any Tenant's Work performed by Tenant, the installation or operation of equipment in the Premises or for any other reason relating to Tenant's particular use of the Premises, Tenant shall reimburse Owner for the cost of such work, installation or improvement, as Additional Rent, within fifteen (15) days after demand.

45. Maintenance and Repairs (Supplementing Article 4)

45.1. Tenant, at Tenant's sole cost and expense, shall take good care of the Premises and the fixtures, appurtenances, equipment and facilities therein that serve the Premises or any portion thereof (regardless of whether such fixtures, appurtenances, equipment or facilities also serve other portions of the Building) and shall make, as and when needed, all necessary repairs and improvements to the Premises, required to keep them in good order and condition; such repairs and improvements to be in equal quality to the original work. In addition, Tenant shall cause the interior and exterior surfaces of all windows to be cleaned no less frequently than one (1) time per year. Notwithstanding anything herein to the contrary, any and all damage or injury to the Premises or to any other part of the Building, or to its fixtures, equipment and appurtenances, whether requiring structural or nonstructural repairs, caused by or resulting from Tenant's Work or the acts, carelessness, omission, neglect or improper conduct of Tenant, Tenant's agents, employees, contractors, invitees or licensees, shall be repaired at Tenant's sole cost and expense. Such repairs shall be made by Tenant to the reasonable satisfaction of Owner (or, at Owner's election, by Owner) if the required repairs are nonstructural in nature. If the required repairs are structural in nature, such repairs shall be made by Owner (at Tenant's sole reasonable cost and expense). In addition to any other rights and remedies which Owner may have under the terms of this Lease, Owner shall be entitled to a decree specifically enforcing the provisions of this Article.

45.2. Owner reserves the right to suspend the service of any utilities, elevator or by reason of accident or repairs, alterations or improvements that Owner is required or permitted to make in the Premises or the Building until such repairs, alterations or improvements shall have been completed, and Owner shall have no responsibility or liability for such suspension of service and there shall be no allowance to Tenant for the diminution of rental value, lost business or any other matter by reason thereof and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising therefrom, or otherwise. Except in the event of an emergency, Owner shall use commercially reasonable efforts to perform such repairs, alterations and improvements in such manner as to avoid unreasonable interference with Tenant's conduct of its operations at the Premises, to the extent reasonably practicable. However, notwithstanding the foregoing or anything else to the contrary set forth in this Lease, in no event shall Owner be obligated to incur any overtime or other additional costs, expenses, charges or liabilities to perform any such repairs, alterations or improvements which shall be imposed by or otherwise payable to or incurred in favor of any contractor or other third party, or to perform any such repairs, alterations or improvements other than during normal business hours and days. Further, the provisions of this Article shall not be deemed to impose upon Owner any obligation for the furnishing of any service, maintenance or repair other than as specifically set forth in this Lease. However, the provisions of this Section 45.2 are subject to the provisions of note 2 to Article 4 of the printed portion of this Lease if the Premises are rendered untenantable.

45.3. Owner reserves the right, subject to the terms and provisions of this Lease, to construct and maintain sidewalk bridges, scaffolding or similar structures from time to time during the term of this Lease in connection with any repairs, alterations or improvements to be made in or to the Building or any portion thereof and there shall be no allowance to Tenant for the diminution of rental value, lost business or any other matter by reason thereof and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising therefrom, except as may otherwise be specifically provided herein.

45.4. In addition to, and without limitation of, Tenant's obligations pursuant to Section 45.1 above and notwithstanding anything to the contrary set forth in this Lease, Tenant shall be solely responsible, at Tenant's sole cost and expense, to repair and maintain in good working order and condition throughout the term of this Lease all of the heating, ventilation and air conditioning units, systems, fixtures and equipment now or hereafter servicing the Premises, whether or not installed by Owner, and all appurtenances thereto including, without limitation, all ductwork, diffusers, controls and related plumbing and electrical systems and equipment, exclusive of the Building perimeter heating system, (all of such units, systems, equipment and appurtenances are hereinafter collectively referred to as the "HVAC Systems"). Such repair and maintenance shall be performed by a service contractor reasonably acceptable to Owner. If any portion(s) of the HVAC Systems shall require replacement in order that all of the HVAC Systems shall be and remain in good working order and condition, then Tenant shall be solely responsible to make such replacements at Tenant's sole cost and expense. However, if any major component of the HVAC Systems (other than the supplemental HVAC equipment installed by the previous tenant) cannot be repaired by Tenant and requires replacement during the term of this Lease (as reasonably determined by Tenant and reasonably approved by Owner), then Tenant shall be responsible for such replacement at Tenant's sole cost and expense; provided, however, that if Tenant is not in default under this Lease (after notice and the expiration of any applicable cure period which are specifically provided for in this Lease with respect to such default, if any), Tenant shall be entitled to a credit against the Fixed Rent next becoming due following the calendar month in which such major component shall be replaced and the cost thereof shall have been paid in full by Tenant (as shall be reasonably substantiated by Tenant to Owner) in an amount equal to the unamortized original cost of the replaced component (as shall be substantiated by Tenant to the reasonable satisfaction of Owner) which shall be attributable to the period subsequent to the expiration of the term of this Lease, based upon the useful life for such component published by the manufacturer thereof or, if no such useful life information is so published, the useful life of such component shall be determined by an independent mechanical engineer or engineering firm selected by Owner from the list annexed hereto as Annex III (the "Independent Mechanical Engineer"). The Independent Mechanical Engineer selected by Owner shall not then be under retention by Owner. If the replacement of the major HVAC component shall be made prior to the expiration of the initial term of the Lease (i.e., prior to December 31, 2012) and Tenant shall exercise the Option (hereinafter defined) to extend the term of this Lease as set forth in Article 93 below, then Tenant shall pay to Owner, as Additional Rent, on the first (lst) day of the calendar month immediately following the date on which the Option shall be exercised, an amount equal to the unamortized original cost of the component attributable to the Extension Term (hereinafter defined). All repairs, maintenance and replacements with respect to the HVAC Systems shall be performed by Tenant in a good, workmanlike fashion to Owner's reasonable satisfaction and otherwise in accordance with the provisions of Articles 3, 4, 44 and 45 of this Lease and all other applicable provisions of this Lease. Additionally, Tenant shall pay all of the operating costs and expenses relating to the HVAC Systems, including, without limitation, the cost of all electricity used for the operation thereof. Owner shall have no obligations, responsibilities or liabilities of any nature whatsoever arising out of or in connection with the operation, repair, maintenance or replacement of the HVAC Systems or any portion(s) thereof.

45.5. If Tenant shall reasonably establish, within thirty (30) days from the date hereof, that the HVAC units servicing the fourth, fifth and sixth floors do not currently have a combined cooling capacity of at least 125 tons (hereinafter "HVAC Cooling Capacity") then Owner shall reimburse Tenant for the reasonable cost actually incurred by Tenant to increase such combined cooling capacity to the HVAC Cooling Capacity. However, in no event shall such cost exceed the rate of $5,000 per ton for each ton that the HVAC Systems are less than the HVAC Cooling Capacity. Such reimbursement shall be in the form of a rent credit against the first Fixed Rents thereafter becoming payable after such expenditure is made by Tenant and reasonable substantiation thereof is provided to Owner. Any dispute with regard to this Section shall be submitted for determination to any of the Independent Mechanical Engineers not then under retention by Owner or Tenant.

46. Subordination (Supplementing Article 7)

46.1. The ground and underlying leases and mortgages referred to in Article 7, to which this Lease is subject and subordinate, are hereinafter sometimes called "superior leases" and "superior mortgages" respectively, and the lessor of a superior lease or its successor in interest is hereinafter sometimes called the "lessor" of such superior lease.

46.2. In the event of any act or omission of Owner which would give Tenant the right, immediately or after a lapse of a period of time, to cancel or terminate this Lease, or claim a partial or total eviction, Tenant shall not exercise such right (i) until it has given written notice of such act or omission to the holder of each superior mortgage and the lessor of each superior lease whose name and address shall have been furnished to Tenant in writing, and (ii) unless such act or omission shall be one which is not capable of being remedied by Owner or such mortgage holder or lessor within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such holder or lessor shall have become entitled under such superior mortgage or superior lease, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Owner would be entitled under this Lease or otherwise, after similar notice, to effect such remedy), provided such holder or lessor shall with due diligence give Tenant written notice of intention to, and commence and continue to, remedy such act or omission.

46.3. If the lessor of a superior lease or the holder of a superior mortgage shall succeed to Owner's estate in the Building or the rights of Owner under this Lease, whether through possession or foreclosure action or delivery of a new lease or a deed or otherwise, then, at the election of such party so succeeding to Owner's rights (herein sometimes called "successor landlord"), Tenant shall attorn to and recognize such successor landlord as Tenant's landlord under this Lease, and shall promptly execute and deliver any instrument which such successor landlord may reasonably request to evidence such attornment. Tenant hereby irrevocably appoints such successor landlord Tenant's attorney-in-fact to execute and deliver such instrument for and on behalf of Tenant.

46.4. If, in connection with the financing of the Premises or the Building, the institutional holder of any mortgage shall request reasonable modifications to this Lease as a condition of approval thereof, Tenant shall not withhold or delay or defer making such modifications which do not increase Tenant's substantive obligations hereunder or decrease Tenant's substantive rights under this Lease.

46.5. (a) Owner represents to Tenant that: (i) Owner is currently the sole owner of fee title to the Building and the Land and there is currently no ground or underlying lease pertaining thereto; (ii) there is currently no leasehold mortgage affecting the Land and Building which is superior to this Lease; and (iii) the only existing fee mortgages affecting the Land and Building are held by Washington Mutual Bank, F.A. ("Existing Mortgagee").

(b) Owner shall exercise good faith efforts to obtain a Subordination, Nondisturbance and Attornment Agreement ("SNDA"), substantially in the form annexed hereto as Exhibit D, from the Existing Mortgagee within thirty (30) days after the execution and exchange of this Lease and the execution and delivery by Tenant to Owner of the SNDA substantially as annexed hereto as Exhibit D. If Owner fails to furnish such SNDA from the Existing Mortgagee within such thirty (30) day period, time being of the essence, then, as Tenant's sole and exclusive remedy, Tenant may cancel this Lease by notice sent to Owner within ten (10) days after the expiration of such thirty (30) day period unless, within ten (10) days after Owner's receipt of such notice of cancellation, Owner shall furnish to Tenant an SNDA signed by the Existing Mortgagee. In the event of such cancellation of this Lease by Tenant, the parties shall have no further rights or obligations hereunder and all advance rent and security theretofore paid by Tenant to Owner and the letter of credit delivered by Tenant to Owner shall be promptly returned to Tenant.

(c) Notwithstanding anything in this Lease to the contrary, the subordination of this Lease to any future mortgage or ground or underlying lease shall be subject to and conditioned upon the mortgagee or lessor thereunder, concurrently with the consummation of the applicable mortgage or ground lease, delivering to Tenant an SNDA which is in such mortgagee's or lessor's then standard form which does not serve to materially increase any of Tenant's material substantive obligations under this Lease or to materially decrease any of Tenant's material substantive rights; provided, however, that Tenant shall be obligated to promptly execute and deliver any SNDA meeting such requirements.

47. Tenant's Liability Insurance (Supplementing Article 8)

47.1. Tenant shall defend, indemnify and save harmless Owner and its agents against and from (a) any and all claims, losses, liabilities, damages, demands, actions, causes of action, judgments, costs and expenses, including, without limitation, attorneys' fees, disbursements and court costs, arising from or in connection with: (i) the conduct of business in or management of the Premises or any work or thing whatsoever done or any condition created in or about the Premises during the term of this Lease; (ii) any act or omission of Tenant or any of its subtenants or licensees or its or their guests, invitees, patrons, employees, agents or contractors; (iii) any accident, injury or damage occurring outside the Premises, where such accident, injury or damage resulted or is claimed to have resulted from the willful misconduct or the negligent or tortious acts or omissions of Tenant or any of its guests, invitees, patrons, employees, visitors, agents or contractors and (iv) any default by Tenant in the performance of any of the covenants, terms, provisions, conditions and/or obligations on its part to be performed hereunder, and (b) all costs and expenses (including attorneys' fees) and liabilities incurred in or in connection with each such claim or action or proceeding brought thereon. In case any action or proceeding be brought against Owner by reason of any such claim, Tenant, upon notice from Owner, shall resist and defend such action or proceeding by counsel chosen by Tenant who shall be reasonably satisfactory to Owner. Tenant or its counsel shall keep Owner fully apprised at all times of the status of such defense.

47.2. Without limiting Tenant's liability under the indemnity provided for in this Article, Tenant shall provide on or before the Commencement Date, and shall keep in force continuously throughout the term of this Lease, for the benefit of Owner and Tenant, insurance of the kinds and in the limits hereinafter specified against any liability whatsoever occasioned by any occurrence in, on or about, or resulting from the use, operation and/or maintenance of, the Premises, or the fixtures or equipment therein or the elevators, stairways, sidewalks, passageways and other areas adjacent to the Premises or located elsewhere in the Building, and shall cause Owner, Owner's managing agent, and their respective officers, directors, shareholders, and authorized agents and representatives to be named as additional insureds, and as loss payees (as to property insurance covering Tenant's improvements and personal property), with respect to all policies of such insurance (other than worker's compensation insurance). Such additional insureds shall be specifically named as follows in all such policies and certificates: "Moklam Enterprises, Inc., as owner, and Yuco Management, Inc., as agent, 475 Fifth Avenue, 19' Floor, New York, New York 10017, and such parties' respective officers, directors, shareholders, and authorized agents and representatives". Additional insured status in respect of Tenant's comprehensive general public liability insurance shall be provided on ISO Form 2026 or its equivalent, without modification, or such other endorsement as shall be satisfactory to Owner in Owner's sole and absolute discretion. Such kinds and limits of insurance are as follows:

47.2.1 worker's compensation insurance to the extent required by law in statutory limits covering all persons employed by or on behalf of Tenant in connection with the performance of work upon, in or about the Premises;

47.2.2 comprehensive general public liability and property damage insurance with a broad form contractual liability endorsement with a minimum combined single limit of liability with respect to each occurrence and in the aggregate in an amount of not less than five million ($5,000,000.00) dollars for injuries and/or deaths and property damage, and adequate water and fire insurance, with extended coverage, covering Tenant's fixtures, installations and other personal property as well as property owned by others but in the possession of Tenant at the Premises;

47.2.3 business interruption insurance in a sum sufficient to cover one year's Rents;

47.2.4 plate glass coverage in such amount as Owner shall reasonably approve; and

47.2.5 insurance against such other risks, and in such limits as are or shall be customarily insured against in businesses and use and occupancy similar to that operated by Tenant in the Premises; provided, however, that, prior to requiring any additional coverage or increased limits of coverage pursuant to this Section 47.2.5, Owner will provide notice thereof to Tenant and will agree to limit such additional coverage or increased limits to that customarily carried by similar office tenants in the area of the Building.

47.3. If Tenant is permitted to enter the Premises prior to the Commencement Date, Tenant shall obtain insurance of the kinds and limits as set forth hereinabove in Sections 47.2.1, 47.2.2 and 47.2.4 prior to the Commencement Date, and such insurance shall be effective as of the date of which Tenant first enters upon the Premises.

47.4. The policies of insurance provided for in Section 47.2. above shall be issued by insurance companies reasonably satisfactory to Owner, shall be non-cancelable except on at least thirty (30) days' prior written notice to Owner by certified mail, return receipt requested, and, to the extent obtainable, shall not be invalidated as against one assured by reason of any act or omission of another assured. Such insurance companies shall be responsible, authorized to issue the relevant insurance coverage, authorized to do business in New York and have a policyholder's rating of no less than "A+10" in the most current edition of Best's Insurance Reports or its successor. All insurance policies to be provided by Tenant shall be endorsed to be primary over any insurance covering the Building that Owner may elect to carry, in Owner's sole and absolute discretion. Not later than the earlier to occur of the day prior to the date Tenant first enters upon the Premises or the day prior to the Commencement Date, Tenant shall furnish Owner with a duplicate original policy evidencing each such insurance policy, together with satisfactory evidence of payment of the premium therefor for a period of coverage of not less than one year. Similar documentary evidence of renewal and payment for each renewal or new policy for such insurance shall be furnished to Owner at least thirty (30) days prior to each date of expiration of the then current policy. All such policies shall contain agreements by the insurers that the coverage afforded thereby shall not be affected by the performance of any work upon, in or about the Premises.

47.5. Anything herein to the contrary notwithstanding, Tenant shall reimburse Owner within ten (10) days after demand and presentation of an invoice or other reasonable supporting documentation with respect thereto, for any increase in the rate of insurance over the insurance rates generally charged for office use in buildings in the vicinity of the Building which Owner may be required to pay because of the manner in which the Premises are used or occupied by Tenant.

47.6. Tenant shall pay to Owner an amount equal to any increase in fire insurance premiums due to Tenant's particular use of the Premises, including extended coverage, vandalism, malicious mischief and surcharges, if any, above the premiums determined by the base fire insurance rate applicable to the Building.

47.7. Tenant shall pay all premiums and charges for all policies of insurance required to be secured and provided by Tenant pursuant to this Lease and shall pay for any increases in premiums thereon as required by this Article, or elsewhere in this Lease. If Tenant shall fail to make any such payment when due or provide any such coverage, Owner may, but shall not be obligated to, make such payment or secure such policy, and the amount paid by Owner, shall be repaid to Owner by Tenant within ten (10) days after demand and presentation of an invoice or other reasonable supporting documentation with respect thereto, and all such amounts so repayable shall be considered as Additional Rent for the collection of which Owner shall have all of the remedies provided for hereunder or by law. Payment by Owner of any such premium, increase in premium, other charge or the securing by Owner of any such policy shall not be deemed to waive or release the default of Tenant with respect thereto.

48. Eminent Domain (Supplementing Article 10)

48.1. If the whole of the Premises shall betaken under the power of eminent domain of any public or private authority, then this Lease shall be deemed terminated as of the date of such taking and unearned rent or other charges, if any, paid in advance, shall be refunded to Tenant.

48.2. If only a portion of the Premises shall be taken under the power of eminent domain by any public or private authority, then this Lease shall continue in full force and effect, at Owner's option, provided, however, that if Owner shall elect to continue this Lease, then Owner shall, at its own expense, restore that portion of the Premises which remains to substantially the same condition as prior to the condemnation. There shall be a pro rata abatement of the Fixed Rent to the extent that the amount of floor space so taken compares to the amount of space prior to such condemnation, to compensate Tenant for its loss of use of such portion of the Premises. If Owner shall not elect to continue this Lease in the event of a partial taking as aforesaid, then this Lease shall be deemed terminated as of the date of such taking and unearned rent or other charges, if any, paid in advance, shall be refunded to Tenant.

48.3. Tenant shall not be entitled to any award for the loss or, damage in any such condemnation proceeding and in no event shall the condemnation award be apportioned. Notwithstanding anything herein contained to the contrary, Tenant may assert a separate claim with the condemning authority limited solely to the then value of Tenant's leasehold improvements paid for directly by Tenant, and moving expenses, provided and on condition that such claim by Tenant shall not affect or reduce any award to Owner in the condemnation proceeding.

49. Assignment/Subletting/Occupancy (Supplementing Article 11)

49.1. For purposes of this Lease, subject to the provisions of Section 49.2 below, the transfer or other disposition of in excess of forty-nine (49%) percent of the issued and outstanding capital stock of a corporate Tenant or any corporate subtenant, or the transfer of in excess of forty-nine (49%) percent of the total ownership interest in any other entity (partnership, limited liability company or otherwise) which is Tenant or a subtenant, however accomplished, whether in a single transaction or in a series of related or unrelated transactions, shall be deemed to constitute an assignment of this Lease or such sublease, as the case may be. Additionally, subject to the provisions of Section 49.2 below, (i) any increase in the amount of issued and/or outstanding capital stock of any corporate Tenant, or any increase of the issued and outstanding membership interests in any Tenant which is a limited liability company and/or the creation of one or more additional classes of capital stock of any corporate Tenant, whether in a single transaction or a series of related or unrelated transactions, resulting in a change in the legal or beneficial ownership of such Tenant so that the shareholders or members of such Tenant existing immediately prior to such transaction or series of transactions shall no longer own a majority of the issued and outstanding capital stock or membership interests of such Tenant, if the primary purpose of such transaction is not a bona fide business purpose or is designed or intended to avoid the limitations and restrictions on subletting or assignment set forth in Article 49 shall be deemed to constitute an assignment of this Lease, (ii) an agreement by any other person or entity, directly or indirectly, to assume all or any significant portion of Tenant's obligations under this Lease shall be deemed to constitute an assignment of this Lease, (iii) any person or legal representative of Tenant, to whom Tenant's interest under this Lease passes by operation of law, or otherwise, shall be bound by the provisions of Article 11 and this Article 49, (iv) a modification, amendment or extension of a sublease shall be deemed to constitute a sublease, and (v) the change or conversion of Tenant to a limited liability company, a limited liability partnership or any other entity which possesses the characteristics of limited liability shall be deemed to constitute an assignment of this Lease. Tenant agrees to furnish to Owner, upon demand at any time, such information and assurances as Owner may reasonably request that neither Tenant, nor any previously permitted subtenant, has violated the provisions of Article 11 and this Article 49.

49.2. Subject to the terms and conditions hereinafter set forth in this Section 49.2, Owner's consent shall not be required with regard to, and the provisions set forth in Section 49.7 below shall not apply to: (i) transactions by Tenant with a corporation or other entity into or with which Tenant is merged or consolidated or with an entity to which all or substantially all of Tenant's stock or assets are transferred, provided and on condition that such merger, consolidation or transfer of assets is for a good and proper business purpose and not principally for the purpose of transferring the leasehold estate created by this Lease, and further provided and on condition that the assignee or surviving entity, as the case may be, has a net worth at least equal to or in excess of the net worth of Tenant as of the date immediately prior to such merger, consolidation or transfer, as evidenced by audited financial statements dated within twelve (12) months prior to the date of the transaction and prepared in accordance with generally accepted accounting principles, consistently applied, by Tenant's independent certified public accountant; (ii) assignment or subletting to an entity that, at the time of the transaction, controls or is controlled by Tenant or is under common control with Tenant; or (iii) the underwritten public offering of the capital stock of Tenant on any national stock market or exchange (such as the NYSE, Nasdaq or Amex) or the subsequent public trading of such stock on such national markets or exchanges. Tenant shall notify Owner not more than five (5) days after any such transaction or public offering is consummated. As used in this Lease, the term "control" (i) in the case of a corporation, shall mean ownership of more than fifty (50%) percent of the outstanding capital stock of that corporation, (ii) in the case of a general or limited liability partnership, shall mean ownership of more than fifty (50%) percent of the partnership interests of the partnership, (iii) in the case of a limited partnership, shall mean ownership of more than fifty (50%) percent of the general partnership interests and limited partnership interests of such limited partnership, and (iv) in the case of a limited liability company, shall mean ownership of more than fifty (50%) percent of the membership interests of such limited liability company. Notwithstanding the foregoing, the provisions of this Section 49.2 shall be subject to and conditioned upon all of the following additional conditions: (a) Tenant shall not be in default in the performance of any of its obligations under this Lease (after notice and the expiration of any applicable cure period which are specifically provided for in the Lease with respect to such default, if any); (b) prior to any such subletting or assignment by Tenant to a related entity, Tenant shall furnish Owner with the name of any such related entity, together with a certification of Tenant and such other proof as Owner may reasonably request, that such subtenant or assignee is a related entity of Tenant; (c) if the related entity is the assignee of this Lease, Tenant shall deliver to Owner an instrument of assumption, reasonably satisfactory to Owner, pursuant to which the related entity assumes all of the obligations of Tenant under this Lease, after which assumption Tenant and the related entity shall be jointly and severally liable with Tenant for all such obligations; (d) such transaction is for a good, bona fide business purpose and not principally for the purpose of transferring the leasehold estate created hereby; (e) in connection with the information to be provided to Owner pursuant to this Section 49.2, Owner shall have the right, at any reasonable time and from time to time, to examine such books and records of Tenant and such related entity as may be necessary to establish that such related entity remains a related entity of Tenant; and (f) the provisions of Sections 49.3.3, 49.3.5, 49.3.8, 49.3.11, 49.3.12, 49.3.14, 49.4 and 49.9 shall be complied with and/or be applicable, as the case may be.

49.3. If Owner shall not exercise its rights under Section 49.7 below, Owner shall not unreasonably withhold, delay or condition its consent to an assignment of this Lease or to a subletting of all or a portion of the Premises, provided and on condition that:

49.3.1 Tenant is not in default in the performance of any of the terms and conditions of this Lease (after notice and the expiration of any applicable cure period which are specifically provided for in the Lease with respect to such default, if any) both on the date Tenant's request for consent to such assignment or subletting is submitted to Owner and on the date that such assignment or subletting is to become effective;

49.3.2 Tenant shall deliver to Owner a written notice by certified mail, return receipt requested, at least thirty (30) days prior to the effective date of such assignment or subletting, accompanied by the following information and documentation:

(a) The name and business address of the proposed subtenant or assignee, an unexecuted counterpart or draft of the proposed assignment or subletting agreement (if available), reasonably satisfactory information with respect to the nature and character of the business of the proposed assignee, and current financial information and references reasonably satisfactory to Owner including, without limitation, the completion and submission to Owner of Owner's then current form application to lease and, based on such information, Owner shall be reasonably satisfied with the suitability of the proposed subtenant or assignee and its ability to fully and timely perform all of its obligations under the sublease or this Lease, as the case may be; and

(b) A written statement by Tenant and the proposed assignee or subtenant (or an officer, shareholder or director thereof, if a corporation) certifying to Owner that such assignee or subtenant have never within the immediately preceding forty-two (42) month period (i) filed a voluntary petition in bankruptcy or insolvency, (ii) been adjudicated as bankrupt or insolvent, (iii) filed a petition seeking relief under Federal, state or similar bankruptcy laws or (iv) been the subject of an involuntary bankruptcy proceeding that was not discharged.

49.3.3 The proposed subtenant or assignee shall use the Premises solely for the use permitted under this Lease;

49.3.4 If, at the time Tenant gives notice to Owner of a proposed sublease or assignment, Owner has or within three (3) months thereafter reasonably expects to have comparable space for a comparable term available in the Building, the proposed subtenant or assignee shall not be (x) a party with whom Owner is then negotiating or discussing the leasing of space in the Building; or (y) a tenant in or occupant of the Building or any party that, directly or indirectly, is controlled by, controls or is under common control with any such tenant or occupant;

49.3.5 The proposed use of the Premises by the proposed subtenant or assignee shall be in full and complete accordance with the provisions of Article 2 and Article 43 hereof and shall not violate the terms of this Lease or any applicable law;

49.3.6 Intentionally Deleted.

49.3.7 The proposed assignee or subtenant shall neither be entitled directly or indirectly to diplomatic or sovereign immunity nor be a not-for-profit organization nor an entity or agency of any government;

49.3.8 Not more than three (3) subtenants per floor or nine (9) subtenants in the Premises shall be permitted at any time during the term of this Lease, subject, however, to the provisions of Section 49.9 below;

49.3.9 In the case of a proposed subletting, the listing or advertising for subletting of the Premises shall not have included a proposed rental rate; provided, however, that Tenant may quote in writing or orally directly to prospective subtenants the proposed rental rate.

49.3.10 Intentionally Deleted.

49.3.11 Any subletting shall be expressly subject to all of the terms, covenants, conditions and obligations on Tenant's part to be observed and performed under this Lease, and any assignment or subletting shall be subject to the further condition and restriction that this Lease or the sublease shall not be further assigned, encumbered or otherwise transferred or the subleased premises further sublet by the subtenant in whole or in part, or any part thereof suffered or permitted by the assignee or subtenant to be used or occupied by others, without the prior written consent of Owner in each instance given pursuant to the provisions of this Lease;

49.3.12 At no time shall there be more than three (3) occupants, including Tenant, in any floor of the Premises;

49.3.13 Tenant shall reimburse Owner within fifteen (15) days after demand, as Additional Rent, for any reasonable costs and expenses that may be incurred by Owner in connection with said assignment or sublease, including, without limitation, any reasonable processing fees, attorneys' fees and disbursements, architect's fees (if required) and the costs of making investigations as to the acceptability of the proposed assignee or subtenant;

49.3.14 The nature of the occupancy and the particular use of the Premises by the proposed subtenant or assignee shall, not impose on Owner any requirements of applicable federal, state or local laws, rules, codes, or regulations (including, without limitation, the Americans with Disabilities Act) in excess of those requirements imposed on Owner by reason of Tenant's use and occupancy, whether under this Lease or otherwise, unless such proposed subtenant or assignee shall have agreed in writing to comply with each of such excess requirements and, at Owner's option, shall have furnished Owner with such security as Owner may require to assure that such subtenant or assignee shall so comply; and

49.3.15 The subletting or assignment is effected pursuant to a written instrument in form and substance reasonably satisfactory to Owner and its counsel and is in strict compliance with the information and documentation submitted to Owner pursuant to Section 49.3.2 above, and, if an assignment agreement, contains an agreement by the assignee to assume and perform all of the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed from and after the effective date of the assignment, and that a duplicate original of any such subletting or assignment agreement be delivered to Owner within five (5) days following the date of its execution or not less than five (5) days prior to its effective date, whichever shall be sooner.

49.4. Notwithstanding any subletting or assignment and/or acceptance of Fixed Rent or Additional Rent by Owner directly from any subtenant or assignee, Tenant shall and will remain fully liable for the payment of Rents due and to become due hereunder and for the performance of all the covenants, agreements, terms, provisions and conditions contained in this Lease on the part of Tenant to be performed. The liability of Tenant hereunder shall be unaffected by any changes, modifications, extensions, renewals or amendments of this Lease or by any extensions of time or other concessions which Owner may grant to any assignee for the payment of Rents or other charges due hereunder that extend the term of this Lease or materially increase the lessee's substantive obligations above, or materially diminish its substantive rights below the substantive obligations, rights or term set forth in this Lease, as same may have been amended and/or extended as of the time of its assignment by Tenant, unless agreed to by Tenant. However, Tenant shall in all events remain liable to Owner with regard to all of Tenant's obligations as contained in this Lease, as same may have been amended and/or extended as of the time of its assignment by Tenant.

49.5. Tenant hereby waives any claim against Owner for money damages which it may have based upon any assertion that Owner shall have unreasonably withheld, delayed and/or conditioned any consent to a subletting or assignment pursuant to the terms of this Article. Tenant's sole remedy shall be an action or proceeding to enforce such provision or for specific performance, injunction or declaratory judgment, or to enforce such provision pursuant to an arbitration proceeding instituted in accordance with the provisions of Article 89 below. In the event any such arbitration proceeding is commenced, the arbitrator's determination shall be limited solely to the issue of whether Owner shall have unreasonably withheld, delayed or conditioned any consent to a subletting or assignment pursuant to the terms of this Article and whether such subletting or assignment shall be permitted. In no event shall the arbitrators have the power to award monetary damages.

49.6. (a) If Tenant shall sublet the Premises or any portion thereof (other than in accordance with Section 49.2 above), then all sums in excess of the Rent due under this Lease or, in the case of a sublease of a portion of the Premises, all sums in excess of the Rent allocable to that portion of the Premises being sublet, which are paid, directly or indirectly, to Tenant or Tenant's shareholders or principals by such subtenant in consideration of or in connection with said subletting including, without limitation, all sums payable as additional rent or for the rental (but not the bona-fide sale) of Tenant's fixtures, leasehold improvements, equipment, furniture, business or other personal or real property interest of any nature whatsoever (such excess sums are hereinafter referred to as the "Excess Subletting Rents") shall be disclosed to Owner. Tenant shall pay to Owner, on a monthly basis on the first day of each calendar month during the term of the subletting, as Additional Rent, fifty (50%) percent of the excess of (i) all of the Excess Subletting Rents paid to Tenant during the immediately preceding calendar month less (ii) the monthly amortized amount (as amortized on a straight-line basis over the total number of months of the term of the sublease) of the reasonable amount of out-of-pocket costs of brokerage commissions, legal fees, any reasonable construction work allowance granted to the subtenant actually paid by Tenant in connection with the execution and delivery of the sublease and the reasonable cost of any improvements to the subleased premises actually made by Tenant as shall be required pursuant to the sublease agreement. The amount of such brokerage commissions, legal fees. construction work allowance (if any) and improvement costs (if any) shall be properly documented by Tenant to Owner's reasonable satisfaction. The obligation to make such payment to Owner shall be binding upon Tenant as well as each subtenant, jointly and severally, and such obligation shall survive the expiration or earlier termination of the term of this Lease.

(b) If this Lease shall be assigned, or shall be deemed to be assigned, at any time(s) during the term of this Lease (other than in accordance with Section 49.2 above), then the aggregate amount of all sums which are paid, directly or indirectly, to Tenant or Tenant's shareholders or principals by or on behalf of the assignee in consideration of or in connection with said assignment and/or for Tenant's leasehold improvements (including, without limitation, all sums paid for the sale or rental of Tenant's 'fixtures, equipment, furniture, business or other personal or real property interest of any nature whatsoever in excess of the then fair market value of such items), shall be disclosed to Owner and Tenant shall pay to Owner, as Additional Rent, an amount equal to fifty (50%) percent of the difference between (i) the total amount of such consideration (hereinafter, "Tenant's Assignment Consideration") less (ii) the reasonable amount of out-of-pocket costs of brokerage commissions, legal fees and reasonable costs of improvements to the Premises actually made by Tenant as shall be required pursuant to the assignment agreement actually paid by Tenant in connection with the execution and delivery of the assignment. The amount of such brokerage commissions, legal fees and improvement costs shall be properly documented by Tenant to Owner's reasonable satisfaction. No later than two (2) business days prior to the effective date of the assignment, time being. of the essence, Tenant shall furnish Owner with definitive documentary evidence of the amount of Tenant's Assignment Consideration which shall be reasonably satisfactory to Owner including, without limitation, (i) true copies of all agreements and other documentation between Tenant and Tenant's assignee relating to the assignment and (ii) affidavits from executive officers of both Tenant and Tenant's assignee (as well as from such parties' respective independent certified public accounts) attesting, under penalties of perjury, as to the amount of Tenant's Assignment Consideration. The obligation to make such payment of Tenant's Assignment Consideration to Owner shall be binding upon Tenant and the assignee, jointly and severally, and shall survive the expiration or earlier termination of the term of this Lease.

(c) Owner may, by notice to Tenant, elect to waive the benefits of this Section 49.6, in whole or in part, prospectively or retroactively. Any retroactive waiver shall be accompanied by a return to Tenant of all sums theretofore paid to and retroactively waived by Owner.

49.7. (a) Anything herein contained to the contrary notwithstanding, should Tenant desire to assign this Lease or sublet the Premises or any portion thereof, then Tenant shall send to Owner a written notice (hereinafter, a "Sublease or Assignment Notice") by registered mail, return receipt requested, at least thirty (30) days prior to the date that Tenant intends such assignment or subletting to commence, setting forth the proposed commencement date of such assignment or subletting and in the case of subletting, the terms of such subletting, as well as the name and business address of the proposed subtenant or assignee, an unexecuted counterpart or draft of the proposed assignment or subletting agreement (if available), reasonably satisfactory information with respect to the nature and character of the business of the proposed assignee, and current financial information and references reasonably satisfactory to Owner including, without limitation, the completion and submission to Owner of Owner's then current form application to lease. In the case of a subletting of a portion of the Premises, such notice shall be accompanied by a reasonably accurate floor plan of that portion of the Premises to be sublet. The portion of the Premises to which such proposed assignment or sublease is to be applicable is hereinafter referred to in this Section 49.7 as the "Space" (which term shall be deemed to mean the entire Premises if Tenant's proposed transaction is a sublease of the entire Premises or an assignment of this Lease). Notwithstanding the foregoing, if Tenant wishes to assign this Lease or enter into a sublease and Tenant has not yet located the assignee or subtenant and/or negotiated the terms of the transaction, Tenant shall send to Owner a notice (an "Abbreviated Notice") specifying only Tenant's intention to so assign or sublease, the desired effective date and term of the proposed transaction and the relevant Space. If Tenant gives a Sublease or Assignment Notice or an Abbreviated Notice as above set forth, the applicable Sublease or Assignment Notice or Abbreviated Notice shall constitute an irrevocable offer to Owner, for the thirty (30) or sixty (60) day period set forth below, as applicable; to exercise Owner's right to Recapture (as hereinafter defined).

(b) A Sublease or Assignment Notice or an Abbreviated Notice (collectively hereinafter sometimes referred to as a "Tenant's Notice"), if given, shall be deemed an irrevocable offer (coupled with an interest) by Tenant to Owner, exercisable within thirty (30) days after Owner's receipt of a Sublease or Assignment Notice or sixty (60) days after receipt of an Abbreviated Notice, as the case may be, by notice to Tenant ("Owner's Notice"), to terminate this Lease with respect to the Space for the period specified in the Sublease or Assignment Notice or the Abbreviated Notice on the terms set forth in subparagraph (c) below (such action being called a "Recapture"). If Owner fails to exercise such Recapture option within the applicable period, then Owner shall not unreasonably withhold, delay or condition its consent to the proposed assignment or sublease in accordance with and subject to the provisions of this Article 49 (but only, in the case of an Abbreviated Notice, after Tenant has timely delivered a Sublease or Assignment Notice with respect thereto). If Tenant initially gives an Abbreviated Notice in accordance with the provisions hereof and Owner fails to Recapture the Space, then Tenant shall provide a Sublease or Assignment Notice with respect thereto once the proposed transaction is consummated, and Owner shall not unreasonably withhold, delay or condition its consent thereto in accordance with and subject to the provisions of this Article 49 (but Owner shall not have the right of Recapture with respect to any such Sublease or Assignment Notice) provided that such transaction is on substantially no less favorable terms to Tenant than those described in the

Abbreviated Notice and is consummated within one hundred fifty (150) days after Owner's receipt of the Abbreviated Notice. Notwithstanding the foregoing or anything to the contrary set forth in this Article 49, (x) Tenant shall not be permitted to give Owner an Abbreviated Notice if Tenant shall be in default under this Lease (after notice and the expiration of any applicable cure period which are specifically provided for in this Lease with regard to such default, if any.

(c) If Owner requires that this Lease be terminated as to the Space pursuant to subparagraph (b) above, then (i) if the Space encompasses any partial floor(s) in the Premises, Tenant, at its sole expense shall (w) erect all partitions required to separate the Space from the remainder of the space on such partial floor(s), (x) to the extent reasonably required by Owner, install all doors required for independent access from the Space to the elevators, lavatories and stairwells on the floor and install all equipment and facilities (including, without limitation, men's and women's toilets) required to comply with all applicable Legal Requirements and to enable Owner to maintain and service the Space and permit the Space to be used as an independent unit, (y) Owner and Tenant shall execute and deliver a supplementary agreement modifying this Lease by eliminating the Space from the Premises for the term specified in Tenant's Notice commencing, at Owner's option, on the later of (1) the commencement date set forth in Tenant's Notice, or (2) a date designated by Owner which shall not be more than thirty (30) days after the date of Owner's Notice, and, for such period, reducing the Fixed Rent and Additional Rent payable under this Lease on a pro rata basis and (z) at the expiration of the period for which this Lease shall be terminated with respect to the Space, the Space shall be returned to Tenant subject to all alterations, decorations, additions or improvements made by Owner, with no obligation on Owner's part to restore same or (ii) if the proposed transaction is an assignment of this Lease or a subletting of all or substantially all of the Premises for all or substantially all of the remaining term of this Lease, then the Lease shall be deemed terminated as of the date which shall be, at Owner's option on the later of (x) the effective date of the assignment or subletting transaction set forth in Tenant's Notice or (y) a date designated by Owner which shall not be more than thirty (30) days after the date of Owner's Notice, and Tenant shall pay all Fixed Rent and Additional Rent due under or pursuant to this Lease through such date of termination and this Lease shall terminate as of such date as if such date were the fixed date of expiration of the term of this Lease.

(d) Notwithstanding anything to the contrary contained in this Section 49.7, provided and on condition that Tenant shall not be in default under this Lease (after notice and the expiration of any applicable cure period which are specifically provided for in this Lease with respect to such default, if any), Owner shall not have the right to Recapture with regard to any proposed subletting or assignment transaction which is being made in connection with, and as an integral and necessary component of, the bona fide sale, transfer or spin off by Tenant of the stock or assets of or attributed to any division of Tenant, or any portion of Tenant's business which is not a separate division, which in any case represents not less than forty (40%) percent of the total asset value of Tenant at the time of such proposed transaction. Tenant shall furnish Owner, together with the Sublease or Assignment Notice in respect of such proposed transaction, substantiation of the foregoing which shall be reasonably satisfactory to Owner. Owner's consent to such proposed subletting or assignment shall not be unreasonably withheld or delayed in accordance with the provisions of this Article 49.

(e) The failure by Owner to exercise any of its options under this Section 49.7 with respect to any proposed subletting or assignment shall not be deemed a waiver of any of such options with respect to any amendment or extension of such subletting or assignment or any subsequent subletting or assignment.

49.8. If Owner shall terminate this Lease pursuant to the provisions of this Lease or if Owner shall otherwise recover or come into possession of the Premises before the date herein fixed for the expiration of the term of this Lease, Owner shall have the right, at Owner's sole and exclusive option, to take over any and all subleases or sublettings of the Premises or any part thereof made by Tenant (other than subleases or sublettings to affiliates of Tenant) and to succeed to a ll of the rights of said subleases and sublettings or such of them as Owner may elect to take over. Tenant hereby expressly assigns and transfers to Owner such of the subleases and sublettings as Owner may elect to take over at the time of such recovery of possession, such assignment and transfer not to be effective until the termination of this Lease or reentry by Owner hereunder or if Owner shall otherwise succeed to Tenant's estate in the Premises, at which time Tenant shall, upon request of Owner, execute, acknowledge and deliver to Owner such further assignments and transfers as may be necessary to vest in Owner the then existing subleases and sublettings. Every subletting hereunder is subject to the condition and by its acceptance of and entry into a sublease, each subtenant thereunder shall be deemed conclusively to have thereby agreed from and after the termination of this Lease or re-entry by Owner hereunder or if Owner shall otherwise succeed to Tenant's estate in the Premises, that such subtenant shall waive any right to surrender possession or to terminate the sublease and, at Owner's election, such subtenant shall be bound to Owner for the balance of the term of such sublease and shall attorn to and recognize Owner, as its Owner, under all of the then executory terms of such sublease, except that Owner shall not (i) be liable for any previous act, omission or negligence of Tenant under such sublease, (ii) be subject to any counterclaim or offset not expressly provided for in such sublease, which theretofore accrued to such subtenant against Tenant, (iii) be bound by any previous modification or amendment of such sublease which shall not have been consented to by Owner or by any previous prepayment of more than one month's rent and additional rent which shall be payable as provided in the sublease, (iv) be obligated to repair, alter or improve the subleased space, the Premises, the Building or any part thereof or (v) be obligated to perform any work in the subleased space, the Premises, or the Building or to prepare them for occupancy beyond Owner's obligations under this Lease, and the subtenant shall execute and deliver to Owner any instruments Owner may reasonably request to evidence and confirm such attornment.

49.9. As a condition to Owner's granting its consent to any sublease of less than one (1) full floor of the Premises or to any sublease which otherwise involves the subdivision of any floor of the Premises, and as an independent affirmative covenant of Tenant separate and apart from the provisions of Article 3 above, (which condition and covenant shall be effective as to any proposed alteration and/or reconfiguration of the Premises to accommodate a partial floor sublease, whether or not Owner's consent thereto shall be required pursuant to the provisions of this Lease), Tenant shall deposit with Owner, not later than ten (10) days prior to the effective date of such subletting or the commencement of such proposed alteration and/or reconfiguration, as the case may be, such sum (hereinafter, the "Sublease Restoration Deposit") as Owner shall reasonably determine shall be necessary to pay for the cost of removal at the end of the term of the proposed sublease of all fixtures, partitions and other installations proposed or reasonably contemplated to be made by or on behalf of Tenant and/or its subtenant in order to separately demise the portion of the Premises to be sublet and otherwise to prepare such space for the subtenant's proposed use and occupancy, as well as for the cost to restore the floor of the Premises in which such space is situated to its original full floor configuration and condition (reasonable wear and tear excepted). Such restoration shall be deemed to include, without limitation, the removal of all demising walls, doors and other installations made by Tenant and the relocation of all equipment, fixtures, conduits and other installations to their original configuration and the repair of any damage to the Premises arising as a result of the original alteration and/or reconfiguration. The amount of any Sublease Restoration Deposit shall be subject to adjustment, if necessary, at such time as Tenant shall submit Tenant's Plans for the alteration and/or reconfiguration of the floor(s) on which the subleased space shall be situated. The amount of any such adjustment shall be reasonably determined by Owner, However, in no event shall the Sublease Restoration Deposit be in an amount equal to less than four ($4.00) dollars per rentable square foot of the space proposed to be sublet, as such area shall be reasonably determined by Owner. The Sublease Restoration Deposit shall be held by Owner in the same manner as a cash security deposit under the provisions of Article 57 below, and any unapplied portion thereof shall be refunded to Tenant within forty-five (45) days after the completion of the removal and restoration work described above by Owner or by a subsequent lessee, but in no event more than one (1) year after the expiration or earlier termination of the term of this Lease. Owner shall have the right to apply all or any portion of the Sublease Restoration Deposit to pay for the cost incurred by Owner or any such subsequent lessee to perform such removal and restoration work, either directly or indirectly by means of a rent credit, rent abatement, work allowance or otherwise. Upon such application, Owner shall be relieved of any obligation to refund to Tenant the amount of the Sublease Restoration Deposit so applied. Notwithstanding the provisions of the immediately preceding sentence, if with respect to the first new lease for all or any portion of any floor of the Premises entered into by Owner subsequent to the expiration or earlier termination of the term of this Lease, Owner rents such partial floor space without any reconfiguration thereof by either Owner or the new lessee, then Owner shall not be entitled to apply such portion of the Sublease Restoration Deposit as shall equal the cost of reconfiguring such subdivided floor to a full floor (as such cost shall be reasonably determined by Owner). Notwithstanding anything to the contrary herein, Tenant shall be liable for all reasonable costs of removal and restoration which shall be in excess of

the amount of the Sublease Restoration Deposit (if any). The provisions of this Section 49.9 shall survive the expiration or earlier termination of the term of this Lease.

49.10. Owner shall have no liability for brokerage commissions incurred with respect to any assignment of this Lease or any subletting of all or any part of the Premises by or on behalf of Tenant. Tenant shall pay, and shall indemnify and hold Owner harmless from and against, any and all costs, expenses (including reasonable attorneys' fees and disbursements) and liability in connection with any compensation, commissions or charges claimed by any broker or agent with respect to any such assignment or subletting.

49.11. Except as otherwise specifically set forth above in this Article 49, Tenant shall not (a) assign or otherwise transfer this Lease or the term or estate hereby granted, whether by operation of law, transfers of ownership interest in Tenant, or otherwise, (b) sublet the Premises or any part thereof or allow the same to be used, occupied, managed or operated by others or (c) mortgage or encumber Tenant's interest in this Lease, in whole or in part, without, in each instance, obtaining the prior written consent of Owner, which such consent may be withheld for any reason (whether reasonable, unreasonable or arbitrary) or for no reason.

50. 50. Bankruptcy (Supplementing Article 16)

(a) If at or before the date fixed as the Commencement Date of the term of this Lease or if at any time during the term of this Lease:

(i) Tenant shall file a petition commencing a voluntary case under the Federal Bankruptcy Code (Title 11 of the United States Code), now or hereafter in effect, or under any similar law, or file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any state bankruptcy law or any similar law; or

(ii) an involuntary case against Tenant as debtor is commenced by a petition under the Federal Bankruptcy Code (Title 11 of the United States Code), as now or hereafter in effect, or under similar law, or a petition or answer proposing the adjudication of Tenant a bankrupt or its reorganization pursuant to any state bankruptcy law or any similar state law shall be filed in any court and Tenant shall consent to or acquiesce in the filing thereof; or in such case, the petition or answer shall not be dismissed, discharged or denied within sixty (60) days after the filing thereof; or

(iii) a custodian, receiver, United States Trustee, trustee or liquidator of Tenant or of all or substantially all of Tenant's property or of the Premises shall be appointed in any proceedings brought by Tenant; or if such custodian, receiver, United States Trustee, trustee or liquidator shall be appointed in any proceedings brought against Tenant and shall not be discharged within sixty (60) days after such appointment; or if Tenant shall consent to or acquiesce in such appointment; or

(iv) Tenant shall generally not pay Tenant's debts as such debts become due, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, then, at the sole and absolute option of Owner, after notice of the happening of any one or more of the aforementioned events, this Lease may be cancelled and terminated by written notice to such effect given by Owner to Tenant or Tenant's custodian, receiver, United States Trustee, trustee or liquidator, as the case may be.

(b) If an order for relief is entered, or if any stay or other act becomes effective in favor of Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the Federal Bankruptcy Code (Title 11 of the United States Code), as now or hereafter in effect, or under any similar law, Owner shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately protect Owner's right, title and interest in and to the Premises or any part thereof and adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Owner's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease shall include, without limitation, the following requirements: (i) that Tenant comply with all of its obligations under this Lease; (ii) that Tenant pay to Owner, on the first day of each month occurring subsequent to the entry of such order, or the effective date of such stay, a sum equal to the aggregate amount of Rents payable for such monthly period; (iii) that any use of the Premises shall be in accordance with the provisions of this Lease; (iv) that Tenant pay to Owner within thirty (30) days after entry of such order or the effective date of such stay, as adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, an additional security deposit in an amount reasonably acceptable to Owner; and (v) that Tenant has and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Owner that sufficient funds will be available to fulfill the obligations of Tenant under this Lease.

51. Default and Remedies (Supplementing Articles 17 and 18)

51.1. In the event of any dispossess by summary proceedings or otherwise, or such other termination of this Lease under the provisions hereof or under any summary dispossess or other proceeding or action or any provision of law, Owner shall be entitled to retain all monies, if any, paid by or on behalf of Tenant to Owner, whether as advance Rents, security deposit or otherwise (including, without limitation, Owner's right to draw down the full amount of any letter of credit delivered to Owner as set forth in Article 57 below and to retain the full proceeds of such letter of credit). Such monies shall be credited by Owner against any Fixed Rent, Additional Rent or any other charges due from Tenant at the time of such termination or re-entry or, at Owner's option, against any damages payable by Tenant under Article 18 above or under Sections 51.2 and 51.4 below, or as otherwise permitted by applicable law, and any excess amounts shall be restored to the security deposit or (if this Lease has been terminated) be promptly refunded to Tenant.

51.2. Modifying the provisions of clause (c) of the first sentence of Article 18 of this Lease, in the event of any default and/or dispossess by summary proceedings or otherwise, or such other termination of this Lease under the provisions hereof or under any summary dispossess or other proceeding or action or any provision of law, Tenant will pay to Owner, as damages, at the election of Owner, either:

51.2.1 a sum which at the time of such termination of this Lease or at the time of any such re-entry by Owner, as the case may be, represents the sum of (i) the then value of the excess, if any, of (1) the aggregate of the installments of Fixed Rent and Additional Rent which would have been payable under this Lease by Tenant, had this Lease not so terminated, for the period commencing on the effective date of such earlier termination of this Lease or the date of any such re-entry, as the case may be, and ending with the date set forth herein as the fixed date of expiration of the term of this Lease (hereinafter, the "Expiration Date") over (2) the aggregate fair market rental value of the Premises for the same period, each of (1) and (2) being first discounted to present value at the rate of four (4%) percent per annum or the rate then being paid on newly issued ten year U.S. Treasury Bonds, whichever shall be less, plus (ii) an amount equal to the expenses incurred or paid by Owner in terminating this Lease and of re-entering the Premises and of securing possession thereof, including without limitation, reasonable attorneys' fees and costs of removal and storage of Tenant's property, as well as the reasonable expenses of reletting, including repairing and restoring the Premises for new tenants, brokers' commissions, advertising costs, construction allowances or "free rent", reasonable attorneys' fees, and all other similar or dissimilar reasonable expenses incurred in connection with such re-letting, it being understood that such re-letting may be for a period equal to or shorter or longer than the remaining term of this Lease. For the purpose(s) of this Section 51.2.1, the amount of Additional Rent which would have been payable by Tenant pursuant to this Lease for each year ending after such termination of this Lease or such re-entry, shall be deemed to be an amount equal to the amount of such Additional Rent payable by Tenant for the calendar year ended immediately preceding the calendar year in which such termination of this Lease or such re-entry shall have occurred. If, before presentation of proof of such damages to any court, commission or tribunal, the Premises, or any part thereof, are relet by Owner for the period which otherwise would have constituted the unexpired portion of the term of this Lease, or any part thereof, the amount of rent reserved upon such releting shall be deemed, prima facie, to be the fair market rental value for the part or the whole of the Premises so relet during the term of the releting; or

51.2.2 sums equal to the aggregate of the installments of Fixed Rent and Additional Rent which would have been payable by Tenant had this Lease not so terminated, payable upon the due dates therefor specified in this Lease following such termination or such re-entry through and including the Expiration Date; provided, however, that if Owner shall relet the Premises during said period, Owner shall credit Tenant with the net rents received by Owner from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Owner from such reletting the reasonable expenses incurred or paid by Owner in terminating this Lease or of re-entering the Premises and of securing possession thereof, including without limitation, reasonable attorneys' fees and costs of removal and storage of Tenant's property, as well as the reasonable expenses of reletting, including repairing and restoring the Premises for new tenants, brokers' commissions, advertising costs, attorneys' fees, and all other similar or dissimilar reasonable expenses incurred in connection with such re-letting, it being understood that such re-letting may be for a period equal to or shorter or longer than the remaining term of this Lease.

In no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Owner hereunder. Further, (a) in no event shall Tenant be entitled in any suit for the collection of damages pursuant to this Section 51.2 to a credit in respect of any net rents received from a reletting, except, with respect to Section 51.2.2 above only, to the extent that such net rents are actually received by Owner with respect to the period for which a judgment is obtained by Owner in such suit, and (b) if only a portion of the Premises shall be relet, or if the Premises or any portion thereof should be relet in combination with other space in the Building, then a proper apportionment on a square foot area basis shall be made of the rent received from such reletting and of the expenses of reletting, or if such reletting shall be for a period longer than the remaining term of this Lease, the expenses of reletting shall be apportioned based on the respective terms.

51.3. Suitor suits for the recovery of such damages, or any installments thereof, may be brought by Owner from time to time at Owner's election, and nothing contained herein shall be deemed to require Owner to postpone suit until the date when the term of this Lease would have expired if it had not been terminated under the provisions of Article 17, or under any provision of law, or had Owner not re-entered the Premises.

51.4. Nothing herein contained shall be construed as limiting or precluding the recovery by Owner against Tenant of any sums or damages to which, in addition to the damages particularly provided above, Owner may lawfully be entitled by reason of any default hereunder on the part of Tenant. The failure or refusal of Owner to re-let the Premises or any part or parts thereof, or the failure of Owner to collect the rent thereof under such re-letting, shall not release or affect Tenant's liability for damages.

51.5. Tenant, for Tenant, and on behalf of any and all persons, firms, corporations and associations claiming through or under Tenant, including creditors of all kinds, does hereby waive and surrender all right and privilege which they or any of them might have under or by reason of any present or future law to redeem the Premises or to have a continuance of this Lease for the term hereby demised after Tenant is dispossessed or rejected therefrom by process of law or under the terms of this Lease or after the expiration or termination of this Lease as herein provided or pursuant to law. If Owner commences any summary proceeding for non-payment of Rents, or for. holding over after the expiration or earlier termination of this Lease, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding.

51.6. Tenant expressly recognizes that Tenant's due and punctual performance of each of its monetary and non-monetary obligations under this Lease throughout the term hereof is of paramount importance to Owner. Accordingly, without limiting the provisions of Article 17, Article 18 or this Article 51, if Tenant shall default in the timely performance of any obligation of Tenant under this Lease, and in each and every instance that any such default shall occur at least three (3) times in any twelve (12) month period, then notwithstanding that such failure or other default shall have been cured within the applicable period provided in said Article 17 (if any): (i) if Owner shall give notice to Tenant that Owner intends to invoke the provisions of this Section 51.6 upon the occurrence of the next default by Tenant then, upon the occurrence of the next default by Tenant, Tenant shall be obligated to immediately tender and deliver to Owner by certified or official bank check, an amount equal to two (2) months of the then current Fixed Rent, to be held and applied as an additional cash security deposit pursuant and subject to the provisions of Article 57 below; and (ii) such next default shall be deemed to be deliberate and Owner may thereafter give Tenant a notice of such default, and if such default shall not be cured by Tenant within ten (10) days after the giving of such notice to Tenant, time being of the essence, Owner may proceed to serve a notice of intention to terminate this Lease at the expiration of the next succeeding month and upon such date this Lease shall be terminated and of no further force and effect except with respect to those provisions which are stated to or which by implication survive the termination of this Lease.

52. Access to Premises (Supplementing Article 13)

52.1. Owner's right of access provided for in Article 13 shall be deemed to include: (i) access to equipment areas with respect to electric meter, telephone, internet service and any other rooms and/or cabinets on each floor of the Building; (ii) access to the meter room(s) and boiler room in the cellar portion of the Building and any other equipment or fixtures in or accessible through the Premises which are used in the general service of the Building or for the maintenance or repair of which Owner may be responsible on a twenty-four hour per day, seven day per week basis; (iii) access to the Building service elevator and stairway, if any, to the Building service passage on the ground floor of the Premises; (iv) egress and ingress through the Premises for the purposes of (1) removing waste, refuse, debris and garbage resulting from the operation of the Building and (2) access to the elevator machinery on the roof of the Building and other areas of the roof of the Building; (v) access through the Premises to any Building stairway, the roof, passenger elevator shaftways and cabs; and (vi) access to the Premises during business hours to inspect the Premises. Tenant shall not cause or permit any materials to be stored in such a manner as to delay access to meter rooms, telephone/internet service equipment areas, service and passenger elevator(s), service passages and stairways by anyone having a right to such access.

52.2. Tenant shall not obstruct the sidewalks or curbs abutting the Building or the driveways or other entrances to the Building or any loading dock areas.

53. No Representations by Owner/Building Security (Supplementing Article 21)

53.1. Tenant acknowledges that it has inspected the Premises and agrees to accept possession thereof in its "as-is" physical condition on the date of this Lease, it being understood and agreed that Owner shall not be obligated to perform any alterations or improvements to the Premises. Tenant agrees that neither Owner, nor any broker, agent, employee or representative of Owner nor any other party has made, and Tenant does not rely on, any representations, warranties, or promises with respect to the Building, the Premises or this Lease, except as may be herein expressly set forth, and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as may be expressly set forth in this Lease. Further, without limitation of the foregoing, Owner makes no representations, warranties or promises of any nature as to the design, construction, development or use of the Building, the manner of construction thereof, the contents, presence or absence of asbestos or other toxic or hazardous materials therein, or otherwise, except as may be expressly set forth in this Lease. Without limiting the foregoing provisions of this Section 53.1, and notwithstanding anything to the contrary set forth in this Lease, Tenant acknowledges and agrees that Owner shall not be obligated to provide any security to the Premises and Tenant hereby assumes all risk and liability for loss or damage occasioned by theft or otherwise.

53.2. Owner shall have no liability for lost, stolen or damaged property or for injuries to Tenant, its employees, contractors, customers, invitees or guests, except if and to the extent caused solely by Owner's negligence, tortious acts or willful misconduct. Except as specifically set forth in Section 53.3 below, Owner shall have no obligation to provide locks, fences, guards or other security devices or measures for the Building or the Premises. Tenant may use any existing locks located at the Premises at Tenant's sole risk; however, Owner makes no representations or warranties as to the condition or adequacy of any such existing locks and Owner shall have no obligations to maintain, service or repair same. Notwithstanding the provisions of Section 53.3 below or any other provisions of this Lease, Owner shall have no liability whatsoever relating to the security of the Building, except as may be provided by law.

53.3. Owner has installed a closed-circuit television system in various areas throughout the Building (but not within the interior of the Premises). Owner shall have no liability whatsoever to Tenant or any other party if the Building lobby shall not be attended or any such closed-circuit television system shall not be in operation during any period(s) during the term of this Lease. Further, Tenant acknowledges that neither the lobby attendant nor any closed-circuit television system which Owner has installed or may hereafter elect to install shall, or shall be intended to, provide any security to Tenant or any other tenants or occupants of the Building and Owner shall not have any liability arising out of any acts or omissions of such lobby attendant or relating to the operation of the Building lobby or any closed-circuit television system. Tenant agrees that Tenant and all persons under Tenant's control shall not make any claims relating to invasion of privacy with regard to such closed-circuit television system and Tenant shall indemnify and hold Owner and Owner's managing agent harmless from and against any and all such claims asserted by persons under Tenant's control or by persons who at any time were under Tenant's control.

53.4. The Premises are being leased to and accepted by Tenant together with all furniture, telephone equipment and built-ins currently located within the fifth (5`n) and sixth (6t") floors of the Premises, in their current "as-is, where-is" condition, (collectively, the "Fifth and Sixth Floor Furniture") subject to all liens, claims, and encumbrances and adverse interests. Owner has not made, and does not make, any representations or warranties of any nature whatsoever relating to such furniture, telephone equipment and built-ins, which Owner has advised Tenant were abandoned by the prior tenant of the Premises. However, if any claim(s) shall hereafter be made by a third party with regard to any ownership rights or security interest in any of the Fifth and Sixth Floor Furniture, then (i) such claim(s) shall be defended by Owner and (ii) Tenant shall be responsible to pay to Owner, as Additional Rent, an amount equal to (i) fifty (50%) percent of any liability arising out of such claim(s), as well as (ii) fifty (50%) percent of all reasonable attorneys' fees, disbursements and court costs incurred by Owner in connection with the defense and/or settlement of such claim(s). Owner shall not be permitted to settle any such claim without the prior written consent of Tenant, which consent shall not be unreasonably withheld, delayed or conditioned. The furniture and telephone equipment currently located within the fourth (4") floor of the Premises, which are subject to a claim asserted by a prior subtenant of the Premises, are not included in the leasing of the Premises and such furniture will be removed by Owner prior to the Commencement Date.

53.5. Tenant shall be obligated to cause all of its employees, agents, vendors, contractors and invitees to strictly adhere to all Building rules, regulations and policies now or hereafter adopted by Owner or its managing agent relating to Building security and ingress and egress to and from the Building and the Premises, including, without limitation, sign-in, sign-out procedures, delivery and pick-up by messengers and other personnel, identification and after-business hours ingress and egress.

54. Quiet Enjoyment (Supplementing Article 23)

Tenant shall not interfere with the quiet enjoyment of the other tenants of the Building. Tenant shall indemnify and save Owner harmless from and against any and all claims made, and liabilities, losses and damages sustained (including all costs, expenses, penalties and attorneys' fees), which Owner may sustain arising out of Tenant's breach or default of the terms of this Article. In addition to any other rights and remedies which Owner may have under the terms of this Lease, Owner shall be entitled to a decree specifically enforcing the provisions of this Article and enjoining Tenant from the breach or default of the terms hereof.

55. Bills and Notices (Supplementing Article 28)

55.1. Any notice or other communication which either party may desire or be required to give to the other under this Lease shall be in writing and shall be delivered by a nationally recognized overnight courier service with guaranteed next day delivery which provides proof of delivery (such as Federal Express), by certified mail, return receipt requested, or by personal delivery, as follows: In the case of notice to Tenant, one copy shall be mailed to Tenant at the Building and a copy of any notice of default only shall be given to Tenant c/o Blank Rome Tenzer Greenblatt, LLP, 405 Lexington Avenue, New York, New York, 10174, Attention: Lloyd Shor, Esq.. In the case of notice to Owner, one copy shall be given to Owner at the address first hereinabove set forth and a copy shall be given to Owner c/o Kaufman Friedman Plotnicki & Grun, LLP, 300 East 42nd Street, New York, New York 10017, Attention: Gary S. Friedman, Esq. Notices shall be deemed given on the date personal delivery or delivery by overnight courier is effected or three (3) business days after mailing by certified mail, return receipt requested, as the case may be. Either party shall have the right to substitute an address for such notices upon prior written notice to the other party given in the manner hereinabove set forth. A notice or other communication given by a party's attorneys shall be deemed given by such party.

55.2. Whenever either party shall consist of more than one person or entity, any bill, notice, statement, demand or other communication required or permitted to be given, rendered or made to or by, and any payment to be made to such party, shall be deemed duly given, rendered, made or paid if addressed to or by (or in the case of payment by check, to the direct order of) one of such persons or entities who shall be designated from time to time by all persons or entities then comprising such party. Such party shall promptly notify the other of the identity of such person or entity who is to act on behalf of all persons and entities then comprising such party and of all changes in such identity.

55.3. Notwithstanding anything to the contrary contained herein, all bills for Rent and/or Additional Rent may be sent by regular mail to Tenant only and copies of bills need not be sent to Tenant's attorney or any other party.

56. Cleaning of Premises

56.1. Tenant shall clean the Premises on each business day to Owner's reasonable satisfaction, at Tenant's sole cost and expense. Tenant shall use a reputable cleaning contractor of Tenant's choice, subject to Owner's reasonable written pre-approval. Tenant shall not permit Tenant's cleaning contractor to utilize the passenger elevators of the Building or to damage the windows, floors or any other portion(s) of the Premises or the Building. Tenant's contractors shall complete all cleaning activities and vacate the Building on a daily basis by no later than 11:30 P.M. each day. Tenant shall cause Tenant's cleaning contractor to provide liability insurance with coverage limits of not less than $1,000,000.00 per occurrence, with a minimum aggregate limit of $2,000,000.00, as well as a fidelity bond in an amount not less than $1,000,000.00. The policies of insurance and fidelity bond provided for in this Section shall be issued by insurance companies reasonably satisfactory to Owner, shall be non-cancelable except on at least thirty (30) days' prior written notice to Owner by certified mail, return receipt requested, and, to the extent obtainable, shall not be invalidated as against one assured by reason of any act or omission of another assured. Such insurance companies shall be responsible, authorized to issue the relevant insurance coverage and fidelity bond, authorized to do business in New York and have a policyholder's rating of no less than "A+10" in the most current edition of A.M. Best's Insurance Reports or its successor. Not later than the earlier to occur of the day prior to the date Tenant first enters upon the Premises or the day prior to the Commencement Date, Tenant shall cause Tenant's cleaning contractor to furnish Owner with a duplicate original policy evidencing each such insurance policy and an original fidelity bond, together with satisfactory evidence of payment of the premiums therefor for a period of coverage of not less than one year. Similar documentary evidence of renewal and payment for each renewal or new policy for such insurance and fidelity bond shall be furnished to Owner at least thirty (30) days prior .to each date of expiration of the then current policy or bond. All such insurance policies shall contain agreements by the insurers that the coverage afforded thereby shall not be affected by the performance of any work upon, in or about the Premises. Such policy(ies) and fidelity bond shall name Owner, Owner's managing agent and their respective officers, directors, shareholders, and authorized agents and representatives as additional insureds. Such additional insureds shall be specifically named as follows in all such policies, bonds and certificates: "Moklam Enterprises, Inc., as owner, and Yuco Management, Inc., as agent, 475 Fifth Avenue, 19' Floor, New York, New York 10017, and such parties' respective officers, directors, shareholders, and authorized agents and representatives". Additional insured status in respect of such contractor's comprehensive general public liability insurance shall be provided on ISO Form 2026 or its equivalent, without modification, or such other endorsement as shall be satisfactory to Owner in Owner's sole and absolute discretion.

56.2. Notwithstanding the provisions of Section 56.1 above or anything else to the contrary set forth in this Lease, Owner shall have the option, effective upon thirty (30) days' notice to Tenant given at any time(s) during the term of this Lease, to designate and require Tenant to utilize the contractor or contractors specified by Owner (which contractor(s) may be affiliated with Owner or have a contractual relationship with Owner or an affiliate of Owner) to perform all cleaning services on business days with regard to the Premises, including window cleaning. The charges of the cleaning contractor(s) so designated by Owner shall be at competitive market rates and shall be timely paid by Tenant. The current charge for the cleaning contractor currently designated by Owner is $2,100.00 (plus applicable tax) per month, per floor (i.e. $6,300.00 plus tax per month for the Premises), exclusive of window cleaning. Tenant hereby acknowledges and confirms that such charge is a competitive market rate and that Owner has elected (and Tenant has agreed) to require Tenant to use Owner's designated cleaning contractor effective as of the Commencement Date. Such charges for cleaning services may be billed directly by Owner to Tenant as Additional Rent and, in such event, such charges shall be payable by Tenant as Additional Rent. As long as Tenant is utilizing Landlord designated contractor, the provisions of Section 56.1 shall be inapplicable.

57. Security

57.1. Tenant shall deliver to Owner, upon Tenant's execution and delivery of this Lease, and Tenant shall hereafter continuously maintain in full force and effect, a letter of credit in favor of Owner, in the form annexed hereto as Exhibit A (the provisions of which Exhibit are hereby incorporated herein by reference and made a part hereof) and otherwise satisfactory to Owner in all respects, in the sum of one million five hundred sixty thousand and 00/100 ($1,560,000.00) dollars, as security for the faithful performance by Tenant of all of the terms, conditions, covenants and agreements of this Lease, including, but not limited to, the payment of Rents. Owner may use, apply or retain the whole or any part of the letter of credit, to the extent required for the payment of Fixed Rent and/or Additional Rent or any other sum as to which Tenant is in default (after notice and the expiration of any applicable cure period which are specifically provided for in this Lease with respect to such default, if any), or for the payment or reimbursement of any sum which Owner may expend or may be required to expend or for any damages Owner may suffer by reason of Tenant's default (after notice and the expiration of any applicable cure period which are specifically provided for in this Lease with respect to such default, if any) in respect of any of the terms, conditions, covenants and agreements set forth in this Lease including, without limitation, reasonable attorneys' fees, court costs and other expenses paid by Owner. Tenant covenants and agrees that it will not assign or encumber the letter of credit provided for herein and that neither Owner nor its successors or assigns shall be bound by any assignment, encumbrance, attempted assignment or attempted encumbrance. Without limitation to the foregoing or any other provisions set forth in this Article 57, the letter of credit delivered to Owner shall: (i) be clean, irrevocable and non-negotiable, except by Owner to mortgagees and future transferees of the Building without charge to the beneficiary; (ii) be issued by Bank of America or by any other domestic banking institution then ranked in the top ten as to total assets among domestic banking institutions, for an initial term expiring on December 6, 2002, and automatically renewable for successive one (1) year periods as provided below; (iii) provide that it shall be deemed automatically renewed, without amendment, for consecutive periods of one (1) year after the initial term and after each subsequent one (1) year renewal term during the term of this Lease; and (iv) provide for payment on sight of the amount of the letter of credit to Owner upon receipt by the bank of a sight draft signed by Owner or a representative of Owner. However, in the event of any conflict or inconsistency between the provisions of this Section 57.1 and the form of letter of credit annexed hereto as Exhibit A, the annexed form of letter of credit shall control. If Tenant hereafter terminates its banking relationship with Bank of America and desires to tender a replacement letter of credit from another domestic banking institution meeting the requirements set forth herein, then Tenant shall use commercially reasonable efforts to obtain such replacement letter of credit in the form annexed hereto as Exhibit A or in the form of the letter of credit actually issued by Bank of America in connection with Tenant's execution and delivery of this Lease which shall have been accepted by Owner. If Tenant is unable to obtain a letter of credit in either such form, then subject to Owner's prior written approval (which shall not be unreasonably withheld, delayed or conditioned), Tenant may obtain a replacement letter of credit in substantially the same form and containing the same material provisions and conditions as either the form letter of credit annexed hereto as Exhibit A or the letter of credit actually issued by Bank of America in connection with Tenant's execution and delivery of this Lease which shall have been accepted by Owner. In the event that Owner applies or retains any portion of the proceeds of the letter of credit, Tenant shall restore the amount so applied or retained within ten (10) days after Owner's demand, time being of the essence, so that, at all times, the amount of the letter of credit shall be the amount of security required to be maintained pursuant to the provisions of this Article 57. Owner, in Owner's sole and absolute discretion, shall have the option, exercisable by notice to Tenant, of requiring Tenant to restore the amount so applied by means of a cash deposit (which shall be held by Owner pursuant to the provisions of Section 57.3 below) or by means of an amended or supplemental letter of credit complying in all respects with the provisions of this Section 57.1.

57.2. (a) Subject to the conditions and limitations hereinafter set forth in this Section 57.2, the amount of the security deposit shall be subject to reduction commencing with the fifty-fifth (55") Lease Month (as such term is hereinafter defined) in accordance with the following schedule:

Lease Month	Amount of Reduction of Security Deposit
55	$200,000.00
67	$200,000.00
79	$200,000.00
91	$200,000.00

(b) The reduction in the amount of the security deposit in each Lease Month as set forth in subsection (a) above is subject to and conditioned upon the following: (i) Tenant shall not be in default under any of the provisions of this Lease (after the expiration of any applicable notice and cure period which is specifically provided for in this Lease with regard to such default, if any); and (ii) Tenant's consolidated tangible net worth, exclusive of goodwill, software development and other capitalized costs and intangibles (as determined in accordance with generally accepted accounting principles, consistently applied and either publicly disclosed pursuant to Tenant's periodic reporting requirements under the Securities Exchange Act of 1934 or certified to Owner by an independent certified public accountant) as of the end of the fiscal quarter immediately preceding such Lease Month, shall not be less than one hundred seventy five million ($175,000,000.00) dollars.

(c) In no event shall the amount of the security deposit be reduced to less than seven hundred sixty thousand and 00/100 ($760,000.00) dollars.

(d) As used in this Article 57, the term "Lease Month" shall mean the calendar month during the term of this Lease as numbered consecutively from the calendar month in which the Commencement Date falls (i.e., July 2002 is Lease Month 1).

57.3. If any cash security shall be deposited hereunder by Tenant pursuant to the provisions of this Article 57, such cash security shall be placed in an interest-bearing account or accounts at one or more savings banks, savings and loan associations or commercial banks duly authorized to do business in the State of New York to be selected by Owner with all accrued interest to be added to the principal amount of such security deposit. Notwithstanding the provisions of the immediately preceding sentence, Owner shall be entitled to payment from said account on a periodic basis of an administrative fee of one percent (1%) per annum of the principal amount of the security deposit required to be maintained by Tenant pursuant to this Lease. Owner shall have no liability or obligation to Tenant for any loss suffered by Tenant by reason of the investment of the security deposit as aforesaid. Notwithstanding the foregoing, Owner shall have no obligation to deposit the security deposit into an interest-bearing account and no interest shall be payable hereunder to Tenant unless Tenant's federal employer identification number is furnished herein in writing to Owner. Tenant represents that Tenant's present federal tax identification number is 51-0350842.

57.4. If, during the term of this Lease, Owner shall sell, exchange, lease or otherwise convey the Building, Owner shall have the right to, pay, transfer or assign said deposit to such grantee, transferee or lessee and, in such event, Owner shall be released from all responsibility and liability in connection therewith, and Tenant will look solely to said grantee, transferee or lessee for its return, provided such grantee, transferee or lessee shall assume, or shall be deemed to have assumed, Owner's obligations under this Lease with respect to such security deposit.

57.5. Within forty-five (45) days after the expiration or earlier termination of the term of this Lease, provided and on condition that Tenant shall have vacated the Premises and surrendered possession thereof to Owner vacant and free and clear of all rights and claims of tenants, subtenants and other occupants, in the condition required pursuant to the provisions of this Lease, Owner shall return to Tenant the unapplied portion of the cash security deposit, if any, or the letter of credit serving as security, as the case may be. However, nothing set forth in the immediately preceding sentence or elsewhere in this Lease shall be deemed to waive, impair or otherwise affect Owner's right whether prior to or subsequent to the date of expiration of earlier termination of this Lease, to apply all or any portion of the cash security deposit, or to draw down the letter of credit in whole or in part, and to apply the proceeds thereof in accordance with the provisions of this Lease.

58. Glass

Tenant shall promptly replace, at its sole cost and expense, all glass damaged or broken in or about the Premises by reason of the negligent or wrongful acts or omissions of Tenant or Tenant's employees, agents, contractors or invitees.

59. Certificates

59.1. Tenant shall, without charge, at any time and from time to time, at the request of Owner for a bona fide business reason, upon not less than seven (7) business days' notice, execute and deliver to Owner an estoppel certificate in such form as shall be reasonably required by Owner, certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modification, that the same is in full force and effect as modified and stating the modifications), (ii) the commencement date and the expiration date of this Lease, (iii) the dates to which the Fixed Rent and Additional Rent have been paid, (iv) whether or not, to the best of Tenant's knowledge, there are then existing any setoffs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof upon the part of Tenant to be performed or complied with under this Lease and, if so, specifying same, (v) whether or not, to the best of Tenant's knowledge, Owner is in default in performance of any of its obligations under this Lease, and, if so, specifying each such default (including the specific provision(s) of the Lease with respect to which Owner is claimed to be in default), (vi) whether or not any item of Fixed Rent or Additional Rent has been paid more than one (1) month prior to its due date, (vii) the amount of the security deposit (if any) deposited by Tenant under this Lease, (viii) whether any actions, whether voluntary or otherwise, are pending against Tenant under the bankruptcy laws of the United States or any state thereof, (ix) whether Tenant has any option to renew or expand the term of this Lease and (x) whether Tenant has any right of first refusal to purchase (or lease) the Premises or any portion thereof or the Building or any portion thereof. Any such estoppel certificate delivered pursuant hereto shall be binding upon Tenant and may be relied upon by Owner as well as by others with whom Owner may be dealing.

59.2. Owner shall, without charge, at any time and from time to time, at the request of Tenant for a bona fide business reason, upon not less than seven (7) business days' notice, execute and deliver to Tenant an estoppel certificate in such form as shall be reasonably required by Tenant, certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) the commencement date and the expiration date of this Lease, (iii) the dates to which the Fixed Rent and Additional Rent have been paid, (iv) whether or not, to the best of Owner's knowledge, there are then existing any setoffs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof upon the part of Tenant to be performed or complied with under this Lease and, if so, specifying same, (v) whether or not, to the best of Owner's knowledge, Tenant is in default in performance of any of its obligations under this Lease, and, if so, specifying each such default (including the specific provision(s) of the Lease with respect to which Tenant is claimed to be in default), (vi) whether or not any item of Fixed Rent or Additional Rent has been paid more than one (1) month prior to its due date, (vii) the amount of the security deposit (if any) deposited by Tenant under this Lease, (viii) whether any actions, whether voluntary or otherwise, are pending against Owner under the bankruptcy laws of the United States or any state thereof, (ix) whether Tenant has any option to renew or expand the term of this Lease and (x) whether Tenant has any right of first refusal to purchase (or lease) the Premises or any portion thereof or the Building or any portion thereof. Any such estoppel certificate delivered pursuant hereto shall be binding upon Owner and may be relied upon by Tenant as well as by others with whom Tenant may be dealing.

59.3. Within a reasonable period of time after the request of Tenant, Owner and Tenant shall execute a memorandum of lease which specifies only the names and addresses of the parties, the term of the lease, the space leased, that Tenant has a right to extend the Lease for a five year period, that Tenant has a right of first offer covering the second and third floors in the Building and that Tenant is entitled to an SNDA as provided in this Lease. Tenant shall also prepare and execute a termination of such memorandum in recordable form which shall be delivered to Owner upon Owner's and Tenant's execution of such memorandum and which may be recorded after the expiration or earlier termination of this Lease. Such memorandum and termination of memorandum shall be subject to Owner's approval, which shall not be unreasonably withheld or delayed. Tenant shall prepare all necessary real property transfer tax returns for recordation.

60. Waiver of Subrogation

60.1. Tenant shall cause to be included in each of its insurance policies insuring Tenant's property and business interest in the Premises against loss, damage or destruction by fire or other casualty (i) a waiver of the insurer's right of subrogation, against Owner, and (ii) an express agreement that such policy shall not be invalidated if, prior to the occurrence of a casualty, the insured waives the right of recovery against any party responsible for a casualty covered by the policy. If such waiver or permission shall not be, or shall cease to be, obtainable without additional charge or at all, Tenant shall so notify Owner promptly after learning thereof. In such case, if Owner shall so elect and shall pay the insurer's additional charge therefor, such waiver shall be included in the policy. Each such policy shall name Owner as an additional insured and shall contain, if obtainable, agreements by the insurer that the policy will not be canceled without at least thirty days' prior notice to both assureds and that the act or omission of Tenant will not invalidate the policy as to Owner. Tenant hereby releases Owner with respect to any claim (including a claim for negligence) which it might otherwise have against Owner for loss, damage or destruction with respect and to the extent to which it is required to be insured under a policy or policies containing a waiver of subrogation or naming Owner as an additional insured, as provided in this Lease, whether or not the Tenant is actually so insured and whether or not the loss, damage or destruction is due to the carelessness or negligence of Owner, its servants, agents or employees.

60.2. Owner shall cause to be included in each of its insurance policies insuring the Premises and the Building against loss, damage or destruction by fire or other casualty (i) a waiver of the insurer's right of subrogation against Tenant, and (ii) an express agreement that such policy shall not be invalidated if, prior to the occurrence of a casualty, the insured waives the right of recovery against any party responsible for a casualty covered by the policy. If such waiver or permission shall not be, or shall cease to be, obtainable without additional charge or at all, Owner shall so notify Tenant promptly after learning thereof. In such case, if Tenant shall so elect and shall pay the insurer's additional charge therefor, such waiver shall be included in the policy. Each such policy shall contain agreements by the insurer that the policy will not be canceled without at least thirty days' prior notice to both insureds by certified mail, return receipt requested, and that the act or omission of Owner will not invalidate the policy as to Tenant. Owner hereby releases Tenant with respect to any claim (including a claim for negligence) which it might otherwise have against Tenant for loss, damage or destruction with respect and to the extent to which it is required to be insured under a policy or policies containing a waiver of subrogation or naming Tenant as an additional assured, as provided in this Article, whether or not the Owner is actually so insured and whether or not the loss, damage or destruction is due to the carelessness or negligence of Tenant, its servants, agents or employees.

61. Limitation of Liability

61.1. The liability of Owner under this Lease and all matters pertaining to or arising out of the tenancy and the use and occupancy of the Premises, shall be limited to Owner's interest in the Land and Building and in no event shall Tenant make any claim against or seek to impose any personal liability upon Owner or Owner's managing agent or any officer, director, stockholder, partner, principal, employee, contractor or agent of Owner or of Owner's managing agent or any other person affiliated with or constituting Owner, or any principal of any firm or corporation that may hereafter be or become the Owner or the Owner's managing agent. Without limitation of the foregoing, Tenant shall look solely to the estate and property of Owner in the Land and Building for the satisfaction of Tenant's remedies for the collection of any judgment (or other judicial process) requiring the payment of money by Owner in the event of any default or breach by Owner with respect to any of the terms, covenants and conditions of the Lease to be observed and/or performed by Owner, and no other property or assets of Owner, or of Owner's managing agent (or any officer, director, stockholder, partner, principal, employee, contractor or agent of Owner or of Owner's managing agent) shall be subject to levy, execution or other enforcement procedures for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of Owner and tenant hereunder, or Tenant's use and occupancy of the Premises.

61.2. If Owner shall at any time covenant that its consent to or approval of any matter relating to this Lease shall not be unreasonably withheld, delayed and/or conditioned, Tenant waives any claim against Owner for money damages which it may have, based upon its assertion that Owner has unreasonably withheld, delayed and/or conditioned its consent to or approval of Tenant's proposed action or work. Tenant's sole remedy shall be an action or proceeding to specifically enforce such provisions of this Lease or, in certain cases relating to assignment and subletting as are specifically provided for in Article 49 of this Lease, to institute arbitration pursuant to the provisions of Article 89 below. In the event of any such action, proceeding or arbitration, Tenant's remedy shall be limited to specific performance.

62. Brokers

Tenant and Owner each warrants and represents that there were no brokers, finders or like agents instrumental in consummating this Lease except for Insignia/ESG, Inc., and Newmark & Company Real Estate, Inc. (the "Brokers") and that no conversations or prior negotiations were had by the representing party with any brokers, finders or like agents other than the Brokers concerning the renting of the Premises by Tenant or this Lease. Each party shall indemnify and hold the other party harmless from and against any claims for brokerage commissions arising out of any conversations or negotiations had by the indemnifying party with any brokers other than the Brokers concerning the renting of the Premises or this Lease. The provisions of this Article shall survive the expiration or earlier termination of this Lease. Owner shall pay a leasing brokerage commission to the Brokers pursuant to a separate written agreement.

63. Payment of Rents

63.1. The Fixed Rent payable by Tenant hereunder during the period commencing on the Commencement Date through and including the expiration or earlier termination of the term of this Lease shall be at the following rates:

63.1.1 One million four hundred eighty-eight thousand and 00/100 ($1,488,000.00) dollars per annum ($124,000.00 per month) during the one (1) year and six (6) month period commencing on July l, 2002 through and including December 31, 2003;

63.1.2 One million two hundred sixty-nine thousand seven hundred sixty and 00/100 ($1,269,760.00) dollars per annum ($105,813.33 per month) during the one (1) year period commencing on January 1, 2004 through and including December 31, 2004;

63.1.3 One million three hundred thousand one hundred fifteen and 20/100 ($1,300,115.20) dollars per annum ($108,342.93 per month) during the one (1) year period commencing on January 1, 2005 through and including December 31, 2005;

63.1.4 One million five hundred seventy-nine thousand seventy-seven and 50/100 ($1,579,077.50) dollars per annum ($131,589.79 per month) during the one (1) year period commencing on January 1, 2006 through and including December 31, 2006;

63.1.5 One million six hundred ten thousand six hundred fifty-nine and 05/100 ($1,610,659.05) dollars per annum ($134,221.59 per month) during the one (1) year period commencing on January 1, 2007 through and including December 31, 2007;

63.1.6 One million seven hundred eighty-nine thousand seven hundred fifty-two and 24/100 ($1,789,752.24) dollars per annum ($149,146.02 per month) during the one (1) year period commencing on January 1, 2008 through and including December 31, 2008;

63.1.7 One million eight hundred twenty-five thousand five hundred forty-seven and 28/100 ($1,825,547.28) dollars per annum ($152,128.94 per month) during the one (1) year period commencing on January 1, 2009 through and including December 31, 2009;

63.1.8 One million eight hundred sixty-two thousand fifty-eight and 23/100 ($1,862,058.23) dollars per annum ($155,171.52 per month) during the one (1) year period commencing on January 1, 2010 through and including December 31, 2010;

63.1.9 One million eight hundred ninety-nine thousand two hundred ninety-nine and 39/100 ($1,899,299.39) dollars per annum ($158,274.95 per month) during the one (1) year period commencing on January 1, 2011 through and including December 31, 2011; and

63.1.10 One million nine hundred thirty-seven thousand two hundred eighty-five and 38/100 ($1,937,285.38) dollars per annum ($161,440.45 per month) during the one (1) year period commencing on January 1, 2012 through and including December 31, 2012.

63.2. Fixed Rent shall be payable in advance in equal, consecutive, monthly installments on the first day of each and every calendar month during the term hereof without any credits, off-sets or reduction whatsoever, except as shall be otherwise specifically provided for in this Lease. However, upon Tenant's execution and delivery of this Lease, Tenant shall pay the Fixed Rent in advance for the one (1) month period of September 2002, in the amount of $124,000.00. Tenant's liability to pay the Rents due under this Lease shall survive the expiration or earlier termination of this Lease.

63.3. Provided and on condition that Tenant shall not default under any provision of this Lease (after the expiration of any applicable cure period which is specifically provided for in this Lease with regard to such default, if any), the Fixed Rent shall be abated for each of the first two (2) months of the term of this Lease (i.e., the months of July 2002 and August 2002). Accordingly, the maximum amount of Fixed Rent which can be abated pursuant to this Section 63.3 is $248,000.00. However, if this Lease shall be terminated by reason of Tenant's default or if Tenant shall abandon the Premises at any time during the term of this Lease, then the total amount of Fixed Rent which shall have been abated pursuant to this Section 63.3. multiplied by a fraction, the numerator of which is the number of full calendar months falling within the period commencing on the date of termination of this Lease or abandonment of the Premises, as the case may be, through the fixed date of expiration hereof and the denominator of which is the number of months constituting the term of this Lease (i.e., 126), shall become immediately due and payable by Tenant to Owner as Additional Rent without notice or demand.

63.4. If any installment or installments of Fixed Rent or Additional Rent shall not be received by Owner within five (5) days of the date due, a late payment fee equal to six percent (6%) of each late payment shall become immediately due to Owner for the purpose of defraying the expenses incident to handling such delinquent payment. Such fee shall be payable on the first business day of the following month as Additional Rent hereunder. If any installment(s) of Fixed Rent or Additional Rent shall not be received by Owner within thirty (30) days of the date due, such payment, in addition to the aforesaid late payment fee, shall bear interest from the date it is payable until it shall have been paid, at a rate equal to the lesser of (a) eighteen (18%) percent per annum or (b) the maximum rate of interest allowed by law. Notwithstanding the foregoing, nothing herein contained shall at any time whatsoever be construed as a consent on the part of Owner to any delay or postponement of such payments.

63.5. Tenant's failure to timely pay any Rents under this Lease shall be deemed a breach by Tenant of the terms of this Lease and owner shall have the same rights and remedies with respect to such breach as it has with respect to any other breach by Tenant of any covenant hereunder and Owner shall not be limited to the commencement of a nonpayment summary proceeding with respect thereto.

64. Electricity

64.1. Tenant shall contract directly with the public utility company furnishing electric current to be used in the Premises. Owner, at Tenant's sole cost and expense, shall furnish and install separate meter(s) servicing the Premises and all other equipment necessary to measure Tenant's consumption of electricity at the Premises if and to the extent such meters and equipment are not already installed, and Tenant shall pay Owner for the cost of such installation, on demand, as Additional Rent. Tenant shall pay directly to the utility company supplying electricity to the Premises the amounts due for electric current consumed in the Premises from and after the Commencement Date through the term of this Lease, as indicated by meters measuring the use thereof or as otherwise reasonably estimated by Owner.

64.2. Tenant's use of electric current in the Premises shall not at any time exceed the capacity of any of the electrical conduits and equipment in or otherwise serving the Premises. Tenant shall not make or perform or permit the making or performing of, any alterations to wiring, installations or other electrical facilities in or serving the Premises and the Building without the prior written consent of Owner in each instance. Should Owner grant any such consent, all additional risers or other equipment required therefor shall be installed by Owner and the cost therefor shall be paid by Tenant upon Owner's demand accompanied by reasonably sufficient supporting documentation (such as invoices).

64.3. Owner shall not be liable in anyway to Tenant for any failure or defect in the supply or character of electric energy furnished to the Premises by reason of any requirement, act or omission of the public utility providing the Building with electricity or for any other reason whatsoever. Owner shall reasonably cooperate with Tenant to eliminate any such failure or defect, provided that Owner shall not be obligated to incur any costs or expenses or incur any liability in connection therewith. Owner shall not voluntarily take any affirmative action to reduce the existing amount of electric capacity servicing the Premises unless Owner shall be required to do so by applicable laws, codes, ordinance, rules or regulations or pursuant to direction of any municipal, governmental or quasi-governmental department or organization or any utility providing electric service to the Building. Tenant shall have the right to reallocate existing electrical service to the Premises among the three floors thereof and the roof deck, as Tenant's Work pursuant to Article 44 above, subject to Owner's consent, not to be unreasonably withheld, delayed or conditioned subject to the provisions of Article 44 above; provided that Tenant reimburse Owner for the reasonable cost to restore the original allocation of electric energy. The provisions of this Section 64.3 shall survive the expiration or earlier termination of this Lease.

65. Utility and Other Charges

Tenant shall pay all charges imposed by reason of (a) the use of (i) hot water and steam and (ii) electric current and gas for light or power or any other purpose for the use of the Premises and (b) the operation of fans and other devices in the HVAC Systems and any other systems or equipment which shall service the Premises and the cost of installation and maintenance of any systems required to be installed or maintained in connection therewith. Tenant acknowledges that the heating of the Premises shall be provided at the existing capacity of the Building's existing heating plant, as same shall be supplemented by the HVAC Systems. Owner shall be responsible for the repair and maintenance of the Building's existing central boiler/heating plant. Charges for all services supplied to the Premises by the City of New York or any public service companies shall be billed directly to Tenant and shall be timely paid by Tenant to the City of New York or any public service company, as the case may be. Tenant acknowledges that no utilities or other services, except as may be specifically provided herein, have been included in Rents and that, without limitation, Owner has no obligation to furnish or supply electricity, gas, water, air conditioning or any other utility or service to or for the Premises.

66. Tenant's Compliance with Notices

Tenant shall comply, at its own expense, with all notes, notices of violation of law or municipal ordinances, orders and requirements which may be issued by the departments having jurisdiction over the Premises, arising out of (i) Tenant's particular use of the Premises and/or (ii) Tenant's default under any of the provisions of this Lease. However, Tenant shall not be responsible to cure violations affecting the Premises which are issued prior to the Commencement Date. Owner shall be responsible for the cure of any violation resulting from the condition of the Premises as of the Commencement Date which shall have a material adverse effect upon Tenant's use and occupancy of the Premises or which shall prevent Tenant from obtaining a building permit.

67. Permits

67.1. Tenant, at its sole cost and expense, shall (i) obtain all necessary permits, licenses, franchises or other authorizations as may be required by law, to carry on Tenant's particular use of the Premises as set forth in Article 2 and Article 43 above and for the installation by Tenant of any equipment, appliances and other services to and upon the Premises, (ii) promptly after obtaining same, submit copies of all such permits, licenses, franchises or other authorizations to Owner for Owner's inspection and (iii) not less than thirty (30) days prior to expiration, submit to Owner copies of all such new or renewal permits, licenses, franchises or other authorizations expiring during the term of this Lease. Tenant, at Tenant's sole cost and expense, shall furnish and install in the Premises all fire fighting equipment and all appurtenances thereto required by the governmental authorities having jurisdiction of the Premises by reason of Tenant's particular use of the Premises.

67.2. Tenant shall not, nor shall Tenant permit any of its agents, servants and/or employees to, do or perform any act or acts or fail to act which will cause or result in the suspension or revocation of any of the permits, licenses, franchises or authorizations issued for the Premises or the placement of a violation against such licenses, permits, franchise or authorizations, the Premises or the Building. If Tenant shall receive notice of any such violation or notice of proposed suspension or revocation of said permits, licenses, franchises or authorizations, Tenant shall forthwith notify Owner and shall immediately cease or cause its agents, servants and/or employees to immediately cease to do or perform the act which gave rise to the notice. Tenant, at Tenant's sole cost and expense, shall promptly, take whatever actions are necessary to defend and have removed the violation, suspension or revocation. If Tenant fails to cause any such violation, suspension or revocation to be promptly removed, Owner shall, in Owner's sole and absolute discretion, have the right (but not the obligation), after ten (10) days' prior notice to Tenant, to take whatever actions are necessary in order to defend and have removed the violation, suspension or revocation of said permit, license, franchise or authorization for the Premises, and Tenant shall, immediately upon demand from Owner, either pay directly said costs and expenses (including, without limitation, all penalties, fines, and attorneys' fees, costs and expenses) or reimburse Owner for the same as Additional Rent, and Tenant hereby agrees to indemnify and hold Owner harmless from and against any liability or expense incurred by Owner as a result thereof.

68. Signs

68.1. Tenant shall not display or erect any exterior decorations, lettering, signs, advertisements, notices, posters, displays, projections, curtains, blinds, shades, screens or awnings on the outside of the Premises or the Building or any interior signs which are visible from the exterior of the Premises (collectively, "Signs") without obtaining Owner's prior written approval thereto, which approval shall not be unreasonably withheld. Without limitation of the foregoing, Tenant shall also be responsible for obtaining, at Tenant's sole cost and expense, any required consent or approval of the Landmarks Commission with regard to all Signs. Additionally, subject to all of the provisions of this Article 68, Tenant shall be permitted to install its corporate and brand(s) Signs within the Premises and on the exterior of the Building adjacent to the entrance on Broadway; provided, however that any proposed Sign identifying Tenant as a tenant of the Building to be affixed by Tenant on the exterior of the Building adjacent to the Building entrance on Broadway shall not be larger than ten inches wide by four inches high and shall be placed in a location designated by Owner which shall be reasonably acceptable to Tenant. All Signs located in public corridors and hallways, including Signs for the exterior door(s) of the Premises, shall be furnished by Owner at the expense of Tenant. All Signs shall comply with all of the laws, orders, rules and regulations of the governmental authorities having jurisdiction thereof, including zoning laws, building codes and as required by insurance underwriters. Tenant shall obtain and pay for all permits required therefor. No Signs shall be installed until all approvals and permits are first obtained and copies thereof delivered to Owner with evidence of payment for any fees pertaining thereto. Tenant shall pay all annual renewal fees pertaining to its Signs. Tenant acknowledges that Owner's approval of the dimensions, material, content, location and/or design of any Signs shall not be deemed a representation that such Signs or the installation thereof comply with applicable laws or building codes or are otherwise safely and properly manufactured and installed. Tenant shall be solely liable for all loss, damage and/or injury to persons and/or property arising out of or in connection with the installation and maintenance of all Signs in or about the Premises.

68.2. If Owner shall deem it necessary to remove any Signs in order to paint or to make any other repairs, alterations or improvements in or upon the Premises or the Building or any part thereof, Tenant, upon demand, shall remove same at Tenant's expense and, upon completion of said repairs, alterations or improvements, shall have same replaced at Tenant's expense.

69. Intentionally Deleted.

70. Rent Control

If at the commencement of, or at any time or times during the term of this Lease, the Rents reserved in this Lease shall not be fully collectible by reason of any Federal, State, County or City law, proclamation, order or regulation, or direction of a public officer or body pursuant to law, Tenant shall enter into such agreements and take such other steps (at Owner's cost and expense) as Owner may reasonably request and maybe legally permissible to permit Owner to collect the maximum Rents which may from time to time during the continuance of such legal rent restriction be legally permissible (and not in excess of the amounts reserved therefor under this Lease). Upon the termination of such legal rent restriction prior to the expiration of the term of this Lease, (i) the Rents shall become and thereafter be payable hereunder in accordance with the amounts reserved in this Lease for the Owner and, if legally permissible, an amount equal to (a) the Rents which would have been paid pursuant to this Lease but for such legal rent restriction less (b) the Rents paid by Tenant to Owner during the period or periods such legal rent restriction was in effect, shall be forthwith paid to Owner by Tenant as Additional Rent.

71. Tenant Holdover

71.1. Should Tenant hold over in possession after the expiration or sooner termination of the term or of any extended term of this Lease, such holding over shall not be deemed to extend the term or renew the Lease, but such holding over thereafter shall continue upon the covenants and conditions herein set forth except that, in addition to any other rights or remedies Owner may have under this Lease, at law or in equity, and without in any manner limiting Owner's right to demonstrate or collect any damages suffered by Owner and arising from Tenant's failure to timely surrender possession of the Premises upon the expiration or sooner termination of the term of this Lease, the charge for use and occupancy of such holding over for each month or part thereof (even if such part shall be a small fraction of a month) shall be the product of (a) one-twelfth of the annual Rents payable for the twelve-month period immediately preceding such holding over multiplied by (b) 2.5, which amount Tenant shall pay to Owner promptly upon demand, in full without set-off.

71.2. Tenant expressly waives, for itself and for any person claiming through or under Tenant, any rights which Tenant or any each such person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any similar or successor law of same import then in force, in connection with any holdover proceedings which Owner may institute to enforce the provisions of this Lease.

71.3. The provisions of this Article shall survive the expiration or sooner termination of this Lease and shall not be deemed to limit Owner's rights or remedies under this Lease, at law and/or in equity.

72. Hazardous Materials/Odor

72.1. Tenant shall not permit any unusual or obnoxious odors to emanate from the Premises. Tenant shall not cause or permit any Hazardous Materials (as hereinafter defined) to be used, stored, transported, released, handled, produced or installed in, on or from the Premises, except solely for reasonable and safe quantities of such materials as are customarily and ordinarily used by office tenants, provided that same are used, handled, stored and disposed of in accordance with all applicable laws, ordinances, rules and regulations. The term "Hazardous Materials", as used herein, shall mean any flammables, explosives, radioactive materials, hazardous wastes, hazardous and toxic substances or related materials, asbestos or any material containing asbestos, or any other substance or material defined as hazardous by any Federal, state or local law, ordinance, rule or regulation, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act, as amended, and in the regulations adopted and publications promulgated pursuant to each of the foregoing. Owner shall have the right to enter the Premises at any time upon reasonable notice (except in an emergency, in which event no notice shall be necessary) to inspect same and ascertain whether the Premises are clean and free of unusual or obnoxious odors or Hazardous Materials (including, without limitation, the elimination and removal of same) at or affecting the Premises. The provisions of this Section 72.1 shall survive the expiration or sooner termination of this Lease.

72.2. Tenant hereby indemnifies and holds harmless Owner and Owner's officers, directors, shareholders, principals, agents and employees from and against any and all claims, losses, liabilities, damages, demands, actions, causes of action, judgments, costs and expenses, including, without limitation, reasonable attorneys' fees, disbursements and Court costs, arising out of Tenant's breach of any provision of this Article 72. The provisions of this Section 72.2 shall survive the expiration or earlier termination of this Lease.

72.3. Notwithstanding the foregoing, Owner shall be responsible to remove or remediate any asbestos existing in the Premises as of the date prior to the Commencement Date (if any) as may be required by law.

72.4. Owner has provided Tenant with an ACP-5 covering the fourth, fifth and sixth floors of the Building and the roof deck in the form annexed hereto as Exhibit C-1.

73. Partnership Tenant

If Tenant is a partnership (or is comprised of two (2) or more persons, individually or as co-partners of a partnership) or if Tenant's interest in this Lease shall be assigned to a partnership (or to two (2) or more persons, individually or as co-partners of a partnership) (any such partnership and such persons are referred to in this Article 73 as the "Partnership Tenant"), the following provisions shall apply to such Partnership Tenant: (a) the liability of each of the parties comprising the Partnership Tenant shall be joint and several; (b) each of the parties comprising the Partnership Tenant hereby consents in advance to, and agrees to be bound by (x) any written instrument which may hereafter be executed by the Tenant nr any successor partnership, changing, modifying, extending or discharging this Lease, in whole or in part, or surrendering all or any part of the Premises to Owner, and (y) any notices, demands, requests or other communications which may hereafter be given by the Partnership Tenant; (c) any bills statements, notices, demands requests or other communications given or rendered to the Partnership Tenant or to any of such parties shall be binding upon the Partnership Tenant and all such parties; (d) if the Partnership Tenant shall admit new partners, all of such new partners shall, by their admission to the Partnership Tenant, be deemed to have assumed joint and several personal liability for the performance of all of the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed; and (e) the Partnership Tenant shall give prompt notice to Owner of the admission of any new partners, and upon demand of Owner, shall cause each such new partner to execute and deliver to Owner an agreement in form satisfactory to Owner, wherein each such new partner shall assume joint and several personal liability for the performance of all the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed (but neither Owner's failure to request any such agreement nor the failure of any such new partner to execute or deliver any such agreement to Owner shall vitiate the provisions of clause (d) of this Article 73). The provisions of this Article 73 shall also apply to all general partners of a tenant which is a limited partnership.

74. Increase in Taxes

74.1. Tenant shall pay to Owner, as Additional Rent, for each fiscal tax year subsequent to the Base Tax Year (hereinafter defined) falling in whole or in part within the term of this Lease, fifty (50%) percent ("Tenant's Proportionate Share") of any and all increases in Real Estate Taxes (as such term is hereinafter defined) above those for the 2002/2003 fiscal tax year (hereinafter referred to as the "Base Tax Year") imposed on the Building and/or the land on which the Building is situated (the Building and such land are hereinafter jointly referred to as the "Real Property") during the term of this Lease, whether any such increase results from a higher effective tax rate, and/or an increase in the assessed valuation of such the property, and/or the reduction or elimination of any exemption or abatement, and/or for any other

reason(s). The term "Real Estate Taxes" shall mean the aggregate amount of real estate taxes and any general or special assessments imposed upon the Real Property (including, without limitation, (i) assessments made upon or with respect to any "air" and "development" rights now or hereafter appurtenant to or affecting the Real Property, (ii) any fee, tax or charge imposed for any vaults, vault space or other space within or outside the boundaries of the Real Property, and (iii) any assessments levied after the date of this Lease for public benefits to the Real Property or the Building); provided that if, because of any change in the taxation of real estate, any other tax or assessment, however denominated (including, without limitation, any franchise, income, profit, sales, use, occupancy, gross receipts or rental tax) is imposed upon Owner or the owner of the Real Property or the Building, or the occupancy, rents or income therefrom, in substitution for or in addition to any of the foregoing taxes or for an increase in any of the foregoing taxes, such other or additional tax or assessment shall be deemed part of Real Estate Taxes computed as if Owner's sole asset were the Real Property. With respect to any fiscal tax year subsequent to the Base Tax Year, all expenses, including attorneys' fees and disbursements and experts' and other witnesses' fees, incurred in contesting the validity or amount of any Real Estate Taxes or in obtaining a refund of Real Estate Taxes shall be considered as part of the Real Estate Taxes for such fiscal tax year. Anything contained herein to the contrary notwithstanding, Real Estate Taxes shall not be deemed to include (1) any taxes on Owner's income, (2) franchise taxes, (3) estate or inheritance taxes, or (4) any similar taxes imposed on Owner, unless such taxes are levied, assessed or imposed as a substitute for the whole or any part of, or as a substitute for an increase in, the taxes, assessments, levies, fees, charges and impositions that now constitute Real Estate Taxes. Real Estate Taxes shall also not include any interest or penalties imposed upon Owner by the Department of Finance of the City of New York which are solely attributable to Owner's late payments of real estate taxes which do not arise out of Tenant's late payment of Additional Rent pursuant to this Article. A copy of the tax bill of the City of New York or any other documentation available from the Department of Finance of the City of New York or any other governmental agency shall be sufficient evidence of the amount of Real Estate Taxes for any period(s).

74.2. Owner shall give Tenant written notice of each change in Real Estate Taxes which will be effective to create or change Tenant's obligation to pay Additional Rent pursuant to the provisions of this Article. Such notice shall include a copy of the tax bill(s) or other documentation on which it is based and shall contain Owner's calculation of the annual rate of Additional Rent payable resulting from such increase in Real Estate Taxes. However, Owner shall have no obligation to furnish more than one such copy of the real estate tax bill or other documentation for any fiscal tax year and in no event shall Owner's failure to furnish a copy of any such tax bill(s) or other documentation affect Tenant's obligations as to the amount or due date of the Additional Rent payable by Tenant pursuant to the provisions of this Article. Every notice given by Owner pursuant to this Section shall be conclusive and binding upon Tenant in the absence of manifest computational error unless Tenant shall give notice to Owner (hereinafter, "Tenant's Objection Notice"), within six (6) months after Owner's notice shall have been given to Tenant, time being of the essence, stating that Tenant disputes the calculation of Additional Rent set forth in Owner's notice and specifying in reasonable detail all of Tenant's bona fide objections to the accuracy of Owner's notice. Notwithstanding the giving of Tenant's Objection Notice, Tenant shall nevertheless timely pay the full amount of Additional Rent specified in Owner's notice until such dispute is finally resolved by a final, unappealed judgment of a court of competent jurisdiction.

74.3. Only Owner shall be eligible to institute tax reduction or other proceedings to reduce the assessed valuation of the Real Property. Should Owner be successful in any such reduction proceeding and obtain a rebate for periods during which Tenant has paid its share of increases, Owner shall, after deducting its expenses including, without limitation, attorneys' fees and disbursements in connection therewith, return to Tenant its pro rata share of such rebate, except that Tenant may not obtain any portion of the benefits which may accrue to Owner from any reduction in Real Estate Taxes, for any year, below those imposed in the Base Tax Year. Should Owner be successful in reducing the Real Estate Taxes for the Base Tax Year, the amount of such taxes, as finally determined, shall be used in computing (or re-computing, as the case may be) the Additional Rent payable by Tenant pursuant to this Article.

74.4. The amounts due under this Article 74 shall be collectible without set-off or deduction, and shall be paid in full by Tenant no later than the date which is fifteen (15) days after the rendering of a bill therefor by Owner.

74.5. Owner's failure during the Term to prepare and deliver any of the foregoing tax bills, statements or bills, or Owner's failure to make a demand, shall not in any way cause Owner to forfeit or surrender its rights to collect the sums due to Owner pursuant to this Article and such rights shall survive the expiration or other termination of the term of this Lease. Further, Owner shall have the right to render a corrected or revised notice, statement or bill at any time(s).

74.6. Notwithstanding the expiration of this Lease or earlier termination of the term of this Lease, Tenant's obligation to pay Additional Rent under this Article shall continue and shall cover all periods up to and including the date of expiration or earlier termination of the term of this Lease, and shall survive the expiration or any termination of the term of this Lease.

74.7. If the date of expiration or termination of the term of this Lease (hereinafter, the "Expiration Date") shall occur on a date other than June 30, respectively, any payment under this Article 74 for the fiscal tax year in which such expiration or termination date occurs shall be apportioned in that percentage which the number of days in the period from July 1 to the Expiration Date, both inclusive, bears to the total number of days in such fiscal tax year.

75. Owner's Renovation Work

Subject to the provisions of footnote 2 to the printed portion of this Lease, Owner shall have the absolute and unrestricted right, but no the obligation, to perform such renovations, alterations, improvements and other installations to the Building (including within the Premises), both structural and non-structural in nature, as Owner may elect to perform, in Owner's sole and absolute discretion, from time to time during the term of this Lease (such work is hereinafter referred to as "Owner's Renovation Work"). Tenant shall fully cooperate with Owner and Owner's agents, employees, contractors, subcontractors, engineers, architects and other persons involved in the performance of Owner's Renovation Work, with regard to the performance of Owner's Renovation Work. In that regard, Tenant shall schedule and coordinate with Owner the performance of any Tenant's Work which may be performed by Tenant concurrently with any Owner's Renovation Work so as to minimize, to the maximum extent possible, any interference or delay in the performance of Owner's Renovation Work arising out of the performance of Tenant's Work. Further, neither Tenant nor any of Tenant's employees, agents, contractors, subcontractors, engineers, architects or other persons under Tenant's control shall take or omit to take any actions which shall hinder, delay or impair the performance of Owner's Renovation Work. Without limitation of the foregoing, Tenant shall provide Owner and Owner's employees, contractors, subcontractors, engineers, architects and other persons involved in the performance of Owner's Renovation Work with reasonable access to all portions of the Premises at all times during the performance of Owner's Renovation Work. Further, if Owner shall at any time perform Owner's Renovation Work consisting of the renovation of any Building lobby or entrance, Owner shall have the right to close such lobby or entrance during the performance of such renovations, so long as Tenant is provided with access to the Premises, and Tenant shall not be entitled to any abatement of Rents nor shall Owner have any liability by reason of inconvenience, annoyance or injury to business. In addition to Owner's other rights and remedies under this Lease, at law and/or in equity in the event of any breach by Tenant of the provisions of this Article 75, Tenant shall be obligated to reimburse Owner, as Additional Rent, for any and all costs and expenses Owner may incur by reason of or in connection with any breach by Tenant of the provisions of this Section 75.

76. Tenant's Initial Work

76.1. Tenant has advised Owner that Tenant intends to perform Tenant's Work consisting of alterations and improvements to the Premises to build-out and prepare the Premises for Tenant's initial use and occupancy thereof in accordance with this Lease (such alterations and improvements are hereinafter referred to as "Tenant's Initial Work"). Tenant's contractor for the performance of Tenant's Initial Work shall be a reputable third party contractor reasonably satisfactory to Owner. Tenant's Initial Work shall be subject to Owner's approval of Tenant's Plans covering all aspects of Tenant's Initial Work (hereinafter, "Tenant's Initial Plans") pursuant to the provisions of Articles 3 and 44 above as well as all other applicable provisions of this Lease. Tenant shall cause to be timely filed with the New York City Department of Buildings a so-called "type 2" building permit application covering Tenant's Initial Work. Tenant's Initial Work shall be performed with reasonable diligence in a good, workmanlike manner and otherwise subject to and strictly in accordance with the provisions of Articles 3 and 44 above as well as all other applicable provisions of this Lease. Owner shall have no obligations, responsibilities or liabilities of any nature whatsoever with regard to the performance of Tenant's Initial Work. Without limitation of the foregoing, in no event shall Tenant assert any claims against Owner, or seek to assert any offset, set-off or counterclaim against or with respect to any Rents due or to become due, arising out of any matter or thing relating to Tenant's Initial Work or the performance thereof by Tenant, and no such claim, offset, set-off or counterclaim shall be valid or have any force or effect whatsoever.

76.2. Subject to and conditioned upon Tenant's compliance with the provisions of Articles 3 and 44 above and this Article 76 including, without limitation, the submission and approval by Owner of Tenant's Plans relating thereto, Owner shall not unreasonably withhold Owner's consent to the following items of Tenant's Work to be performed by Tenant as part of Tenant's Initial Work:

76.2.1 installation of an internal staircase between the fifth and sixth floors of the Premises at a location to be reasonably determined by Owner; it being understood that notwithstanding anything to the contrary in this Article 76 or elsewhere in this Lease, Owner's reasonable determinations as to the structural aspects of such internal staircases and the installation thereof shall be conclusive and binding upon Tenant;

76.2.2 connection of Tenant's telecommunications equipment in the Premises to a satellite dish to be installed by Tenant on the roof deck of the Building; and

76.2.3 if needed, installation of conduits (not to exceed three (3) inches in diameter) from the basement of the Building to the Premises for Tenant's reasonable electrical and telecommunications needs; provided, however, that Tenant shall use reasonable efforts to minimize its need for such conduits.

77. Security Agreements

77.1. No security agreement, whether by way of conditional bill of sale, chattel mortgage or instrument of similar import, shall be placed upon any improvements made by Tenant which is affixed to the Premises.

77.2. If any of the machinery, fixtures, furniture and equipment installed by Tenant in the Premises are purchased or acquired by Tenant subject to a chattel mortgage, conditional sale agreement or other title retention or security agreement, Tenant undertakes and agrees (i) that no such chattel mortgage, conditional sale agreement or other title retention or security agreement shall be permitted to be filed as a lien against the Building and (ii) to cause to be inserted in any of the above described title retention, chattel mortgage or security agreements the following provision: "Notwithstanding anything to the contrary herein, this chattel mortgage, conditional sale agreement, title retention agreement or security agreement shall not create or be filed as a lien against the land, building or improvements comprising the real property in which goods, machinery, equipment, appliances or other personal property covered hereby are to be located or installed."

77.3. If any such lien or UCC filing statement, is filed against the Building, Tenant shall, upon obtaining actual knowledge of same, immediately cause such lien or statement to be removed and discharged of record at Tenant's cost and expense.

78. Fees and Expenses

Without limitation of any other provisions of this Lease, Tenant shall pay to Owner all reasonable attorneys' fees and disbursements (and all other court costs or expenses of legal proceedings), all architectural, engineering and other professional fees and disbursements, and all other fees and costs, which Owner may incur or pay out by reason of, or in connection with: (a) any action or proceeding by Owner to terminate this Lease in which Owner shall be the prevailing party; (b) any other action or proceeding by Owner against Tenant in which Owner shall be the prevailing party; (c) any default by Tenant in the observance or performance of any obligation under this Lease (including, but not limited to, matters involving: payment of Fixed Rent and Additional Rent; alterations or other Tenant's Work; and subletting or assignment) whether or not Owner commences any action or proceeding against Tenant; (d) any action or proceeding brought by Tenant against Owner (or any officer, partner, agent, attorney or employee of Owner) in which Owner shall be the prevailing party; (e) any other appearance by Owner (or any officer, partner, agent, attorney or employee of Owner) in connection with any action or proceeding whatsoever involving or affecting Owner, Tenant or this Lease, whether pursuant to court order, subpoena or otherwise); (f) any bankruptcy proceeding involving Tenant or any guarantor(s) of this Lease; and (g) any amendment, modification or extension of this Lease (and any negotiations with respect thereto).

79. Entire Agreement

This Lease represents the entire agreement between the parties with respect to the subject matter hereof and all prior negotiations, understandings, commitments and agreements relating thereto are superseded hereby.

80. Severability

If any provision of this Lease is found to be void or unenforcaable by a court of competent jurisdiction, the remaining provisions of this Lease shall nevertheless be binding upon Owner and Tenant with the same effect as though the void or unenforceable part had been severed and deleted.

81. Joint Tenants

If Tenant shall consist of more than one individual or entity, then each of the parties constituting Tenant shall be jointly and severally liable and responsible for the observance and performance of all of the terms, covenants and provisions of this Lease to be observed and/or performed by Tenant including, without limitation, the timely payment of Rent and Additional Rent.

82. Occupancy Tax

Tenant shall timely pay the occupancy taxes and/or rent taxes now in effect or hereafter enacted that are required by law to be paid by tenants, directly to the taxing authority responsible for the collection of same.

83. Floors and Sidewalk

83.1. Tenant shall keep the floors of the Premises clean and in good condition and free of dirt, debris and other foreign matter.

83.2. Tenant shall not permit any vehicle or materials under its control to block any sidewalk adjacent to the Building and shall reimburse Owner for any sums required to be paid by Owner because of any breach thereof.

84. Deliveries/Rubbish Removal

It is expressly agreed that no individuals wearing, holding or using skates, "rollerblades", bicycles, skateboards or similar apparatus shall be permitted to enter or leave the Building; provided, however, that skates, "rollerblades", skateboards or similar equipment may be held by individuals entering or leaving the Building if and for so long as such equipment shall be securely covered in a bag or carrying case which is sufficient to prevent any scratches, dents or other damage to any portion of the Building. Further, all deliveries to and from the Premises and refuse and rubbish removal from the Premises shall be made only through the service entrance to the Building and the service elevator therein, and all construction personnel, delivery persons, cleaning contractors, movers and all similar persons, or any other persons with hand trucks, dollies, suitcases or tool boxes, shall use only the service entrance to the Building and the service elevator therein, unless Owner notifies Tenant in writing of another entrance and/or elevator to be used for such purposes. If Tenant causes or permits any delivery, movement of any furniture, equipment or supplies, and/or refuse and rubbish removal to be made through the front lobby of the Building or by means of the passenger elevators in the Building, or if Tenant otherwise breaches or permits a breach of this Article 84, and such breach shall occur more than two (2) times during any calendar year during the term of this Lease, then Tenant shall pay to Owner, immediately upon demand therefor, as Additional Rent hereunder, an amount equal to One Thousand and 00/100 ($1,000.00) Dollars per occurrence for the sole purpose of defraying the costs to Owner for inspecting the lobby and elevators for damage and/or cleaning the same following such delivery or refuse and rubbish removal (and not as a penalty). Notwithstanding any such payment, permitting individuals using the aforementioned apparatus to enter the Building or the use of the front lobby and passenger elevators for deliveries, movement of any furniture, equipment or supplies, and/or refuse and rubbish removal shall be and be deemed to be a default pursuant to the terms of this Lease and Owner, following any such default, may exercise any and all rights and remedies herein set forth, or otherwise permissible at law or in equity, including, without limitation, the payment to Owner of the cost of any damage to the Premises or the Building arising therefrom.

85. Building Doors/Floors

All doors which lead into or out of the Building, whether such doors lead into or out of any elevator lobby or staircase lobby or hallway or otherwise, (hereinafter, the "Doors") must be kept in the closed position at all times. Propping such Doors in the open position by Tenant or the unlocking of such Doors during unauthorized hours is strictly prohibited and shall constitute a nuisance and a dangerous condition. In the event of any violation of this provision by Tenant, without limitation of Owner's other rights and remedies, Tenant shall be responsible for all loss and damage caused by or relating to such violation, including, without limitation, loss due to theft or vandalism and damage to any Doors caused by the elements or otherwise. Owner may inspect the Premises for violation of this provision and may repair damage caused thereby and may charge the expense incurred thereby to Tenant as Additional Rent payable on demand, which expense shall include the cost to Owner of inspecting the Premises.

86. BID Assessment

If an assessment is imposed on the land and/or Building in connection with or relating to any Business Improvement District (BID), then Tenant shall pay to Owner, as Additional Rent, an amount equal to fifty (50%) percent of the aggregate amount of all BID assessments imposed during the term of this Lease.

87. No Smoking/Loitering

87.1. Smoking is strictly prohibited in the Premises and Building (except solely on the roof deck of the Building as provided in Section 87.2 below). Loitering is strictly prohibited in all lobbies, staircases and hallways in the Building.

87.2. Notwithstanding the provisions of Section 87.1 above, cigarette smoking by a limited number of Tenant's employees shall be permitted on the roof deck of the Building only; subject, however, to the following conditions: (i) not more than a reasonable number of Tenant's employees shall be permitted to smoke cigarettes on the roof deck at any time; (ii) prior to permitting any person to smoke cigarettes on the roof deck, Tenant shall perform the following items of Tenant's Work in accordance with the provisions of Articles 3 and 44 and all other applicable provisions of this Lease: (a) install a fireproof barrier under the entire surface of the existing wood roof deck of a type reasonably satisfactory to Owner, (b) resurface the wood roof deck with a fire retardant material of a type reasonably satisfactory to Owner, (c) install on the roof deck at least three (3) proper receptacles for cigarette butts, ashes and other debris and (d) install and maintain a fire extinguisher in the stairwell leading from the sixth floor to the roof of the Building; (iii) Tenant shall keep the wood roof deck and all other portions of the roof of the Building free and clear at all times of cigarette butts, ashes and other debris to Owner's reasonable satisfaction and to empty the receptacles, failing which Owner may elect to do so and to bill Tenant a reasonable charge therefor as shall be determined by Owner, which shall be payable by Tenant as Additional Rent; (iv) such smoking shall not be in violation of (a) any current or future federal, state or local laws, codes, ordinances, rules or regulations or (b) the requirements of any insurance carrier or organization or any insurance policies currently or hereafter maintained by Owner or Tenant covering the Building or the Premises; and (v) such smoking shall not disturb or annoy any other tenants or occupants of the Building or of any neighboring properties.

88. Sprinkler and Fire Alarm Maintenance Costs and Fuel Costs

88.1. Tenant shall pay fifty (50%) percent of Owner's costs for maintaining, servicing, repairing, inspecting and monitoring the Building sprinkler, standpipe and fire alarm systems during the term of this Lease. Such payment shall be made periodically by Tenant within fifteen (15) days after each demand by Owner, as Additional Rent. If the Commencement Date or the date of expiration or earlier termination of the term of this Lease shall not begin or end at the start or end of a calendar year, then Tenant shall pay Owner's prorated estimate of such costs for each such calendar year in which the term of this Lease shall commence, expire or be terminated, as the case may be. The provisions of this Article shall survive the expiration or earlier termination of the term of this Lease.

88.2. For purposes of this Article, the following definition shall apply: the term "Fuel Costs" shall mean all annual costs and expenses incurred or borne by Owner with respect to all fuel purchased by Owner for the Building.

88.3. Tenant shall pay to Owner, as Additional Rent, which shall be collectible as such under the terms of this Lease, an amount equal to the increase in Fuel Costs, if any, for the Building for each calendar year or portion thereof falling within the term of this Lease, over the Fuel Costs for calendar year 2002. At or after the end of each calendar year, Owner shall calculate such increased cost and bill Tenant for its share together with reasonable substantiation of the Fuel Costs, which bill shall be due and payable within fifteen (15) days after Tenant shall be billed therefor. This obligation will survive the expiration or termination of this Lease except that should Tenant's term expire other than at the end of a calendar year, Tenant shall only be obligated pro-rata for the number of months in such year which formed a part of its term.

88.4. Every bill given by Owner pursuant to Section 8 8.3. above shall be conclusive and binding upon Tenant in the absence of manifest computational error unless Tenant shall give a Tenant's Objection Notice to Owner within six (6) months after Owner's notice shall have been given to Tenant, time being of the essence, stating that Tenant disputes the calculation of Additional Rent set forth in Owner's notice and specifying in reasonable detail all of Tenant's bona fide objections to the accuracy of Owner's notice. Notwithstanding the giving of Tenant's Objection Notice, Tenant shall nevertheless timely pay the full amount of Additional Rent specified in Owner's notice until such dispute is finally resolved by a final, unappealed judgment of a court of competent jurisdiction.

88.5. Owner's failure during the Lease term to prepare and deliver any of the foregoing bills, or Owner's failure to make a demand, shall not in any way waive or cause Owner to forfeit or surrender its rights to collect the sums due to Owner pursuant to this Article or to thereafter render such bills or make such demand nor constitute a waiver of, nor in any way impair the continuing obligation of Tenant to pay Additional Rent as required by this Article. Further, Owner shall have the right to render a corrected or revised notice, statement or bill at any time(s).

88.6. Notwithstanding any expiration of this Lease or the earlier termination of the term of this Lease, Tenant's obligation to pay Additional Rent under this Article shall continue and shall cover all periods up to and including the Lease expiration date, and shall survive the expiration or termination of this Lease.

89. Arbitration

Whenever any provision of this Lease specifically provides that a matter shall be determined by arbitration in accordance with this Article 89 and either party notifies the other that such matter be so determined, then such arbitration shall be determined in New York County, and shall be governed by the expedited rules applicable to expedited arbitration of the American Arbitration Association (or any successor thereto) and the judgment on the award rendered may be entered in any. court having jurisdiction, subject to appeal as provided in this Lease. Reasonable fees and expenses of the arbitration shall be paid by the party against whom a determination shall have been rendered.

90. Tenant's Right to Contest Legal Requirements.

Tenant, at Tenant's sole risk, cost and expense and after not less than thirty (30) days prior notice to Owner, may contest, by appropriate proceedings prosecuted diligently and in good faith, the legality or applicability of any Legal Requirements affecting the Premises, provided and on condition that: (i) neither Owner nor any of Owner's principals, officers, directors, employees, agents or contractors shall be subject to criminal penalties, nor shall the Building or any part thereof be subject to being condemned or vacated, nor shall the certificate of occupancy for the Building be suspended or threatened to be suspended, by reason of non-compliance or by reason of such contest; (ii) before the commencement of such contest, if Owner or any of Owner's principals, officers, directors, employees, agents or contractors may be subject to any civil fines or penalties or if Owner may be liable to any independent third party as a result of such non-compliance, then Tenant shall furnish to Owner either (a) a bond of a surety company satisfactory to Owner, in form and substance reasonably satisfactory to Owner, and in an amount at least equal to two hundred (200%) percent of Owner's estimate of the sum of (x) the cost of such compliance, (y) the penalties or fines that may accrue by reason of such non-compliance (as estimated by Owner) and (z) the amount of such liability to independent third parties, and shall indemnify Owner against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance; or (b) other security satisfactory in all respects to Owner; (iv) such non-compliance or contest shall not constitute or result in a violation (either with the giving of notice or the passage of time or both) of the terms of any Superior Mortgage or Superior Lease, or if such Superior Lease or Superior Mortgage conditions such noncompliance or contest upon the taking of action or furnishing of security by Owner, such action shall be taken or such security shall be furnished at the expense of Tenant; (v) Tenant shall keep Owner regularly advised as to the status of such proceedings; and (c) Tenant is not in default under this Lease after notice and the expiration of any applicable cure period which are specifically provided for in this Lease with regard to such default, if any.

91. Controlled_ Access Elevator System

91.1. As an accommodation to the tenants of the Building, but without having incurred or hereafter incurring any obligations, responsibilities or liabilities in connection therewith, Owner has installed in the Building a system (hereinafter, the "Controlled Access Elevator System") which is designed to electronically control access to the second through sixth floors of the Building from the two passenger elevators servicing the Building. Tenant shall pay to Owner, as Additional Rent, a monthly fee (hereinafter, the "Monthly Elevator Fee") of two hundred fifty and 00/100 ($250.00) dollars per month plus sixty (60%) percent of Owner's monthly cost to maintain the telephone line servicing the Controlled Access Elevator System. The Monthly Elevator Fee is subject to increase from time to time as shall be reasonably determined by Owner based upon any increases in the cost of maintenance and management services currently being provided by Owner or Owner's managing agent and/or by any third party service providers, in such amount(s) as shall be reasonably determined and/or established by Owner or Owner's managing agent.

91.2. Owner shall have no liabilities, responsibilities or obligations whatsoever to Tenant for any service problems, downtime, failure or defect in, or any other matter or thing related to, the Controlled Access Elevator System. Further, Owner shall have no liabilities, responsibilities or obligations of any nature with regard to any repair, maintenance, service or replacement costs or expenses relating to the operation, maintenance, servicing or replacement of the Controlled Access Elevator System including, but not limited to, those relating to theft, fire, water damage, programming or the supply of cards or key fobs required by Tenant. All of the costs and other obligations referred to in this Section 91.2 shall be borne and paid collectively by Tenant and the other office tenants of the Building, in such proportions as they shall mutually agree or in such proportions as Owner shall determine. In the event of any conflict between the mutual agreement of the tenants of the Building and Owner's determination (if any), Owner's determination shall control and be binding.

91.3. Owner has no obligation to maintain the Controlled Access Elevator System in operation and Owner shall have the absolute right to disable, disconnect, suspend the operation of or remove the Controlled Access Elevator System at any time(s) during the term of this Lease.

91.4. Tenant acknowledges that the third party maintenance and security management services relating to the Controlled Access Elevator System are currently being performed by Controlled Access LLC, currently with an address at 122 Kings Highway, Suite 501, Maple Shade, New Jersey and that Owner has the absolute right to replace such third party service provider with another service provider(s) at any time(s) upon not less than thirty (30) days' notice to Tenant (except in an emergency, in which event no notice shall be required). Tenant hereby agrees to indemnify and hold Owner and Owner's managing agent harmless from and against any claims, losses, liabilities, damages, costs and expenses, whether asserted by any third party service provider or otherwise, arising out of the acts or omissions of Tenant or Tenant's employees, guests or contractors, relating to the Controlled Access Elevator System.

92. Additional Provisions

92.1. Owner will not perform any work in connection with the furnishing or installation of any ductwork from the air conditioning units installed by Owner to service the Premises. The furnishing and installation of all ductwork shall be the sole responsibility of the Tenant, to be performed by Tenant at Tenant's sole cost and expense.

92.2. Tenant shall be solely responsible, at Tenant's sole cost and expense, for installing all fire protection equipment and devices within the Premises (including, without limitation, all fire extinguishers, strobe lights, signage and intercom systems) and for the connection of such equipment and devices to the Building fire alarm system. Notwithstanding anything contained in this Lease to the contrary, Tenant may only use the fire alarm contractor used by Owner for the installation of the Building fire alarm system for any fire alarm work performed by Tenant within the Premises. Furthermore, any fire alarm equipment installed by Tenant is subject to Owner's approval and must be from the same manufacturer and/or supplier as the Building fire alarm equipment. Tenant must also purchase and install its fire alarm equipment in accordance with the approved plans and specifications for the Building fire alarm system and as otherwise directed by Owner, Owner's architect and/or any consultant retained by Owner or Owner's architect.

92.3. Tenant shall be solely responsible, at Tenant's sole cost and expense, for the cleaning, repair and maintenance of the bathrooms in the Premises and all fixtures, structures, appliances and equipment therein contained (including, without limitation, the electric heating units which create hot water) throughout the term of this Lease and for the supply of all bathroom paper, soap and other products, fixtures and equipment such as paper towels, toilet and soap dispensers and hand dryers and mirrors.

93. Option to Extend

93.1. Provided and on condition that Tenant shall not be in default in the performance of any of the terms and conditions of this Lease as more specifically provided in Section 93.3 below, Tenant shall have one (1) option (the "Option") to extend the term of this Lease for one (1) additional term of five (5) years commencing on January 1, 2013 and expiring on December 31, 2017 (the "Extension Term"). Except for the rates at which the Fixed Rent shall be payable during the Extension Term, as set forth in Sections 93.4 and 93.5 below, all of the terms, conditions and provisions of this Lease shall continue unmodified and in full force and effect during the Extension Term.

93.2. The Option may only be exercised by Tenant giving written notice to Owner of Tenant's exercise of the Option (the "Option Exercise Notice") by certified mail, return receipt requested, by no earlier than the date which is twenty-four (24) months prior to the fixed expiration date of the term of this Lease (i.e., by no earlier than December 31, 2010) and by no later than the date which is twelve (12) months prior to the fixed expiration date of the term of this Lease (i.e., by not later than December 31, 2011), time being. of the essence. Upon Tenant's proper and timely giving of the Option Exercise Notice, the term of this Lease shall be automatically extended for the Extension Term upon the terms and conditions specified in this Article, without the execution of an extension agreement or other instrument. If Tenant shall not give Owner the Option Exercise Notice at the time and in the manner set forth above, time being of the essence, the Option shall thereupon terminate and be of no further force and effect.

93.3. Notwithstanding the foregoing provisions of this Article, if on the date that Tenant exercises the Option, or if on any subsequent date up to and including the date upon which the Extension Term commences, Tenant is in default (after notice and the expiration of the applicable cure period which are specifically provided for in this Lease with respect to such default, if any) in the payment of Fixed Rent or Additional Rent hereunder, or in the performance of any of the other terms, conditions or provisions of this Lease, then and in any such event, Tenant's exercise of the Option and the Extension Term shall, at the option of Owner exercised by written notice to Tenant, be rendered null and void and of no force or effect and Tenant shall have no other or additional right to exercise the Option, and the Option shall thereupon be deemed irrevocably waived by Tenant.

93.4. During the Extension Term, Fixed Rent shall be payable at the following rates:

93.4.1 Annual Initial Extension Term Fixed Rent (as such term is defined below) during the one (1) year period commencing January 1, 2013 through and including December 31, 2013;

93.4.2 Annual Initial Extension Term Fixed Rent multiplied by one hundred two (102%) percent during the one (1) year period commencing January 1, 2014 through and including December 31, 2014;

93.4.3 An amount equal to the Fixed Rent payable for the one (1) year period referred to in Section 93.4.2 above (i.e., January 1, 2014 through December 31, 2014) multiplied by one hundred two (102%) percent during the one (1) year period commencing January 1, 2015 through and including December 31, 2015;

93.4.4 An amount equal to the Fixed Rent payable for the one (1) year period referred to in Section 93.4.3 above (i.e., January 1, 2015 through December 31, 2015) multiplied by one hundred two (102%) percent during the one (1) year period commencing January 1, 2016 through and including December 31, 2016; and

93.4.5 An amount equal to the Fixed Rent payable for the one (1) year period referred to in Section 93.4.4 above (i.e., January 1, 2016 through December 31, 2016) multiplied by one hundred two (102%) percent during the one (1) year period commencing January 1, 2017 through and including December 31, 2017.

93.5. For purposes of this Article 93, Annual Initial Extension Term Fixed Rent shall be determined as follows:

93.5.1 Not earlier than six (6) months nor later than three (3) months prior to the commencement of the Extension Term, Owner shall send Tenant a notice ("Market Rent Notice") stating the amount which, in Owner's opinion, shall constitute the fair market annual Fixed Rent (exclusive of all items of Additional Rent and all subsequent increases in Fixed Rent provided for in this Lease) for the Premises as of the first day of the Extension Term assuming a five year lease of the Premises on an "as-is" basis to a new tenant. The amount set forth in the Market Rent Notice shall constitute the Annual Initial Extension Term Fixed Rent All of the provisions of this Lease relating to the payment of Additional Rent shall be unaffected by the determination of the Annual Initial Extension Term Fixed Rent and shall continue in full force and effect.

93.5.2 Within thirty (30) days after Tenant's receipt of the Market Rent Notice, time being of the essence, Tenant may dispute the Annual Initial Extension Term Fixed Rent as set forth in the Market Rent Notice by giving notice to Owner that Tenant is initiating the appraisal process provided for herein and specifying in such notice the name and address of the arbitrator designated by Tenant to act on its behalf. If Tenant does not timely dispute the Annual Initial Extension Term Fixed Rent set forth in the Market Rent Notice within the time and in the manner set forth above, time being; of the essence, the Annual Initial Extension Term Fixed Rent as determined by Owner shall be conclusive and binding on Owner and Tenant. Within thirty (30) days after the designation of Tenant's arbitrator, Owner shall give notice to Tenant specifying the name and address of Owner's arbitrator. The two arbitrators so chosen shall meet within ten (10) days after the second arbitrator is appointed and shall endeavor to mutually agree upon the determination of the Annual Initial Extension Term Fixed Rent of the Premises and to render a decision as to their mutual determination within twenty (20) days after the second arbitrator is appointed. If, within twenty (20) days after the second arbitrator is appointed, the two arbitrators shall not mutually agree upon the determination of the Annual Initial Extension Term Fixed Rent in accordance with the provisions of this Section 93.5, then they shall together appoint a third arbitrator. If said two arbitrators cannot agree upon the appointment of a third arbitrator within ten (10) days after the expiration of such twenty (20) day period, then either party, on behalf of both, and on notice to the other, may request such appointment by the American Arbitration Association (or any successor organization) in accordance with its then prevailing rules. If the American Arbitration association shall fail to appoint said third. arbitrator within ten (10) days after such request is made, then either party may apply, on notice to the other, to the Supreme Court in the county in which the Premises are located (or any other court having jurisdiction and exercising functions similar to those now exercised by the foregoing court) for the appointment of such third arbitrator.

93.5.3 Each of the arbitrators selected as herein provided shall have at least fifteen (15) years experience in the leasing of commercial space in New York City and properties similar in character to the Building. Each party shall pay the fees and expenses of the arbitrator selected by it. The fees and expenses of the third arbitrator and all other expenses (not including the attorneys' fees, witness fees and similar expenses of the parties which shall be borne separately by each of the parties) of the arbitration shall be borne entirely by the party against whom a determination pursuant to this Article 93 shall have been rendered.

93.5.4 If the third arbitrator shall be appointed, then each of the first two arbitrators shall promptly submit their respective determinations of the Annual Initial Extension Term Fixed Rent in writing to the third arbitrator, who must select one or the other of such determinations of the Annual Initial Extension Term Fixed Rent and so notify both Owner and Tenant of such selection within thirty (30) days after the appointment of the third arbitrator or as soon thereafter as is practicable.

93.5.5 In determining the Initial Annual Extension Term Fixed Rent, the arbitrators shall not modify the provisions of this Lease and shall take into consideration market rents then being charged for comparable space in other similar buildings in the area of the Building and all of the following assumptions: (i) the Annual Initial Extension Term Fixed Rent shall be determined on the basis of the use of the Premises as offices; (ii) Owner has had a reasonable period of time to locate a tenant who rents with the knowledge of the uses to which the Premises can be adapted and will not be obligated to incur any costs of rent concession or work allowance which would otherwise be dictated by the then prevailing market conditions for a five (5) year lease; (iii) the Premises are free and clear of all leases and tenancies and available for immediate occupancy and possession as of the commencement date of the Extension Term; (iv) neither Owner nor Tenant is under any compulsion to rent; (v) the Premises are fit for immediate occupancy and use "as is" and require no additional work by Owner and that no work has been carried out thereon by the Tenant, its subtenant, or their predecessors in interest during the term of this Lease which has diminished the rental value of the Premises; (vi) in the event the Premises have been destroyed or damaged by fire or other casualty, they have been fully restored and (vii) the escalation provisions and base periods therefor provided in this Lease shall remain unchanged (and such provisions and periods shall, in fact, remain unchanged during the Extension Term). The decision and award of the arbitrators shall be in writing and shall be final and conclusive on both parties and counterpart copies thereof shall be delivered to each of said parties.

93.5.6 Until such time as the final determination of the Annual Initial Extension Term Fixed Rent shall be made by the arbitrators in accordance with the provisions of this Section 93.5, Tenant shall pay, as Annual Initial Extension Term Fixed Rent , the amount of the Annual Initial Extension Term Fixed Rent determined by Owner as set forth in the Market Rent Notice (subject to further increases as otherwise provided in this Lease), until the final determination is made. If based upon the final determination hereunder of the Annual Initial Extension Term Fixed Rent, the payments made by Tenant on account of the Fixed Rent were less than the Annual Initial Extension Term Fixed Rent payable as determined by this Section 93.5, Tenant shall pay to Owner the amount of the underpayment on demand, and if the payments made by Tenant on account of Fixed Rent were greater than the Annual Initial Extension Term Fixed Rent payable as determined by this Section 93.5, Owner shall credit to Tenant the amount of any excess against Fixed Rent due or to become due.

93.5.7 Except solely for the provisions concerning Annual Initial Extension Term Fixed Rent set forth above in this Section 93.5, all of the provisions of this Lease relating to the payment of increases in Fixed Rent and the payment of Additional Rent including, without limitation, the provisions of Article 74 above ("Increase in Taxes"), shall remain unmodified and in full force and effect.

93.5.8 Notwithstanding the provisions of Sections 93.4.1 through 93.4.5 above, if either Owner or the arbitrators shall determine that, as of the commencement date of the Extension Term, the annual fair market base rent percentage increase factor (in lieu of any operating expense escalation or any similar escalation) for comparable five year leases shall be more or less than two (2%) percent, then the fixed annual percentage increase in the Initial Annual Extension Term Fixed Rent of two (2%) percent referred to in Sections 93.4.1 through 93.4.5 above shall be increased or decreased, as the case may be, to such annual fair market base rent percentage increase factor as shall be determined by Owner or the arbitrators, as the case may be.

94. Right of First Offer

94.1. As used in this Article:

94.1.1 the term "available" means, as to any space, that such space is vacant and free of any present or future possessory right in favor of either of the Existing Tenants (hereinafter defined) which is contained in the existing lease with such Existing Tenant;

94.1.2 the term "Offer Space" means either of (i) the entire second floor of the Building (the "Second Floor Premises"), currently leased to Advanstancom, Inc. ("Advanstar"), and (ii) the entire third floor of the Building (the "Third Floor Premises") currently leased to Novell, Inc./Cambridge Technology Partners (Massachusetts), Inc. (collectively "Cambridge"). Advanstar and Cambridge, together with their respective successors, assigns and affiliates, are each herein referred to as an "Existing Tenant" and collectively as the "Existing Tenants"); and

94.1.3 the term "Inclusion Date" means, as to either Offer Space, the later of (i) the date Tenant gives an Offer Acceptance Notice (as such term is hereinafter defined) with respect to such Offer Space and (ii) the date that such Offer Space is first available and vacant possession of such space has been delivered to Tenant, in either case with the Premises being in its then existing "as-is" condition.

94.2. If at any time during the term of this Lease, either Offer Space (i.e., either the Second Floor Premises or the Third Floor Premises) first becomes available upon the expiration or termination of the lease currently in effect for such Offer Space by reason of bankruptcy or bona fide dispossess, then within a reasonable period of time thereafter (or at any time within eighteen (18) months prior thereto), Owner shall give Tenant notice thereof (an "Offer Notice"), specifying (i) the designation of such Offer Space, (ii) the date or approximate date that such Offer Space has become available or is anticipated to become available, (iii) Owner's determination of the fair market rental value of such Offer Space as of the applicable Inclusion Date, (iv) the Tenant's Proportionate Share and Base Tax Year (and any other base year(s)) attributable to the Offer Space with respect to Article 74 and any other rental escalation provisions set forth in this Lease, (v) the amount of the security deposit reasonably required by Owner for the leasing of the Offer Space (the parties hereby acknowledging that, without limitation, a security deposit equal to the same per square foot security deposit then maintained by Tenant under this Lease shall be deemed reasonable) and (vi) any other terms and conditions determined by Owner, in Owner's discretion, which are or would be applicable to the proposed leasing of the Offer Space by Owner to a third party as of the applicable Inclusion Date. Provided and on condition that on the date that Owner gives Tenant an Offer Notice through and including the applicable Inclusion Date (a) this Lease is in full force and effect, (b) Tenant is not in default under this Lease (after notice and the expiration of any applicable cure period which are specifically provided for in this Lease with respect to such default, if any) and (c) Tenant or any assignee or successor of Tenant (as referred to in Section 49.2 above) occupies the entire Premises under and pursuant to this Lease and there has been no assignment of the Lease by Tenant, then and in such events only, Tenant shall have the option (herein, the "Offer Space Option"), exercisable by notice (the "Offer Acceptance Notice") given to Owner on or before the date that is fifteen (15) days after the giving of the Offer Notice by Owner to Tenant, time being of the essence, to include such Offer Space in the Premises for the balance of the term of this Lease.

94.3. If Tenant properly and timely exercises the Offer Space Option with respect to either Offer Space, such Offer Space shall become part of the Premises effective as of the Inclusion Date and thereafter for the greater of (i) five (5) years or (ii) the entire then remaining balance of the term of this Lease, without any further act by Owner or Tenant and upon all of the terms and conditions set forth in this Lease (including this Article) and the Offer Notice, except that:

94.3.1 such Offer Space shall be delivered to Tenant in its then existing condition, on an "as-is" basis on the Inclusion Date for such Offer Space;

94.3.2 the Fixed Rent for such Offer Space as of the applicable Inclusion Date shall be the fair market rental value of such Offer Space as of the applicable Inclusion Date as shall be determined by Owner, in Owner's sole and absolute discretion, as set forth in the Offer Notice; provided, however, that subsequent to the applicable Inclusion Date, Fixed Rent for the Offer Space shall be increased on each date that Fixed Rent for the Premises (exclusive of the Offer Space) shall be increased pursuant to the provisions of Article 63 of this Lease in such amount(s) as Owner shall determine, in Owner's reasonable discretion, to be the fair market escalation percentage factor(s) for the balance of the term of this Lease as of the applicable Inclusion Date, assuming that the Option shall have been exercised;

94.3.3 payment of Fixed Rent and all items of Additional Rent applicable to the Offer Space shall commence on the applicable Inclusion Date; and

94.3.4 if any of the terms and conditions set forth in the Offer Notice are different or inconsistent with the terms and conditions set forth in this Lease, the terms and conditions set forth in the Offer Notice shall control and this Lease shall automatically be deemed amended accordingly with respect solely to the Offer Space.

94.4. Promptly after the occurrence of any Inclusion Date, Owner and Tenant shall confirm the occurrence thereof, the inclusion of the applicable Offer Space in the Premises and the terms of this Lease applicable to such Offer Space by executing and delivering an instrument reasonably satisfactory to Owner; provided, however, that the failure by Owner or Tenant to execute such instrument shall not affect the inclusion of such Offer Space in the Premises in accordance with this Article.

94.5. (a) If Tenant does not timely deliver an Offer Acceptance Notice with respect to any Offer Space, time being of the essence, and if either (i) within nine (9) months after the date on which Tenant declined (or was deemed to decline by failing to timely accept) the Offer Notice, Owner is prepared to lease the Offer Space at a net effective rental (taking into account any work allowances and rent concessions, and discounted to present value using a discount rate equal to the then-current "prime rate" or "base rate" of Citibank, N.A. or any comparable bank) of less than ninety (90%) percent of the net effective rental offered to Tenant in the rejected Offer Notice, or (ii) after nine (9) or more months after the date on which Tenant declined (or was deemed to decline by failing timely to accept) the Offer Notice, Owner is prepared to lease the Offer Space for any rent whatsoever, whether higher or lower than the net effective rental set forth in the previous Offer Notice, then in each case the terms of Sections 94.1 through 94.5 above shall once again apply and Owner shall thereafter deliver to Tenant an Offer Notice as described in Section 94.2 above incorporating the rental terms that Owner is prepared to accept from a third party with regard to such Offer Space.

(b) If Tenant does not timely deliver an Offer Acceptance Notice with respect to any Offer Space, time being of the essence, and neither of clauses (i) or (ii) set forth in subparagraph (a) above shall apply, then the Offer Space Option with respect to such Offer Space shall be deemed irrevocably waived by Tenant and Owner shall have the right to enter into a lease or leases covering such Offer Space or any portion(s) thereof with any third party(ies) on such terms and conditions as Owner shall determine, in Owner's sole and absolute discretion.

94.6. Notwithstanding anything to the contrary set forth in this Article 94 or elsewhere in this Lease, if at the time Tenant shall give Owner an Offer Acceptance Notice pursuant to the provisions of Section 94.2 above, there shall be less than five (5) years then remaining in the term of this Lease, and if Tenant shall not theretofore have exercised the Option pursuant to the provisions of Article 93 above, then as a further condition to Tenant's exercise of the Offer Space Option, Tenant must exercise the Option pursuant to Article 93 above by giving an Option Exercise Notice to Owner simultaneously with Tenant's delivery of the Offer Acceptance Notice to Owner. In such event, notwithstanding the time limitations set forth in Section 93.2 above, Tenant shall be permitted to exercise the Option even though the date on which Tenant shall give Owner the Option Exercise Notice shall be more than twenty-four (24) months prior to the original fixed date of expiration of the term of this Lease.

94.7. Notwithstanding anything to the contrary set forth in this Article 94, the Offer Space Option is limited solely to the original Tenant under this Lease (i.e., Take-Two Interactive Software, Inc.) and any successor or assignee as referred to in Section 49.2 above.

95. Miscellaneous

95.1. Tenant shall have access to the Premises on a twenty-four hour per day, seven day per week basis, subject to such restrictions and limitations as may be imposed pursuant to Legal Requirements and to circumstances beyond Owner's reasonable control.

95.2. Tenant shall not record or attempt to record this Lease or any memorandum

95.3. Irrespective of the place of execution or performance of this Lease, this Lease shall be governed by and construed and interpreted in accordance with the internal laws of the State of New York. If any provision of this Lease is found to be void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Lease shall nevertheless be binding upon Owner and Tenant with the same force and effect as though the void or unenforceable part had been severed and deleted.

95.4. This Lease shall be construed and interpreted without regard to any presumption or other rule requiring construction or interpretation against the party causing this Lease to be drafted. If any words in this Lease or any draft thereof shall have been stricken out or otherwise eliminated, whether or not any other words have been added in their place, this Lease shall be construed as if the words so stricken out or otherwise eliminated were never included in this Lease and no implication or inference shall be drawn from the fact that said words were so stricken out or otherwise eliminated.

95.5. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

95.6. The obligations of Owner under this Lease shall not be binding upon Owner named herein after the sale, conveyance, assignment or transfer by such Owner (or upon any subsequent landlord after the sale, conveyance, assignment or transfer by such subsequent landlord) of its interest in the Land and Building and in the event of any such sale, conveyance, assignment or transfer, Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder. Neither the partners comprising Owner, nor the shareholders, partners, principals, agents, directors or officers of any of such partners shall be liable for the performance of Owner's obligations under this Lease. Tenant shall look solely to Owner to enforce Owner's obligations hereunder. Prior to any such sale, conveyance, assignment or transfer, the liability of Owner for Owner's obligations under this Lease shall be limited to Owner's interest in the Land and Building and Tenant shall not look to any other property or assets of Owner or the property or assets of Owner or any of its partners in seeking either to enforce Owner's obligations under this Lease or to satisfy a judgment for Owner's failure to perform such obligations. After any such sale, conveyance, assignment or transfer, to the extent that the transferee shall have not assumed Owner's obligations under this Lease, the liability of Owner for such obligations shall be limited to the proceeds of such transfer received by it.

95.7. Notwithstanding anything contained in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Owner under this Lease, whether or not expressly denominated Fixed Rent, Additional Rent or other charges, shall constitute rent for the purposes of Section 502(b)(7) of the Bankruptcy Code.

95.8. If and for so long as Tenant is in default under this Lease (after notice and the expiration of any applicable cure period which are specifically provided for in this Lease with respect to such default, if any) Tenant hereby irrevocably waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Owner may apply any payments made by Tenant to any items Owner sees fit, irrespective of and notwithstanding any designation or request by Tenant as to the items against which any such payments shall be credited.

95.9. Except as may be otherwise specifically set forth in this Lease, whenever Owner's consent or approval is required or requested, same may be withheld for any reason or for no reason, in Owner's sole and absolute discretion.

95.10. Whenever in this Lease it shall be provided that Owner shall not unreasonably withhold, delay and/or unreasonably condition Owner's consent or approval to Tenant's proposed action or work, Tenant hereby waives any claim against Owner for money damages which Tenant may have based upon any assertion that Owner has unreasonably withheld or unreasonably delayed any such consent or approval to Tenant's proposed action or work. Tenant's sole remedy shall be an action or proceeding (or, in certain instances specifically set forth in this Lease, an arbitration) to enforce such provisions of this Lease or for specific performance. In addition, without limitation of the foregoing and notwithstanding anything to the contrary set forth in this Lease, Owner may condition its granting of consent or approval as to any proposed action or work on any other matter upon Owner's or Tenant's receiving the consent or approval to such action, work or other matter from the Landmarks Commission and/or any other governmental or municipal agency or commission having or asserting jurisdiction and/or Owner's mortgagee(s).

95.11. Tenant and all persons within Tenant's control shall strictly comply with the Rules and Regulations contained in the printed portion of this Lease as well as with the Additional Rules and Regulations annexed as Exhibit C to this Lease. Nothing contained in this Lease shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or the Additional Rules and Regulations or the terms, covenants or conditions in any other lease against any other tenant, and Owner shall not be liable to Tenant for violation of the same by any other tenant, its employees, agents, visitors or licensees. In case of any conflict or inconsistency between the provisions of this Lease and of any of the Rules and Regulations or the Additional Rules and Regulations as originally or as hereinafter adopted or revised, the provisions of this Lease shall control.

95.12. All checks tendered to Owner in payment of Fixed Rent or Additional Rent shall be deemed payment for the account of Tenant. Acceptance by Owner of Fixed Rent or Additional Rent from a party other than Tenant shall not be deemed to operate as an attornment to Owner by such party or as a consent by Owner to an assignment or subletting by Tenant or as a modification of the provisions of this Lease.

95.13. Intentionally Deleted.

95.14. Without incurring any liability to Tenant, Owner may permit access to the Premises and open the same, whether or not Tenant shall be present, upon demand of any receiver, trustee, assignee for the benefit of creditors, sheriff, marshal or court officer entitled to, or reasonably purporting to be entitled to, such access for the purpose of taking possession of, or removing, Tenant's property or for any other lawful purpose (but this provision and any action by Owner hereunder shall not be deemed a recognition by Owner that the person or official making such demand has any right or interest in this Lease, or in or to the Premises), or upon demand of any representative of the fire, police, building, sanitation or other department of the city, state or federal governments.

95.15. No receipt of monies by Owner from Tenant, after any reentry or after the cancellation or termination of this Lease in any lawful manner, shall reinstate this Lease, and after the service of notice to terminate this Lease, or after the commencement of any action, proceeding or other remedy, Owner may demand, receive and collect any monies due, and apply them on account of Tenant's obligations under this Lease but without in any respect affecting such notice, action, proceeding or remedy.

95.16. No payment by Tenant nor receipt by Owner of a lesser amount than may be required to be paid hereunder shall be deemed to be other than on account of any such payment, nor shall any endorsement or statement on any check or any letter accompanying any check tendered as payment be deemed an accord and satisfaction and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such payment due and/or to pursue any other remedy(ies) provided for in this Lease, at law and/or in equity.

95.17. Tenant acknowledges that Tenant has no rights with regard to any development rights, "air rights" or comparable rights appurtenant to the Property and hereby irrevocably waives any such rights in connection with any zoning lot merger or transfer of development rights with respect to the Property including, without limitation, any rights it may have to be a party to, to contest, or to execute, any Declaration of Restrictions (as such term is defined in Section 12-10 of the Zoning Resolution of the City of New York effective December 15, 1961, as amended) with respect to the Property, which would cause the Property to be merged with or unmerged from any other zoning lot pursuant to such Zoning Resolution or pursuant to any document of a similar nature and purpose, and Tenant agrees that this Lease shall be subject and subordinate to any Declaration of Restrictions or any other document of similar nature and purpose now or hereafter affecting the Property. In confirmation of such subordination and waiver, Tenant shall execute and promptly deliver to Owner any certificate or instrument that Owner reasonably may request and, in connection therewith, Tenant hereby irrevocably constitutes and appoints Owner as Tenant's attorney-in-fact, coupled with an interest, to execute any such certificate or instrument for and on behalf of Tenant. The provisions of this Section shall be deemed to be and shall be construed as an express waiver by Tenant of any interest Tenant may have, or be deemed to have, as a "party in interest" (as such quoted term is defined in Section 12-10 of the aforementioned Zoning Resolution) in the Building or the land upon which the Building is situated. The provisions of this Section 95.17 shall not be deemed to prevent Tenant's use of the roof deck subject to and in accordance with the applicable provisions of this Lease.

95.18. Intentionally Deleted.

95.19. Owner shall not be deemed to be in default of any of its covenants or obligations under or pursuant to this Lease, unless and until (i) Tenant shall have given Owner notice specifying the nature of such alleged default in accordance with the notice provisions of this Lease and (ii) Owner shall have failed to cure or remedy such alleged default within thirty (30) days after Owner's receipt of such notice, or if such alleged default shall be of a nature that the same cannot reasonably be cured or remedied within a thirty (30) day period, then for such additional period of time as shall be reasonably required for Owner to cure or remedy such alleged default. No action on the part of Owner to address, cure or remedy any matter alleged by Tenant to be a default by Owner under this Lease shall be deemed to constitute an admission by Owner that the matter alleged to be a default by Owner constitutes a default by Owner under this Lease.

95.20. In the event any governmental entity promulgates or revises any law, or issues controls or regulations, relating to the use or conservation of energy, water, gas or electricity, or the provision of any other utility or service furnished by Owner in the Building, Owner may freely comply with such provision of law, controls or regulations without liability to or recourse by Tenant. Without limitation of the foregoing, neither Owner's actions nor its failure to act in order to comply with the same shall entitle Tenant to any damages, abate or suspend Tenant's obligation to pay Fixed Rent and Additional Rent or constitute or be construed as a constructive or other eviction of Tenant.

95.21. Owner and Tenant, any subtenant, and any guarantor of Tenant's obligations under this Lease, hereby irrevocably consent to the jurisdiction of the Civil court of the City of New York and the Supreme Court of the State of New York with respect to any action or proceeding between Owner and Tenant or such party with respect to this Lease or any rights or obligations of either party pursuant to this Lease, and each of such subtenant, guarantor, Owner and Tenant agrees that venue shall lie in New York County. Tenant and any subtenant further waive any and all rights to commence any such action or proceeding against Owner before any other court.

95.22. The submission of this Lease to Tenant shall not be construed as an offer, nor shall Tenant have any rights with respect thereto unless and until both Owner and Tenant shall execute and deliver an original of this Lease. Until such execution and delivery, any action taken or expense incurred by Tenant shall be at its sole risk, cost and expense.

95.23. Any apportionments or prorations of Rents to be made under the Lease shall be computed on the basis of a 360 day year, with 12 months of 30 days each.

95.24. Tenant shall be entitled to the non-exclusive use of the service elevator (subject to availability), on a reserved basis, at no charge, during normal service elevator hours of operation as set forth elsewhere in this Lease; solely in connection with Tenant's move-in at

the commencement of the term of this Lease, Tenant's move-out at the expiration of the term of this Lease and for the performance of Tenant's Initial Work.

Moklam Enterprises, Inc., Owner

By: /s/ Raymond H. Yu

Raymond H. Yu, President

Take Two Interactive Software, Inc., Tenant

By: /s/ Don Leeds

Don Leeds, Executive Vice President

State of New York)
) ss.:
County of New York)

On the 2nd day of July in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Raymond H. Yu, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Gary S. Friedman
- ----------
Signature and Office of individual
taking acknowledgment

State of New York)
) ss.:
County of New York)

On the 2nd day of July in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Don Leeds, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Gary S. Friedman
- ----------
Signature and Office of individual
taking acknowledgment

ANNEX I

The below noted information must appear in complete form in Tenant's Plans for Tenant's Initial Work and any other items of Tenant's Work.

1. ARCHITECTURAL INFORMATION

(a) Locate and identify all types of partitions.

(b) Clearly indicate all dimensions from items of base building construction or in relation to other fixed elements.

(c) Indicate the locations and specifications for doors, door frames and hardware; provide a keying schedule.

(d) Indicate the locations and specifications for any non-building standard paints and any wall coverings or other wall finish. It is Tenant's responsibility that all finishes comply with the fire code of the City and State of New York.

(e) Indicate the location of millwork, carpentry, etc., on the plan and provide elevations, sections and details sufficient to clearly describe all requirements.

(f) Indicate any modifications to the acoustical ceiling required for mounted projection screens, overhead security grills, etc.

(g) Provide locations and complete specifications for any floor coverings, including the combined height of carpet and padding. It is Tenant's responsibility that all non-building standard finishes comply with fire code of the City and State of New York.

(h) Provide support framing details for special walls and any ceiling-mounted equipment.

(i) Provide a finish schedule and finish legend clearly indicating the room number, wall finishes and colors, floor finishes and colors and ceiling finish.

(j) Locate and identify all built-in furniture and cabinetry.

2. ELECTRICAL AND TELEPHONE INFORMATION

(a) Indicate the dimensions of wall electrical outlets and switches and telephone outlets.

(b) Indicate dimensions and manufacturer for all electrical floor outlets and telephone floor outlets. These dimensions must be coordinated with the base Building structural system.

(c) Provide the specification and location of special receptacles and separate circuits for special equipment such as appliances, copiers, computer equipment, etc.

(d) Provide details of the space requirements, room finish and electrical and mechanical requirements for the telephone equipment within the Premises. Approval of the telephone plan by Tenant's telephone vendor is also required.

(e) Indicate the location of the emergency disconnect switch for any data processing equipment.

(f) Indicate the location of all computer wiring.

3. LIGHTING INFORMATION

(a) Locate and identify all fixtures used, and provide specifications.

(b) Provide the specifications and location of all switches, dimmers and other lighting control devices.

(c) Provide the specifications and location of all exit lighting and any special emergency lighting.

(d) All fixtures shall be U.L. listed.

4. MECHANICAL AND PLANNING INFORMATION

Provide complete plans, details and specifications prepared by a licensed mechanical engineer reasonably approved by Owner describing all HVAC, electrical and plumbing work to be performed.

5. STRUCTURAL INFORMATION

Provide complete plans, details and specifications prepared by a licensed structural engineer reasonably approved by Owner of any structural modifications required to perform Tenant's Initial Work or any other item of Tenant's Work.

6. FIRE SAFETY SPECIFICATION

(a) Provide complete plans, details and specifications prepared by a licensed engineer reasonably approved by Owner describing all fire safety installations and equipment to be installed in the Premises by Tenant.

(b) Locate and identify all equipment to be installed.

(c) Locate and identify the main control panel including any shut-off and/or reset switches.

(d) Provide instruction manuals for system and equipment controls.

(e) Indicate any modifications to existing sprinkler system.

ANNEX II

List of Independent Structural Engineering Firms

GILSANZ MURRAY STEFICEK, LLP
95 University Place
New York, New York 10003
(212) 254-0030

ROBERT SILMAN ASSOCIATES 88
University Place
New York, New York 10003
(212) 620-7970

CANTOR SEINUK GROUP, PC
600 Madison Avenue
New York, New York 10022
(212) 755-4242

ANNEX III

List of Independent Mechanical Engineering Firms

SAC ENGINEERING, PC
37 West 39" Street
New York, New York 10018
(212) 852-9855

LASZLO BODAK ENGINEERS
45 West 36' Street
New York, New York 10018
(212) 643-1444

I.M. ROBBINS PC
15 West 44th Street
New York, New York 10036
(212) 944-5566

ANNEX IV

List of Independent Architectural Firms

FOX & FOWLE ARCHITECTS
22 West 19th Street
New York, New York 10011
(212) 627-1700

GERTLER WENTE KERBEYKIAN ARCHITECTS LLP
145 West 30th Street
New York, New York 10001
(212) 273-9888

BEYER BLINDER BELLE ARCHITECTS
41 East 11th Street
New York, New York 10003
(212) 777-7800

Bank of America

EXHIBIT A

DRAFT
FOR DISCUSSION
PURPOSES ONLY

DATE: JUNE 28, 2002

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3049576

BENEFICIARY
MOKLAM ENTERPRISES, ,INC.
c/o YUCO MANAGEMENT, INC.
475 FIFTH AVENUE, 19th FLOOR
NEW YORK, N.Y. 10017'

APPLICANT
TAKE TWO INTERACTIVE SOFTWARE INC.
575 BROADWAY
3rd FLOOR
NEW YORK, NEW YORK 10012

WORDING IS ACCEPTABLE

AMOUNT
NOT EXCEEDING USD 1,560,000.00
NOT EXCEEDING
ONE MILLION FIVE HUNDRED SIXTY THOUSAND AND
00/100'S US DOLLARS

EXPIRATION
DECEMBER 6, 2002 AT OUR COUNTERS

WE HEREBY ESTABLISH THIS CLEAN, IRREVOCABLE AND UNCONDITIONAL STANDBY LETTER OF CREDIT NO. 3049876 (THE "LETTER OF CREDIT") IN FAVOR OF MOKLAM ENTERPRISES, INC. OR ITS TRANSFEREES AS HEREINAFTER PROVIDED, AS BENEFICIARY, FOR THE ACCOUNT OF TAKE TWO INTERACTIVE SOFTWARE, INC., AS ACCOUNT PARTY, IN AN AMOUNT UP TO U.S. ONE MILLION FIVE HUNDRED SIXTY THOUSAND AND 00/100 ($1,560,000.00) DOLLARS AVAILABLE BY DRAFT(S) OF BENEFICIARY DRAWN ON US PAYABLE AT SIGHT.

WE AGREE TO PAY BENEFICIARY'S DRAWING UNDER THIS LETTER OF CREDIT WITH OUR OWN FUNDS. WE WILL NOT BE SUBROGATED TO ANY OF BENEFICIARY'S RIGHTS AS A RESULT OF ANY PAYMENT WE MAKE TO BENEFICIARY UNDER THIS LETTER OF CREDIT. THE REQUEST FOR PAYMENT UNDER THIS LETTER OF CREDIT SHALL BE FINAL AND CONCLUSIVE FOR ALL PURPOSES WITHOUT VERIFICATION BY US AND SHALL NOT BE SUBJECT TO REFUTATION, DENIAL OR CONSENT.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE ISP (AS DEFINED BELOW) OR OTHERWISE, BENEFICIARY-S DRAWING UNDER THIS LETTER OF CREDIT WILL BE PAID, BY WIRE TRANSFER IN FEDERAL FUNDS TO THE ACCOUNT DESIGNATED IN BENEFICIARY-S INSTRUCTIONS ACCOMPANYING THE DRAFT, BY NO LATER =AN (I) 4:00 P.M. EASTERN TIME ON THE SAME BUSINESS DAY ON WHICH SUCH DRAFT AND INSTRUCTIONS ARE RECEIVED BY US IN CONFORMITY WITH tHE TERMS HEREOF, IF RECEIVED BY US AT OR BEFORE 11:00 A.M. EASTERN TIME OR (II) 4:00 P.M. EASTERN TIME OF THE NEXT BUSINESS DAY FOLLOWING THE BUSINESS DAY ON WHICH SUCH DRAFT AND INSTRUCTIONS ARE RECEIVED BY US IN CONFORMITY WITH THE TERMS HEREOF, IF RECEIVED BY US AFTER 11:00 A.M. EASTERN TIME.

WE HEREBY AGREE THAT ALL DRAFTS DRAWN BY BENEFICIARY UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED AND PAID AS ;PROVIDED ABOVE, UPON PRESENTATION AND DELIVERY OF THE ORIGINAL OF THIS LETTER OF CREDIT TOGETHER WITH THE DRAFT AS SPECIFIED HEREIN, IF PRESENTED TO OUR OFFICE LOCATED AT BANK OF AMERICA, N.A., MAIL :CODE: ca9-703-19-23, 333 SOUTH BEAUDRY AVENUE, 19TH FLOOR, LOS ANGELES, CA 90017-1466, ON OR BEFORE THE THEN CURRENT EXPIRATION DATE (AS DEFINED BELOW) ON WHICH DATE THIS LETTER OF CREDIT EXPIRES

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER : 3049876

PARTIAL DRAWINGS ARE PERMITTED.

IF DEMAND FOR PAYMENT MADE BY BENEFICIARY HEREUNDER DOES NOT, IN ANY INSTANCE, CONFORM TO THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, WE SHALL GIVE BENEFICIARY IMMEDIATE WRITTEN NOTICE BY FACSIMILE TRANSMISSION AT (212) 725-4704 THAT ITS PURPORTED DRAWING UNDER THIS LETTER OF CREDIT WAS NOT EFFECTED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, STATING THE REASONS

DRAFT
FOR DISCUSSION
PURPOSES ONLY

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 3049876

THEREFORE AND THAT WE ARE HOLDING ANY DOCUMENTS AT BENEFICIARY'S DISPOSAL OR RETURNING THE SAME TO BENEFICIARY. SUCH NOTICE MUST BE GIVEN TO BENEFICIARY WITHIN TWO (2) BUSINESS DAYS OF OUR RECEIPT-OF BENEFICIARY'S DRAFT.

THIS LETTER OF CREDIT IS TRANSFERABLE, AT BENEFICIARY'S OPTION, AT NO COST TO BENEFICIARY. TRANSFER OF THIS LETTER OF CREDIT SHALL BE EFFECTED BY PRESENTATION TO US OF THIS LETTER OF CREDIT M ALL AMENDMENTS ACCOMPANIED BY A TRANSFER FORM IN FORM OF EXHIBIT A HERETO ATTACHED WITH THE BLANKS THEREIN COMPLETED. UPON SUCH PRESENTATION, WE SHALL FORTHWITH ENDORSE THIS LETTER OF CREDIT TO THE TRANSFEREE AND FORWARD SAME TO Tim TRANSFEREE WITH OUR ADVICE OF TRANSFER.

THIS LETTER OF CREDIT EXPIRES ON DECEMBER 6, 2002 (THE "EXPIRATION DATE"). IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR AN ADDITIONAL ONE (1) YEAR FROM THE EXPIRATION DATE, AND FOR AN ADDITIONAL ONE (1) YEAR PERIOD FROM EACH FUTURE EXPIRATION DATE THROUGH AND INCLUDING THE FINAL EXPIRATION DATE OF FEBRUARY 28, 2018, UNLESS AT LEAST FORTY-FIVE (45) DAYS PRIOR TO THE EXPIRATION DATE OR ANY FUTURE EXPIRATION DATE, WE NOTIFY BENEFICIARY BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY OVERNIGHT COURIER SERVICE WHICH PROVIDES PROOF OF DELIVERY (SUCH AS FEDERAL EXPRESS), THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD. IF BENEFICIARY RECEIVES OUR N PORTION OF THIS LETTER OF CREDIT SHALL PRESENTATION, WITHIN THE THEN CURRENT EXPIRATION DATE, OF BENEFICIARY'S SIGHT DRAFT.

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED OR AMENDED BY REFERENCE TO ANY AGREEMENT, DOCUMENT OR INSTRUMENT AND SHALL NOT BE DEEMED TO INCORPORATE ANY other AGREEMENT, DOCUMENT OR INSTRUMENT BY REFERENCE.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (ISP98), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 590 ("ISP") AND AS TO ANY MATTERS NOT SPECIFICALLY COVERED BY THE ISP, THIS LETTER OF CREDIT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE :CALL 213-345-0098.

DRAFT
FOR DISCUSSION
PURPOSES ONLY

- ----------
AUTHORIZED SIGNATURE

DRAFT
FOR DISCUSSION
PURPOSES ONLY

AUTHORIZED SIGNATURE

THIS DOCUMENT CONSISTS OF 2 PAGES

EXHIBIT 1

INSTRUCTIONS TO TRANSFER LETTER OF CREDIT

Dated: June __, 2002
Irrevocable Standby Letter of Credit No.___

[Name and Address of Issuer]

Ladies and Gentlemen:

For value received, the undersigned beneficiary hereby irrevocably transfers to:

(Name of Transferee)

(Address)

all rights of the undersigned beneficiary to draw under the above Letter of Credit (the "Letter of Credit"). Such transfer is in accordance with and permitted by the Lease Agreement (as defined in Exhibit A to the Letter of Credit).

By this transfer, all rights of the undersigned beneficiary in the Letter of Credit are transferred to the transferee and the transferee shall hereafter have the sole rights as beneficiary thereof, provided, however that no rights shall be transferred to a transferee unless such transfer complies with the requirements of the Letter of Credit pertaining to transfers.

The Letter of Credit and all amendments are returned herewith, and in accordance therewith, we ask you to endorse the Letter of Credit in favor of the transferee and forward same to the transferee with your advice of transfer. Exhibit A thereto will thereupon be deemed modified to reflect the change of the beneficiary to the transferee.

Very truly yours,

By:

[Name and Title]

EXHIBIT B

ADDITIONAL RULES AND REGULATIONS

1. No tenant shall invite to the tenant's premises, or permit the visit of persons in such numbers or under such conditions as to interfere with the use and enjoyment of any of the entrances, corridors, escalators, elevators and other facilities of the Building by other tenants. Fire exits and stairways are for emergency use only, and they shall not be used for any other purpose by the tenants, their employees, licensees or invitees. Owner reserves the right to control and operate the public portions of the Building and the public facilities, as well as facilities furnished for the common use of the tenants, in such manner as Owner deems best for the benefit of the tenants generally and is not inconsistent with Owner's obligations under this Lease.

2. Owner may refuse admission to the Building outside of ordinary business hours to any person not known to the watchman in charge or not having a pass issued by Tenant, Owner or Owner's managing agent or not properly identified, and may require all persons admitted to or leaving the Building outside of ordinary business hours to register. Subject to the foregoing, Tenant's employees, agents and visitors shall be permitted to enter and leave the Building at all times. Each tenant shall be responsible for all persons for whom such tenant requests such permission and shall be liable to Owner for all acts of such persons. Any person whose presence in the Building at any time shall, in the reasonable judgment of Owner or Owner's managing agent, be prejudicial to the safety, character, reputation and interests of the Building or its tenants may be denied access to the Building or may be ejected therefrom. In case of invasion, riot, public excitement or other commotion, Owner may prevent all access to the Building during the continuance of the same, by closing the doors or otherwise, for the safety of the tenants and protection of property in the Building. Owner may require any person leaving the Building with any package or other object to exhibit a pass from the tenant from whose premises the package or object is being removed, but the establishment and enforcement of such requirement shall not impose any responsibility on Owner for the protection of any tenant against the removal of property from the premises of the tenant. The Owner shall in no way be liable to any tenant for damages or loss arising from the admission, exclusion or ejection of any person to or from the tenant's premises or the Building under or despite the provisions of this rule or any other rule or regulation.

3. No tenant shall obtain or accept for use in its premises floor polishing, lighting maintenance, cleaning, or other similar services from any persons not authorized by Owner in writing to furnish such services, provided always that the charges for such services by persons authorized by Owner are competitive. Such services shall be furnished only at such hours, in such places within the tenant's premises and under such regulations as may be fixed by Owner.

4. All entrance doors in each tenant's premises shall be left locked when the tenant's premises are not in use. Entrance doors shall not be left open at any time.

5. Nothing shall be done or permitted in any tenant's premises, and nothing shall be brought into or kept in any tenant's premises, which would unreasonably or materially impair or interfere with any of the Building services or the proper and economic heating, cleaning or other servicing of the Building or the premises, or the use or enjoyment by any other tenant of any other premises, nor shall there be installed by any tenant any ventilating, air conditioning, electrical or other equipment of any kind which, in the reasonable judgment of Owner, might cause any such impairment or interference.

6. Except for ancillary personal use of a microwave oven by Tenant's employees, Tenant shall not permit any cooking within the Premises (unless specifically consented to in writing by Owner or specifically permitted pursuant to this Lease), and shall not permit any food odors emanating within the tenant's premises to seep into other portions of the Building. If Owner shall consent in writing to any cooking or installation of kitchen equipment in the tenant's premises, the tenant shall operate its dining room and kitchen equipment, if any, in a manner that will prevent odors and smoke from escaping into areas of the Building outside the tenant's premises, and shall, at its expense, (i) install and maintain appropriate filters and grease traps to prevent accumulation of grease in any duct, stack or flue used to exhaust fumes and vapors resulting from such food preparation and to prevent stopping up of the sewerage ejecting system of the Building if any of same are necessary or are required by any governmental authority, (ii) keep all range hoods and ducts therefrom, if any, clean and free of grease at all times so as to avoid fire hazard, and (iii) clean out the vertical exhaust flue and duct, if any, at least once per month, or more frequently as conditions require. The discharge of any fumes, vapors and odors which, by law must be discharged into a separate stack or flue, will not be permitted unless Tenant, at its expense, shall provide for such discharge in a proper manner.

7. No acids, vapors or other materials shall be discharged or permitted to be discharged into the waste lines, vents or flues of the Building which may damage them.

8. No tenant or occupant shall engage or pay any employees in the Building, except those actually working for such tenant or occupant in the Building, nor advertise for laborers giving an address at the Building. No premises shall be used, or permitted to be used, at any time, as a store for the sale or display of goods, wares or merchandise of any kind, or as a restaurant, shop, booth, bootblack or other stand, or for the conduct of any business or occupation which predominantly involves direct patronage of the general public in the premises demised to such tenant, or for manufacturing or for other similar purposes.

9. The requirements of tenants will be attended to only upon application at the office of the Building or of Owner's managing agent. Employees of Owner or Owner's agents shall not perform any work or do anything outside of their regular duties, unless under special instructions from the office of Owner or Owner's managing agent.

10. The tenant's employees shall not loiter around the hallways, stairways, elevators, front, roof or any other part of the Building (other than the Premises) used in common by the occupants thereof.

11. Business machines and mechanical equipment of tenant which cause noise, vibration or any other nuisance that may be transmitted to the structure or other portions of the Building or to the Premises, to such a degree as to be reasonably objectionable to Owner or which interfere with the use or enjoyment by other tenants of their premises or the public portions of the Building, shall be placed and maintained by Tenant at Tenant's sole cost and expense, in settings of cork, rubber or spring type vibration eliminators or otherwise installed in a manner sufficient to eliminate noise or vibration to the satisfaction of Owner.

12. Owner, at the request of Tenant, shall maintain not more than 9 listings on the Building directory of the name of Tenant and of Tenant's personnel and permitted subtenants. Tenant shall pay to Owner, as Additional Rent, an amount (in no event less than one hundred ($100) dollars) equal to Owner's actual cost for each such change, plus forty (40%) percent of such cost as an administrative fee to Owner. The listing of any name other than that of Tenant, whether on the doors of the Premises, on the Building directory, or, or otherwise, shall not operate to vest any right or interest in this Lease or in the Premises, it being expressly understood that any such listing is a privilege extended by Owner revocable at will by written notice to Tenant.

13. (a) The service elevator is in operation only during business days during the hours of 9:00 a.m. to 11:00 a.m. and 2:00 p.m. to 4:00 p.m. Tenant shall provide Owner or Owner's agent with written notice not less than two (2) business days prior to the date on which Tenant desires to use the service elevator. Such notice must include a description of the materials to be moved and the approximate time(s) during which the movement is scheduled by Tenant. Tenant shall comply with all reasonable instructions from Owner or Owner's agent with regard to the time, method and procedures to be used with regard to such movement of materials and use of the service elevator. Tenant shall assume all risk of damage to articles moved and injury to the Building or other property or persons resulting from such movement of materials and/or use of the service elevator, and Owner shall not have any liability whatsoever with regard thereto. All movers used by Tenant shall be appropriately licensed and shall maintain adequate workers compensation, general liability and such other insurance as shall be required by Owner. Proof of such licensure and insurance coverage acceptable to Owner must be submitted to Owner at least twenty-four (24) hours prior to any move.

(b) Any heavy equipment or bulky matter to be moved in or out of the Building requires special handling and Tenant agrees to employ only persons holding a Master Rigger's License to do said work. All such work shall be done in full compliance with the Administrative Code of the City of New York and other municipal requirements. All such movements shall be made during hours which will least interfere with the normal operations of the Building as shall be determined by Owner, and all damage caused by such movement shall be promptly repaired by Tenant at Tenant's expense.

(c) If, in Owner's reasonable determination, the materials to be moved by Tenant by means of the service elevator require the service elevator cab to be padded and/or otherwise protected, Tenant shall not use the service elevator unless and until such padding and/or other protection has been installed by Owner. Such installation shall be at Tenant's expense. If Owner shall elect to permit Tenant to use the service elevator after regular hours, or in such a manner that requires the supervision of Owner's employees (of which fact Owner shall be the sole judge), Tenant shall pay to Owner the cost of furnishing such after-hour service and/or supervision as shall be determined by Owner, with a three (3) hour minimum charge. The rate currently being charged by Owner for after-hours or supervised service elevator service is (i) $75.00 per hour, for service on business days during the hours of 8:00 a.m. to 6:00 p.m. and (ii) $150.00 per hour for service at any other time(s). Such rates are subject to change by Owner effective upon notice to Tenant.

14. Tenant shall be solely responsible for locking-out and reestablishing elevator access to the Premises or any portion(s) thereof at such times as shall be determined by Tenant, and Owner and Owner's agents shall have no obligations, responsibilities or liabilities whatsoever with regard thereto.

EXHIBIT C

DESCRIPTION OF ROOF DECK

No warranty or representation is made or is to be implied as to the accuracy of the information reflected in this Exhibit. The information reflected in this Exhibit is subject to errors, omissions or changes without notice. The plans in this Exhibit are not drawn to scale. Any and all plans and/or drawings provided are not to be relied upon for exact measurements and/or configurations. The location and dimensions of walls, partitions, columns, stairs and openings are approximate and subject to revisions due to mechanical work, job conditions and requirements of governmental departments and authorities, and no resulting deviation shall affect the rent or Tenant's obligations under this Lease.

Roof Plan
622 Broadway Manhattan, New York City

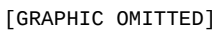
[GRAPHIC OMITTED]

EXHIBIT C1

ACP -5

NYC DEPARTMENT OF ENVIRONMENTAL PROTECTION
Asbestos Control Program
59-17 Junction Boulevard, 8th Floor, Corona, NY 11388-5107

NOT AN ASBESTOS PROJECT

[FORM ACP5 OMITTED]

EXHIBIT C-2

CERTIFICATE OF OCCUPANCY

THE CITY OF NEW YORK
DEPARTMENT OF BUILDINGS

CERTIFICATE OF OCCUPANCY

[CERTIFICATE OMITTED]

EXHIBIT D

Loan No.:_____

TAKE-TWO INTERACTIVE SOFTWARE, INC.

Tenant,

and

WASHINGTON MUTUAL BANK, F.A., SUCCESSOR BY MERGER TO
THE DIME SAVINGS BANK OF NEW YORK, FSB,

Lender.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Dated as of July 1, 2002

This instrument affects real and personal property situated in the State of New York, in Section 2, Block 522, Lot 5 on the Tax Map of New York County, known by the street address of 622626 Broadway, New York, New York 10012.

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RECORD AND RETURN TO:

Washington Mutual Bank, F.A.,
successor by merger to
The Dime Savings Bank of New York, FSB
Commercial Lending - 13th Floor
EAB Plaza
Uniondale, New York 11556-0123
Att'n: Mr. James Regan
Title Company and No.: Chicago Title Insurance Company of New York Title Number:

SUBORDINATION. NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), made as of the 1 s" day of July, 2002, by and among Take-Two Interactive Software, Inc., a corporation organized and existing under the laws of the State of New York, having an address at 575 Broadway, New York, New York 10012 ("Tenant"), WASHINGTON MUTUAL BANK, F.A., SUCCESSOR BY MERGER TO THE DIME SAVINGS BANK OF NEW YORK, FSB, a banking corporation chartered under the laws of the United States, having an address at EAB Plaza, Thirteenth Floor, Uniondale, New York 11556-0123 ("Lender"), and Moklam Enterprises, Inc., a corporation organized and existing under the laws of the State of New York, having an address at c/o Yuco Management, Inc., 475 Fifth Avenue, 19`h Floor, New York, New York 10017 ("Landlord"), WITNESSETH THAT:

WHEREAS Tenant has entered into a certain lease dated as of July 1, 2002 between Landlord, as lessor, and Tenant, as lessee, as amended by a supplemental agreement dated even date therewith (collectively the "Lease"), which Lease covers a portion of the improvements now or hereafter erected on the premises described in Schedule A annexed hereto and made part hereof known as 622-626 Broadway, New York, New York (the "Premises"); and

WHEREAS Lender is the holder of a certain Modified Promissory Note dated December 28, 1999 made by Landlord in favor of Lender, which is secured by a mortgage consolidation, modification and security agreement of even date therewith encumbering the Premises, as may hereafter be amended from time to time (the "First Mortgage Agreement"); and

WHEREAS Lender is also the holder of a certain Promissory Note dated March 31, 2000 made by landlord in favor of Lender, which is secured by a mortgage of even date therewith encumbering the Premises, as same may hereafter be amended from time to time (the "Second Mortgage Agreement"; the First Mortgage Agreement and the Second Mortgage Agreement, as consolidated, are hereinafter jointly referred to as the "Mortgage Agreement"); and

WHEREAS Tenant has requested that Lender agree not to disturb Tenant's possessory rights with respect to the Demised Space (as hereinafter defined) in the event that Lender should foreclose the Mortgage (as hereinafter defined), provided Tenant is not in default under the Lease beyond applicable periods of notice and grace and provided further that Tenant attorns to Lender; and

WHEREAS Lender is willing so to agree on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, and other. good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby respectively covenant, represent, warrant, consent and agree as follows:

1. The Lease and all of Tenant's right, title and interest thereunder are, and at all times shall be, subject and subordinate in all respects to the lien of the Mortgage Agreement, to all of the terms, conditions and provisions thereof and to all renewals, modifications, extensions, replacements and consolidations thereof, and substitutions therefor, and to each and every advance under any of the foregoing (collectively, the "Mortgage"), all without regard to the order of execution and delivery or to the order of recordation of the Mortgage and the Lease or any memorandum thereof.

2. Tenant, with full knowledge that Lender, in entering into this Agreement, is relying upon the truth, accuracy and completeness of the statements made by Tenant herein, represents and warrants to Lender that:

(a) The Lease is in full force and effect, has not been modified or amended, and is binding upon, and enforceable against, Tenant in accordance with its terms, subject to the provisions of Section 46.5 thereof. The Lease constitutes the entire agreement between Landlord and Tenant with respect to the space demised under the Lease (the "Demised Space") and Tenant has no interest in the Demised Space or the Premises except pursuant to the Lease.

(b) The commencement date of the Lease will occur upon the satisfaction of the conditions set forth in the supplemental agreement amending the Lease, at which time Tenant shall accept possession of the Demised Space. All alterations, improvements and work to be performed by Landlord pursuant to the Lease, if any, have been completed in a manner fully satisfactory to Tenant.

(c) Tenant has paid base rent under the Lease in advance for the month of October 2002. Tenant is entitled to an abatement of Fixed Rent for the first two (2) months of the term of the Lease. No prepayment of any Rent for more than one month has been made to date or hereafter will be made.

(d) Neither Tenant nor Landlord is in breach of, or in default under, the Lease, and Tenant knows of no event or condition which, with the passage of time or the giving of notice or both, would constitute such a breach or default.

(e) Neither Tenant nor Landlord has commenced any action or received any notice with respect to the termination of the Lease.

(f) Rent has been and shall be paid by Tenant free and clear of any and all defenses, offsets, claims, counterclaims, credits or deductions of any kind, except as otherwise specifically provided for in the supplemental agreement amending the Lease, in footnote 2 to the printed portion of the Lease, in Articles 9 and 10 of the Lease and pursuant to applicable law relating to constructive eviction.

(g) Tenant has not transferred, encumbered, mortgaged, assigned, conveyed or otherwise disposed of Tenant's interest in the Lease.

Tenant agrees at any time and from time to time upon not less than ten (10) days' prior notice by Lender to execute, acknowledge and deliver to Lender a statement in writing certifying that the Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease, as modified, is in full force and effect and stating the modifications) and the date to which Rent has been paid, and stating whether or not (a) there is a continuing default by Landlord in complying with any obligation imposed upon Landlord in the Lease or (b) there shall have occurred any event which, with the giving of notice or passage of time or both, would become such a default, and, if so, specifying each such default or occurrence.

3. Lender covenants and agrees with Tenant that, provided the Lease is in full force and effect and no default by Tenant exists thereunder after notice and the expiration of any cure period which are specifically provided for in the Lease with respect to such default, if any, (a) Tenant shall not be named or joined as a party defendant in any action or proceeding to foreclose the Mortgage (provided, however, that Tenant may be named or joined as a party defendant in any suit, action or proceeding for the appointment of a receiver, to quiet title to the Premises or to prevent impairment of Lender's security under the Mortgage and in any other suit, action or proceeding the purpose or intent of which shall be to enforce Lender's rights and remedies under the Loan Documents (as defined in the Mortgage Agreement), so long as same does not extinguish or interfere with the rights of Tenant under the Lease); and (b) neither a default by Landlord under the Mortgage nor a suit, action or proceeding to foreclose the Mortgage shall result in a cancellation or termination of the Lease or of the rights of Tenant thereunder. Nothing set forth in this paragraph is intended to impair or shall impair the right of Landlord to enforce any obligation of Tenant under the Lease or to take such action as is available to Landlord thereunder or under applicable law by reason of any default under the Lease beyond applicable periods of notice and grace.

4. If Successor Landlord (as hereinafter defined) acquires fee title to the Premises, then, subject to the provisions of the following sentence, (a) Successor Landlord shall thereby succeed to the position of the lessor under the Lease, (b) Successor Landlord shall not disturb the possession of Tenant except in accordance with the terms of the Lease or this Agreement, and the Lease shall continue in full force and effect as a direct lease between Tenant and Successor Landlord upon all of the then executory terms, covenants, conditions and agreements set forth therein, and (c) tenant shall attorn to and recognize Successor Landlord as the lessor under the Lease and be bound to comply with all of the obligations imposed upon Tenant in the Lease (Tenant hereby

STATE OF)
) ss.:
COUNTY OF)

On the _____ day of _____, in the year 2002, before me, the undersigned personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

- ----------
Signature and Office of individual
taking acknowledgment

STATE OF NEW YORK)
) ss.:
COUNTY OF YORK)

On the___ day of _____, in the year 2002, before me, the undersigned personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

- ----------
Signature and Office of individual
taking acknowledgment

STATE OF NEW YORK)
) ss.:
COUNTY OF YORK)

On the _____ day of _____, in the year 2002, before me, the undersigned personally appeared Raymond Yu, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

- ----------
Signature and Office of individual
taking acknowledgment

SCHEDULE A

DESCRIPTION OF PREMISES

Exhibit 99.1

CERTIFICATION PURSUANT TO
18 U. S. C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Take-Two Interactive Software, Inc. (the "Company") on Form 10-Q for the period ended July 31, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kelly Sumner, as Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. SS 1350, as adopted pursuant to SS. 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934: and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Kelly Sumner

Kelly Sumner
Chief Executive Officer

September 16, 2002

Exhibit 99.2

CERTIFICATION PURSUANT TO
18 U. S. C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Take-Two Interactive Software, Inc. (the "Company") on Form 10-Q for the period ended July 31, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Karl H. Winters, as Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. SS 1350, as adopted pursuant to SS. 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934: and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Karl H. Winters

Karl H. Winters
Chief Financial Officer

September 16, 2002